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Title 3—

The President

Executive Order 14010 of February 2, 2021

Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.,* it is hereby ordered as follows:

Section 1. *Policy.* For generations, immigrants have come to the United States with little more than the clothes on their backs, hope in their hearts, and a desire to claim their own piece of the American Dream. These mothers, fathers, sons, and daughters have made our Nation better and stronger.

The United States is also a country with borders and with laws that must be enforced. Securing our borders does not require us to ignore the humanity of those who seek to cross them. The opposite is true. We cannot solve the humanitarian crisis at our border without addressing the violence, instability, and lack of opportunity that compel so many people to flee their homes. Nor is the United States safer when resources that should be invested in policies targeting actual threats, such as drug cartels and human traffickers, are squandered on efforts to stymie legitimate asylum seekers.

Consistent with these principles, my Administration will implement a multi-pronged approach toward managing migration throughout North and Central America that reflects the Nation's highest values. We will work closely with civil society, international organizations, and the governments in the region to: establish a comprehensive strategy for addressing the causes of migration in the region; build, strengthen, and expand Central and North American countries' asylum systems and resettlement capacity; and increase opportunities for vulnerable populations to apply for protection closer to home. At the same time, the United States will enhance lawful pathways for migration to this country and will restore and strengthen our own asylum system, which has been badly damaged by policies enacted over the last 4 years that contravened our values and caused needless human suffering.

Sec. 2. *United States Strategies for Addressing the Root Causes of Irregular Migration and for Collaboratively Managing Migration in the Region.* (a) The Assistant to the President for National Security Affairs (APNSA), in coordination with the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the heads of any other relevant executive departments and agencies, shall as soon as possible prepare:

(i) the United States Strategy for Addressing the Root Causes of Migration (the ''Root Causes Strategy''); and

(ii) the United States Strategy for Collaboratively Managing Migration in the Region (the ''Collaborative Management Strategy'').

(b) The Root Causes Strategy shall identify and prioritize actions to address the underlying factors leading to migration in the region and ensure coherence of United States Government positions. The Root Causes Strategy shall take into account, as appropriate, the views of bilateral, multilateral, and private sector partners, as well as civil society, and it shall include proposals to:

(i) coordinate place-based efforts in El Salvador, Guatemala, and Honduras (the ''Northern Triangle'') to address the root causes of migration, including by:

(A) combating corruption, strengthening democratic governance, and advancing the rule of law;

(B) promoting respect for human rights, labor rights, and a free press;

(C) countering and preventing violence, extortion, and other crimes perpetrated by criminal gangs, trafficking networks, and other organized criminal organizations;

(D) combating sexual, gender-based, and domestic violence; and

(E) addressing economic insecurity and inequality;

(ii) consult and collaborate with the Office of the United States Trade Representative, the Secretary of Commerce, and the Secretary of Labor to evaluate compliance with the Dominican Republic-Central America Free Trade Agreement to ensure that unfair labor practices do not disadvantage competition; and

(iii) encourage the deployment of Northern Triangle domestic resources and the development of Northern Triangle domestic capacity to replicate and scale efforts to foster sustainable societies across the region.

(c) The Collaborative Management Strategy shall identify and prioritize actions to strengthen cooperative efforts to address migration flows, including by expanding and improving upon previous efforts to resettle throughout the region those migrants who qualify for humanitarian protection. The Collaborative Management Strategy should focus on programs and infrastructure that facilitate access to protection and other lawful immigration avenues, in both the United States and partner countries, as close to migrants' homes as possible. Priorities should include support for expanding pathways through which individuals facing difficult or dangerous conditions in their home countries can find stability and safety in receiving countries throughout the region, not only through asylum and refugee resettlement, but also through labor and other non-protection-related programs. To support the development of the Collaborative Management Strategy, the United States Government shall promptly begin consultations with civil society, the private sector, international organizations, and governments in the region, including the Government of Mexico. These consultations should address:

(i) the continued development of asylum systems and resettlement capacities of receiving countries in the region, including through the provision of funding, training, and other support;

(ii) the development of internal relocation and integration programs for internally displaced persons, as well as return and reintegration programs for returnees in relevant countries of the region; and

(iii) humanitarian assistance, including through expansion of shelter networks, to address the immediate needs of individuals who have fled their homes to seek protection elsewhere in the region.

Sec. 3. *Expansion of Lawful Pathways for Protection and Opportunity in the United States.* (a) The Secretary of State and the Secretary of Homeland Security shall promptly review mechanisms for better identifying and processing individuals from the Northern Triangle who are eligible for refugee resettlement to the United States. Consideration shall be given to increasing access and processing efficiency. As part of this review, the Secretary of State and the Secretary of Homeland Security shall also identify and implement all legally available and appropriate forms of relief to complement the protection afforded through the United States Refugee Admissions Program. The Secretary of State and Secretary of Homeland Security shall submit a report to the President with the results of the review.

(b) As part of the review conducted pursuant to section 3(a) of this order, the Secretary of Homeland Security shall:

(i) consider taking all appropriate actions to reverse the 2017 decision rescinding the Central American Minors (CAM) parole policy and terminating the CAM Parole Program, *see* ''Termination of the Central American Minors Parole Program,'' 82 FR 38,926 (August 16, 2017), and consider initiating appropriate actions to reinstitute and improve upon the CAM Parole Program; and

(ii) consider promoting family unity by exercising the Secretary's discretionary parole authority to permit certain nationals of the Northern Triangle who are the beneficiaries of approved family-sponsored immigrant visa petitions to join their family members in the United States, on a case-by-case basis.

(c) The Secretary of State and the Secretary of Homeland Security shall promptly evaluate and implement measures to enhance access for individuals from the Northern Triangle to visa programs, as appropriate and consistent with applicable law.

Sec. 4. *Restoring and Enhancing Asylum Processing at the Border.* (a) *Resuming the Safe and Orderly Processing of Asylum Claims at United States Land Borders.*

(i) The Secretary of Homeland Security and the Director of the Centers for Disease Control and Prevention (CDC), in coordination with the Secretary of State, shall promptly begin consultation and planning with international and non-governmental organizations to develop policies and procedures for the safe and orderly processing of asylum claims at United States land borders, consistent with public health and safety and capacity constraints.

(ii) The Secretary of Homeland Security, in consultation with the Attorney General, the Secretary of Health and Human Services (HHS), and the Director of CDC, shall promptly begin taking steps to reinstate the safe and orderly reception and processing of arriving asylum seekers, consistent with public health and safety and capacity constraints. Additionally, in furtherance of this goal, as appropriate and consistent with applicable law:

(A) The Secretary of HHS and the Director of CDC, in consultation with the Secretary of Homeland Security, shall promptly review and determine whether termination, rescission, or modification of the following actions is necessary and appropriate: ''Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists,'' 85 FR 65,806 (October 13, 2020); and ''Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right to Introduce and Prohibition of Introduction of Persons into United States from Designated Foreign Countries or Places for Public Health Purposes,'' 85 FR 56,424 (September 11, 2020) (codified at 42 CFR 71.40).

(B) The Secretary of Homeland Security shall promptly review and determine whether to terminate or modify the program known as the Migrant Protection Protocols (MPP), including by considering whether to rescind the Memorandum of the Secretary of Homeland Security titled ''Policy Guidance for Implementation of the Migrant Protection Protocols'' (January 25, 2019), and any implementing guidance. In coordination with the Secretary of State, the Attorney General, and the Director of CDC, the Secretary of Homeland Security shall promptly consider a phased strategy for the safe and orderly entry into the United States, consistent with public health and safety and capacity constraints, of those individuals who have been subjected to MPP for further processing of their asylum claims.

(C) The Attorney General and the Secretary of Homeland Security shall promptly review and determine whether to rescind the interim final rule titled ''Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims,'' 83 FR 55,934 (November 9,

2018), and the final rule titled ''Asylum Eligibility and Procedural Modifications,'' 85 FR 82,260 (December 17, 2020), as well as any agency memoranda or guidance that were issued in reliance on those rules.

(D) The Attorney General and the Secretary of Homeland Security shall promptly review and determine whether to rescind the interim final rule titled ''Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act,'' 84 FR 63,994 (November 19, 2019), as well as any agency memoranda or guidance issued in reliance on that rule. In the interim, the Secretary of State shall promptly consider whether to notify the governments of the Northern Triangle that, as efforts to establish a cooperative, mutually respectful approach to managing migration across the region begin, the United States intends to suspend and terminate the following agreements:

(1) ''Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims,'' 84 FR 64,095 (July 26, 2019).

(2) ''Agreement Between the Government of the United States of America and the Government of the Republic of El Salvador for Cooperation in the Examination of Protection Claims,'' 85 FR 83,597 (September 20, 2019).

(3) ''Agreement Between the Government of the United States of America and the Government of the Republic of Honduras for Cooperation in the Examination of Protection Claims,'' 85 FR 25,462 (September 25, 2019).

(E) The Secretary of Homeland Security shall promptly cease implementing the ''Prompt Asylum Case Review'' program and the ''Humanitarian Asylum Review Program'' and consider rescinding any orders, rules, regulations, guidelines or policies implementing those programs.

(F) The following Presidential documents are revoked:

(1) Executive Order 13767 of January 25, 2017 (Border Security and Immigration Enforcement Improvements).

(2) Proclamation 9880 of May 8, 2019 (Addressing Mass Migration Through the Southern Border of the United States).

(3) Presidential Memorandum of April 29, 2019 (Additional Measures to Enhance Border Security and Restore Integrity to Our Immigration System).

(4) Presidential Memorandum of April 6, 2018 (Ending ''Catch and Release'' at the Border of the United States and Directing Other Enhancements to Immigration Enforcement).

(5) Presidential Memorandum of April 4, 2018 (Securing the Southern Border of the United States).

(G) The Secretary of State, the Attorney General, and the Secretary of Homeland Security shall promptly take steps to rescind any agency memoranda or guidance issued in reliance on or in furtherance of any directive revoked by section 4(a)(ii)(F) of this order.

(b) *Ensuring a Timely and Fair Expedited Removal Process.*

(i) The Secretary of Homeland Security, with support from the United States Digital Service within the Office of Management and Budget, shall promptly begin a review of procedures for individuals placed in expedited removal proceedings at the United States border. Within 120 days of the date of this order, the Secretary of Homeland Security shall submit a report to the President with the results of this review and recommendations for creating a more efficient and orderly process that facilitates timely adjudications and adherence to standards of fairness and due process.

(ii) The Secretary of Homeland Security shall promptly review and consider whether to modify, revoke, or rescind the designation titled ''Designating Aliens for Expedited Removal,'' 84 FR 35,409 (July 23, 2019), regarding the geographic scope of expedited removal pursuant to INA section

235(b)(1), 8 U.S.C. 1225(b)(1), consistent with applicable law. The review shall consider our legal and humanitarian obligations, constitutional principles of due process and other applicable law, enforcement resources, the public interest, and any other factors consistent with this order that the Secretary deems appropriate. If the Secretary determines that modifying, revoking, or rescinding the designation is appropriate, the Secretary shall do so through publication in the *Federal Register*.

(c) *Asylum Eligibility.* The Attorney General and the Secretary of Homeland Security shall:

(i) within 180 days of the date of this order, conduct a comprehensive examination of current rules, regulations, precedential decisions, and internal guidelines governing the adjudication of asylum claims and determinations of refugee status to evaluate whether the United States provides protection for those fleeing domestic or gang violence in a manner consistent with international standards; and

(ii) within 270 days of the date of this order, promulgate joint regulations, consistent with applicable law, addressing the circumstances in which a person should be considered a member of a ''particular social group,'' as that term is used in 8 U.S.C. 1101(a)(42)(A), as derived from the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

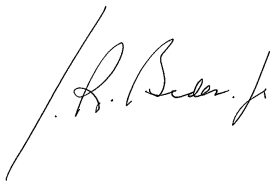
Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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



THE WHITE HOUSE,
February 2, 2021.

[FR Doc. 2021–02561
Filed 2–4–21; 8:45 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 14011 of February 2, 2021

Establishment of Interagency Task Force on the Reunification of Families

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to reunite children separated from their families at the United States-Mexico border, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of my Administration to respect and value the integrity of families seeking to enter the United States. My Administration condemns the human tragedy that occurred when our immigration laws were used to intentionally separate children from their parents or legal guardians (families), including through the use of the Zero-Tolerance Policy. My Administration will protect family unity and ensure that children entering the United States are not separated from their families, except in the most extreme circumstances where a separation is clearly necessary for the safety and well-being of the child or is required by law.

Sec. 2. *Establishment.* There is hereby established an Interagency Task Force on the Reunification of Families (Task Force).

Sec. 3. *Membership.* (a) The Task Force shall include the following members or their designees:

(i) the Secretary of Homeland Security, who shall serve as Chair;

(ii) the Secretary of State, who shall serve as a Vice Chair;

(iii) the Secretary of Health and Human Services, who shall serve as a Vice Chair;

(iv) the Attorney General;

(v) such other officers or employees of the Departments of State, Justice, Health and Human Services, and Homeland Security, as the head of each respective department may designate; and

(vi) such other officers or employees of executive departments and agencies (agencies) as the Chair or Vice Chairs may invite to participate, with the concurrence of the head of the agency concerned.

(b) The Chair shall convene and preside at meetings of the Task Force. The Chair, in consultation with the Vice Chairs, shall direct its work and, as appropriate, establish and direct subgroups of the Task Force.

Sec. 4. *Functions.* The Task Force shall, consistent with applicable law, perform the following functions:

(a) Identifying all children who were separated from their families at the United States-Mexico border between January 20, 2017, and January 20, 2021, in connection with the operation of the Zero-Tolerance Policy;

(b) To the greatest extent possible, facilitating and enabling the reunification of each of the identified children with their families by:

(i) providing recommendations to heads of agencies concerning the exercise of any agency authorities necessary to reunite the children with their families, including:

(A) recommendations regarding the possible exercise of parole under section 212(d)(5)(A) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(d)(5)(A)), or the issuance of visas or other immigration benefits, as appropriate and consistent with applicable law;

(B) recommendations regarding the provision of additional services and support to the children and their families, including trauma and mental health services; and

(C) recommendations regarding reunification of any additional family members of the children who were separated, such as siblings, where there is a compelling humanitarian interest in doing so;

(ii) providing recommendations to the President concerning the exercise of any Presidential authorities necessary to reunite the children with their families, as appropriate and consistent with applicable law; and

(iii) for purposes of developing the recommendations described in this subsection, and in particular with respect to recommendations regarding the manner and location of reunification, consulting with the children, their families, representatives of the children and their families, and other stakeholders, and considering the families' preferences and parental rights as well as the children's well-being; and

(c) Providing regular reports to the President, including:

(i) an initial progress report no later than 120 days after the date of this order;

(ii) interim progress reports every 60 days thereafter;

(iii) a report containing recommendations to ensure that the Federal Government will not repeat the policies and practices leading to the separation of families at the border, no later than 1 year after the date of this order; and

(iv) a final report when the Task Force has completed its mission.

Sec. 5. *Task Force Administration.* (a) To the extent permitted by law, and subject to the availability of appropriations, the Department of Homeland Security shall provide the funding and administrative support the Task Force needs to implement this order, as determined by the Secretary of Homeland Security.

(b) To the extent permitted by law, including the Economy Act (31 U.S.C. 1535), and subject to the availability of appropriations, additional agencies represented on the Task Force may detail staff to the Task Force, or otherwise provide administrative support, as necessary to implement this order, as determined by the respective heads of agencies.

(c) The Task Force shall coordinate, as appropriate and consistent with applicable law, with relevant stakeholders, including domestic and international non-governmental organizations, and representatives of the children and their families.

(d) The Task Force, at the direction of the Chair, may hold public meetings and engagement sessions as necessary to carry out its mission.

(e) The Task Force shall terminate 30 days after it provides its final report to the President under section 4(c)(iv) of this order.

Sec. 6. *Revocation of Executive Order 13841.* Executive Order 13841 of June 20, 2018 (Affording Congress an Opportunity To Address Family Separation), is hereby revoked.

Sec. 7. *Definitions.* For purposes of this order:

(a) The term ''children'' includes all persons who were under the age of 18 at the time they were separated from their families at the border.

(b) The term ''Zero-Tolerance Policy'' means the policy discussed in the Attorney General's memorandum of April 6, 2018, entitled, ''Zero-Tolerance for Offenses Under 8 U.S.C. 1325(a),'' and any other related policy, program, practice, or initiative resulting in the separation of children from their families at the United States-Mexico border.

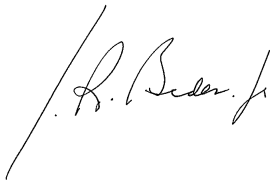
Sec. 8. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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



THE WHITE HOUSE,
February 2, 2021.

[FR Doc. 2021–02562
Filed 2–4–21; 8:45 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 14012 of February 2, 2021

Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans

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

Section 1. *Policy*. Over 40 million foreign-born individuals live in the United States today. Millions more Americans have immigrants in their families or ancestry. New Americans and their children fuel our economy, working in every industry, including healthcare, construction, caregiving, manufacturing, service, and agriculture. They open and successfully run businesses at high rates, creating jobs for millions, and they contribute to our arts, culture, and government, providing new traditions, customs, and viewpoints. They are essential workers helping to keep our economy afloat and providing important services to Americans during a global pandemic. They have helped the United States lead the world in science, technology, and innovation. And they are on the frontlines of research to develop coronavirus disease 2019 (COVID–19) vaccines and treatments for those afflicted with the deadly disease.

Consistent with our character as a Nation of opportunity and of welcome, it is essential to ensure that our laws and policies encourage full participation by immigrants, including refugees, in our civic life; that immigration processes and other benefits are delivered effectively and efficiently; and that the Federal Government eliminates sources of fear and other barriers that prevent immigrants from accessing government services available to them. Our Nation is enriched socially and economically by the presence of immigrants, and we celebrate with them as they take the important step of becoming United States citizens. The Federal Government should develop welcoming strategies that promote integration, inclusion, and citizenship, and it should embrace the full participation of the newest Americans in our democracy.

Sec. 2. *Role of the Domestic Policy Council*. The role of the White House Domestic Policy Council (DPC) is to convene executive departments and agencies (agencies) to coordinate the formulation and implementation of my Administration's domestic policy objectives. Consistent with that role, the DPC shall coordinate the Federal Government's efforts to welcome and support immigrants, including refugees, and to catalyze State and local integration and inclusion efforts. In furtherance of these goals, the DPC shall convene a Task Force on New Americans, which shall include members of agencies that implement policies that impact immigrant communities.

Sec. 3. *Restoring Trust in our Legal Immigration System*. The Secretary of State, the Attorney General, and the Secretary of Homeland Security shall review existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that may be inconsistent with the policy set forth in section 1 of this order.

(a) In conducting this review, the Secretary of State, the Attorney General, and the Secretary of Homeland Security shall:

(i) identify barriers that impede access to immigration benefits and fair, efficient adjudications of these benefits and make recommendations on how to remove these barriers, as appropriate and consistent with applicable law; and

(ii) identify any agency actions that fail to promote access to the legal immigration system—such as the final rule entitled, ''U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,'' 85 Fed. Reg. 46788 (Aug. 3, 2020), in light of the Emergency Stopgap USCIS Stabilization Act (title I of division D of Public Law 116–159)—and recommend steps, as appropriate and consistent with applicable law, to revise or rescind those agency actions.

(b) Within 90 days of the date of this order, the Secretary of State, the Attorney General, and the Secretary of Homeland Security shall each submit a plan to the President describing the steps their respective agencies will take to advance the policy set forth in section 1 of this order.

(c) Within 180 days of submitting the plan described in subsection (b) of this section, the Secretary of State, the Attorney General, and the Secretary of Homeland Security shall each submit a report to the President describing the progress of their respective agencies towards implementing the plan developed pursuant to subsection (b) of this section and recognizing any areas of concern or barriers to implementing the plan.

Sec. 4. *Immediate Review of Agency Actions on Public Charge Inadmissibility*. The Secretary of State, the Attorney General, the Secretary of Homeland Security, and the heads of other relevant agencies, as appropriate, shall review all agency actions related to implementation of the public charge ground of inadmissibility in section 212(a)(4) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(a)(4), and the related ground of deportability in section 237(a)(5) of the INA, 8 U.S.C. 1227(a)(5). They shall, in considering the effects and implications of public charge policies, consult with the heads of relevant agencies, including the Secretary of Agriculture, the Secretary of Health and Human Services, and the Secretary of Housing and Urban Development.

(a) This review should:

(i) consider and evaluate the current effects of these agency actions and the implications of their continued implementation in light of the policy set forth in section 1 of this order;

(ii) identify appropriate agency actions, if any, to address concerns about the current public charge policies' effect on the integrity of the Nation's immigration system and public health; and

(iii) recommend steps that relevant agencies should take to clearly communicate current public charge policies and proposed changes, if any, to reduce fear and confusion among impacted communities.

(b) Within 60 days of the date of this order, the Secretary of State, the Attorney General, and the Secretary of Homeland Security shall each submit a report to the President describing any agency actions identified pursuant to subsection (a)(ii) of this section and any steps their agencies intend to take or have taken, consistent with subsection (a)(iii) of this section.

Sec. 5. *Promoting Naturalization*.

(a) *Improving the naturalization process*. The Secretary of State, the Attorney General, and the Secretary of Homeland Security shall, within 60 days of the date of this order, develop a plan describing any agency actions, in furtherance of the policy set forth in section 1 of this order, that they will take to:

(i) eliminate barriers in and otherwise improve the existing naturalization process, including by conducting a comprehensive review of that process with particular emphasis on the N–400 application, fingerprinting, background and security checks, interviews, civics and English language tests, and the oath of allegiance;

(ii) substantially reduce current naturalization processing times;

(iii) make the naturalization process more accessible to all eligible individuals, including through a potential reduction of the naturalization fee and restoration of the fee waiver process;

(iv) facilitate naturalization for eligible candidates born abroad and members of the military, in consultation with the Department of Defense; and

(v) review policies and practices regarding denaturalization and passport revocation to ensure that these authorities are not used excessively or inappropriately.

(b) *Implementing improvements to the naturalization process*. Within 180 days of the issuance of the plan developed pursuant to subsection (a) of this section, the Secretary of State, the Attorney General, and the Secretary of Homeland Security shall each submit a report to the President describing the progress in implementing the plan, any barriers to implementing the plan, and any additional areas of concern that should be addressed to ensure that eligible individuals are able to apply for naturalization in a fair and efficient manner.

(c) *Strategy to promote naturalization*. There is established an Interagency Working Group on Promoting Naturalization (Naturalization Working Group) to develop a national strategy to promote naturalization. The Naturalization Working Group shall be chaired by the Secretary of Homeland Security, or the Secretary's designee, and it shall include the heads of the following agencies, or senior-level officials designated by the head of each agency:

(i) the Secretary of Labor;

(ii) the Secretary of Health and Human Services;

(iii) the Secretary of Housing and Urban Development;

(iv) the Secretary of Education;

(v) the Secretary of Homeland Security;

(vi) the Commissioner of Social Security; and

(vii) the heads of other agencies invited to participate by the Working Group chair.

(d) Within 90 days of the date of this order, the Naturalization Working Group shall submit a strategy to the President outlining steps the Federal Government should take to promote naturalization, including the potential development of a public awareness campaign.

Sec. 6. *Revocation*. The Presidential Memorandum of May 23, 2019 (Enforcing the Legal Responsibilities of Sponsors of Aliens), is revoked. The heads of relevant agencies shall review any investigations or compliance actions initiated pursuant to that memorandum and shall determine whether to suspend, as appropriate, any investigations or compliance actions inconsistent with the policy set forth in section 1 of this order. The heads of relevant agencies shall review any agency actions developed pursuant to that memorandum and, as appropriate, issue revised guidance consistent with the policy set forth in section 1 of this order.

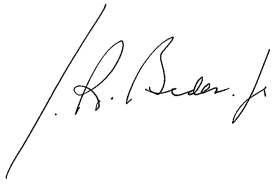
Sec. 7. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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



THE WHITE HOUSE,
February 2, 2021.

[FR Doc. 2021–02563
Filed 2–4–21; 8:45 am]
Billing code 3295–F1–P

Presidential Documents

Memorandum of February 2, 2021

Maximizing Assistance From the Federal Emergency Management Agency To Respond to COVID–19

Memorandum for the Secretary of Homeland Security [and] the Administrator of the Federal Emergency Management Agency

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the ''Stafford Act''), I hereby order as follows:

Section 1. *Policy*. Consistent with the nationwide emergency declaration concerning the coronavirus disease 2019 (COVID–19) pandemic on March 13, 2020, it is the policy of my Administration to combat and respond to COVID–19 with the full capacity and capability of the Federal Government to protect and support our families, schools, and businesses, and to assist State, local, Tribal, and territorial governments to do the same, including through emergency and disaster assistance available from the Federal Emergency Management Agency (FEMA).

Sec. 2. *Assistance for Category B COVID–19 Emergency Protective Measures*. (a) FEMA shall provide a 100 percent Federal cost share for all work eligible for assistance under Public Assistance Category B, pursuant to sections 403 (42 U.S.C. 5170b), 502 (42 U.S.C. 5192), and 503 (42 U.S.C. 5193) of the Stafford Act, including that authorized by section 3(a) of my memorandum of January 21, 2021 (Memorandum to Extend Federal Support to Governors' Use of the National Guard to Respond to COVID–19 and to Increase Reimbursement and Other Assistance Provided to States), performed from January 21, 2021, through September 30, 2021.

(b) FEMA shall provide a 100 percent Federal cost share for all work eligible for assistance under Public Assistance Category B, pursuant to sections 403 (42 U.S.C. 5170b), 502 (42 U.S.C. 5192), and 503 (42 U.S.C. 5193) of the Stafford Act, but not including that authorized by section 3(a) of my memorandum of January 21, 2021, performed from January 20, 2020, through January 20, 2021.

Sec. 3. *General Provisions*. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

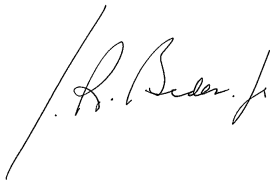
(i) the authority granted by law to an executive department or agency, or the head thereof; or

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

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

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

(d) The Administrator of FEMA is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, February 2, 2021

[FR Doc. 2021–02569
Filed 2–4–21; 8:45 am]
Billing code 9111–23–P

Rules and Regulations

Federal Register

Vol. 86, No. 23

Friday, February 5, 2021

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

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

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2020–0028]

RIN 3170–AA98

Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): Seasoned QM Loan Definition; Correction

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; correction.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) recently published ''Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): Seasoned QM Loan Definition,'' which appeared in the **Federal Register** on December 29, 2020. This document corrects a scrivener's error in an amendatory instruction in that document.

DATES: Effective March 1, 2021.

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

SUPPLEMENTARY INFORMATION: In FR Doc. 2020–27571 appearing on page 86402 in the **Federal Register** of Tuesday, December 29, 2020, the following correction is made:

§ 1026.43 [Corrected]

■ On page 86452, in the second column, in amendment 2, the instruction ''Amend § 1026.43 by revising paragraphs (e)(1) and (e)(2) introductory text and adding paragraph (e)(7) to read as follows: '' is corrected to read: ''Amend § 1026.43 by revising the headings for paragraphs (e) and (e)(1) and paragraphs (e)(1)(i) and (e)(2) introductory text and adding paragraph (e)(7) to read as follows:''.

Dated: January 15, 2021.

Grace Feola,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2021–01387 Filed 2–4–21; 8:45 am]

BILLING CODE 4810–AM–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket Number SBA–2021–0006]

RIN 3245–AH65

DEPARTMENT OF THE TREASURY

RIN 1505–AC75

Business Loan Program Temporary Changes; Paycheck Protection Program—Loan Forgiveness Requirements and Loan Review Procedures as Amended by Economic Aid Act

AGENCY: U.S. Small Business Administration; Department of the Treasury.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements changes related to the forgiveness and review of loans made under the Paycheck Protection Program (PPP), which was originally established under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID–19). On December 27, 2020, the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act) was enacted, extending the authority to make PPP loans through March 31, 2021, revising certain PPP requirements, and permitting second draw PPP loans. This interim final rule consolidates prior rules related to forgiveness and reviews of PPP loans and incorporates changes made by the Economic Aid Act, including with respect to forgiveness of second draw PPP loans.

DATES:

Effective date: Unless otherwise specified in the Economic Aid Act, the provisions of this interim final rule are effective February 3, 2021.

Applicability date: This interim final rule applies to Paycheck Protection Programs loans for which a loan forgiveness payment had not been remitted by SBA as of December 27, 2020. Parts IV.6.c., IV.7 and V of this interim final rule, Paycheck Protection Program SBA Loan Review Procedures and Related Borrower and Lender Responsibilities, apply to all Paycheck Protection Program loans.

Comment date: Comments must be received on or before March 8, 2021.

ADDRESSES: You may submit comments, identified by number SBA–2021–0006 through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please send an email to *ppp-ifr@sba.gov.* All other comments must be submitted through the Federal eRulemaking Portal described above. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: A Call Center Representative at 833–572–0502, or the local SBA Field Office; the list of offices can be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID–19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all States, territories, and the District of Columbia. With the COVID–19 emergency, many small businesses nationwide continue to experience economic hardship as a direct result of the Federal, State, and local public health measures that continue to be taken to minimize the public's exposure to the virus. In addition, based on the advice of public health officials, other voluntary measures continue to be observed, resulting in a decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and

Economic Security Act (the CARES Act) (Pub. L. 116–136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the CARES Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID–19 emergency.

Section 1102 of the CARES Act temporarily permitted SBA to guarantee 100 percent of 7(a) loans under a new program titled the ''Paycheck Protection Program,'' pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)). Section 1106 of the CARES Act provided for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP). On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116–139), which provided additional funding and authority for the Paycheck Protection Program.

On June 5, 2020, the President signed the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) (Pub. L. 116–142), which changed provisions of the PPP relating to the maturity of PPP loans, the deferral of PPP loan payments, and the forgiveness of PPP loans. On July 4, 2020, Public Law 116–147 extended the authority for SBA to guarantee PPP loans to August 8, 2020.

On December 27, 2020, the President signed the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (Economic Aid Act) (Pub. L. 116–260), which reauthorizes lending under the PPP through March 31, 2021, and among other things, modifies the PPP, including provisions relating to forgiveness of PPP loans. The Economic Aid Act added a new temporary section 7(a)(37) to the Small Business Act, which authorizes SBA to guarantee additional PPP loans to eligible borrowers under generally the same terms and conditions available under section 7(a)(36) of the Small Business Act through March 31, 2021. The Economic Aid Act also redesignates section 1106 of the CARES Act as section 7A and transfers that section to the Small Business Act, to appear after section 7 of the Small Business Act.[1]

As described below, this interim final rule (1) provides borrowers and lenders with guidance on requirements governing forgiveness of PPP loans, and (2) informs borrowers and lenders of SBA's process for reviewing loan applications and loan forgiveness applications. SBA is incorporating and restating the prior interim final rules relating to loan forgiveness and loan reviews and making revisions to conform these prior interim final rules to the amendments made by the Economic Aid Act, including for PPP loans made under section 7(a)(37) of the Small Business Act. The prior interim final rules relating to loan forgiveness and loan reviews that are incorporated in this interim final rule are: The first interim final rule on loan forgiveness (85 FR 33004) (June 1, 2020); the first interim final rule on SBA loan review procedures and related borrower and lender responsibilities (85 FR 33010) (June 1, 2020); the interim final rule incorporating Flexibility Act Amendments (85 FR 38304) (June 26, 2020); the interim final rule on Treatment of Owners and Forgiveness of Certain Nonpayroll Costs (85 FR 52881) (August 27, 2020); and the interim final rule on Additional Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules (85 FR 66214) (October 19, 2020). The rule also incorporates the forgiveness portions of the interim final rules regarding individuals with self-employment income (85 FR 21747 (April 20, 2020) and 85 FR 36997 (June 19, 2020)) and fishing boat owners (85 FR 39066) (June 30, 2020).

This rule should be interpreted consistently with the sets of Frequently Asked Questions (FAQs) regarding the PPP that are posted on SBA's and the Department of the Treasury's (Treasury) websites, the consolidated interim final rule implementing updates to the Paycheck Protection Program (86 FR 3692 (January 14, 2021)) and the interim final rule on second draw PPP loans (86 FR 3712 (January 14, 2021)); however, the Economic Aid Act overrides any conflicting guidance in the FAQs, and SBA will be revising the FAQs to fully conform to the Economic Aid Act as quickly as feasible.

Most of this document restates existing regulatory provisions to provide PPP lenders and new and existing PPP borrowers a single regulation to consult on loan forgiveness and loan review requirements and processes. To enhance the readability of this document, SBA has not reproduced the policy and legal justifications for existing regulatory provisions restated here, except to the extent that those justifications may be helpful to the borrower or lender. However, those justifications from the original interim final rules are adopted here.

Six provisions of this interim final rule are an exercise of rulemaking authority by Treasury either jointly with SBA or by Treasury alone: (1) The additional reference period option provided for seasonal employers, (2) the *de minimis* exemption provided with respect to certain offers of rehire, (3) the *de minimis* exemption from the full-time equivalent employee reduction penalty when an employee is, for example, fired for cause, (4) the *de minimis* exemption from the full-time equivalent employee reduction penalty when the borrower eliminates reductions by December 31, 2020 or, for a PPP loan made after December 27, 2020, the last day of the loan's covered period, (5) the *de minimis* exemption from the full-time equivalent (FTE) employee reduction penalty for certain PPP loans of $50,000 or less, and (6) the *de minimis* exemption from the employee salary and wages reduction penalty for certain PPP loans of $50,000 or less. Otherwise, all provisions in this rule are an exercise of rulemaking authority by SBA alone.

II. Comments and Immediate Effective Date

This interim final rule is being issued without advance notice and public comment because section 303 of the Economic Aid Act authorizes SBA to issue regulations to implement the Economic Aid Act without regard to notice requirements. In addition, this rule is being issued to allow for immediate implementation of this program. The intent of both the CARES Act and the Economic Aid Act is that SBA provides relief to America's small businesses expeditiously. The Economic Aid Act provided that several of the changes relating to loan forgiveness are effective as if included in the CARES Act and apply to any loan made pursuant to section 7(a)(36) of the Small Business Act before, on, or after December 27, 2020, including forgiveness of such a loan. Accordingly, loans that were made in 2020 but for which SBA has not yet remitted forgiveness to the lender will be forgiven based on changes made in the Economic Aid Act, as implemented in this interim final rule. Given the urgent need to provide borrowers that are eligible for loan forgiveness with timely relief, the Administrator in consultation with the Secretary has determined that it is impractical and not in the public interest to provide a 30-day delayed effective date. An immediate effective date will allow SBA to continue remitting forgiveness payments to

[1] Because section 1106 of the CARES Act is now codified as section 7A of the Small Business Act, any reference to section 1106 of the CARES Act in the rules that are being restated herein will refer to section 7A.

lenders without disruption and in accordance with the amendments made by the Economic Aid Act. This good cause justification also supports waiver of the 60-day delayed effective date for major rules under the Congressional Review Act at 5 U.S.C. 808(2). Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule.

These comments must be submitted on or before March 8, 2021. SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Paycheck Protection Program—Loan Forgiveness and Loan Review Procedures as Amended by Economic Aid Act

Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, and organizations affected by the COVID–19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under the Paycheck Protection Program (PPP). Loans under the PPP will be 100 percent guaranteed by SBA, and the full principal amount of the loans may qualify for loan forgiveness.

Under the CARES Act, as amended by the Economic Aid Act, SBA is authorized to guarantee loans under the PPP, a new temporary 7(a) program, through March 31, 2021. PPP loans made under section 7(a)(36) of the Small Business Act may be referred to as ''First Draw PPP Loans,'' and PPP loans made under section 7(a)(37) of the Small Business Act may be referred to as ''Second Draw PPP Loans.'' (Any reference to ''PPP loans'' or ''PPP loan'' herein refers to both First Draw PPP Loans and Second Draw PPP Loans.) The intent of the CARES Act and the Economic Aid Act is that SBA provide relief to America's small businesses expeditiously, which is expressed in the CARES Act by giving all lenders delegated authority and streamlining the requirements of the regular 7(a) loan program. This intent is also expressed in the Economic Aid Act through the statutory deadlines requiring that the Administrator issue certain guidance and regulations within 10 days of enactment.[2]

The Small Business Act authorizes the Administrator to conduct investigations to determine whether a recipient or participant in any assistance under a 7(a) program, including the PPP, is ineligible for a loan, or has violated section 7(a), or any rule, regulation or order issued thereunder.[3] Additionally, under section 7(a), the Administrator is empowered to make loans in cooperation with lenders through agreements to participate on a deferred (guaranteed) basis.[4] Further, the Administrator may make such rules and regulations as deemed necessary and take any and all actions determined to be necessary or desirable with respect to 7(a) loans.[5] Pursuant to these provisions of the Small Business Act, SBA has issued regulations establishing the standards by which it will investigate whether a loan met program requirements and the circumstances under which SBA will be released from liability on a guarantee for such a loan.[6] Additionally, section 7A(l)(1)(E) of the Small Business Act expressly provides that SBA may review and audit PPP loans of $150,000 or less and access any records the borrower is required to retain.

In light of the structure of the PPP program established by the CARES Act and the PPP Interim Final Rules, in which loans and loan forgiveness are provided based on the borrower's certifications and documentation provided by the borrower, the Administrator, in consultation with the Secretary of the Treasury (Secretary), previously determined that it was appropriate to adopt additional procedures and criteria through which SBA will review whether an action by the borrower has resulted in its receipt of a PPP loan that did not meet program requirements.[7] SBA's review of borrower certifications and representations regarding the borrower's eligibility for a PPP loan and loan forgiveness, and the borrower's use of PPP loan proceeds, is essential to ensure that PPP loans are directed to the entities Congress intended, and that PPP loan proceeds are used for the purposes Congress required, including the CARES Act's and the Economic Aid Act's central purposes of keeping workers paid and employed.

[2] See, *e.g.*, section 303 of the Economic Aid Act; section 7(a)(37)(M) of the Small Business Act.

[3] 15 U.S.C. 634(b)(11).

[4] 15 U.S.C. 636(a).

[5] 15 U.S.C. 634(b)(6) and (b)(7).

[6] 13 CFR 120.524.

[7] This interim final rule is an exercise of SBA's rulemaking authority under 15 U.S.C. 634(b), 15 U.S.C. 633(d), and 5 U.S.C. App., Reorg. Plan No. 4 of 1965, 11(b), 13(a) (abolishing Loan Policy Board and transferring functions to the Administrator); sections 1106(k) (now section 7A(k) of the Small Business Act) and 1114 of the CARES Act, and section 307 of the Economic Aid Act.

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IV. Paycheck Protection Program Loan Forgiveness Requirements

1. General

a. What amounts are eligible for forgiveness? [8]

Section 7A(b) of the Small Business Act provides that, subject to several important limitations, borrowers shall be eligible for forgiveness of their PPP loan in an amount equal to the sum of the following costs incurred and payments made during the covered period (as described in section IV.3. below).

(1) Payroll costs.[9] Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care or group life, disability, vision, or dental insurance, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wages, commissions, income, or net earnings from self-employment, or similar compensation. Payroll costs that are qualified wages taken into account in determining the Employer Retention Credit are not eligible for loan forgiveness.[10]

(2) Interest payments on any business mortgage obligation on real or personal property that was incurred before February 15, 2020 (but not any prepayment or payment of principal).

(3) Payments on business rent obligations on real or personal property under a lease agreement in force before February 15, 2020.

(4) Business utility payments for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.

(5) Covered operations expenditures. A covered operations expenditure is a payment for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses.[11]

(6) Covered property damage costs. A covered property damage cost is a cost related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation.[12]

(7) Covered supplier costs. A covered supplier cost means an expenditure made by a borrower to a supplier of goods for the supply of goods that—(A) are essential to the operations of the borrower at the time at which the expenditure is made; and (B) is made pursuant to a contract, order, or purchase order—(i) in effect at any time before the covered period with respect to the applicable covered loan; or (ii) with respect to perishable goods, in effect before or at any time during the covered period with respect to the applicable covered loan.[13]

(8) Covered worker protection expenditures. A covered worker protection expenditure:

(A) Means an operating or a capital expenditure to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by the Department of Health and Human Services, the Centers for Disease Control, or the Occupational Safety and Health Administration, or any equivalent requirements established or guidance issued by a State or local government related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID–19, during the period beginning on March 1, 2020 and ending the date on which the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) with respect to the Coronavirus Disease 2019 (COVID–19) expires;

(B) may include—

[8] This subsection was originally published at 85 FR 33004, section III.1. (June 1, 2020) and has been modified to conform to section 304 of the Economic Aid Act.

[9] ''Payroll costs'' has the same meaning as in subsections III.B.4.g. and h. of the consolidated interim final rule implementing updates to the Paycheck Protection Program. 86 FR 3692, 3702 (Jan. 14, 2021).

[10] Section 7(a)(37)(J)(iii) of the Small Business Act provides these amounts are not eligible for forgiveness for Second Draw PPP Loans. This provision similarly provides that these amounts are not eligible for forgiveness for First Draw PPP Loans in order to provide consistent treatment and to prevent a borrower from receiving forgiveness for amounts for which the borrower will also receive a tax credit.

[11] This eligible nonpayroll cost was added by section 304 of the Economic Aid Act.

[12] This eligible nonpayroll cost was added by section 304 of the Economic Aid Act.

[13] This eligible nonpayroll cost was added by section 304 of the Economic Aid Act.

(i) the purchase, maintenance, or renovation of assets that create or expand—

(I) a drive-through window facility;

(II) an indoor, outdoor, or combined air or air pressure ventilation or filtration system;

(III) a physical barrier such as a sneeze guard;

(IV) an expansion of additional indoor, outdoor, or combined business space;

(V) an onsite or offsite health screening capability; or

(VI) other assets relating to the compliance with the requirements or guidance described in subsection (A), as determined by the Administrator in consultation with the Secretary of Health and Human Services and the Secretary of Labor; and

(ii) the purchase of—

(I) covered materials described in § 328.103(a) of title 44, Code of Federal Regulations, or any successor regulation;

(II) particulate filtering facepiece respirators approved by the National Institute for Occupational Safety and Health, including those approved only for emergency use authorization; or

(III) other kinds of personal protective equipment, as determined by the Administrator in consultation with the Secretary of Health and Human Services and the Secretary of Labor; and

(C) does not include residential real property or intangible property.[14]

This interim final rule uses the term ''nonpayroll costs'' to refer to the payments described in (2)–(8) above. Eligible nonpayroll costs cannot exceed 40 percent of the loan forgiveness amount.[15] A borrower may receive forgiveness for the nonpayroll costs described in (5), (6), (7) and (8) only if SBA had not yet remitted a forgiveness payment on the borrower's loan to the borrower's PPP lender as of December 27, 2020 (the date of the Economic Aid Act's enactment).

b. For borrowers that are individuals with self-employment income who file a Form 1040, Schedule C or F, what amounts are eligible for forgiveness?[16]

The amount of loan forgiveness can be up to the full principal amount of the loan plus accrued interest. The actual amount of loan forgiveness will depend, in part, on the total amount spent during the covered period (as described in section IV.3 below)[17] on:

i. Payroll costs including salary, wages, and tips, up to $100,000 of annualized pay per employee, as prorated for the period during which the payments are made or the obligation to make the payments is incurred (maximum per individual is $100,000 prorated for the covered period, *e.g.,* for an 8-week covered period a maximum of $15,385 and for a 24-week covered period a maximum of $46,154),[18] as well as covered benefits for employees (but not owners), including health care expenses, retirement contributions, and state taxes imposed on employee payroll paid by the employer (such as unemployment insurance premiums), but excluding any qualified wages taken into account in determining the Employer Retention Credit;

ii. owner compensation replacement, calculated based on 2019 or 2020[19] net profit[20] as described in subsection 3.c. below; forgiveness of such amounts is limited to either (a) the prorated portion of 2019 or 2020 net profit for a covered period up to 2.5 months, or (b) 2.5 months' worth (2.5/12) of 2019 or 2020 net profit (up to $20,833) for a covered period greater than 2.5 months,[21] excluding any qualified sick leave equivalent amount for which a credit is claimed under section 7002 of the Families First Coronavirus Response Act (FFCRA) (Pub. L. 116–127) or qualified family leave equivalent amount for which a credit is claimed under section 7004 of FFCRA;

iii. payments of interest on mortgage obligations on real or personal property incurred before February 15, 2020, to the extent they are deductible on Form 1040 Schedule C or F (business mortgage payments);

iv. rent payments on lease agreements in force before February 15, 2020, to the extent they are deductible on Form 1040 Schedule C or F (business rent payments);

v. utility payments under service agreements dated before February 15, 2020 to the extent they are deductible on Form 1040 Schedule C or F (business utility payments);

vi. any covered operations expenditures to the extent they are deductible on Form 1040 Schedule C or F;[22]

vii. any covered property damage costs to the extent they are deductible on Form 1040 Schedule C or F;[23]

viii. Any covered supplier costs to the extent they are deductible on Form 1040 Schedule C or F;[24] and

ix. any covered worker protection expenditures to the extent they are deductible on Form 1040 Schedule C or F.[25]

A borrower may receive forgiveness for the new nonpayroll costs described in vi., vii., viii., and ix. only if SBA had not yet remitted a forgiveness payment on the borrower's loan to the borrower's PPP lender as of December 27, 2020.

2. Loan Forgiveness Process

a. What is the general process to obtain loan forgiveness?[26]

To receive loan forgiveness on either a First Draw PPP Loan or a Second Draw PPP Loan, a borrower must complete and submit the Loan Forgiveness Application[27] to its lender (or to the lender servicing its loan). For Second Draw PPP Loans in excess of $150,000, the borrower must submit its loan forgiveness application for the First Draw PPP Loan before or simultaneously with the loan forgiveness application for the Second Draw PPP Loan, even if the calculated amount of forgiveness on the First Draw PPP Loan is zero.[28]

[14] This eligible nonpayroll cost was added by section 304 of the Economic Aid Act.

[15] *See* section 7A(d)(8) of the Small Business Act.

[16] This subsection was originally published at 85 FR 21747, subsection III.1.f. (Apr. 20, 2020) and has been modified to conform to subsequent rules or guidance and sections 306, 313, and 344 of the Economic Aid Act.

[17] The Economic Aid Act amended the definition of the forgiveness covered period.

[18] Due to the amended definition of forgiveness covered period in the Economic Aid Act, this calculated amount has changed.

[19] For First Draw PPP loans made in 2020, borrowers use 2019. For First Draw PPP loans made in 2021 and Second Draw PPP Loans, borrowers use the year (2019 or 2020) that was used to calculate the borrower's loan amount.

[20] For self-employed borrowers that file Form 1040, Schedule F and have no employees, gross income may be used instead of net profit throughout this calculation. For self-employed borrowers that file Schedule F and have employees, the difference between gross income and employee payroll costs may be used instead of net profit throughout this calculation. *See* section 313 of the Economic Aid Act.

[21] Section 306 of the Economic Aid Act allows the borrower to select a covered period between 8 weeks and 24 weeks.

[22] This eligible nonpayroll cost was added by section 304 of the Economic Aid Act.

[23] This eligible nonpayroll cost was added by section 304 of the Economic Aid Act.

[24] This eligible nonpayroll cost was added by section 304 of the Economic Aid Act.

[25] This eligible nonpayroll cost was added by section 304 of the Economic Aid Act.

[26] This subsection was originally published at 85 FR 33004, section III.2. (June 1, 2020) and was amended by 85 FR 38304, subsection III.2.a. (June 26, 2020) and 85 FR 66214, subsections III.2.a. and b. (Oct. 19, 2020) and has been modified to conform to section 307 of the Economic Aid Act.

[27] SBA Form 3508, 3508EZ, 3508S, as applicable, or lender equivalent. Loan Forgiveness Application forms were amended to conform to the Economic Aid Act, including section 307, which requires a simplified forgiveness application for loans of not more than $150,000. The Simplified Forgiveness Application is SBA Form 3508S (as amended).

[28] This requirement is necessary to provide information relevant to the borrower's eligibility for the Second Draw PPP Loan and loan forgiveness. A borrower is eligible for a Second Draw PPP Loan

Continued

As a general matter, the lender will review the application and make a decision regarding loan forgiveness. The lender has 60 days from receipt of a complete application to issue a decision to SBA. If the lender determines that the borrower is entitled to forgiveness of some or all of the amount applied for under the statute and applicable regulations, the lender must request payment from SBA at the time the lender issues its decision to SBA. SBA will, subject to any SBA review of the borrower's loan(s) or loan application(s), remit the appropriate forgiveness amount to the lender, plus any interest accrued through the date of payment, not later than 90 days after the lender issues its decision to SBA. The EIDL Advance Amount received by the borrower will not reduce the amount of forgiveness to which the borrower is entitled and will not be deducted from the forgiveness payment amount that SBA remits to the Lender.[29] If SBA determines in the course of its review that the borrower was ineligible for the PPP loan under the statute, the SBA rules or guidance available at the time of the borrower's loan application, or the terms of the borrower's PPP loan application (for example, because the borrower lacked an adequate basis for the certifications that it made in its PPP loan application), the loan will not be eligible for loan forgiveness. The lender must notify the borrower of the forgiveness amount. If only a portion of the loan is forgiven, or if the forgiveness request is denied, any remaining balance due on the loan must be repaid by the borrower on or before the maturity date of the loan. The lender must notify the borrower of remittance by SBA of (i) the loan forgiveness amount (or that SBA determined that no amount of the loan is eligible for forgiveness), and (ii) the date on which the borrower's first payment is due, if applicable. If SBA determines that the full amount of the loan is eligible for forgiveness and remits the full amount of the loan to the lender, the lender must mark the PPP loan note as ''paid in full'' and report the status of the loan as ''paid in full'' on the next monthly 1502 report filed by the lender.[30]

The general loan forgiveness process described above applies only to loan forgiveness applications that are not reviewed by SBA prior to the lender's decision on the forgiveness application. Part V of this interim final rule describes SBA's procedures for reviewing PPP loan applications and loan forgiveness applications.

b. When must a borrower apply for loan forgiveness or start making payments on a loan? [31]

A borrower may submit a loan forgiveness application any time on or before the maturity date of the loan if the borrower has used all of the loan proceeds for which the borrower is requesting forgiveness, except that a borrower applying for forgiveness of a Second Draw PPP Loan that is more than $150,000 must submit the loan forgiveness application for its First Draw PPP Loan before or simultaneously with the loan forgiveness application for its Second Draw PPP Loan.[32] If the borrower does not apply for loan forgiveness within 10 months after the last day of the maximum covered period of 24 weeks,[33] or if SBA determines that the loan is not eligible for forgiveness (in whole or in part), the PPP loan is no longer deferred and the borrower must begin paying principal and interest. If this occurs, the lender must notify the borrower of the date the first payment is due. The lender must report that the loan is no longer deferred to SBA on the next monthly SBA Form 1502 report filed by the lender.

3. Payroll Costs Eligible for Loan Forgiveness

a. When must payroll costs be incurred and/or paid to be eligible for forgiveness? [34]

In general, payroll costs paid or incurred during the covered period are eligible for forgiveness. For purposes of loan forgiveness, the covered period is the period beginning on the date the lender disburses the PPP loan and ending on a date selected by the borrower that occurs during the period (i) beginning on the date that is 8 weeks after the date of disbursement, and (ii) ending on the date that is 24 weeks after the date of disbursement.[35] The covered periods for a First Draw PPP Loan and a Second Draw PPP Loan cannot overlap; the borrower must use all proceeds of the First Draw PPP Loan for eligible expenses before disbursement of the Second Draw PPP Loan.

Payroll costs are considered paid on the day that paychecks are distributed or the borrower originates an ACH credit transaction. Payroll costs incurred during the borrower's last pay period of the covered period are eligible for forgiveness if paid on or before the next regular payroll date; otherwise, payroll costs must be paid during the covered period to be eligible for forgiveness. Payroll costs generally are incurred on the day the employee's pay is earned (*i.e.,* on the day the employee worked). For employees who are not performing work but are still on the borrower's payroll, payroll costs are incurred based on the schedule established by the borrower (typically, each day that the employee would have performed work).

b. Are salary, wages, or commission payments to furloughed employees; bonuses; or hazard pay during the covered period eligible for loan forgiveness? [36]

Yes. The CARES Act defines the term ''payroll costs'' broadly to include compensation in the form of salary, wages, commissions, or similar compensation. If a borrower pays furloughed employees their salary,

if they have used, or will use, the full amount of its First Draw PPP Loan (including the amount of any increase on such First Draw PPP Loan) on authorized uses on or before the expected date on which the Second Draw PPP Loan will be disbursed. *See* interim final rule on Second Draw PPP Loans. 86 FR 3712, 3717 (Jan. 14, 2021). This requirement does not apply to Second Draw PPP Loans of $150,000 or less that use the simplified forgiveness application (SBA Form 3508S).

[29] Section 333 of the Economic Aid Act repealed the CARES Act provision requiring SBA to deduct EIDL Advance Amounts received by borrowers from the forgiveness payment amounts remitted by SBA to the lender. Any EIDL Advance Amounts previously deducted from a borrower's forgiveness amount will be remitted to the lender, together with interest through the remittance date.

[30] Although the note is marked ''Paid in Full,'' the forgiven amount is considered canceled indebtedness under section 7A(c)(1) of the Small Business Act.

[31] This subsection was originally published at 85 FR 38304, section III.1.c. (June 26, 2020) and has been modified to conform to sections 306 and 307 of the Economic Aid Act.

[32] Because section 306 of the Economic Aid Act allows the borrower to select a covered period between 8 weeks and 24 weeks, there is no longer a need to allow a borrower to apply for forgiveness ''before the end of the covered period'' and that text has been deleted.

[33] The Economic Aid Act is silent on what covered period applies for a borrower who does not apply for forgiveness, so SBA will apply the longest available covered period to such borrowers.

[34] This subsection was originally published at 85 FR 33004, subsection III.3.a. (June 1, 2020) and amended by 85 FR 38304, subsection III.1.d. (June 26, 2020) and has been modified to conform to section 306 of the Economic Aid Act and for readability.

[35] Amended to conform to the section 306 of Economic Aid Act change to definition of covered period. The option to elect an alternative covered period has been removed because the Economic Aid Act provided borrowers flexibility to choose the end of their covered period.

[36] This subsection was originally published at 85 FR 33004, subsection III.3.b. (June 1, 2020) and has been modified to conform to section 344 of the Economic Aid Act.

wages, or commissions during the covered period, those payments are eligible for forgiveness as long as they do not exceed an annual salary of $100,000, as prorated for the period during which the payments are made or the obligation to make the payments is incurred. The Administrator, in consultation with the Secretary, has also determined that, if an employee's total compensation does not exceed $100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, the employee's hazard pay and bonuses are eligible for loan forgiveness because they constitute a supplement to salary or wages, and are thus a similar form of compensation.

c. Are there caps on the amount of loan forgiveness available for owner-employees and self-employed individuals' own payroll compensation? [37]

Yes. Forgiveness is capped at 2.5 months' worth (2.5/12) of an owner-employee or self-employed individual's 2019 or 2020 [38] compensation (up to a maximum $20,833 per individual in total across all businesses). The individual's total compensation may not exceed $100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred. For example, for borrowers that elect to use an eight-week covered period, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at eight weeks' worth (8/52) of 2019 or 2020 compensation (*i.e.,* approximately 15.38 percent of 2019 or 2020 compensation) or $15,385 per individual, whichever is less, in total across all businesses. For borrowers that elect to use a ten-week covered period, the cap is ten weeks' worth (10/52) of 2019 or 2020 compensation (approximately 19.23 percent) or $19,231 per individual, whichever is less, in total across all businesses. For a covered period longer than 2.5 months, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at 2.5 months' worth (2.5/12) of 2019 or 2020 compensation (up to $20,833) in total across all businesses.

In particular, C-corporation owner-employees are capped by the prorated amount of their 2019 or 2020 [39] employee cash compensation and employer retirement and health, life, disability, vision and dental insurance contributions made on their behalf. S-corporation owner-employees are capped by the prorated amount of their 2019 or 2020 [40] employee cash compensation and employer retirement contributions made on their behalf. However, employer health, life, disability, vision and dental insurance contributions made on their behalf cannot be separately added; those payments are already included in their employee cash compensation. Schedule C or F filers are capped by the prorated amount of their owner compensation replacement, calculated based on 2019 or 2020 net profit.[41] General partners are capped by the prorated amount of their 2019 or 2020 net earnings from self-employment (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235. For self-employed individuals, including Schedule C or F filers and general partners, retirement and health, life, disability, vision or dental insurance contributions are included in their net self-employment income and therefore cannot be separately added to their payroll calculation. LLC members are subject to the rules based on their LLC's tax filing status in the reference year used to determine their loan amount.

d. Are any individuals with an ownership stake in a PPP borrower exempt from application of the PPP owner-employee compensation rule when determining the amount of their compensation that is eligible for loan forgiveness? [42]

Yes, owner-employees with less than a 5 percent ownership stake in a C- or S-corporation are not subject to the owner-employee compensation rule in subsection IV.3.c. above.

e. May a fishing boat owner include as payroll costs in its application for loan forgiveness any compensation paid to a crewmember who received his or her own PPP loan and is seeking forgiveness for amounts of compensation the crewmember received for performing services described in Section 3121(b)(20) of the Internal Revenue Code with respect to that owner's fishing boat? [43]

No. If a fishing boat crewmember obtains his or her own PPP loan during the fishing boat owner's covered period and seeks forgiveness of that loan based in part on compensation from a particular fishing boat owner, the fishing boat owner cannot also obtain PPP loan forgiveness based on compensation paid to that same crewmember. This restriction applies only if the crewmember is performing services described in section 3121(b)(20) of the Internal Revenue Code for the particular fishing boat owner. The fishing boat owner is responsible for determining whether any of its crewmembers received their own PPP loans during the fishing boat owner's loan forgiveness covered period.

4. Nonpayroll Costs Eligible for Loan Forgiveness

a. When must nonpayroll costs be incurred and/or paid to be eligible for forgiveness? [44]

A nonpayroll cost is eligible for forgiveness if it was:

i. Paid during the covered period; or

ii. incurred during the covered period and paid on or before the next regular billing date, even if the billing date is after the covered period.

Example: A borrower that received a loan before June 5, 2020 uses a 24-week covered period that begins on June 1 and ends on November 15. The borrower pays its electricity bills for June through October during the covered period and pays its November electricity bill on December 10, which is the next regular billing date. The borrower may seek loan forgiveness for its June through October electricity bills, because they were paid during the covered period. In addition, the borrower may seek loan forgiveness for the portion of its November electricity bill through November 15 (the end of the covered period), because it was

[37] This subsection was originally published at 85 FR 33004, subsection III.3.c. (June 1, 2020) and amended by 85 FR 38304, subsection III.1.d (June 26, 2020) and has been modified to conform to sections 308 and 344 of the Economic Aid Act and for readability.

[38] For First Draw PPP loans made in 2020, borrowers use 2019. For First Draw PPP loans made in 2021 and Second Draw PPP loans, borrowers use the year (2019 or 2020) that was used to calculate the borrower's loan amount.

[39] Use whichever year was used to calculate the borrower's loan amount.

[40] Use whichever year was used to calculate the borrower's loan amount.

[41] For self-employed borrowers that file Form 1040, Schedule F and have no employees, gross income may be used instead of net profit. For self-employed borrowers that file Schedule F and have employees, the difference between gross income and employee payroll costs may be used instead of net profit. *See* section 313 of the Economic Aid Act.

[42] This subsection was originally published at 85 FR 52881, section III.1. (Aug. 27, 2020) and has been modified for readability.

[43] This subsection was originally published at 85 FR 39066, subsection III.2. (June 30, 2020) and has been modified for consistency with the Economic Aid Act.

[44] This subsection was originally published at 85 FR 33004, subsection III.4.a. (June 1, 2020) and amended by 85 FR 38304, subsection III.1.e (June 26, 2020) and has been modified for readability.

incurred during the covered period and paid on the next regular billing date.

b. Are advance payments of interest on mortgage obligations eligible for loan forgiveness? [45]

No. Advance payments of interest on a covered mortgage obligation are not eligible for loan forgiveness because the CARES Act's loan forgiveness provisions regarding mortgage obligations specifically exclude ''prepayments.'' Principal on mortgage obligations is not eligible for forgiveness under any circumstances.

c. Are amounts attributable to the business operation of a tenant or sub-tenant of the PPP borrower or, in the context of home-based businesses, household expenses, eligible for forgiveness? [46]

No, the amount of loan forgiveness requested for nonpayroll costs may not include any amount attributable to the business operation of a tenant or sub-tenant of the PPP borrower or, for home-based businesses, household expenses. The examples below illustrate this rule.

Example 1: A borrower rents an office building for $10,000 per month and sub-leases out a portion of the space to other businesses for $2,500 per month. Only $7,500 per month is eligible for loan forgiveness.

Example 2: A borrower has a mortgage on an office building it operates out of, and it leases out a portion of the space to other businesses. The portion of mortgage interest that is eligible for loan forgiveness is limited to the percent share of the fair market value of the space that is not leased out to other businesses. As an illustration, if the leased space represents 25% of the fair market value of the office building, then the borrower may only claim forgiveness on 75% of the mortgage interest.

Example 3: A borrower shares a rented space with another business. When determining the amount that is eligible for loan forgiveness, the borrower must prorate rent and utility payments in the same manner as on the borrower's 2019 tax filings, or if a new business, the borrower's expected 2020 tax filings.

Example 4: A borrower works out of his or her home. When determining the amount of nonpayroll costs that are eligible for loan forgiveness, the borrower may include only the share of covered expenses that were deductible on the borrower's 2019 tax filings, or if a new business, the borrower's expected 2020 tax filings.

d. Are rent payments to a related party eligible for loan forgiveness? [47]

Yes, as long as (1) the amount of loan forgiveness requested for rent or lease payments to a related party is no more than the amount of mortgage interest owed on the property during the covered period that is attributable to the space being rented by the business, and (2) the lease and the mortgage were entered into prior to February 15, 2020.[48] Any ownership in common between the business and the property owner is a related party for these purposes. The borrower must provide its lender with mortgage interest documentation to substantiate these payments. While rent or lease payments to a related party may be eligible for forgiveness, mortgage interest payments to a related party are not eligible for forgiveness.

5. Reductions to Loan Forgiveness Amount

Section 7A of the Small Business Act specifically requires certain reductions in a borrower's loan forgiveness amount based on reductions in full-time equivalent employees or in employee salary and wages. It includes an important statutory exemption for borrowers that have eliminated the reduction on or before December 31, 2020 (or, for a PPP loan made on or after December 27, 2020, not later than the last day of the loan's covered period).[49] Section 7A(d)(7) of the Small Business Act also allows exemptions from reductions in loan forgiveness amounts based on employee availability and business activity. In addition, SBA and Treasury have adopted regulatory exemptions to the reduction rules for borrowers that (1) have offered to restore employee hours at the same salary or wages, even if the employees have not accepted, (2) fired an employee for cause or have an employee that voluntarily resigns or voluntarily requests a schedule reduction, (3) eliminate reductions by December 31, 2020 or, for a PPP loan made after December 27, 2020, the last day of the loan's covered period, or (4) have a PPP loan of $50,000 or less. The instructions to the loan forgiveness applications and the guidance below explain how the statutory forgiveness reduction formulas work.

a. Will a borrower's loan forgiveness amount be reduced if the borrower reduced the hours of an employee, then offered to restore the reduction in hours, but the employee declined the offer? [50]

No. In calculating the loan forgiveness amount, a borrower may exclude any reduction in full-time equivalent employee headcount that is attributable to an individual employee if:

i. The borrower made a good faith, written offer to restore the reduced hours of such employee;

ii. the offer was for the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the reduction in hours;

iii. the offer was rejected by such employee; and

iv. the borrower has maintained records documenting the offer and its rejection.

b. What effect does a reduction in a borrower's number of full-time equivalent (FTE) employees have on the loan forgiveness amount? [51]

In general, a reduction in FTE employees during the covered period reduces the loan forgiveness amount by the same percentage as the percentage reduction in FTE employees. For both First Draw PPP Loans and Second Draw PPP Loans, the borrower must first select a reference period: (i) February 15, 2019 through June 30, 2019; (ii) January 1, 2020 through February 29, 2020; or (iii) in the case of a seasonal employer,[52] either of the two preceding methods or a consecutive 12-week period between February 15, 2019 and February 15, 2020.[53] If the average number of FTE employees during the covered period is less than during the

[45] This subsection was originally published at 85 FR 33004, subsection III.4.b. (June 1, 2020).

[46] This subsection was originally published at 85 FR 52881, subsection III.2.a. (Aug. 27, 2020).

[47] This subsection was originally published at 85 FR 52881, subsection III.2.b. (Aug. 27, 2020) and has been modified for readability.

[48] In this context, the related party itself would not also be eligible to request forgiveness for this amount.

[49] This subsection was originally published at 85 FR 33004, subsection III.5. (June 1, 2020) and amended by 85 FR 38304, subsection III.1.f. (June 26, 2020), and has been modified to conform to subsequent rules or guidance and section 311 of the Economic Aid Act.

[50] This subsection was originally published at 85 FR 33004, subsection III.5.a. (June 1, 2020) and amended by 85 FR 38304, section III.5. (June 26, 2020) and has been modified for readability.

[51] This subsection was originally published at 85 FR 33004, subsection III.5.b. (June 1, 2020) and amended by 85 FR 38304, section III.1.f. (June 26, 2020) and has been modified to conform to sections 306, 311 and 336 of the Economic Aid Act and for readability.

[52] The term ''seasonal employer'' is defined in section 7(a)(36)(A)(xiii) of the Small Business Act.

[53] This decision to permit seasonal employers to use, as a reference period, any consecutive 12-week period between February 15, 2019 and February 15, 2020 is an exercise of the Secretary's rulemaking authority under section 1109 of the CARES Act. This reference period is consistent with section 336 of the Economic Aid Act, which amends the calculation of the maximum loan amount for seasonal employers.

reference period, the total eligible expenses available for forgiveness is reduced proportionally by the percentage reduction in FTE employees. For example, if a borrower had 10.0 FTE employees during the reference period and this declined to 8.0 FTE employees during the covered period, the percentage of FTE employees declined by 20 percent and thus only 80 percent of otherwise eligible expenses are available for forgiveness.

Borrowers are exempted from the loan forgiveness reduction arising from a proportional reduction in FTE employees during the covered period if the borrower is able to document in good faith the following: (1) An inability to rehire individuals who were employees of the borrower on February 15, 2020; and (2) an inability to hire similarly qualified individuals for unfilled positions on or before December 31, 2020 (or, for a PPP loan made on or after December 27, 2020, not later than the last day of the loan's covered period).[54] Borrowers are required to inform the applicable state unemployment insurance office of any employee's rejected rehire offer within 30 days of the employee's rejection of the offer. The documents that borrowers should maintain to show compliance with this exemption include, but are not limited to, the written offer to rehire an individual, a written record of the offer's rejection, and a written record of efforts to hire a similarly qualified individual.

Borrowers are also exempted from the loan forgiveness reduction arising from a reduction in the number of FTE employees during the covered period if the borrower is able to document in good faith an inability to return to the same level of business activity as the borrower was operating at before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020 (or, for a PPP loan made on or after December 27, 2020, not later than the last day of the loan's covered period) [55] by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention (CDC), or the Occupational Safety and Health Administration related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID–19 (COVID Requirements or Guidance). Specifically, borrowers that can certify that they have documented in good faith that their reduction in business activity during the covered period stems directly or indirectly from compliance with such COVID Requirements or Guidance are exempt from any reduction in their forgiveness amount stemming from a reduction in FTE employees during the covered period. Such documentation must include copies of applicable COVID Requirements or Guidance for each business location and relevant borrower financial records.

Example: A PPP borrower is in the business of selling beauty products both online and at its physical store. During the covered period, the local government where the borrower's store is located orders all non-essential businesses, including the borrower's business, to shut down their stores, based in part on COVID–19 guidance issued by the CDC in March 2020. Because the borrower's business activity during the covered period was reduced compared to its activity before February 15, 2020 due to compliance with COVID Requirements or Guidance, the borrower satisfies the exemption and will not have its forgiveness amount reduced because of a reduction in FTEs during the covered period, if the borrower in good faith maintains records regarding the reduction in business activity and the local government's shutdown orders that reference a COVID Requirement or Guidance as described above.

c. What does ''full-time equivalent employee'' mean? [56]

Full-time equivalent employee means an employee who works 40 hours or more, on average, each week. The hours of employees who work less than 40 hours are calculated as proportions of a single full-time equivalent employee and aggregated, as explained further below in subsection IV.5.d.

d. How should a borrower calculate its number of FTE employees? [57]

Borrowers seeking forgiveness must document their average number of FTE employees during the covered period and their selected reference period. If applicable, a borrower must perform this calculation for both its First Draw PPP Loan and Second Draw PPP Loan. For purposes of this calculation, borrowers must divide the average number of hours paid for each employee per week by 40, capping this quotient at 1.0. For example, an employee who was paid 48 hours per week during the covered period would be considered to be an FTE employee of 1.0.

For employees who were paid for less than 40 hours per week, borrowers may choose to calculate the full-time equivalency in one of two ways. First, the borrower may calculate the average number of hours a part-time employee was paid per week during the covered period. For example, if an employee was paid for 30 hours per week on average during the covered period, the employee could be considered to be an FTE employee of 0.75. Similarly, if an employee was paid for ten hours per week on average during the covered period, the employee could be considered to be an FTE employee of 0.25. Second, for administrative convenience, borrowers may elect to use a full-time equivalency of 0.5 for each part-time employee. The Administrator recognizes that not all borrowers maintain hours-worked data, and has decided to afford such borrowers this flexibility in calculating the full-time equivalency of their part-time employees.

Borrowers may select only one of these two methods, and must apply that method consistently to all of their part-time employees for the covered period and the selected reference period. In either case, the borrower shall provide the aggregate total of FTE employees for both the selected reference period and the covered period by adding together all of the employee-level FTE employee calculations. The borrower must then divide the average FTE employees during the covered period by the average FTE employees during the selected reference period, resulting in the reduction quotient.

e. What effect does a borrower's reduction in employees' salary or wages have on the loan forgiveness amount? [58]

Under section 7A(d)(3) of the Small Business Act, a reduction in an employee's salary or wages in excess of 25 percent will generally result in a reduction in the loan forgiveness amount, unless an exception applies. Specifically, for each new employee in 2020 and 2021, as well as each existing employee who was not paid more than the annualized equivalent of $100,000

[54] This text was originally published at 85 FR 38304, subsection III.1.f. (June 26, 2020) and has been modified to conform to section 311 of the Economic Aid Act.

[55] This text was originally published at 85 FR 38304, subsection III.1.f. (June 26, 2020) and has been modified to conform to section 311 the Economic Aid Act.

[56] This subsection was originally published at 85 FR 33004, subsection III.5.c. (June 1, 2020) and has been modified for readability.

[57] This subsection was originally published at 85 FR 33004, subsection III.5.d. (June 1, 2020) and has been modified to conform to section 311 of the Economic Aid Act and for readability.

[58] This subsection was originally published at 85 FR 33004, subsection III.5.e. (June 1, 2020) and has been modified to conform to section 306 of the Economic Aid Act and for readability.

in any pay period in 2019, the borrower must reduce the total forgiveness amount by the total dollar amount of the salary or wage reductions that are in excess of 25 percent of base salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period (the reference period), subject to exceptions for borrowers who restore reduced wages or salaries (see g. below). This reduction calculation is performed on a per employee basis, not in the aggregate. Additionally, this reduction is performed based on the covered period and reference period applicable to the First Draw Loan or Second Draw Loan.

Example: A borrower is using a 24-week covered period. This borrower reduced a full-time employee's weekly salary from $1,000 per week during the reference period to $700 per week during the covered period. The employee continued to work on a full-time basis during the covered period, with an FTE of 1.0. In this case, the first $250 (25 percent of $1,000) is exempted from the loan forgiveness reduction. The borrower seeking forgiveness would list $1,200 as the salary/hourly wage reduction for that employee (the extra $50 weekly reduction multiplied by 24 weeks).[59]

Example: A borrower has elected to use an eight-week covered period. This borrower reduced a full-time employee's weekly salary from $1,000 per week during the reference period to $700 per week during the covered period. The employee continued to work on a full-time basis during the covered period, with an FTE of 1.0. In this case, the first $250 (25 percent of $1,000) is exempted from the loan forgiveness reduction. The borrower seeking forgiveness would list $400 as the salary/hourly wage reduction for that employee (the extra $50 weekly reduction multiplied by eight weeks).

f. How should borrowers seeking loan forgiveness account for the reduction based on a reduction in the number of employees (section 7A(d)(2)) relative to the reduction relating to salary and wages (section 7A(d)(3))?[60]

To ensure that borrowers are not doubly penalized, the salary/wage reduction applies only to the portion of the decline in employee salary and wages that is *not* attributable to the FTE reduction.

Example: An hourly wage employee had been working 40 hours per week during the borrower selected reference period (FTE employee of 1.0) and the borrower reduced the employee's hours to 20 hours per week during the covered period (FTE employee of 0.5). There was no change to the employee's hourly wage during the covered period. Because the hourly wage did not change, the reduction in the employee's total wages is entirely attributable to the FTE employee reduction and the borrower is not required to conduct a salary/wage reduction calculation for that employee.

g. If a borrower restores reductions made to employee salaries and wages or FTE employees, can the borrower avoid a reduction in its loan forgiveness amount?[61]

Yes. Section 7A(d)(5) of the Small Business Act provides that if certain employee salaries and wages were reduced between February 15, 2020 and April 26, 2020 (the safe harbor period) but the borrower eliminates those reductions by December 31, 2020 (or, for a PPP loan made on or after December 27, 2020, by the last day of the loan's covered period), the borrower is exempt from any reduction in loan forgiveness amount that would otherwise be required due to reductions in salaries and wages under section 7A(d)(3) of the Small Business Act. Similarly, if a borrower eliminates any reductions in FTE employees occurring during the safe harbor period by December 31, 2020 (or, for a PPP loan made on or after December 27, 2020, by last day of the loan's covered period), the borrower is exempt from any reduction in loan forgiveness amount that would otherwise be required due to reductions in FTE employees.[62]

This provision implements section 7A(d)(5) of the Small Business Act, which gives borrowers an opportunity to cure reductions in FTEs, salary/wage reductions in excess of 25 percent, or both, using the applicable methodology set forth in section 7A(d)(5). The Small Business Act provides that the reduction in FTEs or the reduction in salary/hourly wages must be eliminated not later than December 31, 2020 (or, for a PPP loan made on or after December 27, 2020, not later than the last day of the loan's covered period). This does not change or affect the requirement that at least 60 percent of the loan forgiveness amount must be attributable to payroll costs.

h. Will a borrower's loan forgiveness amount be reduced if an employee is fired for cause, voluntarily resigns, or voluntarily requests a schedule reduction?[63]

No. When an employee of the borrower is fired for cause, voluntarily resigns, or voluntarily requests a reduced schedule during the covered period (FTE reduction event), the borrower may count such employee at the same full-time equivalency level before the FTE reduction event when calculating the section 7A(d)(2) FTE employee reduction penalty. Borrowers that avail themselves of this *de minimis* exemption shall maintain records demonstrating that each such employee was fired for cause, voluntarily resigned, or voluntarily requested a schedule reduction. The borrower shall provide such documentation upon request.

i. Is a borrower with a loan of $50,000 or less exempt from any reductions to the loan forgiveness amount?[64]

Yes. A borrower with a loan of $50,000 or less, other than any borrower

[59] This subsection previously provided that a borrower must account for the salary reduction for the full 24-week covered period if the borrower applies for forgiveness before the end of the covered period. 85 FR 38304, 38308 (June 26, 2020). This text has been removed because section 306 of the Economic Aid Act allows the borrower to select a covered period between 8 and 24 weeks and there is no need to apply for forgiveness before the end of the covered period.

[60] This subsection was originally published at 85 FR 33004, subsection III.5.e. (June 1, 2020) and has been modified for readability.

[61] This subsection was originally published at 85 FR 33004, subsection III.5.g. (June 1, 2020) and has been modified to conform to section 311 of the Economic Aid Act.

[62] In light of the flexibility the Small Business Act provides to borrowers with respect to their selection of the reference time period for any potential reduction in loan forgiveness, and the statutory authority for SBA and the Treasury to grant *de minimis* exemptions from this requirement, if the borrower meets the requirements for the FTE reduction safe harbor, it will not be subject to any loan forgiveness reduction based on a reduction in FTE employees.

[63] This subsection was originally published at 85 FR 33004, subsection III.5.h. (June 1, 2020) and has been modified to conform to section 304 of the Economic Aid Act and for readability.

[64] This subsection was originally published at 85 FR 66214, subsection III.1.b. (Oct. 19, 2020) and has been modified to conform to sections 304 and 307 the Economic Aid Act and for readability. As described further below in subsection 6.a and 6.b, borrowers with loans up to $150,000 may use SBA Form 3508S. However, only borrowers with loans of $50,000 or less, other than any borrower that together with its affiliates received First Draw Loans totaling $2 million or more or Second Draw Loans totaling $2 million or more, are exempt from any reductions to the loan forgiveness amount. Accordingly, the exemptions in this subsection are

that together with its affiliates received First Draw PPP Loans totaling $2 million or more or Second Draw PPP Loans totaling $2 million or more, is exempt from any reductions in the borrower's loan forgiveness amount based on reductions in FTE employees (section 7A(d)(2) of the Small Business Act) or reductions in employee salary or wages (section 7A(d)(3) of the Small Business Act) that would otherwise apply. As such, subsections IV.5.a. through IV.5.h. above do not apply to qualifying borrowers with loans of $50,000 or less.

6. Documentation Requirements

a. What must borrowers submit for forgiveness of their PPP loans? [65]

The loan forgiveness application form details the documentation requirements; specifically, documentation each borrower must submit with its Loan Forgiveness Application (SBA Form 3508, 3508EZ, 3508S as applicable, or lender equivalent), documentation each borrower is required to maintain and make available upon request, and documentation each borrower may voluntarily submit with its loan forgiveness application. An eligible borrower that received a loan of $150,000 or less should use the SBA Form 3508S and shall not, at the time of its application for loan forgiveness, be required to submit any application or documentation in addition to the certification and information required by section 7A(*l*)(1)(A) of the Small Business Act. However, an eligible borrower that received a Second Draw loan of $150,000 or less and is using the SBA Form 3508S must, before or at the time of its application for loan forgiveness, submit documentation sufficient to establish that the borrower experienced a reduction in revenue as provided in subsection (g)(2)(v) of the interim final rule on Second Draw PPP Loans, unless the borrower already provided such documentation at the time of its application for the Second Draw PPP Loan.[66] Such documentation may include relevant tax forms, including annual tax forms, or, if relevant tax forms are not available, a copy of the applicant's quarterly income statements or bank statements.

For Second Draw PPP Loans, all borrowers must certify on their loan forgiveness application that the borrower used all First Draw PPP Loan amounts on eligible expense prior to disbursement of the Second Draw PPP Loan. For Second Draw PPP Loans in excess of $150,000, the borrower must submit its loan forgiveness application for the First Draw PPP Loan before or simultaneously with the loan forgiveness application for the Second Draw PPP Loan, even if the calculated forgiveness amount for the First Draw PPP Loan is zero.

b. What documentation are borrowers who are individuals with self-employment income who file a Form 1040, Schedule C or F required to submit to their lender with their request for loan forgiveness? [67]

For borrowers that received loans of $150,000 or less that use the SBA Form 3508S, the borrower must submit the certification and information required by section 7A(*l*)(1)(A) of the Small Business Act and, for a Second Draw PPP Loan, revenue reduction documentation if such documentation was not provided at the time of application.[68] All other borrowers must submit the certification required by section 7A(e)(3) of the Small Business Act, and (if the borrower has employees) Form 941 and state quarterly business and individual employee wage reporting and unemployment insurance tax forms or equivalent payroll processor records that best correspond to the covered period (with evidence of any retirement and group health, life, disability, vision, and dental insurance contributions). Whether or not the borrower has employees, the borrower must submit evidence of business rent, business mortgage interest payments on real or personal property, business utility payments, or payments for a covered operations expenditure, covered property damage cost, covered supplier cost, or covered worker protection expenditure during the covered period if the borrower used loan proceeds for those purposes. This documentation may include cancelled checks, payment receipts, transcripts of accounts, purchase orders, orders, invoices, or other documents verifying payments on nonpayroll costs.

For all loans, the 2019 or 2020 Form 1040 Schedule C or F that the borrower provided at the time of the PPP loan application must be used to determine the amount of net profit allocated to the owner for the covered period.[69]

c. What additional documentation must a borrower submit when the President of the United States, Vice President of the United States, the head of an Executive department, or a Member of Congress, or the spouse of any of the preceding, directly or indirectly holds a controlling interest in the borrower? [70]

For any First Draw PPP loan made before December 27, 2020, if the President of the United States, Vice President of the United States, the head of an Executive department, or a Member of Congress, or the spouse of any such person as determined under applicable common law, directly or indirectly held a controlling interest in the borrower on the date of the loan application, the borrower is required to make certain disclosures following submission of the borrower's application for loan forgiveness.

For purposes of this section, the term ''controlling interest'' means owning, controlling, or holding not less than 20 percent, by vote or value, of the outstanding amount of any class of equity interest in a borrower. For purposes of making this determination, the securities owned, controlled or held by the individual and spouse shall be aggregated. The term ''equity interest'' means (1) a share in a borrower, without regard to whether the share is transferable or classified as stock or anything similar, (2) a capital or profit interest in a limited liability company or partnership, or (3) a warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share of interest described in (1) or (2), respectively. The term ''Executive department'' has the meaning given the term in section 101 of title 5, United States Code. The term ''Member of Congress'' means a Member of the Senate or House of Representatives, a Delegate to the House of

limited to qualifying borrowers with loans of $50,000 or less. A borrower with a loan greater than $50,000 and up to $150,000 must comply with the requirements under the Paycheck Protection Program, including calculating any reduction in forgiveness amounts based on reductions in FTEs or employee salary or wages.

[65] This subsection was originally published at 85 FR 33004, section III.6. (June 1, 2020) and amended at 85 FR 38304, subsection III.1.g. (June 26, 2020) and has been modified to conform to sections 304 and 307 of the Economic Aid Act and for readability.

[66] *See* interim final rule on Second Draw PPP Loans. 86 FR 3712, 3721 (Jan. 14, 2021). Subsection (g)(2)(v) of the interim final rule on Second Draw PPP Loans implements section 7(a)(37)(J)(v) of the Small Business Act.

[67] This subsection was originally published at 85 FR 21747, subsection III.1.g. (Apr. 20, 2020) and has been modified to conform to sections 304, 307, 308, and 313 of the Economic Aid Act and for readability.

[68] *See* subsection (g)(2)(v) of the interim final rule on Second Draw PPP Loans. 86 FR 3712, 3721 (Jan. 14, 2021).

[69] For self-employed borrowers that file Form 1040, Schedule F and have no employees, gross income may be used instead of net profit. For self-employed borrowers that file Schedule F and have employees, the difference between gross income and employee payroll costs may be used instead of net profit.

[70] This subsection has been added to conform to section 322 of the Economic Aid Act.

Representatives, and the Resident Commissioner from Puerto Rico.

If the borrower submitted a loan forgiveness application to its PPP lender before December 27, 2020, then the principal executive officer, or individual performing a similar function, of the borrower shall submit to its PPP lender an SBA Form 3508D disclosing the controlling interest(s) not later than January 26, 2021. If the PPP lender has already submitted a forgiveness decision to SBA, the lender shall promptly transmit the SBA Form 3508D to SBA. Otherwise, the PPP lender shall transmit the SBA Form 3508D to SBA at the time the lender issues its forgiveness decision to SBA. If the borrower submits a loan forgiveness application to its PPP lender on or after December 27, 2020, then the principal executive officer, or individual performing a similar function, of the borrower shall submit to its PPP lender an SBA Form 3508D disclosing the controlling interest(s) not later than 30 days after submitting the application. The PPP lender shall transmit the SBA Form 3508D to SBA with the PPP lender's forgiveness decision. Alternatively, the PPP lender may transmit the completed Form 3508D to SBA when received.

An entity is prohibited from receiving a PPP loan after December 27, 2020 if a controlling interest is held directly or indirectly by the President of the United States, Vice President of the United States, the head of an Executive department, or a Member of Congress, or the spouse of any of the preceding.[71]

7. Lender Hold Harmless [72]

Under what circumstances may a lender rely on a certification or documentation submitted by an eligible PPP borrower that received a PPP loan?

A lender may rely on any certification or documentation submitted by a PPP applicant or an eligible PPP borrower that received a PPP loan that—(a) is submitted pursuant to all applicable statutory requirements, regulations, and guidance related to a PPP loan, including sections 7(a)(36), 7(a)(37), and 7A of the Small Business Act; and (b) attests that the PPP applicant or eligible PPP borrower, as applicable, has accurately provided the certification or documentation to the lender in accordance with the statutory requirements, regulations, and guidance described in (a). With respect to a lender that relies on a borrower certification or documentation meeting the requirements of this subsection, an enforcement action may not be taken against the lender related to the PPP loan, and the lender shall not be subject to any penalties relating to loan origination or forgiveness of the PPP loan, if:

(i) The lender acts in good faith relating to loan origination or forgiveness of the PPP loan based on that reliance; and

(ii) all other relevant Federal, State, local, and other statutory and regulatory requirements applicable to the lender are satisfied with respect to the PPP loan.[73]

V. Paycheck Protection Program SBA Loan Review Procedures and Related Borrower and Lender Responsibilities

1. SBA Reviews of Individual PPP Loans

a. Will SBA review individual PPP loans? [74]

Yes. SBA may review any PPP loan, as the Administrator deems appropriate, as described below.

b. What borrower representations and statements will SBA review? [75]

The Administrator is authorized to review the following:

Borrower Eligibility: The Administrator may review whether a borrower is eligible for the PPP loan based on the provisions of the CARES Act, the Economic Aid Act, the rules and guidance available at the time of the borrower's PPP loan application, and the terms of the borrower's loan application. See FAQ 17 (posted April 6, 2020).[76] These include, but are not limited to, SBA's regulations under 13 CFR 120.110 (as modified and clarified by the PPP Interim Final Rules) and 13 CFR 121.301(f) and the information, certifications, and representations on the Borrower Application Form (SBA Form 2483, 2483–SD, or lender's equivalent form) and the Loan Forgiveness Application Form (SBA Form 3508, 3508EZ, 3508S, or lender's equivalent form). With respect to a Second Draw PPP Loan, this may include a review of whether the borrower experienced the 25 percent revenue reduction required under the Economic Aid Act.

Loan Amounts and Use of Proceeds: The Administrator may review whether a borrower calculated the loan amount correctly and used loan proceeds for the allowable uses specified in the CARES Act and the Economic Aid Act.

Loan Forgiveness Amounts: The Administrator may review whether a borrower is entitled to loan forgiveness in the amount claimed on the borrower's Loan Forgiveness Application (SBA Form 3508, 3508EZ, 3508S, or lender's equivalent form).

c. When will SBA undertake a loan review? [77]

For a PPP loan of any size, SBA may undertake a review at any time in SBA's discretion. For example, SBA may review a loan if the loan documentation submitted to SBA by the lender or any other information indicates that the borrower may be ineligible for a PPP loan, or may be ineligible to receive the loan amount or loan forgiveness amount claimed by the borrower.[78] Additionally, section 7A(l)(1)(E) of the Small Business Act expressly provides that SBA may review and audit PPP loans of $150,000 or less and access any records the borrower is required to retain. SBA may, in its discretion, review a borrower's First Draw PPP Loan and Second Draw PPP Loan at the same time or at different times. For loans of more than $150,000, as noted on the loan forgiveness application forms, the borrower must retain PPP documentation in its files for six years after the date the loan is forgiven or repaid in full. For loans of $150,000 and under, the borrower must retain records relevant to the form that prove compliance with the requirements of section 7(a)(36) or 7(a)(37), as applicable, of the Small Business Act—for employment records, for the 4-year period following submission of the loan forgiveness application, and for other records, for the 3-year period following submission of the loan forgiveness application. All borrowers must permit authorized representatives of SBA, including representatives of its Office of Inspector General, to access such files upon request. Additionally, all borrowers must provide documentation

[71] *See* subsection III.B.2.a. of the consolidated interim final rule implementing updates to the Paycheck Protection Program, 86 FR 3692, 3698 (Jan. 14, 2021); subsection III.e.6. of the interim final rule for Second Draw PPP loans, 86 FR 3712, 3719 (Jan. 14, 2021).

[72] This section has been added to conform to section 305 of the Economic Aid Act.

[73] This provision is effective as if included in the CARES Act and shall apply to any loan made pursuant to section 7(a)(36) or 7(a)(37) of the Small Business Act before, on, or after the date of enactment of the Economic Aid Act, including forgiveness of such a loan.

[74] This subsection was originally published at 85 FR 33010, subsection III.1.a. (June 1, 2020).

[75] This subsection was originally published at 85 FR 33010, subsection III.1.b. (June 1, 2020) and amended by 85 FR 38304, subsection III.2.a. (June 26, 2020) and 85 FR 66214, subsection III.2.a. (Oct. 19, 2020) and has been modified to conform to section 311 of the Economic Aid Act.

[76] *https://www.sba.gov/document/support—faq-lenders-borrowers.*

[77] This subsection was originally published at 85 FR 33010, subsection III.1.c. (June 1, 2020) and has been modified to conform to sections 307 and 311 of the Economic Aid Act.

[78] 13 CFR 120.524(c).

independently to a lender to satisfy relevant Federal, State, local or other statutory or regulatory requirements or in connection with an SBA loan review.

Lenders must comply with applicable SBA requirements for records retention, which for Federally regulated lenders means compliance with the requirements of their federal financial institution regulator and for SBA supervised lenders (as defined in 13 CFR 120.10 and including PPP lenders with authority under SBA Form 3507) means compliance with 13 CFR 120.461.

d. Will I have the opportunity to respond to SBA's questions in a review? [79]

Yes. If loan documentation submitted to SBA by the lender or any other information indicates that the borrower may be ineligible for a PPP loan or may be ineligible to receive the loan amount or loan forgiveness amount claimed by the borrower, SBA will require the lender to contact the borrower in writing to request additional information. SBA may also request information directly from the borrower. The lender will provide any additional information provided to it by the borrower to SBA. SBA will consider all information provided by the borrower in response to such an inquiry.

Failure to respond to SBA's inquiry may result in a determination that the borrower was ineligible for a PPP loan or ineligible to receive the loan amount or loan forgiveness amount claimed by the borrower.

e. If SBA determines that a borrower is ineligible for a PPP loan, can the loan be forgiven? [80]

No. If SBA determines that a borrower is ineligible for the PPP loan, SBA will direct the lender to deny the loan forgiveness application. An SBA determination that a borrower is ineligible for a First Draw PPP Loan may also result in an SBA determination that the borrower is ineligible for any Second Draw PPP Loan, and SBA may direct the lender to deny any loan forgiveness application submitted for the Second Draw PPP Loan. Further, if SBA determines that the borrower is ineligible for the loan amount or loan forgiveness amount claimed by the borrower, SBA will direct the lender to deny the loan forgiveness application in whole or in part, as appropriate. SBA may also seek repayment of the outstanding PPP loan balance or pursue other available remedies.

Section 7A(b) of the Small Business Act provides for forgiveness of a PPP loan only if the borrower is an ''eligible recipient.'' The Administrator has determined that to be an eligible recipient that is entitled to forgiveness under section 7A(b), the borrower must be an ''eligible recipient'' under section 7(a)(36) and section 7(a)(37) of the Small Business Act and rules and guidance available at the time of the borrower's loan application. This requirement promotes the public interest, aligns SBA's functions with other governmental policies, and appropriately carries out the PPP provisions of the CARES Act and the Economic Aid Act, including by preventing evasion of the requirements for PPP loan eligibility and ensuring program integrity with respect to this emergency financial assistance program. It is also consistent with the CARES Act's nonrecourse provision, 15 U.S.C. 636(a)(36)(F)(v), which limits SBA's recourse against individual shareholders, members, or partners of a PPP borrower for nonpayment of a PPP loan only if the borrower is an eligible recipient of the loan.

f. May a borrower appeal SBA's determination that the borrower is ineligible for a PPP loan or ineligible for the loan amount or the loan forgiveness amount claimed by the borrower? [81]

Yes. SBA has issued a separate interim final rule addressing this process.[82]

2. The Loan Forgiveness Process for Lenders

a. What should a lender review? [83]

When a borrower submits SBA Form 3508 or lender's equivalent form, the lender shall:

i. Confirm receipt of the borrower certifications contained in the SBA Form 3508 or lender's equivalent form.

ii. Confirm receipt of the documentation the borrower must submit to aid in verifying payroll and nonpayroll costs, as specified in the instructions to the SBA Form 3508 or lender's equivalent form.

iii. Confirm the borrower's calculations on the borrower's SBA Form 3508 or lender's equivalent form, including the dollar amount of the (A) Cash Compensation, Non-Cash Compensation, and Compensation to Owners claimed on Lines 1, 4, 6, 7, 8, and 9 on PPP Schedule A and (B) Business Mortgage Interest Payments, Business Rent or Lease Payments, Business Utility Payments, Covered Operations Expenditures, Covered Property Damage Costs, Covered Supplier Costs, and Covered Worker Protection Expenditures claimed on Lines 2 through 8 on the PPP Loan Forgiveness Calculation Form, by reviewing the documentation submitted with the SBA Form 3508 or lender's equivalent form.

iv. Confirm that the borrower made the calculation on Line 14 of the SBA Form 3508 or lender's equivalent form correctly, by dividing the borrower's Eligible Payroll Costs claimed on Line 1 by 0.60.

When the borrower submits SBA Form 3508EZ or lender's equivalent form, the lender shall:

i. Confirm receipt of the borrower certifications contained in the SBA Form 3508EZ or lender's equivalent form.

ii. Confirm receipt of the documentation the borrower must submit to aid in verifying payroll and nonpayroll costs, as specified in the instructions to the SBA Form 3508EZ or lender's equivalent form.

iii. Confirm the borrower's calculations on the borrower's SBA Form 3508EZ or lender's equivalent form, including the dollar amount of the Payroll Costs, Business Mortgage Interest Payments, Business Rent or Lease Payments, Business Utility Payments, Covered Operations Expenditures, Covered Property Damage Costs, Covered Supplier Costs, and Covered Worker Protection Expenditures claimed on Lines 1 through 8 of the SBA Form 3508EZ or lender's equivalent form, by reviewing the documentation submitted with the SBA Form 3508EZ or lender's equivalent form.

iv. Confirm that the borrower made the calculation on Line 11 of the SBA Form 3508EZ or lender's equivalent form correctly, by dividing the borrower's Eligible Payroll Costs claimed on Line 1 by 0.60.

Providing an accurate calculation of the loan forgiveness amount is the responsibility of the borrower, and the borrower attests to the accuracy of its reported information and calculations on the Loan Forgiveness Application Form. Lenders are expected to perform

[79] This subsection was originally published at 85 FR 33010, subsection III.1.d. (June 1, 2020).

[80] This subsection was originally published at 85 FR 33010, subsection III.1.e. (June 1, 2020) and has been modified for readability.

[81] This subsection was originally published at 85 FR 33010, subsection III.1.f. (June 1, 2020) and has been modified to reflect the issuance of the interim final rule on appeals of SBA loan review decisions under the Paycheck Protection Program. 85 FR 52883 (Aug. 27, 2020).

[82] *See* 85 FR 52883 (Aug. 27, 2020).

[83] This subsection was originally published at 85 FR 33010, subsection III.2.a. (June 1, 2020) and amended by 85 FR 38304, subsection III.2.b. (June 26, 2020) and 85 FR 66214, subsection III.2.b. (Oct. 19, 2020) and has been modified to conform to sections 307 and 311 of the Economic Aid Act.

a good-faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning amounts eligible for loan forgiveness. For example, minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable. By contrast, if payroll costs are not documented with such recognized sources, more extensive review of calculations and data would be appropriate. The borrower shall not receive forgiveness without submitting all required documentation to the lender.

As the First Interim Final Rule [84] and section IV.7 above indicate, lenders may rely on borrower representations. If the lender identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue. As stated in paragraph III.3.c of the First Interim Final Rule, the lender does not need to independently verify the borrower's reported information if the borrower submits documentation supporting its request for loan forgiveness and attests that it accurately verified the payments for eligible costs.

When a borrower submits SBA Form 3508S or lender's equivalent form, the lender shall:

i. Confirm receipt of the borrower certifications contained in the SBA Form 3508S or lender's equivalent form.

ii. In the case of a Second Draw PPP Loan for which the borrower did not provide documentation of revenue reduction with its application and the lender did not conduct a review of the documentation at the time of application, confirm the dollar amount and percentage of the borrower's revenue reduction by performing a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning the borrower's revenue reduction.[85]

If the lender identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents regarding revenue reduction, the lender should work with the borrower to remedy the issue. Providing an accurate calculation of the loan forgiveness amount is the responsibility of the borrower, and the borrower attests to the accuracy of its reported information and calculations on the Loan Forgiveness Application. The borrower shall not receive forgiveness without submitting all required documentation to the lender.

As the First Interim Final Rule [86] and section IV.7 above indicate, lenders may rely on borrower representations. As stated in paragraph III.3.c of the First Interim Final Rule, the lender does not need to independently verify the borrower's reported information if the borrower submits documentation supporting its request for loan forgiveness (if required) and attests that it accurately verified the payments for eligible costs.

b. What is the timeline for the lender's decision on a loan forgiveness application? [87]

The lender must issue a decision to SBA on a loan forgiveness application not later than 60 days after receipt of a complete loan forgiveness application from the borrower. That decision may take the form of an approval (in whole or in part); denial; or (if directed by SBA) a denial without prejudice due to a pending SBA review of the loan for which forgiveness is sought. In the case of a denial without prejudice, the borrower may subsequently request that the lender reconsider its application for loan forgiveness, unless SBA has determined that the borrower is ineligible for a PPP loan. The Administrator has determined that this process appropriately balances the need for efficient processing of loan forgiveness applications with considerations of program integrity, including affording SBA the opportunity to ensure that borrower representations and certifications (including concerning eligibility for a PPP loan) were accurate.

When the lender issues its decision to SBA approving the application (in whole or in part), it must include the following:

i. For applications submitted using the SBA Form 3508 or lender's equivalent form:

(1) The PPP Loan Forgiveness Calculation Form;

(2) PPP Schedule A;

(3) the (optional) PPP Borrower Demographic Information Form (if submitted to the lender); and

(4) the SBA Form 3508D, if applicable.

ii. For applications submitted using the SBA Form 3508EZ, 3508S, or lender's equivalent form:

(1) The SBA Form 3508EZ, 3508S, or lender's equivalent form;

(2) the (optional) Borrower Demographic Information Form (if submitted to the lender); and

(3) the SBA Form 3508D, if applicable.

The lender must confirm that the information provided by the lender to SBA accurately reflects lender's records for the loan, that the lender has made its decision in accordance with the requirements set forth in subsection V.2.a., and for a Second Draw PPP Loan of $150,000 or less, if applicable, the lender has reviewed the revenue reduction documentation provided by the borrower and confirmed the dollar amount and percentage of the borrower's revenue reduction. If the lender determines that the borrower is entitled to forgiveness of some or all of the amount applied for under the statute and applicable regulations, the lender must request payment from SBA at the time the lender issues its decision to SBA. SBA will, subject to any SBA review of the borrower's loan(s) or loan application(s), remit the appropriate forgiveness amount to the lender, plus any interest accrued through the date of payment, not later than 90 days after the lender issues its decision to SBA. The EIDL Advance Amount received by the borrower will not reduce the amount of forgiveness to which the borrower is entitled and will not be deducted from the forgiveness payment amount that SBA remits to the Lender.[88] The lender is responsible for notifying the borrower of remittance by SBA of the loan forgiveness amount (or that SBA determined that no amount of the loan is eligible for forgiveness) and the date on which the borrower's first payment is due, if applicable.

When the lender issues its decision to SBA determining that the borrower is not entitled to forgiveness in any amount, the lender must provide SBA with the reason for its denial, together with the following:

i. For applications submitted using the SBA Form 3508 or lender's equivalent form:

(1) The PPP Loan Forgiveness Calculation Form;

(2) PPP Schedule A;

[84] 85 FR 20811, 20815–20816 (Apr. 15, 2020).

[85] *See* subsection (h)(2)(i)(D) of the interim final rule on Second Draw PPP Loans. 86 FR 3712, 3721 (Jan. 14, 2021).

[86] 85 FR 20811, 20815–20816 (Apr. 15, 2020).

[87] This subsection was originally published at 85 FR 33010, subsection III.2.b. (June 1, 2020) and amended by 85 FR 38304, subsection III.2.b. (June 26, 2020) and 85 FR 66214, subsection III.2.b. (Oct. 19, 2020) and has been modified to conform to sections 311, 322, and 333 of the Economic Aid Act and for readability.

[88] Section 333 of the Economic Aid Act repealed the CARES Act provision requiring SBA to deduct EIDL Advance Amounts received by borrowers from the forgiveness payment amounts remitted by SBA to the lender. Any EIDL Advance Amounts previously deducted from a borrower's forgiveness amount will be remitted to the lender, together with interest to the remittance date.

(3) the (optional) PPP Borrower Demographic Information Form (if submitted to the lender); and

(4) the SBA Form 3508D, if applicable.

ii. For applications submitted using the SBA Form 3508EZ, 3508S, or lender's equivalent form:

(1) The SBA Form 3508EZ, 3508S, or lender's equivalent form;

(2) the (optional) Borrower Demographic Information Form (if submitted to the lender); and

(3) the SBA Form 3508D, if applicable.

The lender must confirm that the information provided by the lender to SBA accurately reflects lender's records for the loan, and that the lender has made its decision in accordance with the requirements set forth in subsection V.2.a., and for a Second Draw PPP Loan of $150,000 or less, if applicable, the lender has reviewed the revenue reduction documentation provided by the borrower and confirmed the dollar amount and percentage of the borrower's revenue reduction. The lender must also notify the borrower in writing that the lender has issued a decision to SBA denying the loan forgiveness application and provide SBA with a copy of the notice.[89] The notice to the borrower must include the reasons that the lender concluded that the borrower is not entitled to loan forgiveness in any amount and inform the borrower that the borrower has 30 calendar days from receipt of the notification to seek, through the lender, SBA review of the lender's decision.[90] SBA reserves the right to review the lender's decision in its sole discretion. Within 30 days of notice from the lender, a borrower may notify the lender that it is requesting that SBA review the lender's decision in accordance with subsection V.2.c. below. Within 5 days of receipt, the lender must notify SBA of the borrower's request for review. SBA will notify the lender if SBA decides to review the lender's decision or if SBA declines a request for review. If the borrower does not timely request SBA review or SBA declines the request for review, the lender is responsible for notifying the borrower of the date on which the borrower's first payment is due. If SBA accepts a borrower's request for review, SBA will notify the borrower and the lender of the results of the review. If SBA denies forgiveness in whole or in part, the lender is responsible for notifying the borrower of the date on which the borrower's first payment is due.

c. What should a lender do if it receives notice that SBA is reviewing a loan?[91]

SBA may begin a review of any PPP loan of any size at any time in SBA's discretion. SBA may, in its discretion, review the borrower's First Draw PPP Loan and Second Draw PPP Loan at the same time or at different times. If SBA undertakes such a review, SBA will notify the lender in writing and the lender must notify the borrower in writing within five business days of receipt.

Within five business days of receipt of such notice, the lender shall transmit to SBA electronic copies of the following:

i. The Borrower Application Form (SBA Form 2483, 2483–SD, or lender's equivalent form) and all supporting documentation provided by the borrower, including revenue reduction documentation provided by the borrower on a Second Draw PPP Loan.

ii. The Loan Forgiveness Application (SBA Form 3508, 3508EZ, 3508S, or lender's equivalent form), and all supporting documentation provided by the borrower (if the lender has received such application), including revenue reduction documentation provided by the borrower on a Second Draw PPP Loan of $150,000 or less if not provided at the time of loan application. If the lender receives the borrower's loan forgiveness application after it receives notice that SBA has commenced a loan review, the lender shall transmit electronic copies of the application and all supporting documentation provided by the borrower to SBA within five business days of receipt.

The lender must also request that the borrower provide the lender with the applicable documentation that the instructions to the Loan Forgiveness Application Form (SBA Form 3508, 3508EZ, 3508S, or lender's equivalent) instruct the borrower to maintain but not submit (documentation listed under ''Documents that Each Borrower Must Maintain but is Not Required to Submit'').

For Second Draw PPP Loans of $150,000 or less where a loan forgiveness application has not been submitted by the borrower, the lender must also request that the borrower provide the lender with revenue reduction documentation, if not previously provided to the lender.

The lender must submit documents received from the borrower to SBA within five business days of receipt from the borrower.

iii. A signed and certified transcript of account.

iv. A copy of the executed note evidencing the PPP loan.

v. Any memorandum or other analysis that the lender prepared in making its decision on the borrower's loan forgiveness application, if applicable.

vi. Any other documents related to the loan requested by SBA.

If SBA has notified the lender that SBA has commenced a loan review, the lender should issue a forgiveness decision to SBA not later than 60 days after receipt of the complete loan forgiveness application from the borrower, unless otherwise directed by SBA.

d. What should a lender do if a borrower submits documentation of eligible costs that exceed a borrower's PPP Loan Amount?[92]

The amount of loan forgiveness that a borrower may receive cannot exceed the principal amount of the PPP loan. Whether a borrower submits SBA Form 3508, 3508EZ, 3508S, or lender's equivalent form, a lender should confirm receipt of the documentation the borrower is required to submit to aid in verifying payroll and nonpayroll costs, and, if applicable (for SBA Form 3508, 3508EZ, or lender's equivalent form), confirm the borrower's calculations on the borrower's Loan Forgiveness Application, up to the amount required to reach the requested Forgiveness Amount. Supporting documentation regarding a borrower's payroll and nonpayroll costs is not required to be submitted to the lender with the SBA Form 3508S.

3. Lender Fees[93]

Are lender processing fees subject to clawback if a lender has not fulfilled its obligations under PPP regulations?

A lender is required to repay the processing fee to SBA if a lender is found guilty of an act of fraud in connection with the PPP loan. In such

[89] This change has been made so that SBA can determine whether the borrower requested review within the appropriate time frame.

[90] This text has been added to clarify the information that will be provided to borrowers regarding the lender's forgiveness decision.

[91] This subsection was originally published at 85 FR 33010, subsection III.2.c. (June 1, 2020) and amended by 85 FR 38304, subsection III.2.b. (June 26, 2020) and 85 FR 66214, subsection III.2.b. (Oct. 19, 2020) and has been modified to conform to section 311 of the Economic Aid Act and updates to SBA loan review procedures.

[92] This subsection was originally published at 85 FR 66214, subsection III.2.c. (Oct. 19, 2020) and has been modified to conform to section 307 of the Economic Aid Act.

[93] This section was originally published at 85 FR 33010, subsection III.3. (June 1, 2020) and has been modified to conform to section 340 of the Economic Aid Act. Section 340 of the Economic Aid Act provides that a lender may not be required to repay a processing fee unless the lender is found guilty of an act of fraud in connection with the PPP loan.

case, the loan is not eligible for a guaranty.[94]

VI. Additional Information

SBA may provide further guidance, if needed, through SBA notices that will be posted on SBA's website at *www.sba.gov*. Questions on the Paycheck Protection Program may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

Compliance With Executive Orders 12866, 12988, 13132, 13563, and 13771, the Congressional Review Act, the Administrative Procedure Act, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Orders 12866, 13563, and 13771

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. SBA, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

This rule is necessary to implement the Economic Aid Act in order to provide economic relief to small businesses nationwide adversely impacted under the COVID–19 Emergency Declaration. We anticipate that this rule will result in substantial benefits to small businesses, their employees, and the communities they serve. However, we lack data to estimate the effects of this rule.

The Administrator of the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3).

Notwithstanding this requirement, the CRA allows agencies to dispense with the requirements of section 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). Pursuant to § 808(2), SBA for good cause finds that a 60-day delay to provide public notice is impracticable and contrary to the public interest. Likewise, for the same reasons, SBA for good cause finds that there are grounds to waive the 30-day effective date delay under the Administrative Procedure Act. 5 U.S.C. 553(d)(3).

As discussed elsewhere in this interim final rule, the Economic Aid Act provided that several of the changes relating to loan forgiveness are effective as if included in the CARES Act and apply to any loan made pursuant to section 7(a)(36) of the Small Business Act before, on, or after December 27, 2020, including forgiveness of such a loan. Accordingly, loans that were made in 2020 but that have not yet received forgiveness will be forgiven based on changes made in the Economic Aid Act, as implemented in this interim final rule. Given the urgent need to provide borrowers that are eligible for loan forgiveness with timely relief, the Administrator in consultation with the Secretary has determined that it is impractical and not in the public interest to provide a delayed effective date. An immediate effective date will allow SBA to continue remitting forgiveness payments to lenders without disruption and in accordance with the amendments made by the Economic Aid Act.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive effect but does have some retroactive effect consistent with specific applicability provisions of the Economic Aid Act.

Executive Order 13132

SBA has determined that this rule 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 layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this rule will require revisions to existing recordkeeping or reporting requirements of the Paycheck Protection Program (PPP) information collection (OMB Control Number 3245–0407) as a result of amendments made to the PPP by the Economic Aid Act and implemented in this interim final rule. The revisions will affect the PPP Loan Forgiveness Application Form 3508, PPP Loan Forgiveness Application Form 3508EZ, and PPP Loan Forgiveness Application Form 3508S.

Further, to address the conflict of interest provisions in section 322 of the Economic Aid Act, SBA has developed a new form, Paycheck Protection Program—Borrower's Disclosure of Certain Controlling Interests Form 3508D, which is required for certain borrowers who have disclosure requirements under the Economic Aid Act.

SBA Form 3508S was amended to conform to section 307 of the Economic Aid Act, which requires a simplified forgiveness application for loans of not more than $150,000. SBA Forms 3508, 3508EZ and 3508S were also amended to address the new Second Draw PPP Loan program under section 311 of the Economic Aid Act, include the additional expenses that are eligible for forgiveness under section 304 of the Economic Aid Act, address the changes to the covered period definition in section 306 of the Economic Aid Act, and implement the EIDL advance deduction repeal in section 333 of the Economic Aid Act. SBA Form 3508D will be used by borrowers where a covered individual, as defined in section 322 of the Economic Aid Act, holds a controlling interest in the borrower.

SBA has requested Office of Management and Budget (OMB) emergency approval of the revisions to the information collection to enable borrowers to begin submitting loan forgiveness applications with the Economic Aid Act changes as quickly as possible and to enable borrowers with disclosure requirements to meet the statutory deadline for disclosure.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a

[94] *See* 13 CFR 120.524.

regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy guide: How to Comply with the Regulatory Flexibility Act, Ch.1. p.9. Since this rule is exempt from notice and comment, SBA is not required to conduct a regulatory flexibility analysis.

Authority: 15 U.S.C. 636(a)(36); Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116–136, section 1114 and Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Pub. L. 116–260), section 303.

Tami Perriello,

Acting Administrator, Small Business Administration.

Andy P. Baukol,

Principal Deputy Assistant Secretary for International Monetary Policy (performing the delegable duties of the Deputy Secretary), Department of the Treasury.

[FR Doc. 2021–02314 Filed 2–3–21; 11:15 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1177; Project Identifier MCAI–2020–01336–R; Amendment 39–21403; AD 2021–02–20]

RIN 2120–AA64

Airworthiness Directives; Hélicoptères Guimbal Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Hélicoptères Guimbal Model Cabri G2 helicopters. This AD was prompted by a report of a crack in a rotating scissor fitting. This AD requires an initial and repetitive inspections of certain rotating and non-rotating scissor fittings, and depending on the results, replacing the affected assembly. This AD also prohibits installing certain main rotor hubs (MRHs) and swashplate guides unless the initial inspection has been accomplished. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective February 22, 2021.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of February 22, 2021.

The FAA must receive comments on this AD by March 22, 2021.

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

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

For service information identified in this final rule, contact Hélicoptères Guimbal, Basile Ginel, 1070, rue du Lieutenant Parayre, Aérodrome d'Aix-en-Provence, 13290 Les Milles, France; telephone 33–04–42–39–10–88; email *basile.ginel@guimbal.com;* web *https://www.guimbal.com.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1177.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1177; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the European Union Aviation Safety Agency (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Fred Guerin, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 2200 South 216th St. Des Moines, WA 98198; telephone (206) 231–3500; email *fred.guerin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2020–0199, dated September 21, 2020, and corrected September 24, 2020 (EASA AD 2020–0199), to correct an unsafe condition for Hélicoptères Guimbal (HG) Model Cabri G2 helicopters. EASA advises of a report of a crack in a rotating scissor fitting discovered during maintenance. According to EASA, the suspected root cause of the crack was corrosion under residual stress. This condition, if not addressed, could result in failure of the rotating or non-rotating scissor fitting on either the MRH or the swashplate guide, and subsequent loss of control of the helicopter.

Accordingly, EASA AD 2020–0199 requires an initial and repetitive inspections of the rotating and non-rotating scissor fittings part number (P/N) G12–00–200 installed on the MRH or swashplate guide, respectively. If a crack is detected, the EASA AD requires replacing the affected MRH or swashplate guide with a serviceable part. The EASA AD prohibits installing certain MRHs and swashplate guides unless the initial inspection has been accomplished. The EASA AD also requires reporting certain information to HG.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Guimbal Service Bulletin SB 20–011, Revision C, and SB 20–012, Revision B, each dated October 5, 2020 (SB 20–011 Rev C and SB 20–012 Rev B). SB 20–012 Rev B specifies removing the bolts connecting the two scissor fittings P/N G12–00–200 and accomplishing a one-time detailed inspection for a crack in certain areas. SB 20–012 Rev B also specifies reassembling the two scissor fittings using correct bolt torque limits, installing new cotter pins, and reporting any findings to HG customer service. SB 20–011 Rev C specifies procedures for a recurring inspection after accomplishment of SB 20–012 Rev B of the same areas of the scissor fittings for a crack as SB 20–012 Rev B, except without removing the bolts which connect the two scissor fittings. SB 20–

011 Rev C also specifies reporting any findings to customer service.

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

Other Related Service Information

The FAA also reviewed Guimbal Service Bulletin SB 20–011, Revision B, and SB 20–012, Revision A, each dated September 1, 2020 (SB 20–011 Rev B and SB 20–012 Rev A). SB 20–012 Rev A specifies the same procedures as SB 20–012 Rev B, except SB 20–012 Rev B revises the compliance time, adds the EASA AD identification information, and updates the Situation section description. SB 20–011 Rev B specifies the same procedures as SB 20–011 Rev C, except SB 20–011 Rev C adds the EASA AD identification information and updates the Situation section description.

AD Requirements

This AD requires, within 30 hours time-in-service (TIS) or 30 calendar days, whichever occurs first, inspecting each rotating and non-rotating scissor fitting with the bolts connecting the scissor fittings removed. For this initial inspection, this AD requires removing the cotter pins and bolts that connect the two scissor fittings, cleaning the outside surface of each scissor fitting, and using a flashlight to visually inspect each scissor fitting for a crack.

This AD also requires, at intervals not to exceed 50 hours TIS or 6 months, whichever occurs first, repetitive inspections of each scissor fitting without removing the bolts and separating the two scissor fittings. For these repetitive inspections, this AD requires cleaning each scissor fitting, and while using a flashlight, visually inspecting each scissor fitting for a crack.

If during any inspection there is a crack, this AD requires replacing the MRH or swashplate guide, as applicable, before further flight.

This AD also prohibits installing an MRH or swashplate guide with an affected scissor fitting installed, even if new, unless the initial inspection has been accomplished.

Differences Between This AD and the EASA AD

The EASA AD requires detailed inspections, whereas this AD requires cleaning each scissor fitting and visually inspecting each scissor fitting using a flashlight. The EASA AD also requires reporting certain information, whereas this AD does not. The EASA AD allows installing a new (not previously installed) MRH or swashplate guide, whereas this AD prohibits installing a new MRH or swashplate guide unless the initial inspection has been accomplished.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because the initial inspection must be completed within 30 hours TIS or 30 calendar days, whichever occurs first, and thereafter, the repetitive inspections must be completed within 50 hours TIS or 6 months, whichever occurs first. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forego notice and comment.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2020–1177; Project Identifier MCAI–2020–01336–R at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Fred Guerin, Aerospace Engineer, General Aviation and Rotorcraft Section, International Validation Branch (AIR–732), FAA, 2200 South 216th St., Des Moines, WA 98198; telephone (206) 231–3500; email *fred.guerin@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 32 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Removing and installing the bolt and cotter pins in the initial inspection takes a minimal amount of time. Inspecting each scissor fitting takes about 0.5 work-hour for an estimated cost of $43 per fitting, per inspection cycle. There are 2 scissor fittings installed on a helicopter, for an estimated cost of $85 per helicopter and $2,720 for the U.S. fleet, per inspection cycle. If required, replacing an MRH takes about 5 work-

hours and the part costs about $32,000, for an estimated cost of $32,425 per helicopter. If required, replacing a swashplate guide takes about 6 work-hours and the part costs about $2,000, for an estimated cost of $2,510 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–02–20 Hélicoptères Guimbal: Amendment 39–21403; Docket No. FAA–2020–1177; Project Identifier MCAI–2020–01336–R.

(a) Effective Date

This airworthiness directive (AD) is effective February 22, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Hélicoptères Guimbal Model Cabri G2 helicopters, certificated in any category, with rotating or non-rotating scissor fitting part number (P/N) G12–00–200, installed on the main rotor hub (MRH) or swashplate guide, respectively.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of a crack in a rotating scissor fitting. The FAA is issuing this AD to detect a crack and prevent failure of a scissor fitting. The unsafe condition, if not addressed, could result in failure of a rotating or non-rotating scissor fitting and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 30 hours time-in-service (TIS) or 30 calendar days, whichever occurs first:

(i) Remove the cotter pins and bolts connecting the rotating and non-rotating scissor fitting by following the Required Actions, IPC 4.1–2(a), of Guimbal Service Bulletin SB 20–012, Revision B, dated October 5, 2020 (SB 20–012 Rev B). Remove the cotter pins from service. Clean each scissor fitting. Using a flashlight, visually inspect each scissor fitting by following the Required Actions, IPC 4.1–2(b), of SB 20–012 Rev B.

(ii) If there is a crack, before further flight, replace the MRH or swashplate guide, as applicable.

(iii) If there is not a crack, reassemble the scissor fittings by following the Required Actions, IPC 4.1–2(c), of SB 20–012 Rev B.

(2) Thereafter, within 50 hours TIS or 6 months, whichever occurs first, and at intervals not to exceed 50 hours TIS or 6 months, whichever occurs first:

(i) Leaving each rotating and non-rotating scissor fitting assembled, clean each scissor fitting. Using a flashlight, visually inspect each scissor fitting by following the Required Actions, IPC 4.1–2(a), of Guimbal Service Bulletin SB 20–011, Revision C, dated October 5, 2020.

(ii) If there is a crack, before further flight, replace the MRH or swashplate guide, as applicable.

(3) As of the effective date of this AD, do not install an MRH or swashplate guide, with rotating or non-rotating scissor fitting P/N G12–00–200 installed, respectively, on any helicopter, even if new, unless the actions required by paragraph (g)(1) of this AD have been accomplished.

(h) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (g)(1) of this AD if you accomplished Guimbal Service Bulletin SB 20–012, Revision A, dated September 1, 2020, before the effective date of this AD.

(2) This paragraph provides credit for the first instance of the actions required by paragraph (g)(2) of this AD if you accomplished Guimbal Service Bulletin SB 20–011, Revision B, dated September 1, 2020, before the effective date of this AD.

(i) Special Flight Permits

A special flight permit may be permitted provided that there are no passengers onboard, and the flight is operating under day Visual Flight Rules, for the purpose of ferrying the helicopter to an authorized maintenance facility.

(j) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Related Information

(1) For more information about this AD, Fred Guerin, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone (206) 231–3500; email *fred.guerin@faa.gov.*

(2) Guimbal Service Bulletin SB 20–011, Revision B, and SB 20–012, Revision A, each dated September 1, 2020, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Hélicoptères Guimbal, Basile Ginel, 1070, rue du Lieutenant Parayre, Aérodrome d'Aix-en-Provence, 13290 Les Milles, France; telephone 33–04–42–39–10–88; email *basile.ginel@guimbal.com;* web *https://www.guimbal.com.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information

on the availability of this material at the FAA, call (817) 222–5110.

(3) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD No. 2020–0199, dated September 24, 2020. You may view the EASA AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2020–1177.

(l) Material Incorporated by Reference

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

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

(i) Guimbal Service Bulletin SB 20–011, Revision C, dated October 5, 2020.

(ii) Guimbal Service Bulletin SB 20–012, Revision B, dated October 5, 2020.

(3) For Guimbal service information identified in this AD, contact Hélicoptères Guimbal, Basile Ginel, 1070, rue du Lieutenant Parayre, Aérodrome d'Aix-en-Provence, 13290 Les Milles, France; telephone 33–04–42–39–10–88; email *basile.ginel@guimbal.com;* web *https://www.guimbal.com.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on January 19, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–02532 Filed 2–3–21; 2:00 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0024; Project Identifier MCAI–2021–00105–T; Amendment 39–21421; AD 2021–03–18]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Dassault Aviation Model FALCON 7X airplanes. This AD was prompted by a report of deviations concerning the assembly and overhaul of certain crew oxygen mask stowage boxes, including incorrect application of a certain thread-locker on the fitting sensor screws. This AD requires an inspection of certain crew oxygen mask stowage boxes for discrepancies, and replacement if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective February 22, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 22, 2021.

The FAA must receive comments on this AD by March 22, 2021.

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

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

For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0024.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0024; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD 2021–0036–E, dated January 25, 2021 (EASA Emergency AD 2021–0036–E) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Dassault Aviation Model FALCON 7X airplanes.

This AD was prompted by a report of deviations concerning the assembly and overhaul of certain crew oxygen mask stowage boxes, including incorrect application of Loctite 222 thread-locker on the fitting sensor screws. The FAA is issuing this AD to address such deviations, which could lead to blocked oxygen supply flow to flight deck crew oxygen masks. In combination with in-flight depressurization, flight deck smoke, or a smoke evacuation procedure, this lack of oxygen may lead to flightcrew hypoxia and loss of useful consciousness and consequent loss of control of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA Emergency AD 2021–0036–E describes procedures for an inspection (test) of crew oxygen mask stowage boxes having part number CSD30–005–X–X ('X' can represent any alphanumeric value) for discrepancies (an inability to clearly hear oxygen flowing out of the mask during a functional test or see that the yellow blinker on the stowage box does not illuminate), and replacement.

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

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced

above. The FAA is issuing this AD because the FAA evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA Emergency AD 2021–0036–E described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA Emergency AD 2021–0036–E is incorporated by reference in this final rule. This AD, therefore, requires compliance with EASA Emergency AD 2021–0036–E in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA Emergency AD 2021–0036–E that is required for compliance with EASA Emergency AD 2021–0036–E is available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0024.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because deviations during the assembly and overhaul of certain crew oxygen mask stowage boxes could lead to blocked oxygen supply flow to flight deck crew oxygen masks, which, in combination with in-flight depressurization, flight deck smoke, or a smoke evacuation procedure, may lead to flightcrew hypoxia and loss of useful consciousness and consequent loss of control of the airplane. In addition, the compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0024; Project Identifier MCAI–2021–01005–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *tom.rodriguez@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act (RFA)

The requirements of the RFA do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 133 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hours × $85 per hour = $85	$0	$85	$11,305

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 3 work-hours × $85 per hour = Up to $255 (per mask stowage box)	$8,427	Up to $8,682.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–03–18 Dassault Aviation: Amendment 39–21421; Docket No. FAA–2021–0024; Project Identifier MCAI–2021–00105–T.

(a) Effective Date

This airworthiness directive (AD) becomes effective February 22, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Dassault Aviation Model FALCON 7X airplanes, certificated in any category.

Note 1 to paragraph (c): Model FALCON 7X airplanes include those that have embodied Dassault modification (mod) M1000 (commercially known as Falcon 8X) in production.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Reason

This AD was prompted by a report of deviations concerning the assembly and overhaul of certain crew oxygen mask stowage boxes, including incorrect application of Loctite 222 thread-locker on the fitting sensor screws. The FAA is issuing this AD to address such deviations, which could lead to blocked oxygen supply flow to flight deck crew oxygen masks, which, in combination with in-flight depressurization, flight deck smoke, or a smoke evacuation procedure, may lead to flightcrew hypoxia and loss of useful consciousness and consequent loss of control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) Emergency AD 2021–0036–E, dated January 25, 2021 (EASA Emergency AD 2021–0036–E).

(h) Exceptions to EASA Emergency AD 2021–0036–E

(1) Where EASA Emergency AD 2021–0036–E refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (2) of EASA Emergency AD 2021–0036–E specifies actions if ''any discrepancy is detected,'' for this AD a ''discrepancy'' is defined as an inability to clearly hear oxygen flowing out of the mask during a functional test or see that the yellow blinker on the stowage box does not illuminate.

(3) Although the service information referenced in EASA Emergency AD 2021–0036–E specifies that certain actions may be accomplished by a pilot, this AD does not allow that provision.

(4) The ''Remarks'' section of EASA Emergency AD 2021–0036–E does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA Emergency AD 2021–0036–E specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and

fax 206–231–3226; email *tom.rodriguez@faa.gov*.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) Emergency AD 2021–0036–E, dated January 25, 2021.

(ii) [Reserved]

(3) For EASA Emergency AD 2021–0036–E, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; Internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0024.

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

Issued on February 1, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–02478 Filed 2–3–21; 2:00 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0015; Project Identifier MCAI–2021–00014–T; Amendment 39–21408; AD 2021–03–05]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A318, A319, A320, and A321 series airplanes. This AD was prompted by a report that following accomplishment of tap tests on certain modified rudders, disbonding of the rudder was found close to the lightning protection plate. This AD requires inspections of the left- and right-hand rudder side shells for defects, and applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective February 22, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 22, 2021.

The FAA must receive comments on this AD by March 22, 2021.

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

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

For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0015.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0015; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0002, dated January 6, 2021 (EASA AD 2021–0002) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A318 series airplanes; Model A319 series airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N and –273N airplanes; and Model A321 series airplanes. Model A320–215 airplanes are not certified by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This AD was prompted by a report that following accomplishment of tap tests on rudders that were modified using the procedures in previously issued service information (Airbus Service Bulletin A320–55–1052 dated July 28, 2017, Revision 01, dated January 28, 2015, and Revision 02, dated July 11, 2019, or Airbus Service Bulletin A320–55–1059, dated March 8, 2018), disbonding of the rudder was found close to the lightning protection plate. Investigation results determined that those procedures may lead to inadequate curing of the affected part after modification. The FAA is issuing this AD to address disbonding of the rudder, which could result in reduced structural integrity of the rudder, and consequent reduced controllability of the airplane.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0002 describes procedures for a one-time general visual inspection and a special detailed inspection (woodpecker or tap test) of the left- and right-hand rudder side shells for defects (including bulging, waviness, and disbonding) and applicable corrective actions. The corrective actions include accomplishing a special detailed inspection of any affected part with defects and a temporary and eventual permanent repair of the defects. EASA AD 2021–0002 also prohibits modification of a rudder using the procedures in previously issued service information. This material is reasonably

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

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is issuing this AD because the FAA evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2021–0002 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2021–0002 is incorporated by reference in this final rule. This AD, therefore, requires compliance with EASA AD 2021–0002 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2021–0002 that is required for compliance with EASA AD 2021–0002 is available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0015.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because disbonding of the left- and right-hand rudder side shells could result in reduced structural integrity of the rudder, and consequent reduced controllability of the airplane. In addition, the compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0015; Project Identifier MCAI–2021–00014–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act (RFA)

The requirements of the RFA do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 1,630 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 16 work-hours × $85 per hour = Up to $1,360	$0	Up to $1,360	Up to $2,216,800.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–03–05 Airbus SAS: Amendment 39–21408; Docket No. FAA–2021–0015; Project Identifier MCAI–2021–00014–T.

(a) Effective Date

This airworthiness directive (AD) becomes effective February 22, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes, certificated in any category, as identified in paragraphs (c)(1) through (4) of this AD.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N and –273N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Reason

This AD was prompted by a report that following accomplishment of tap tests on rudders that were modified using the procedures in certain previously issued service information, disbonding of the rudder was found close to the lightning protection plate. Investigation results determined that those procedures may lead to inadequate curing of the affected part after modification. The FAA is issuing this AD to address disbonding of the rudder, which could result in reduced structural integrity of the rudder, and consequent reduced controllability of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0002, dated January 6, 2021 (EASA AD 2021–0002).

(h) Exceptions to EASA AD 2021–0002

(1) Where EASA AD 2021–0002 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2021–0002 specifies to comply with ''the instructions of the AOT,'' this AD requires using the words ''the procedures marked as required for compliance (RC) in the AOT.''

(3) The ''Remarks'' section of EASA AD 2021–0002 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0002 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0316 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0002, dated January 6, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0002, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des

Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0015.

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

Issued on January 23, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–02477 Filed 2–3–21; 2:00 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 25, and 52

[FAC 2021–04; FAR Case 2019–016; Docket No. FAR–2019–0016, Sequence No. 1]

RIN 9000–AN99

Federal Acquisition Regulation: Maximizing Use of American-Made Goods, Products, and Materials

Correction

In rule document 2021–00710 beginning on page 6180 in the issue of Tuesday, January 19, 2021, make the following correction:

On page 6180, in the third column, in the first line of the **DATES** section, ''January 21, 2021'' should read ''January 19, 2021''.

[FR Doc. C1–2021–00710 Filed 2–4–21; 8:45 am]

BILLING CODE 1301–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200221–0062]

RTID 0648–XA779

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Pot Gear in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

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

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 3, 2021, through 1200 hrs, A.l.t., June 10, 2021.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

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

The A season allowance of the 2021 Pacific cod TAC apportioned to vessels using pot gear in the Western Regulatory Area of the GOA is 1,068 metric tons (mt) as established by the final 2020 and 2021 harvest specifications for groundfish in the GOA (85 FR 13802, March 10, 2020) and inseason adjustment (85 FR 83834, December 23, 2020).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2021 Pacific cod TAC apportioned to vessels using pot gear in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,060 mt and is setting aside the remaining 8 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Western Regulatory Area of the GOA.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by vessels using pot gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 1, 2021.

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

Dated: February 2, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–02451 Filed 2–2–21; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 23
Friday, February 5, 2021

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

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM21–3–000]

Cybersecurity Incentives

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is proposing to revise its regulations to establish rules for incentive-based rate treatments for voluntary cybersecurity investments by a public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and rates or practices affecting or pertaining to such rates for the purpose of ensuring the reliability of the Bulk-Power System.

DATES: Comments are due April 6, 2021. Also, reply comments are due May 6, 2021.

ADDRESSES: Comments, identified by docket number, may be filed electronically at *http://www.ferc.gov* in acceptable native applications and print-to-PDF, but not in scanned or picture format. For those unable to file electronically, comments may be filed by mail or may be hand-delivered. Mailed comments should be addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand-delivered comments should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

Jessica L. Cockrell (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8190, *jessica.cockrell@ferc.gov*

Craig W. Barrett (Technical Information), Office of Energy Infrastructure Security, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8830, *craig.barrett@ferc.gov*

Andrés López Esquerra (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6128, *andres.lopez@ferc.gov*

Adam Batenhorst (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6150, *adam.batenhorst@ferc.gov*

SUPPLEMENTARY INFORMATION:

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I. Introduction

1. In this Notice of Proposed Rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) proposes under sections 205 and 206 of the Federal Power Act (FPA) [1] to establish rules for incentive-based rate treatments for voluntary cybersecurity investments [2] by a public utility.[3] These rules would provide cybersecurity incentives to public utilities that make certain cybersecurity investments that go above and beyond the requirements of the CIP Reliability Standards,[4] and materially enhance the cybersecurity posture of the Bulk-Power System [5] by enhancing the applicants' cybersecurity posture substantially above levels required by CIP Reliability Standards, to the benefit of ratepayers.

2. First, we propose to allow public utilities making certain cybersecurity investments to request an increase in the rate of return on equity (ROE) applicable to those capital investments. Such cybersecurity investments would include investments following specific CIP Reliability Standards and/or standards and guidelines from the National Institute of Standards and Technology (NIST) [6] Framework.

3. Second, we propose to allow a public utility to seek deferred cost recovery for certain cybersecurity investments. We propose that only expenses for activities that go above and beyond actions required to comply with the CIP Reliability Standards be eligible for these incentives. Therefore, expenses incurred to comply with mandatory CIP Reliability Standards that a public utility incurs on a regular or ongoing basis, or that are incurred prior to the incentive request, would not be eligible for such regulatory asset treatment. We propose to allow deferred cost recovery for three categories of expenses: (1) Expenses associated with third-party provision of hardware, software, and computing networking services; (2) expenses for training to implement new cybersecurity enhancements undertaken pursuant to this rule; and (3) other implementation expenses, such as risk assessments [7] by third parties or internal system reviews and initial responses to findings of such assessments. In all such cases, eligible costs would be limited to costs associated with implementing cybersecurity upgrades and would not include ongoing costs including system maintenance, surveillance, and other labor costs, either in the form of employee salaries or third-party service contracts. Furthermore, we propose that the deferred regulatory assets whose costs are typically expensed should be amortized over a five-year period.

4. Finally, under the proposed regulations, a public utility seeking one or more incentive based-rate treatments proposed in the NOPR must make a filing for Commission approval pursuant to FPA section 205 and receive such approval prior to implementing the proposed incentives in its Commission-jurisdictional rates.

II. Background

A. Critical Infrastructure Protection Reliability Standards

5. On August 8, 2005, Congress enacted the Energy Policy Act of 2005.[8] The Energy Policy Act of 2005 added a new section 215 to the FPA,[9] which requires a Commission-certified Electric Reliability Organization to develop mandatory and enforceable Reliability Standards,[10] including requirements for cybersecurity protection, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the Electric Reliability Organization subject to Commission oversight, or the Commission can independently enforce Reliability Standards.

6. On February 3, 2006, the Commission issued Order No. 672,[11] implementing FPA section 215. The Commission subsequently certified NERC as the Electric Reliability Organization. The Reliability Standards developed by NERC become mandatory and enforceable after Commission approval and apply to users, owners, and operators of the Bulk-Power System, as set forth in each Reliability Standard.[12] The CIP Reliability Standards require entities to comply with specific requirements to safeguard critical cyber assets. These standards are results-based and do not specify a technology or method to achieve compliance, instead leaving it up to the entity to decide how best to comply.

7. On January 18, 2008, the Commission issued Order No. 706,[13] approving the initial eight CIP Reliability Standards, CIP version 1 Standards, submitted by NERC. Subsequently, the Commission has approved multiple versions of the CIP Reliability Standards submitted by NERC, partly to address the evolving nature of cyber-related threats to the Bulk-Power System. On November 22, 2013, the Commission issued Order No. 791,[14] approving CIP version 5 Standards, the last major revision to the CIP Reliability Standards. The CIP version 5 Standards implement a tiered approach to categorize assets, identifying them as high, medium, or

[1] 16 U.S.C. 824d, 824e.

[2] Voluntary cybersecurity investments refer to cybersecurity investments not required to meet mandatory North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection Reliability Standards (CIP Reliability Standards).

[3] The proposed incentive-based treatments for cybersecurity investments would also be available to non-public utilities to the extent that they have Commission-jurisdictional rates.

[4] *Mandatory Reliability Standards for Critical Infrastructure Protection,* Order No. 706, 73 FR 7367 (Feb. 7, 2008),122 FERC ¶ 61,040, at P 1, *order on reh'g and clarification,* Order No. 706–A, 123 FERC ¶ 61,174 (2008), *order on clarification,* Order No. 706–B, 74 FR 12544 (Mar. 25, 2009), 126 FERC ¶ 61,229, *order denying clarification,* Order No. 706–C, 74 FR 30067 (June 24, 2009), 127 FERC ¶ 61,273 (2009).

[5] Bulk-Power System is defined by FPA section 215 as facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof), and electric energy from generation facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy. 16 U.S.C. 825o(a).

[6] NIST is a part of the U.S. Department of Commerce that advances measurement science, standards, and technology. It has developed the voluntary Framework for Improving Critical Infrastructure Cybersecurity (NIST Framework) to ''address and manage cybersecurity risk in a cost-effective way based on business and organizational needs without placing additional regulatory requirements on businesses.'' NIST, Framework for Improving Critical Infrastructure Cybersecurity, at v (Apr. 16, 2018), *https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf.*

[7] NIST, Framework for Improving Critical Infrastructure Cybersecurity, Version 1.1, at 26 (Apr. 16, 2018), *https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf.*

[8] Energy Policy Act of 2005, Pub. L. 109–58, secs. 1261 *et seq.,* 119 Stat. 594 (2005).

[9] 16 U.S.C. 824o.

[10] FPA section 215 defines Reliability Standard as a requirement, approved by the Commission, to provide for reliable operation of existing bulk-power system facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the Bulk-Power System. However, the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity. *Id.* at 824o(a)(3).

[11] *Rules Concerning Certification of the Elec. Reliability Org.; and Procedures for the Establishment, Approval, and Enf't of Elec. Reliability Standards,* Order No. 672, 71 FR 8661 (Feb. 17, 2006), 114 FERC ¶ 61,104, *order on reh'g,* Order No. 672–A, 71 FR 19814 (Apr. 28, 2006), 114 FERC ¶ 61,328 (2006).

[12] NERC uses the term ''registered entity'' to identify users, owners, and operators of the Bulk-Power System responsible for performing specified reliability functions with respect to NERC Reliability Standards. *See, e.g., Version 4 Critical Infrastructure Protection Reliability Standards,* Order No. 761, 77 FR 24594 (Apr. 25, 2012), 139 FERC ¶ 61,058, at P 46, *order denying clarification and reh'g,* 140 FERC ¶ 61,109 (2012). Within the NERC Reliability Standards are various subsets of entities responsible for performing various specified reliability functions. We collectively refer to these as ''entities.''

[13] Order No. 706, 122 FERC ¶ 61,040 at P 1.

[14] *Version 5 Critical Infrastructure Protection Reliability Standards,* Order No. 791, 78 FR 72755 (Dec. 13, 2013), 145 FERC ¶ 61,160 (2013), *order on clarification and reh'g,* Order No. 791–A, 146 FERC ¶ 61,188 (2014).

low risk to the operation of the Bulk Electric System (BES) [15] if compromised. High impact systems include large control centers. Medium impact systems include smaller control centers, ultra-high voltage transmission, and large substations and generating facilities. The remainder of the BES Cyber Systems [16] are categorized as low impact systems. Most requirements in the CIP Reliability Standards apply to high and medium impact systems; however, a technical controls requirement in CIP–003, described below, applies only to low impact systems. Since 2013, the Commission has approved new and modified CIP Reliability Standards that address specific issues such as supply chain risk management, cyber incident reporting, communications between control centers, and the physical security of critical transmission facilities.[17]

8. The CIP Reliability Standards currently consist of 12 standards specifying a set of requirements that entities must follow to ensure the cyber and physical security of the Bulk-Power System. There are 10 currently effective cybersecurity standards and one cybersecurity standard that has been approved by the Commission and will become enforceable on July 1, 2022. There is also one physical security standard, which is not the subject of this NOPR:[18]

- CIP–002–5.1a Bulk Electric System Cyber System Categorization: requires entities to identify and categorize BES Cyber Assets for the application of cyber security requirements commensurate with the adverse impact that loss, compromise, or misuse of those BES Cyber Systems could have on the reliable operation of the BES.
- CIP–003–8 Security Management Controls: Requires entities to specify consistent and sustainable security management controls that establish responsibility and accountability to protect BES Cyber Systems against compromise that could lead to misoperation or instability in the BES.
- CIP–004–6 Personnel and Training: Requires entities to minimize the risk against compromise that could lead to misoperation or instability in the BES from individuals accessing BES Cyber Systems by requiring an appropriate level of personnel risk assessment, training, and security awareness in support of protecting BES Cyber Systems.
- CIP–005–6 Electronic Security Perimeter(s): Requires entities to manage electronic access to BES Cyber Systems by specifying a controlled Electronic Security Perimeter in support of protecting BES Cyber Systems against compromise that could lead to misoperation or instability in the BES.
- CIP–006–6 Physical Security of Bulk Electric System Cyber Systems: Requires entities to manage physical access to BES Cyber Systems by specifying a physical security plan in support of protecting BES Cyber Systems against compromise that could lead to misoperation or instability in the BES.
- CIP–007–6 System Security Management: Requires entities to manage system security by specifying select technical, operational, and procedural requirements in support of protecting BES Cyber Systems against compromise that could lead to misoperation or instability in the BES.
- CIP–008–5 Incident Reporting and Response Planning: [19] Requires entities to mitigate the risk to the reliable operation of the BES as the result of a cybersecurity incident by specifying incident response requirements.
- CIP–009–6 Recovery Plans for Bulk Electric System Cyber Systems: Requires entities to recover reliability functions performed by BES Cyber Systems by specifying recovery plan requirements in support of the continued stability, operability, and reliability of the BES.
- CIP–010–3 Configuration Change Management and Vulnerability Assessments: Requires entities to prevent and detect unauthorized changes to BES Cyber Systems by specifying configuration change management and vulnerability assessment requirements in support of protecting BES Cyber Systems from compromise that could lead to misoperation or instability in the BES.
- CIP–011–2 Information Protection: Requires entities to prevent unauthorized access to BES Cyber System Information by specifying information protection requirements in support of protecting BES Cyber Systems against compromise that could lead to misoperation or instability in the BES.
- CIP–012–1 Communications between Control Centers: [20] Requires entities to protect the confidentiality and integrity of Real-time Assessment and Real-time monitoring data transmitted between Control Centers.
- CIP–013–1 Supply Chain Risk Management: Requires entities to mitigate cybersecurity risks to the reliable operation of the BES by implementing security controls for supply chain risk management of BES Cyber Systems.

9. The CIP Reliability Standards, viewed as a whole, implement a defense-in-depth approach to protecting the security of BES Cyber Systems at all impact levels.[21] The CIP Reliability Standards are objective-based and allow entities to choose compliance approaches best tailored to their systems.[22]

B. NIST Framework

10. The Cybersecurity Enhancement Act of 2014 (Cybersecurity Act) [23] updated the role of the NIST to include identifying and developing cybersecurity risk frameworks for voluntary use by critical infrastructure owners and operators. Under the Cybersecurity Act, NIST must identify a

[15] In general, NERC defines BES to include all Transmission Elements operated at 100 kV or higher and Real Power and Reactive Power resources connected at 100 kV or higher. This does not include facilities used in the local distribution of electric energy. *See* NERC, *Bulk Electric System Definition Reference Document,* Version 3, at page iii (August 2018). In Order No. 693, the Commission found that NERC's definition of BES is narrower than the statutory definition of Bulk-Power System. The Commission decided to rely on the NERC definition of BES to provide certainty regarding the applicability of Reliability Standards to specific entities. *See Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, 72 FR 16415 (Apr. 4, 2007), 118 FERC ¶ 61,218, at PP 75, 79, 491, *order on reh'g,* Order No. 693–A, 72 FR 49717 (July 25, 2007), 120 FERC ¶ 61,053 (2007).

[16] NERC defines BES Cyber System as ''[o]ne or more BES Cyber Assets logically grouped by a responsible entity to perform one or more reliability tasks for a functional entity.'' NERC, Glossary of Terms Used in NERC Reliability Standards, at 5 (2020), *https://www.nerc.com/files/glossary_of_terms.pdf* (NERC Glossary of Terms). NERC defines BES Cyber Asset as

A Cyber Asset that if rendered unavailable, degraded, or misused would, within 15 minutes of its required operation, misoperation, or non-operation, adversely impact one or more Facilities, systems, or equipment, which, if destroyed, degraded, or otherwise rendered unavailable when needed, would affect the reliable operation of the Bulk Electric System. Redundancy of affected Facilities, systems, and equipment shall not be considered when determining adverse impact. Each BES Cyber Asset is included in one or more BES Cyber Systems.

Id. at 4.

[17] *See, e.g.,* Order No. 791, 78 FR 72755; *Revised Critical Infrastructure Protection Reliability Standards,* Order No. 822, 81 FR 4177 (Jan. 26, 2016), 154 FERC ¶ 61,037, *reh'g denied,* Order No. 822–A, 156 FERC ¶ 61,052 (2016); *Revised Critical Infrastructure Protection Reliability Standard CIP–003–7—Cyber Security—Security Management Controls,* Order No. 843, 163 FERC ¶ 61,032 (2018).

[18] CIP–014–2—Physical Security: requires entities to identify and protect transmission stations and transmission substations, and their associated primary control centers, that, if rendered inoperable or damaged as a result of a physical attack, could result in instability, uncontrolled separation, or cascading within an interconnection.

[19] An update to CIP–008–6 Reliability Standard will become enforceable on January 1, 2021.

[20] CIP–012–1: Communications between Control Centers will be subject to enforcement by July 1, 2022.

[21] Order No. 822, 154 FERC ¶ 61,037 at 32.

[22] Order No. 706, 122 FERC ¶ 61,040 at 72.

[23] 15 U.S.C. 272(e)(1)(A)(i).

prioritized, flexible, repeatable, performance-based, and cost-effective approach, including information security measures and controls, that may be voluntarily adopted by owners and operators of critical infrastructure to help them identify, assess, and manage cyber risks.[24]

11. As noted above, NIST implements the Cybersecurity Act through its NIST Framework,[25] which provides a common organizing structure for multiple approaches to cybersecurity by assembling standards, guidelines, and practices that are currently working effectively in industry.[26] The Cybersecurity Framework incorporates voluntary consensus standards and industry best practices to the fullest extent possible.[27] The NIST Framework consists of three parts: Framework Core; Implementation Tiers; and Framework Profiles.[28] The Framework Core is a set of cybersecurity activities, outcomes, and informative references that are common across sectors and critical infrastructure. Elements of the Framework Core provide detailed guidance for developing individual Framework Profiles.[29] Through use of Framework Profiles, the NIST Framework is designed to help an organization to align and prioritize its cybersecurity activities with its business/mission requirements, risk tolerances, and resources. The Implementation Tiers provide a mechanism for an organization to view and understand the characteristics of its approach to managing cybersecurity risk, which is designed to help in prioritizing and achieving cybersecurity objectives.[30] The Framework Core consists of five concurrent and continuous Functions—Identify, Protect, Detect, Respond, and Recover. When considered together, these Functions provide a high-level, strategic view of the lifecycle of an organization's management of cybersecurity risk.[31]

C. Transmission Incentives Notice of Inquiry and Rulemaking

12. On March 21, 2019, the Commission issued a Notice of Inquiry seeking comment on the scope and implementation of its electric transmission incentives policy[32] to ensure that the policy continues to satisfy its obligations under FPA section 219.[33] The Notice of Inquiry included numerous questions regarding the Commission's approach to, and the objectives of, its transmission incentives policy; the mechanics and implementation of a transmission incentives policy; and metrics for evaluating the effectiveness of transmission incentives. As related to this proceeding, the Commission requested comment on whether it should incent physical and cybersecurity enhancements at transmission facilities and, if so, what types of security investments should qualify for transmission incentives.[34]

13. On March 20, 2020, the Commission issued a Notice of Proposed Rulemaking on several topics considered in the 2019 Notice of Inquiry.[35] In the Transmission Incentives NOPR, the Commission acknowledged that, although reliability is clearly delineated as a benefit to be promoted by transmission incentives, there are differing mandates for promoting reliability under FPA sections 215 and 219. Further, the Commission stated that cybersecurity is an important part of reliability and indicated that it would address cybersecurity incentives independently in a separate, future proceeding.[36]

D. Cybersecurity Incentives Policy White Paper

14. On June 18, 2020, Commission staff issued a white paper to explore a new framework for providing transmission incentives to public utilities for cybersecurity investments that produce significant cybersecurity benefits for actions taken that exceed the requirements of the CIP Reliability Standards.[37] In the White Paper, Commission staff discussed augmenting the current CIP Reliability Standards under FPA section 215 with an incentive-based framework under FPA section 219 that encourages public utilities to undertake cybersecurity investments on a voluntary basis. Commission staff reasoned that this framework would incent a public utility to adopt best practices to protect its own transmission system as well as improve the security of the BES. Further, Commission staff stated that the framework could allow the electric industry to be more agile in monitoring and responding to new and evolving cybersecurity threats, to identify and respond to a wider range of threats, and to address threats with comprehensive and more effective solutions. Commission staff reasoned that an incentive-based framework would allow a public utility to tailor its request for incentives to the potential challenges it faces and take responsive action. Commission staff explained that, in the future, these voluntary actions taken by public utilities, if proven beneficial, could be the basis of future CIP Reliability Standards that would be mandatory.[38]

15. Commission staff stated that providing transmission incentives for cybersecurity investments would require a new framework for the Commission to evaluate requests from public utilities for transmission incentives. Commission staff opined that a first necessary step would be to establish approaches that examine the effectiveness of cybersecurity investments in enabling the public utility to achieve a level of protection that exceeds the CIP Reliability Standards and also enhances the security of its transmission system. Commission staff stated that a public utility would then be able to identify the cybersecurity investments for which it seeks transmission incentives with the Commission evaluating such transmission incentive requests.

16. In the White Paper, Commission staff provided two potential approaches for identifying cybersecurity investments eligible for transmission incentives. The first approach was based on a public utility voluntarily applying certain CIP Reliability Standard requirements to transmission facilities that are not subject to those requirements, *e.g.,* applying all requirements applicable to medium or

[24] 15 U.S.C. 272 (e)(1)(A)(iii). Security Controls is defined as follows: The management, operational, and technical controls (*i.e.,* safeguards or countermeasures) prescribed for an information system to protect the confidentiality, integrity, and availability of the system and its information. NIST, *Computer Security Resource Center Glossary, https://csrc.nist.gov/glossary/term/security_controls.*

[25] Version 1.0 of the NIST Framework was released in 2014, and subsequently replaced with version 1.1 in 2018.

[26] NIST, Framework for Improving Critical Infrastructure Cybersecurity, Version 1.1, at v (Apr. 16, 2018), *https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf.*

[27] *See* Executive Order No. 13636, *Improving Critical Infrastructure Cybersecurity,* 78 FR 11737 (Feb. 19, 2013).

[28] NIST Framework at v.

[29] *Id.*

[30] *Id.*

[31] *Id.* at 3.

[32] *Inquiry Regarding the Commission's Electric Transmission Incentives Policy,* 166 FERC ¶ 61,208 (2019) (2019 Notice of Inquiry).

[33] 16 U.S.C. 824s.

[34] 2019 Notice of Inquiry, 166 FERC ¶ 61,208 at P 27.

[35] *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act,* 85 FR 18784 (Apr. 2, 2020), 170 FERC ¶ 61,204, *errata notice,* 171 FERC ¶ 61,072 (2020) (Transmission Incentives NOPR).

[36] 2019 Notice of Inquiry, 166 FERC ¶ 61,208 at P 5.

[37] *Cybersecurity Incentives Policy White Paper,* Notice of White Paper, Docket No. AD20–19–000 (issued June 18, 2020) (White Paper).

[38] *Id.* at 12–13.

high impact systems to low impact systems. The second approach was based on a public utility voluntarily implementing portions of the NIST Framework. Commission staff suggested that the two approaches could be used independently or in combination.[39]

III. Need for Reform

17. We recognize that the energy sector faces numerous and complex cybersecurity challenges. These growing threats come at a time of both great change in the operation of the transmission system and an increase in the number and nature of attack methods.[40] Encouraging utilities to address cybersecurity of the Bulk-Power System is uniquely important given the degree to which components of the Bulk-Power System are digitally interconnected with one another and the ever-expanding risks posed by adversaries create challenges for those tasked with defending those interconnections from cyber exploitation. In addition, a cybersecurity breach could have exponential effects on the Bulk-Power System. As the operating environment continues to change, there is the potential for increased vulnerabilities and amplification of cybersecurity threats to the Bulk-Power System. For example, as the Commission has previously explained, the global supply chain affords significant benefits to customers, including low cost, interoperability, rapid innovation, and a variety of product features.[41] Despite these benefits, the global supply chain creates opportunities for adversaries to directly or indirectly affect the management or operation of companies with potential risks to end users that could introduce new unintended threats to the system and necessitate rapid mitigating actions.[42] Further, the COVID–19 national emergency[43] prompted many organizations to revise their operations to support an increased number of remote workers. The rapid expansion of teleworking capabilities revealed potential vulnerabilities, and some identified cybersecurity events specifically targeting remote access network equipment.[44] It is important that public utilities make cybersecurity investments to quickly and effectively address these cybersecurity challenges as well as other emerging threats. Therefore, the Commission has concluded that, given the unique importance of protecting the cybersecurity of the Bulk-Power System, it is appropriate to provide incentives for public utility cybersecurity investment as proposed in this NOPR.

18. Section 215 of the FPA and the CIP Reliability Standards promulgated under that statute have served as the Commission's primary tools for mandating changes to cybersecurity practices within the electric sector. As required by FPA section 215, the Commission's mandatory CIP Reliability Standards provide for the reliable operation of the Bulk-Power System.[45] Although the CIP Reliability Standards offer protection of the BES[46] and improve the baseline cybersecurity posture of entities,[47] they have certain limitations. For example, it can take many months for a new Reliability Standard to be developed and, once approved, it may be several more months or years before a Reliability Standard is fully implemented and enforceable.[48] Further, the Bulk-Power System relies on the interdependence of connected networks and equipment; because the CIP Reliability Standards apply to BES facilities, which are generally 100 kV or higher as identified in CIP–002, not all cybersecurity systems are covered by these standards. Thus, while there are limits to how quickly CIP Reliability Standards can become mandatory and enforceable as well as limits to what the CIP Reliability Standards can cover, the cybersecurity threats public utilities face evolve and arise on their own timeframe. For these reasons, we believe that an effective strategy against emerging cybersecurity threats includes not only requiring public utilities to comply with the mandatory CIP Reliability Standards but also encouraging public utilities to make cybersecurity investments in addition to those required by the CIP Reliability Standards. We propose to do this by providing incentives to public utilities that voluntarily make certain cybersecurity investments above and beyond those investments required by the CIP Reliability Standards. The Commission proposes taking a two-prong approach to cybersecurity, which includes both mandatory CIP Reliability Standards and a cybersecurity incentives framework. This approach would encourage public utilities to increase the protection of their systems against cybersecurity threats. Currently, public utilities may not have the appropriate economic incentives to invest in cybersecurity measures that go above and beyond the mandatory CIP Reliability Standards. The cybersecurity incentives outlined in this NOPR strive to incent public utilities to use known, effective, and dynamic solutions to cybersecurity threats for the benefit of ratepayers.

19. Given that cybersecurity investments can be made to more than a public utility's transmission system, we find that basing our incentives framework under this proposal on our transmission incentives authority under FPA section 219, as considered in the White Paper, may unnecessarily limit the application of an effective cybersecurity incentives framework and, thereby, limit possible cybersecurity investment. Creating an incentive-based approach under FPA sections 205 and 206 that encourages public utilities to undertake cybersecurity investments on a voluntary basis that are above and beyond the requirements of the mandatory CIP Reliability Standards better ensures secure service for ratepayers. This approach would incent a public utility to adopt cybersecurity practices that would not only better protect its own systems but also improve the security of the Bulk-Power System. For example, the expansion of network monitoring provides the potential integration of all aspects of Bulk-Power System security to include physical access control, equipment status indicators, and system performance monitoring. This provides

[39] Commission staff noted that, under this potential approach, although a public utility could request a combination of incentives for its facility containing multiple assets, each individual asset would be eligible for only one cybersecurity incentive at a time.

[40] *See, e.g.,* Eversource Energy Serv. Co., Comments, Docket No. Public Law 19–3–000, at 29–30 (filed June 26, 2019) (noting that market operations are becoming increasingly more complex at the same time that there is an increasing cybersecurity threat to the operation and control of the transmission system).

[41] *See, e.g. Revised Critical Infrastructure Protection Reliability Standards,* Notice of Proposed Rulemaking, 80 FR 43354, 152 FERC ¶ 61,054, at PP 61–62 (2015).

[42] *Supply Chain Risk Management Reliability Standards,* Order No. 850, 165 FERC ¶ 61,020, at P 2 (2018).

[43] The Secretary of Health and Human Services declared a public health emergency on January 31, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID–19.

[44] Cybersecurity and Infrastructure Security Agency, National Cyber Awareness System Alerts, COVID–19 Exploited by Malicious Cyber Actors (Alert AA20–099A) (Apr. 8, 2020), *https://us-cert.cisa.gov/ncas/alerts/aa20099a#:~:text=Both%20CISA%20and%20NCSC%20are,threat%20to%20individuals%20and%20organizations.*

[45] FPA section 215(a)(3) provides that the term reliability standard means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system.

[46] Order No. 791, 145 FERC ¶ 61,160 at PP 2, 41.

[47] Order No. 822, 154 FERC ¶ 61,037 at 2.

[48] *See, e.g.,* Am. Elec. Power, Inc., Comments, Docket No. PL19–3–000, at 13–14 (filed June 26, 2019) (noting that there is a potential gap between the dynamic threats faced by the energy industry and the CIP Reliability Standards development and compliance process, which sets the rules for minimum compliance).

for improved incident response time, pre-emptive planning, and system optimization. Further, relying on FPA sections 205 and 206 would allow public utilities to be more agile in monitoring and responding to new and unanticipated cybersecurity threats, to identify and respond to a wider range of threats, and to address threats with comprehensive and more effective solutions. An incentive-based approach allows a public utility to tailor its request for incentives to the potential challenges and responsive actions that it faces. Finally, while we recognize that granting incentives to a public utility under this proposal will have an impact on the public utility's rates, we believe that such impact, over time, will be outweighed by the public utility having a more secure grid and services for the benefit of ratepayers.

IV. Discussion

A. Cybersecurity Incentives Framework

20. Pursuant to FPA sections 205 and 206,[49] we propose to add § 35.48 to the Commission's regulations to establish rules to provide incentive-based rate treatments for voluntary cybersecurity investments made by a public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission. FPA sections 205 and 206 give the Commission authority over the rates of a public utility for or in connection with the transmission or sale of electric energy subject to the Commission's jurisdiction.[50] The Commission's FPA section 205 and 206 authority is broader than the Commission's authority under FPA section 219. FPA section 219 requires the Commission to issue a rule that provides incentive rate treatment for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.[51] However, in this NOPR the Commission is proposing to provide incentives for a different purpose under a different section of the FPA: To provide incentives for cybersecurity investment not only in transmission facilities but also for cybersecurity investment in information technology and operational technology[52] networks that a public utility uses to provide other jurisdictional services. Reliance on FPA sections 205 and 206, therefore, allows for a more comprehensive way to encourage cybersecurity investment than is available under FPA section 219. We believe that this comprehensive approach is warranted because cybersecurity threats to a public utility's system can come in a variety of forms, such as through a public utility's information technology and management systems, and not just through a public utility's systems that directly operate its transmission facilities. In addition, the means a public utility may need to use to protect against cybersecurity intrusions that may harm its jurisdictional system may not be limited to steps to protect the public utility's systems that run its transmission assets. Incentive ratemaking to encourage cybersecurity investments for not only those systems that are used to directly operate a public utility's transmission system but also other systems used for the provision of jurisdictional services is consistent with our general ratemaking authority under FPA sections 205 and 206 under which we may depart from cost-of-service ratemaking.[53] We believe that this action is appropriate to facilitate increased cybersecurity investment, and that the resulting rates will be just and reasonable.

B. Applicable Cybersecurity Investments

21. We propose to add § 35.48(b) to the Commission's regulations to authorize incentive-based rate treatments for a public utility that makes voluntary cybersecurity investments in the Bulk-Power System, provided that the proposed incentive is just and reasonable and not unduly discriminatory or preferential.

1. NERC CIP Incentives Approach

22. We propose to add § 35.48(b)(1) to the Commission's regulations to provide that a public utility may receive incentive rate treatment for voluntarily applying identified CIP Reliability Standards to facilities that are not currently subject to those requirements (NERC CIP Incentives Approach). Using the existing CIP Reliability Standards as a framework for providing cybersecurity incentives allows the Commission to leverage an existing set of baseline cybersecurity requirements. Further, public utilities and the Commission are already familiar with the CIP Reliability Standards and encouraging public utilities to voluntarily apply known standards to additional facilities will establish a benchmark for determining eligibility for an incentive.

23. As discussed above, CIP–002 (Bulk Electric System Cyber System Categorization) implements a tiered approach to categorizing assets, requiring an entity to categorize its cyber assets as high, medium, or low risk to the reliable operation of the BES if compromised. These impact ratings determine which requirements in the CIP Reliability Standards CIP–003 though CIP–013 apply to BES Cyber Systems.

24. The CIP version 5 Standards became enforceable for high and medium impact BES Cyber Systems on July 1, 2016, and the CIP Reliability Standards applicable to low impact BES Cyber Systems became enforceable on April 1, 2020. In approving the CIP version 5 Standards, the Commission determined that ''categorizing BES Cyber Systems based on their low, medium, or high impact on the reliable operation of the BES, with all BES Cyber Systems being categorized as at least low impact, offers more comprehensive protection of the bulk electric system'' and that ''the new cybersecurity controls improve the security posture of responsible entities.''[54]

25. We propose two ways for a public utility to demonstrate that it is eligible for a cybersecurity incentive through voluntary investment in applying the requirements of the CIP Reliability Standards to additional facilities. Public utilities that choose to request the proposed incentives under the NERC CIP Incentives Approach will receive a rebuttable presumption that the investments materially enhance the security posture of the Bulk-Power System by enhancing the applicants'

[49] 16 U.S.C. 824d(a).

[50] 16 U.S.C. 824d(a) (FPA section 205(a) provides that all rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable); *see also FERC* v. *Elec. Power Supply Ass'n,* 136 S. Ct. 760, 774 (2016) (stating the Commission's FPA section 205 and 206 jurisdiction extends to practices that directly affect Commission-jurisdictional rates and that are not otherwise expressly excluded from the Commission's jurisdiction).

[51] 16 U.S.C. 824s(a).

[52] Operational technology is defined as programmable systems or devices that interact with the physical environment (or manage devices that interact with the physical environment). These systems/devices detect or cause a direct change through the monitoring and/or control of devices, processes, and events. Examples include industrial control systems, building management systems, fire control systems, and physical access control mechanisms. NIST, Computer Security Resource Center Glossary, *https://csrc.nist.gov/glossary/term/operational_technology.*

[53] *Incentive Ratemaking for Interstate Natural Gas Pipelines, Oil Pipelines, & Elec. Utilities,* 61 FERC ¶ 61,168, at 61,594 (1992); *see also Farmers Union Cent. Exchange, Inc.* v. *FERC,* 734 F.2d 1486, 1503–04 (D.C. Cir. 1984) (''In some circumstances, the contrasting or changing characteristics of regulated industries may justify the agency's decision to take a new approach to the determination of 'just and reasonable' rates.'').

[54] Order No. 791, 145 FERC ¶ 61,160 at P2.

cybersecurity posture substantially above levels required by CIP Reliability Standards to merit an incentive for such cybersecurity investments.[55]

a. Med/High Incentive

26. We propose to add § 35.48(b)(1)(i) to the Commission's regulations to allow a public utility to receive incentive rate treatment for voluntarily applying the requirements for medium or high impact systems to low impact systems, and/or the requirements for high impact systems to medium impact systems (Med/High Incentive).

27. Under the Med/High Incentive, a public utility seeking a cybersecurity incentive for a facility that is classified as a low impact BES Cyber System would invest in ways to make that facility meet all the requirement and sub-requirement protections applicable to medium or high impact BES Cyber Systems. Also, under the Med/High incentive, a public utility seeking a cybersecurity incentive for a facility classified as a medium impact BES Cyber System would invest in ways to make that facility meet all the requirement and sub-requirement protections applicable to high impact BES Cyber Systems. The public utility could choose to apply the medium and/or high impact requirements to some or all of its low or medium impact BES Cyber Systems, and would receive incentives only for the investments it makes to apply the more stringent protections.

b. Hub-Spoke Incentive

28. We propose to add § 35.48(b)(1)(ii) to the Commission's regulations to allow a public utility to receive incentive rate treatment for voluntarily ensuring that all external routable connectivity[56] to and from the low impact system connect to a high or medium impact BES Cyber System (Hub-Spoke Incentive). Under the Hub-Spoke Incentive, a public utility is eligible for incentives if its investment applies CIP Reliability Standard security controls inherited from a high or medium impact BES Cyber System at locations containing low impact BES Cyber Systems by ensuring all external routable connectivity to and from the low impact system connect to a high or medium impact BES Cyber System.

29. Under the Hub-Spoke Incentive, all the cyber communications to and from a low impact system location must connect to a medium or high impact BES Cyber System and the cyber communication security controls required for the medium or high impact BES Cyber System must be implemented on the low impact system.[57] Therefore, the cyber communication would be protected at a higher security level before being transmitted to or received by the low impact BES Cyber System. Thus, low impact BES Cyber Systems would inherit the higher security posture of either the medium or high impact controls.

c. Other Considerations

30. Nothing in this proposal modifies a public utility's obligation to comply with all the mandatory NERC Reliability Standard obligations for its low, medium, and high impact BES Cyber Systems. A public utility requesting incentive rate treatment for voluntarily applying the CIP Reliability Standards requirements, as discussed above, will not be subject to penalties from the Commission for failing to voluntarily follow the CIP Reliability Standards. However, if the Commission approves a public utility's request for cybersecurity incentives pursuant to either the Med/High or Hub-Spoke Incentive and the public utility subsequently ceases to implement the CIP Reliability Standards consistent with the order approving the application, we propose that the public utility would not be able to receive the incentive for the period during which it is not implementing the CIP Reliability Standards consistent with the order approving the application.

31. Additionally, since the NERC CIP Incentives Approach is based on a public utility making voluntary cybersecurity investments based on the CIP Reliability Standards as they exist at the time of the investment, we propose that the determination of the types of cybersecurity incentives that a public utility would be eligible for would reflect the currently enforceable version of the CIP Reliability Standards at the time the public utility submits a request for incentives. As discussed in section IV.E.1 (Incentive Duration), where NERC publicly announces that it is considering making certain cybersecurity activities or investments mandatory through issuing a standard authorization request,[58] a public utility would still be eligible to receive incentives until the requirements become mandatory and enforceable.

2. NIST Framework Approach

32. We propose to add § 35.48(b)(2) to the Commission's regulations to provide that a public utility may receive incentive rate treatment for implementing certain security controls included in the NIST Framework (NIST Framework Approach). The Commission would evaluate a public utility's application for cybersecurity investments that implement security controls in the NIST Framework to determine whether the cybersecurity investments go above and beyond the CIP Reliability Standards and are eligible for incentives. Through the NIST Framework Approach, public utilities have the flexibility of non-prescriptive implementation options to go above and beyond the CIP Reliability Standards.

33. Although the NIST Framework contains many types of security controls, we propose to limit eligibility for cybersecurity incentives to the types of controls that are most likely to provide a significant benefit to the cybersecurity of Commission-jurisdictional transmission facilities, not just the BES. In the White Paper, Commission staff identified five types of security controls included in the NIST Framework that may be considered for incentives under the NIST Framework approach: (1) Automated and continuous monitoring; (2) access control; (3) data protection; (4) incident response; and (5) physical security of cyber systems. Commission staff also acknowledged that, given the continuous and rapid changes in cybersecurity risks, the Commission may need to periodically update the types of security controls eligible for incentives.[59] In proposing the NIST Framework Approach, we propose to initially only consider incentives that fall within the first type of security controls, automated and continuous monitoring. For example, continuous monitoring tools that utilize automated features for pulling information from a variety of sources or that allow for data consolidation into Security Information and Event Management tools would

[55] We do not propose that NERC will have any role in monitoring or reviewing the implementation of voluntary incentives or otherwise participating in this incentives program.

[56] NERC defines external routable connectivity as ''the ability to access a BES Cyber System from a Cyber Asset that is outside of its associated Electronic Security Perimeter via a bi-directional routable protocol connection.'' NERC, Glossary of Terms Used in NERC reliability Standards (2020), *https://www.nerc.com/files/glossary_of_terms.pdf.*

[57] *See* proposed § 35.48(b)(1)(ii).

[58] A standard authorization request is the form used to document the scope and reliability benefit of a proposed project for one or more new or modified Reliability Standards or definitions, as well as document the benefit of retiring one or more approved Reliability Standards. NERC, Standard Authorization Request (SAR), *https://www.nerc.com/pa/Stand/Pages/SARs.aspx.*

[59] White Paper at 19.

qualify as automated and continuous monitoring security controls.[60] While this will limit the NIST Framework security controls eligible for incentives at this time, the Commission considers this to be an important next step in encouraging cybersecurity investments and may consider additional security control types in the future.

34. Under this proposal, one example of an investment that could warrant an incentive as automated and continuous monitoring would be for a public utility to install a dynamic asset management program to improve its ability to quickly detect and address new or previously unknown equipment on its network. Unknown and unattended equipment can present significant vulnerabilities and threats to both the information technology and operational technology networks. Implementing a process that automatically and continuously scans the current inventory of hardware and software across both the information technology and operational technology networks can identify, block, log and report any unauthorized access.

35. Another example of an automated and continuous monitoring investment eligible for an incentive is the implementation of a dynamic file analysis program or a ''sandbox.'' One deployment of a sandbox is as an automated malware detection environment that continuously scans email attachments and weblinks in the corporate email system for malicious code. When malicious code is detected, a sandbox blocks delivery to the end user in real time and automatically issues an alert to the security team. Malicious code deployed in the sandbox will potentially be activated when placed there, but it will be isolated from the information technology and operational technology networks, thereby protecting the networks while alerting the public utility to the threat. The deployment of sandboxes enhances the ability of a public utility to detect and prevent the delivery of malicious code, disrupts social engineering attacks on users, and tests software for dangerous behavior. Further, the ability to perform post-incident forensic triage and analysis enables public utilities to establish the root causes of an event, identify related vulnerabilities, and mitigate associated risks in an expedited manner to optimize long-term operational capabilities.

36. As discussed below, public utilities seeking an incentive under this approach would need to show how a cybersecurity investment, for example, in physical components, software, licensing for cybersecurity enhancements as well as operational costs such as contracts with security providers, third-party incident responders, and third-party security operations centers, allows the public utility to meet NIST Framework security controls, as identified above, will go above and beyond the requirements of the CIP Reliability Standards, and materially enhance the current cybersecurity posture of the Bulk-Power System by enhancing the applicants' cybersecurity posture substantially above levels required by CIP Reliability Standards, to the benefit of ratepayers. As the Commission evaluates incentive applications, we will remain cognizant of ongoing changes to the CIP Reliability Standards, the NIST Framework, and underlying referenced security controls.

37. As with the NERC CIP Incentives Approach, if a public utility ceases to maintain the cybersecurity posture associated with the Commission's order approving its NIST Framework Approach incentives application, the public utility would not be able to receive the incentive for the period during which it is not implementing the CIP Reliability Standards as described in the Commission's order approving its application.

C. Incentives for Cybersecurity Investments

1. ROE Adder

38. We propose to add § 35.48(c)(1) to the Commission's regulations to allow a public utility that makes eligible cybersecurity capital investments, as more fully described above, to request an ROE adder of 200 basis points (Cybersecurity ROE Incentives) for those eligible cybersecurity investments. This ROE incentive will encourage public utilities to proactively make additional investments in cybersecurity systems. We believe that such a 200-basis point adder is appropriate to provide a meaningful incentive to encourage public utilities to improve their systems' cybersecurity. For example, we note that given the relatively small size of such investments, compared to conventional transmission projects, the dollar amounts provided under the incentives should not have a burdensome effect on the public utility's rates. Yet, the benefit to the system, and ultimately to rate payers, by this additional investment will provide additional cybersecurity protections that could have a large impact on the public utility's system by allowing it to better detect and address cybersecurity threats to the Bulk-Power System. The total cybersecurity incentives requested would be capped at the zone of reasonableness.[61] Additionally, we find that the same expenditures should not be eligible for both the Cybersecurity ROE Incentives and the Regulatory Asset Incentives discussed below. Given that regulatory asset treatment is available to costs that are normally treated as expenses, as discussed below, we believe that it is unnecessary to incent investment to also enable deferred costs that would otherwise be expensed to receive this 200 basis-point incentive. We propose that public utilities only be eligible to receive the Cybersecurity ROE Incentive as a cybersecurity incentive for capital investments.

39. Transmission-specific investments based on the NERC CIP Incentives Approach and the NIST Framework Approach may be eligible for the Cybersecurity ROE Incentive under this NOPR. In addition, we propose that enterprise-wide costs—which are not specific to transmission but a portion of which are recovered through transmission rates—may also be eligible for incentives if the applicant can demonstrate how the investment will materially enhance the security posture of the Bulk-Power System by enhancing the applicants' cybersecurity posture substantially above levels required by CIP Reliability Standards, to the benefit of ratepayers. While cybersecurity systems that are not subject to the CIP Reliability Standards may be less critical to reliable operations, compromise of these systems may nevertheless allow access to more critical systems and therefore we believe that incentivizing the enhanced protection of these systems is important to the reliability of the Bulk-Power-System.[62] Only the conventionally allocated portion of such investments that flows through to Commission jurisdictional cost-of-service rates will be eligible for this rate treatment. For instance, if a public utility seeks an incentive for cybersecurity investment that it made to its general plant

[60] NIST, Information Security Continuous Monitoring for Federal Information Systems and Organizations, NIST Special Publication 800–137, at 13 (Sep. 2011), *https://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-137.pdf.*

[61] In the Transmission Incentives NOPR the Commission proposes that, under FPA section 219, the Commission may approve a rate that exceeds the zone of reasonableness to further the purposes of that statutory provision. In this NOPR, however, the Commission is acting under FPA sections 205 and 206.

[62] For example, WANNACRY attacked specific servers that were vulnerable and once the attacker gained access to the server, the attacker moved to other internal systems to complete the attack. *See,* NCCIC, Fact Sheet, What is Wannacry/Wanacryptor?, *https://us-cert.cisa.gov/sites/default/files/FactSheets/NCCIC%20ICS_FactSheet_WannaCry_Ransomware_S508C.pdf.*

facilities, both the underlying investments and associated incentives must be allocated based on conventions of the rates (*e.g.,* the transmission share using a wages and salaries allocator for general plant in most transmission cost of service rates). With this limitation, we seek to ensure that the cybersecurity incentives policy adheres to the ratemaking principles of beneficiary pays and cost-causality by limiting a transmission customer's share of incentive costs to the share of such investments that serve (and is traditionally allocated to) transmission. We note that the Commission's rules and regulations in the Uniform System of Accounts [63] already require public utilities to maintain records supporting any entries to the regulatory asset account so that the utility can furnish full information as to the nature and amount of, and justification for, each regulatory asset recorded in the account. Therefore, pursuant to our existing regulations, public utilities must maintain sufficient records to support the distinction of any expenses that are afforded incentivized treatment.[64]

2. Regulatory Asset Incentive

40. We propose to add § 35.48(c)(2) to the Commission's regulations to allow a public utility to seek deferred cost recovery pursuant to this NOPR. We believe that, in limited circumstances, it may be appropriate to allow a public utility to defer recovery of certain cybersecurity costs that are generally expensed as incurred, and treat them as regulatory assets, while also allowing such regulatory assets to be included in transmission rate base (Regulatory Asset Incentive). Such expenses must be associated with the NERC CIP Incentives Approach or the NIST Framework Approach investments that receive Commission approval for ROE incentives. Like the provision of ROE incentives, discussed above, we propose that only expenses for activities that go above and beyond the CIP Reliability Standards, as discussed above, be eligible for incentives. Under this proposal, expenses that are mandatory, that a public utility incurs on a regular or ongoing basis, or that are incurred prior to the incentive request, would not be eligible for such regulatory asset treatment.

41. More specifically, to implement proposed § 35.48(c)(2) of the Commission's regulations, we propose to allow deferred cost recovery for three categories of expenses: (1) Expenses associated with third-party provision of hardware, software, and computing networking services; (2) expenses for training to implement new cybersecurity enhancements undertaken pursuant to this rule; and (3) other implementation expenses, such as system assessments by third parties or internal system reviews and initial responses to findings of such assessments. In all such cases, eligible costs are limited to costs associated with implementing cybersecurity upgrades and do not include ongoing costs including system maintenance, surveillance, and other labor costs, either in the form of employee salaries or third-party service contracts.

42. Regarding the first category, certain cost categories, such as software, that companies traditionally purchased and could capitalize, are now often procured as services with periodic payments to vendors that is updated as needed. Therefore, to encourage investment in cybersecurity, we believe that it would be appropriate to allow public utilities to defer and amortize eligible costs that are typically recorded as expense that are associated with third party provision of hardware, software, and computing and networking services. Pursuant to our existing regulations, public utilities must maintain sufficient records to support the distinction of any expenses that are afforded incentivized treatment.[65]

43. Regarding the second category, in response to the White Paper, many commenters stated that training is central to improving cybersecurity. We agree that such training is critical to successful implementation of cybersecurity enhancements. Therefore, we propose to allow public utilities to request the Regulatory Asset Incentive for training expenses associated with cybersecurity investments made pursuant to this rule. However, ongoing training expenses, which many organizations provide to employees regularly, would not be eligible because such training is an ongoing rather than implementation type of operating expense for the implementation we seek to incentivize. Pursuant to our existing regulations, public utilities must maintain sufficient records to support the distinction of any training expenses that are afforded incentivized treatment.[66]

44. Regarding the third category, we believe that there may be large one-time expenses associated with implementing cybersecurity upgrades. These may include unusually large internal system evaluations and assessments or analyses by third parties. These expenses may be large relative to the size of the capital investments associated with the cybersecurity upgrades and essential to their proper implementation. We propose that such expenses not include regularly scheduled activities that would occur irrespective of the cybersecurity upgrades. Pursuant to our existing regulations, public utilities must maintain sufficient records to support the distinction of any expenses that are afforded incentivized treatment.

45. Additionally, consistent with the proposal for the ROE incentive for eligible cybersecurity capital investments, only directly assigned transmission costs or the conventionally allocated (*i.e.,* using the wages and salaries allocator) portion of enterprise-wide expenses would be eligible the Regulatory Asset Incentive. Applicants would be required under proposed § 35.48(b) to demonstrate that any enterprise-wide expenses for which they seek this treatment materially enhances the cybersecurity of the Bulk-Power System by enhancing the applicants' cybersecurity posture substantially above levels required by CIP Reliability Standards, to the benefit of ratepayers.

46. Finally, we propose in § 35.48(d)(2) that deferred regulatory assets whose costs are typically expensed should be amortized over a five-year period. We believe that this duration will allow incentive recipients a reasonable amount of time to earn a return on expenditures for which no return is normally allowed. Moreover, the proposed amortization period generally corresponds to the short lifespan and depreciation rates of cybersecurity investments.

3. Other Types of Incentives

47. In this NOPR, we are proposing to grant ROE and deferred cost recovery incentives. Nonetheless, we recognize that other incentives, such as construction work in progress, may be warranted to encourage investment in cybersecurity if adequately supported. To maintain flexibility under this proposal for other types of incentives under these new regulations, we propose to add § 35.48(c)(3) to the Commission's regulations that provides the Commission additional flexibility to grant a public utility any other incentives, pursuant to the requirements of this section, that the Commission deems to be just and reasonable and not unduly discriminatory or preferential for investments undertaken pursuant to

[63] *See* 18 CFR part 101, Account Definition Account 182.3, Other Regulatory Assets, paragraph D.

[64] *Id.*

[65] *Id.*

[66] *Id.*

this rule.[67] We propose to consider applications for other cybersecurity incentives on a case-by-case basis to determine if they are just and reasonable and not unduly discriminatory or preferential under FPA section 205.

D. Application Process

48. Proposed § 35.48(e) of the Commission's regulations would require a public utility's request for one or more incentive based-rate treatments to be made in a filing pursuant to FPA section 205. As proposed, such a request must include a detailed explanation of how the public utility plans to implement one or both of the proposed incentive approaches and the requested rate treatment. We propose that applicants provide detail on the investments or expenses for which they seek incentives, as described in more detail below. An applicant would make a filing showing how its project(s) meet the eligibility requirements described below. In proposing what showing an applicant must make, we balance the need for sufficient information to determine if an applicant is eligible for the incentive against the risk of the applicant providing potentially sensitive information on cybersecurity vulnerabilities in its application. We discuss confidentiality concerns further in section IV.E.3 (Confidentiality Considerations).

49. Finally, under § 35.48(e) of the proposed regulations, a public utility seeking one or more incentive based-rate treatments proposed in the NOPR must make a filing for Commission approval pursuant to FPA section 205 and receive such approval prior to implementing the proposed incentives in its Commission-jurisdictional rates. In order to effectuate the incentives in rates, public utilities would need to propose in their FPA section 205 filing conforming revisions to their formula rates, as appropriate, to reflect incentive rate treatment granted pursuant to these proposed regulations.[68]

1. NERC CIP Incentives Approach

50. To implement proposed § 35.48(b) of the Commission's regulations, for capital investments, we propose that an applicant describe the proposed investments as well as their anticipated cost, completion date and geographic location. An applicant would also describe how the proposed investment meets the description of the Med/High Incentive and/or the Hub-Spoke Incentive.

51. We propose that applicants describe the implementation and method of continuing adherence to the actions required to obtain and maintain the incentive, as described in § 35.48(e)(1) of the proposed regulations. The applicant would include in its application, at a minimum, an identification of the scope of assets for which the public utility is requesting the incentive, and the associated BES Cyber Systems that will be protected. Specifically, an applicant would include a list of BES assets for which the public utility is requesting the incentive, the geographical location of the BES assets, the function they support, the incentive method the public utility is requesting for each of the BES assets, the current impact ratings of the BES assets and the impact level(s) that the assets now meet as a result of the investment, and a list of BES Cyber Systems associated with each of the BES assets including details on their use.

52. Unlike conventional transmission investments, which entail completion of a physical transmission project, investments under the NERC CIP Incentives Approach seek to bring BES assets otherwise not required to be subject to certain cybersecurity requirements to a higher cybersecurity level, and that higher level must be maintained for it to continue to provide ratepayer benefits. Consequently, the Commission proposes that, if an investment that receives a Med/High Incentive or Hub-Spoke Incentive ceases to meet the requirements of that incentive, the public utility would be required to update its cost-of-service rates to reflect this change. In addition, the Commission or third parties may initiate FPA section 206 proceedings to revoke such incentives.

53. In Order No. 791, the Commission recognized that categorizing BES Cyber Systems based on their low, medium, or high impact on the reliable operation of the BES, with all BES Cyber Systems being categorized as at least low impact, offers more comprehensive protection of the BES than the prior CIP Reliability Standards.[69] The Commission also acknowledged that CIP version 5 Standards offer new cybersecurity controls that will improve the overall security posture of responsible entities.[70] Given the Commission's experience with the CIP Reliability Standards, we propose that an asset-by-asset showing of benefits is unnecessary because, though the benefits of upgrades may vary by system, we believe that all upgrades based on the NERC CIP Incentives Approach materially enhance the cybersecurity posture of the Bulk-Power System by enhancing the applicants' cybersecurity posture substantially above levels required by CIP Reliability Standards, to the benefit of ratepayers, and warrant incentives. Thus, we propose that a public utility seeking incentives under the NERC CIP Incentives Approach and that provides the information required under this application process receive a rebuttable presumption that the cybersecurity investments materially enhance the cybersecurity of the Bulk-Power System by enhancing the applicants' cybersecurity posture substantially above levels required by CIP Reliability Standards to merit an incentive.

2. NIST Framework Approach

54. In contrast to applications for incentives based on the NERC CIP Incentives Approach, we propose that a public utility seeking incentives for cybersecurity investments under the NIST Framework Approach would not be entitled to a rebuttable presumption and instead must provide additional information showing that the proposed investment materially enhances the cybersecurity posture of the Bulk-Power System by enhancing the applicants' cybersecurity posture substantially above levels required by CIP Reliability Standards. However, we request comments on what demonstration an applicant should be required to make to show that its NIST Framework Approach investments merit incentives under the FPA section 205 just and reasonable standard.

55. Depending on a public utility's existing attributes; namely the hardware, system configuration, and operating practices that contribute to its overall cybersecurity posture, and the specific characteristics of the proposed cybersecurity investments, proposed cybersecurity investments may or may not materially enhance the cybersecurity posture of the Bulk-Power System by enhancing the applicants' cybersecurity posture substantially above levels required by CIP Reliability Standards to warrant incentives. Under § 35.48(e)(2) of the Commission's regulations, we propose that an

[67] We note that the Commission adopted similar flexibility and language to consider other proposals in § 35.35(d)(viii) of the Commission's rules and regulations in Order No. 679. *See* 18 CFR 35.35(d)(1)(viii); *Promoting Transmission Investment through Pricing Reform,* Order No. 679, 71 FR 43293 (Jul. 31, 2006), 116 FERC ¶ 61,057 (2006), *order on reh'g,* Order No. 679–A, 72 FR 1152 (Jan. 10, 2007), 117 FERC ¶ 61,345 (2006), *order on reh'g* 119 FERC ¶ 61,062 (2007).

[68] Public utilities with stated rates may file under FPA section 205 to seek incentives as part of a larger rate case or make a request for single issue ratemaking, which the Commission will evaluate on a case-by-case basis.

[69] Order No. 791, 145 FERC ¶ 61,160 at P 41.

[70] *Id.*

applicant must describe its current cybersecurity posture, desired cybersecurity posture, and the quantified risk factors being addressed through the proposed incentive actions. An application must include full and detailed explanations of how proposed cybersecurity investments will materially enhance the cybersecurity of the Bulk-Power System by enhancing the applicants' cybersecurity posture substantially above levels required by CIP Reliability Standards, to the benefit of ratepayers. In assessing whether an application meets the standard for granting incentives under this NOPR, we propose that the Commission would review the stated expenditures and level of risk mitigated in comparison to the public utility's pre-incentivized network configuration. This judgement will be made on a case-by-case basis. The application would need to detail the specific components to be installed, network deployment, sensor configuration, and enterprise data incorporation as described in the four-step review process, discussed below.

56. Consistent with incentive requests under the NERC CIP Incentives Approach, an applicant seeking incentives under the NIST Framework Approach would be required to provide detail on the investments or expenses for which it seeks incentives. For capital investments, applicants would describe: (1) The required network components; (2) how the sensors connect to the network; (3) how the sensors deployment recognizes the specific attributes of the network; (4) the costs of all investments; and (5) when the costs are expected to be incurred.

3. ROE Adder

57. Under § 35.48(e)(3) of the proposed regulations, applicants requesting an ROE adder of 200 basis points must include the anticipated cost of the capital investment and identify the Commission-jurisdictional rate schedules under which they will recover the ROE adder.

4. Regulatory Asset Incentive

58. For expenses that the applicant seeks to receive regulatory asset treatment associated with either ROE incentive-eligible projects based on either the NERC CIP Incentives Approach or the NIST Framework Approach, under § 35.48(e)(4) of the proposed regulations, the applicant must describe and estimate the nature of such expenses, their costs, and when they are expected to be incurred.[71] Applicants would be expected to provide a narrative explanation of how such expenses meet the description of the Med/High Incentive, the Hub-Spoke Incentive and/or the NIST Framework Approach. Applicants would then describe whether the expenses are: (1) Expenses associated with third-party provision of hardware, software, and computing networking services; (2) expenses for training to implement new cybersecurity enhancements; or (3) other transition expenses, such as risk assessments [72] by third parties or internal system reviews, and initial responses to findings of such assessments. An applicant would also be required to describe the cost, location, and timing of all eligible capital investments and the cost and timing of all deferred expenses.

E. Implementation

1. Incentive Duration

59. We propose to add § 35.48(d) to the Commission's regulations to allow a public utility granted an incentive under this NOPR to receive that incentive for the lesser of: (1) The depreciation life of the underlying asset; (2) 10 years from when the cybersecurity improvements enter service; (3) when the investments or activities that serve as the basis of that incentive become mandatory pursuant to a Reliability Standard approved by the Commission; or (4) when the public utility no longer meets the requirements for receiving the incentive.[73] We are seeking to incentivize cybersecurity assets that primarily include equipment or system modifications that typically have short depreciation lives. The cybersecurity incentives identified in this NOPR are intended to apply to technology and systems investments and not to more long-lived assets like physical structures. Thus, we believe that most public utilities granted cybersecurity incentives under this NOPR should receive those incentives for the depreciation life of the asset. However, for investments with useful lives exceeding 10 years, we propose that the incentive end at the conclusion of 10 years from when the cybersecurity incentives enter service. Although it is possible that specific components of cybersecurity investments may feature longer useful lives than 10 years, given the evolving nature of cybersecurity threats, we find that 10 years is a reasonable expectation of the principal benefits of the cybersecurity investments, which should correspond to the investment duration.

60. In addition, we propose that, where cybersecurity investments are mandatory, cybersecurity incentives are inappropriate and would only serve to increase ratepayer costs. However, where NERC publicly announces that it is considering making certain cybersecurity activities or investments mandatory, through issuing a standard authorization request, public utilities may receive incentives until the requirements become mandatory. For a public utility that requests regulatory asset treatment for costs normally recorded to expenses, if such expenditures become mandatory, we propose that the public utility must recover the unamortized portion of expenses through expenses in rates with no further earning of an incentive return on the regulatory asset.

2. Informational Filing and Verification

61. In order to ensure that a public utility receiving incentive rate treatment has implemented the requirements for the incentive and to ensure that it continues to adhere to these requirements, we propose to add § 35.48(f) to the Commission's regulations to require public utilities to submit annual informational filings with the Commission.[74] We propose specific reporting requirements for each of the NERC CIP Incentives Approach and the NIST Framework Approach below.

62. The Transmission Incentives NOPR proposes additional reporting requirements for recipients of transmission incentives under FPA section 219.[75] Such additional reporting is likewise appropriate for cybersecurity upgrades receiving incentives. Accordingly, we propose to add § 35.48(f) to require that, within 120 days of the completion of cybersecurity upgrades for which an applicant is granted incentives, an incentives recipient must make an informational filing and subsequent informational filings annually thereafter. The annual informational filings must detail the specific investments that were made

[71] We reiterate that applicants' ongoing costs of operating a more cybersecure system are not eligible for such incentive treatment under this NOPR.

[72] NIST, Framework for Improving Critical Infrastructure Cybersecurity, Version 1.1, at 26 (Apr. 16, 2018), *https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf.*

[73] FPA section 205 filings revising cost of service rates to implement incentives must contain language limiting incentive duration to the lesser of these three eventualities.

[74] These reporting requirements also apply to non-public utilities that receive cybersecurity incentives through their Commission-jurisdictional rates.

[75] Transmission Incentives NOPR, 166 FERC ¶ 61,208 at P 115.

pursuant to the Commission's approval and the corresponding FERC account(s) used. In addition, the annual informational filings must describe what parts of its network were upgraded or expanded (*i.e.,* which substations, control centers, automated and continuous monitoring equipment) in addition to the nature (*i.e.,* describing hardware purchase) and actual cost of the various capital investments. For incentives where the Commission allows deferral of expenses as regulatory assets, annual informational filings should describe such expenses in sufficient detail to demonstrate that such expenses are specifically related to implementing the cybersecurity incentives described in this NOPR and not for ongoing costs including system maintenance, surveillance, and other labor costs, either in the form of employee salaries or third-party service contracts.

63. We preliminarily find that the proposed reporting requirements are necessary to provide the Commission with an understanding of the costs of various types of cybersecurity investments in order to more precisely target future incentives or other policies. However, based on the qualities of such investments, as well as the likely higher sensitivity of the information, we propose to require different reporting requirements under this proposal than those proposed under the Transmission Incentives NOPR.

64. Several aspects of cybersecurity necessitate reporting different information that the Commission has required for conventional transmission facilities receiving incentives pursuant to FPA section 219. First, cybersecurity investments are not observable. Unlike conventional transmission facilities, such as a new transmission line, it is not readily apparent if, and when, such investments are completed and serving customers. Therefore, it is important to confirm the completion of cybersecurity investments by establishing additional reporting requirements. Second, certain cybersecurity investments may require public utilities to undertake subsequent actions or make expenditures to maintain the status for which they receive incentives. Annual reports enable public utilities to demonstrate that they have undertaken such actions or expenditures.

65. Finally, we propose that both the initial and annual informational filings provide a summary of the costs incurred to achieve the higher level of security, including supporting documentation that provides a narrative explanation of the nature of the expenses proposed for deferred cost recovery, and inclusion in rate base as a regulatory asset, including the specific accounts (under the Commission's Uniform System of Accounts) initially charged for the incurred expenses.

66. Also, the Commission may conduct periodic verification to assess cybersecurity investments and expenses for which it has approved incentives. The Commission could perform such verifications through multiple means (*i.e.,* directing further informational filings, audits, etc.). The annual informational filings will inform the Commission on how and when the additional verification is warranted.

a. NERC CIP Incentives Approach

67. To demonstrate that a public utility has implemented the requirements for the Med/High incentive and to ensure that the recipient continues to adhere to these requirements, we propose that the informational filing would describe implementation of the enhanced security controls, as applicable, in all the topics covered by the CIP Reliability Standards. Below is a table of currently effective and Commission-approved CIP Reliability Standards and examples of supporting documentation a public utility may provide to demonstrate incentive adherence to each CIP Reliability Standard. For the first informational filing, we would expect the public utility to provide documents, as indicated below, plus any additional documentation needed to demonstrate voluntary application of identified CIP Reliability Standards to facilities that are not currently subject to those requirements.[76] For each subsequent annual informational filing, the public utility would only need to provide an updated version of the supporting documentation showing any changes from the prior informational filing as well as information on any period of time during the reported year where the public utility ceased to voluntarily apply identified CIP Reliability Standards to facilities that are not currently subject to those requirements.

SUPPORTING DOCUMENTATION DEMONSTRATING INCENTIVE ADHERENCE

Topic	Standard	Documentation
BES Cyber System Categorization	CIP–002[77]	List of the categorization of BES Cyber Systems included in the incentive.
Management Controls	CIP–003	Senior Management approval of revised cyber security policies; updates to delegation procedures.
Personnel and Training	CIP–004	Cyber security training program and quarterly reinforcement; personnel risk assessment program; access management program, and timely access revocation processes.
Electronic Security Perimeters	CIP–005	Establishment of ESPs and management of electronic access points; remote access management.
Physical Security of BES Cyber Systems	CIP–006	Physical security plans; visitor control program; PACS maintenance and testing procedures.
Systems Security Management	CIP–007	Ports and services management; security patch management; malicious code prevention methods; security event monitoring; system access controls.
Incident Reporting and Response	CIP–008	Cyber security incident response plan, implementation, and testing procedures.
Backup and Recovery Plans	CIP–009	System recovery plans, implementation, and testing procedures.
Configuration Change Management	CIP–010	System baseline configurations; configuration monitoring; vulnerability assessment processes.
Information Protection	CIP–011	Information protection procedures; cyber asset reuse and disposal methods.
Communications between Control Centers.	CIP–012[78]	Plans mitigating the risks posed by unauthorized disclosure and unauthorized modification of Real-time Assessment and Real-time monitoring data while being transmitted between any applicable Control Centers; and evidence of the associated security protections implemented and used.

[76] The information requested is similar to the information FERC staff reviews during a NERC CIP Reliability Standards audit.

[77] CIP–002 actions are not eligible for the incentive since it is a mandatory requirement for all BES assets.

[78] CIP–012–1: Communications between Control Centers will be subject to enforcement on July 1, 2022.

SUPPORTING DOCUMENTATION DEMONSTRATING INCENTIVE ADHERENCE—Continued

Topic	Standard	Documentation
Supply Chain Risk Management	CIP–013	Supply chain security risk management plan, implementation, and testing procedures.

68. To demonstrate that a public utility has implemented the requirements for the Hub-Spoke incentive, we propose that the informational filing describe the reconfiguration and assets added to the communication paths to/from locations containing low impact BES Cyber Systems. For the first annual informational filing, we propose that the public utility provide documents demonstrating these changes. For any subsequent annual informational filing, the public utility would only need to provide an updated version of any supporting documentation if a change occurred for the previous informational filing, as well as information on any failure to maintain the communication paths, and any mitigating actions the public utility undertook to resolve the problem.

b. NIST Framework Approach

69. We propose that the reporting requirements to implement proposed § 35.48(f) of its regulations for the NIST Framework Approach differ from those under the NERC CIP Incentives Approach. The Commission would review the informational filings to determine if the proposed changes meet the requirements for incentives by focusing on four areas: Acquisition and installation, system connectivity, security application, and relevance to entity monitoring/response actions. For each subsequent annual informational filing, the public utility would only need to provide an updated version of the supporting documentation showing any changes from the prior informational filing, as well as information on any period of time during the reported year where the public utility ceased to continuously implement specific requirements consistent with the Commission's order approving the application.

70. Step 1 of the review process addresses the acquisition and installation of required network components (*i.e.,* high-fidelity sensors) that meet the proposed security enhancements subject to incentives. The Commission would require a public utility to confirm that funds have been expended on the necessary equipment through documentation such as purchase orders, receipts, licensing agreements, and installation documentation with specified time periods.

71. Step 2 of the review process addresses the attainment of necessary training and personnel for the implementation of the incentivized action. Training and additional personnel must be necessary and limited to the implementation of the cybersecurity equipment within the affected networks. The Commission would require a public utility to verify training and personnel actions through documentation such as third-party contractor agreements, training program curricula, and official job descriptions.

72. Step 3 of the review process addresses network and sensor node recognition optimization of system deployment, and strategic configuration. This step describes how the sensors are connected to a network and how they substantively improve the visibility and security of the affected networks. The public utility could demonstrate this network and sensor node recognition through such items as configuration files, system logs, configuration settings, and a description of its location on the affected network.

73. Step 4 of the review process addresses the incorporation of sensor nodes in the enterprise level incident monitoring and response plan. This step verifies that the incentivized action is being incorporated into monitoring and response actions to impact overall network security. The utility would need to attest that the information would be included in operational activities such as incident response plans, playbooks, and Standard Operating Procedures.

3. Confidentiality Considerations

74. We recognize that the Commission's cybersecurity incentives policy must balance the need to maintain the confidentiality of cybersecurity systems and protocols with the need for transparency in rates when awarding incentive rates to public utilities for cybersecurity investments. The Commission balances these considerations through its confidential [79] and Critical Energy/Electric Infrastructure Information (CEII) filing regulations.[80] These regulations recognize that intervenors in a Commission proceeding, such as a proceeding establishing incentive rates, may need access to information that the applicant believes should be withheld from disclosure to the general public, in order to participate effectively in the proceeding. Therefore, the Commission's regulations provide for any person who is a participant in a proceeding or has filed a motion to intervene or notice of intervention to make a written request to the filer for a copy of the complete, non-public version of the document.

75. Accordingly, we propose that, if a public utility applying for incentive rate treatment under this rule is concerned that the information contained in an application for incentives could lead to the disclosure of confidential information or CEII related to its cybersecurity systems, the public utility could request protection of its information pursuant to these procedures. The Commission's practice, however, is not to allow for the filing of an FPA section 205 rate application under seal. Under this proposal, to the extent an applicant seeks confidential treatment, we expect that the applicant's request for such treatment will be specific and limited. If an applicant requests portions of the application be protected, we expect that the public portion of an application should contain sufficient information for ratepayers to judge the rate impact and scope of the proposed incentives, including the general approach adopted. The Commission will address such requests

[79] Section 388.112 of the Commission's regulations specifies that any person submitting a document to the Commission may request privileged treatment for some or all of the information contained in a particular document that it claims is exempt from the mandatory public disclosure requirements of the Freedom of Information Act and that should be withheld from public disclosure. In particular, § 388.112(b)(2) sets forth procedures for filing and obtaining access to material that is filed as privileged in any proceeding to which a right to intervention exists and specifies that if a person files material as privileged in such proceeding, that person must include a proposed form of protective agreement with the filing, or identify a protective agreement that has already been filed in the proceeding that applies to the filed material. 18 CFR 388.112.

[80] Section 388.113 governs the procedures for submitting, designating, handling, sharing, and disseminating CEII submitted to or generated by the Commission. Section 388.113(d)(1)(iii) provides for the person filing material as CEII in a proceeding to which a right to intervention exists to include a proposed form of protective agreement. 18 CFR 388.113.

for protection on a case by case basis.[81] We request comments on the specific and limited types of information that would be appropriate for applicants to shield from public disclosure, and any other specific modifications or additions to the Commission's generally applicable filing regulations that may be appropriate for the incentives filings proposed in this NOPR.

V. Information Collection Statement

76. The information collection requirements contained in this NOPR are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[82] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[83] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

77. This NOPR will establish the Commission's regulations and policy with respect to the mechanics and implementation of the Commission's cybersecurity incentives policy and will require an annual report from the recipients of cybersecurity incentives in order to demonstrate compliance with the Commission's cybersecurity incentives regulations and policy.

78. Interested persons may obtain information on the reporting requirements by contacting Ellen Brown, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 via email (*DataClearance@ferc.gov*) or telephone ((202) 502–8663).

79. The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

80. Please send comments concerning the collection of information and the associated burden estimates to: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. Due to security concerns, comments should be sent electronically to the following email address: *oira_submission@omb.eop.gov.* Comments submitted to OMB should refer to OMB Control Nos.

81. Please submit a copy of your comments on the information collections to the Commission via the eFiling link on the Commission's website at *http://www.ferc.gov.* If you are not able to file comments electronically, please send a copy of your comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Comments on the information collection that are sent to FERC should refer to RM21–3–000.

82. *Title:* Report of Cybersecurity Incentives Investment Activity.

83. *Action:* Proposed revision of collections of information in accordance with RM21–XX–000.

84. *OMB Control Nos.:* 1902–0248 (FERC–725B).

85. *Respondents for this Rulemaking:* Public Utilities that seek incentive-based rate treatment for cybersecurity projects.

86. *Frequency of Information Collection:* Annually beginning with the calendar year the Commission grants incentive-based rate treatment.

87. *Necessity of Information:* Required to obtain or retain benefits.

88. *Internal Review:* The Commission has reviewed the changes and has determined that such changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has specific, objective support for the burden estimates associated with the information collection requirements.

89. The NERC Compliance Registry, as of October 02, 2020, identifies approximately 319 Transmission Owners in the U.S. that are subject to this proposed rulemaking.

90. The Commission estimates that the NOPR would affect the burden [84] and cost [85] as follows:

PROPOSED CHANGES IN NOPR IN DOCKET NO. RM21–3–000

A Area of modification	B Number of respondents	C Annual estimated number of responses per respondent	D Annual estimated number of responses (column B × column C)	E Average burden hours and cost per response	F Total estimated burden hours and total estimated cost (column D × column E)
Report of Cybersecurity Incentives Investment Activity					
Additional filers of Report of Cybersecurity Incentives Investment Activity (Annually and Ongoing).	20	1	20	80 hours; $6,640	1,600 hours; $132,800.
Critical Infrastructure Protection Reliability Standards for FERC–725B (unchanged).	223,875	1	223,875	9.13 hours; $757.44	2,043,026 hours; $169,571,158.
Total			223,895		2,044,626 hours; $169,703,958.

91. For the purposes of estimating burden in this NOPR, in the table above, we conservatively estimate annual numbers of the different possible cybersecurity incentive requests as similar to the historical high experienced for incentives Orders issued under Section 219. For example, to date, the Commission has received

[81] An applicant or any other person may object to disclosure generally or to a particular requester, and in such cases the non-public document will not be provided to the requester until ordered by the Commission or a decisional authority. 18 CFR 388.112(b)(2)(iv), 388.113(g)(4).

[82] 44 U.S.C. 3507(d).

[83] 5 CFR 1320.11.

[84] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[85] Commission staff estimates that respondents' hourly wages (including benefits) are comparable to those of FERC employees. Therefore, the hourly cost used in this analysis is $83.00 ($172,329 per year).

approximately 110 incentive requests since Order No. 679 was issued in 2006, and has issued an average of 8 incentives Orders per year, with a single year high of 21 incentive Orders issued. This estimate is consistent with our expectation that the cybersecurity incentives are likely to attract significant interest from the industry. We seek comment on the estimates in the table above regarding the number of incentive requests.

VI. Environmental Analysis

92. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[86] We conclude that neither an Environmental Assessment nor an Environmental Impact Statement is required for this proposed rule under § 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under FPA sections 205 and 206 relating to the filing of schedules containing all rates and charges for the transmission or sale of electric energy subject to the Commission's jurisdiction, plus the classification, practices, contracts, and regulations that affect rates, charges, classification, and services.[87]

VII. Regulatory Flexibility Act

93. The Regulatory Flexibility Act of 1980[88] generally requires a description and analysis of proposed and final rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) sets the threshold for what constitutes a small business. Under SBA's size standards,[89] Transmission owners all fall under the category of Electric Bulk Power Transmission and Control (NAICS code 221121), with a size threshold of 500 employees (including the entity and its associates).[90]

94. We estimate that 319 transmission owners are reported in the NERC registry. Using the list of Transmission Owners from the NERC Registry (dated October 2, 2020), we estimate that approximately 6% of those entities may file for incentives.

95. We estimate additional annual costs associated with the NOPR (as shown in the table above) of:

- $6,640 per filer for 20 new filers.
- These costs are only incurred on a voluntary basis.

96. Therefore, the estimated additional annual cost per entity ranges from $0 to $132,800. According to SBA guidance, the determination of significance of impact ''should be seen as relative to the size of the business, the size of the competitor's business, the number of filers received annually (20), and the impact this regulation has on larger competitors.''[91] We do not consider the estimated cost to be a significant economic impact. As a result, we certify that the proposals in this NOPR will not have a significant economic impact on a substantial number of small entities.

VIII. Comment Procedures

97. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due April 6, 2021. Also, reply comments are due May 6, 2021. Comments must refer to Docket No. RM20–3–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

98. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

99. Commenters that are not able to file comments electronically may mail or hand-deliver an original of their comments. Mailed comments should be addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand-delivered comments should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

IX. Document Availability

100. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

101. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

102. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission. Chairman Danly and Commissioner Glick are concurring with a joint separate statement attached. Commissioner Clements is not participating.

Issued: December 17, 2020.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission is proposing to amend part 35, chapter I, title 18, Code of Federal Regulations, as follows.

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Section 35.48 is added to read as follows:

[86] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987) (cross referenced at 41 FERC ¶ 61,284).

[87] 18 CFR 380.4(a)(15).

[88] 5 U.S.C. 601–612.

[89] 13 CFR 121.201

[90] The threshold for the number of employees indicates the maximum allowed for a concern and its affiliates to be considered small.

[91] U.S. Small Business Administration, *A Guide for Government Agencies How to Comply with the Regulatory Flexibility Act,* at 18 (May 2012), *https://www.sba.gov/sites/default/files/advocacy/rfaguide_0512_0.pdf.*

Subpart K—Cybersecurity Investment Provisions

§ 35.48 Cybersecurity investment.

(a) *Purpose.* This section establishes rules for incentive-based rate treatments for voluntarily making cybersecurity investments by a public utility as described in this subpart.

(b) *Incentive-based rate treatments for cybersecurity investment.* The Commission will authorize incentive-based rate treatments for a public utility that makes cybersecurity investments under this subpart that materially enhance the cybersecurity posture of the Bulk-Power System by enhancing the applicants' cybersecurity posture substantially above levels required by Critical Infrastructure Protection Reliability Standards, provided that the proposed incentive is just and reasonable and not unduly discriminatory or preferential. A public utility may request one or both of the following incentive approaches for those eligible cybersecurity investments:

(1) *Critical Infrastructure Protection Incentive Approach.* A public utility may receive incentive rate treatment for voluntarily applying Critical Infrastructure Protection Reliability Standards to bulk electric system facilities that are not currently subject to those requirements. A public utility will receive a rebuttable presumption that the investments made pursuant to this Critical Infrastructure Protection Incentive Approach materially enhance the cybersecurity posture of the Bulk-Power System to merit an incentive for such cybersecurity investments. A public utility may receive incentive rate treatment for the investments as follows:

(i) Increasing the Critical Infrastructure Protection Reliability Standard security controls for facilities identified as low or medium impact bulk electric system Cyber Systems by applying the requirements for medium or high impact systems to low impact systems, and/or the requirements for high impact systems to medium impact systems; or

(ii) Ensuring all external routable connectivity to and from the low impact system connect to a high or medium impact bulk electric system Cyber System and the cyber communication security controls required for the medium or high impact bulk electric system Cyber System must be implemented on the low impact system.

(2) *National Institute of Standards and Technology Framework Approach.* A public utility may receive incentive rate treatment for implementing certain security controls, identified from time to time through a Commission issuance, that are included in the National Institute of Standards and Technology Framework.

(c) *Types of incentive-based rate treatments for cybersecurity investment.* For purposes of paragraph (b) of this section, incentive-based rate treatment shall be for those eligible cybersecurity investments and means any of the following:

(1) An increase in rate of return on equity of 200 basis points;

(2) Deferred cost recovery; or

(3) Any other incentives approved by the Commission, pursuant to the requirements of this section that are deemed to be just and reasonable and not unduly discriminatory or preferential.

(d) *Incentive duration.*

(1) A return on equity incentive rate treatment approved pursuant to this section may last the earlier of:

(i) The depreciation life of the underlying asset;

(ii) 10 years from when the cybersecurity improvements enter service;

(iii) when the investments or activities that serve as the basis of that incentive become mandatory pursuant to a Reliability Standard approved by the Commission;

(iv) or when the public utility no longer meets the requirements for receiving the incentive.

(2) A deferred regulatory asset whose costs are typically expensed should be amortized over a five-year period.

(e) *Incentive Applications.* For the purpose of paragraphs (b) and (c) of this section, a public utility's request for one or more incentive based-rate treatments, to be made in a filing pursuant to section 205 of the Federal Power Act, must include a detailed explanation of the proposed rate treatment and include the following information:

(1) For applications under the Critical Infrastructure Protection Incentive Approach:

(i) The Bulk Electric System assets for which the public utility is requesting the incentive;

(ii) The geographical location of the Bulk Electric System assets;

(iii) The function the Bulk Electric System assets support;

(iv) The incentive method the public utility is requesting for each of the Bulk Electric System assets;

(v) The current and new impact ratings of the Bulk Electric System assets if they change because of the incentive; and

(vi) A list of the Bulk Electric System Cyber Systems associated with each of the Bulk Electric System assets including details on their use.

(2) For applications under the National Institute of Standards and Technology Framework Approach:

(i) A description of the public utility's current cybersecurity posture;

(ii) A description of the public utility's desired cybersecurity posture;

(iii) A description of the quantified risk factors being addressed through the proposed incentive actions.

(3) For applications requesting an increase in rate of return on equity of 200 basis points:

(i) The anticipated cost of the capital investment; and

(ii) The identity of the Commission jurisdictional rate schedule(s) under which it will recover the increased return on equity.

(4) For applications requesting deferred cost recovery:

(i) A description of any expenses, including whether the expenses are:

(A) Expenses associated with third-party provision of hardware, software, and computing networking services;

(B) Expenses for training to implement new cybersecurity enhancements; or

(C) Other transition expenses, such as risk assessments by third parties or internal system reviews, and initial responses to findings of such assessments.

(ii) Estimates of the cost of such expenses;

(iii) When the costs are expected to be incurred;

(iv) A narrative explanation of how the expenses meet the requested Critical Infrastructure Protection Incentive Approach or National Institute of Standards and Technology Framework Approach.

(f) *Reporting requirements.* A public utility that has received cybersecurity incentives under this section must, within 120 days of completion of upgrades for which it receives incentives, make an informational filing and must make subsequent informational filings annually thereafter detailing the specific investments that were made pursuant to the Commission's approval and the corresponding FERC account used. An incentive recipient must describe the parts of its network that it upgraded in addition to the nature and cost of the various capital investments. For incentives where the Commission allows deferral of expenses, annual informational filings should describe such expenses in sufficient detail to demonstrate that such expenses are specifically related to the cybersecurity investment granted incentives and not for ongoing services including system

maintenance, surveillance, and other labor costs.

(1) A public utility that receives incentive-based rate treatment under the Critical Infrastructure Protection Incentive Approach must also describe in its informational filings implementation of the enhanced security controls, as applicable, in all the topics covered by the Critical Infrastructure Protection Reliability Standards. For the first informational filing, the public utility must provide documentation to demonstrate voluntary application of identified Critical Infrastructure Protection Reliability Standards to facilities that are not currently subject to those requirements. For subsequent annual informational filings, the public utility must provide an updated version of the supporting documentation showing any changes from the prior informational filing as well as information on any period of time during the reported year where the public utility ceased to voluntarily apply identified Critical Infrastructure Protection Reliability Standards to facilities that are not currently subject to those requirements.

(2) A public utility that receives incentive-based rate treatments under the National Institute of Standards and Technology Framework Approach must also include information that demonstrates:

(i) The acquisition and installation of required network components, including confirmation that funds have been expended on the necessary equipment through documentation such as purchase orders, receipts, licensing agreements, and installation documentation with specified time periods;

(ii) Attainment of necessary training and personnel, including documentation such as third-party contractor agreements, training program curricula, and official job descriptions;

(iii) Network and sensor node recognition optimization through such items as configuration files, system logs, configuration settings, and a description of its location on the affected network;

(iv) Incorporation of sensor nodes in the enterprise level incident monitoring and response plan including attesting that the information would be included in operational activities such as incident response plans, playbooks, and Standard Operating Procedures.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Cybersecurity Incentives

DANLY, Chairman, and GLICK, Commissioner, *concurring:*

1. Threats to the cybersecurity of the bulk power system are numerous and growing. Ensuring that the system is adequately protected against those threats is an issue of national importance and one that must remain a priority of this Commission. Accordingly, we support this notice of proposed rulemaking (NOPR) as a means for soliciting further comments on whether this particular incentives-based approach is a just and reasonable and not unduly discriminatory or preferential approach to improving public utilities' cybersecurity posture.

2. We write separately to highlight two general issues that we believe require additional attention. The first issue is whether the Commission can better address cybersecurity threats by directing NERC to expand its critical infrastructure protection (CIP) standards to require some or all of the investments contemplated in this NOPR. Although we appreciate the appeal of an incentives-based approach, the importance of cybersecurity demands us to at least consider whether we should mandate the best practices contemplated in this NOPR rather than simply trying to induce public utilities to adopt them.

3. The second issue goes to the heart of what the NOPR intends to achieve—whether public utilities are not adopting the contemplated measures because the existing financial incentives are insufficient. We encourage commenters to address whether—and, if so, why—additional measures, such as an elevated ROE or deferred cost recovery, are necessary to incentivize public utilities to adopt additional cybersecurity measures.

For these reasons, we respectfully concur.

James P. Danly,

Chairman.

Richard Glick,

Commissioner.

[FR Doc. 2021–01986 Filed 2–4–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 10

Wage and Hour Division

29 CFR Parts 516, 531, 578, 579, and 580

RIN 1235–AA21

Tip Regulations Under the Fair Labor Standards Act (FLSA): Delay of Effective Date

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Proposed delay of effective date.

SUMMARY: In accordance with the Presidential directive as expressed in the memorandum of January 20, 2021 from the Assistant to the President and Chief of Staff, entitled ''Regulatory Freeze Pending Review,'' this action proposes to delay until April 30, 2021 the effective date of the rule entitled Tip Regulations Under the Fair Labor Standards Act (''Tip Rule''), published in the **Federal Register** on December 30, 2020. The rule's current effective date is March 1, 2021. WHD seeks comments on this proposed delay, which would allow the Wage and Hour Division additional opportunity for review and consideration of the new rule.

DATES: Submit written comments on or before February 17, 2021.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA21, by either of the following methods: *Electronic Comments:* Submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. *Mail:* Address written submissions to Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit only one copy of your comments by only one method. Commenters submitting file attachments on *www.regulations.gov* are advised that uploading text-recognized documents—*i.e.,* documents in a native file format or documents which have undergone optical character recognition (OCR)—enable staff at the Department to more easily search and retrieve specific content included in your comment for consideration. Anyone who submits a comment (including duplicate comments) should understand and expect that the comment will become a

matter of public record and will be posted without change to *https://www.regulations.gov,* including any personal information provided. All comments must be received by 11:59 p.m. on February 17, 2021, for consideration in this proposed delay of effective date. The Department strongly recommends that commenters submit their comments electronically via *http://www.regulations.gov* to ensure timely receipt prior to the close of the comment period, as the Department continues to experience delays in the receipt of mail. Submit only one copy of your comments by only one method. *Docket:* For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this proposal may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION: In the Consolidated Appropriations Act of 2018 (''CAA''), Congress amended section 3(m) of the Fair Labor Standards Act (''FLSA'' or ''Act'') to prohibit employers from keeping tips received by their employees, regardless of whether the employers take a tip credit under section 3(m). On December 30, 2020, the Wage and Hour Division (''WHD'') published Tip Regulations Under the Fair Labor Standards Act (the ''Tip Rule'') in the **Federal Register** to address these amendments. *See* 85 FR 86756. The Tip Rule would also codify WHD's guidance regarding the tip credit's application to tipped employees who perform tipped and non-tipped duties. *See id.* The effective date of the Tip Rule is March 1, 2021. *See id.*

In a memorandum dated January 20, 2021 and entitled ''Regulatory Freeze Pending Review,'' (''Regulatory Freeze Memorandum'') published in the **Federal Register** on January 28, 2021 (86 FR 7424), the Assistant to the President and Chief of Staff, on behalf of the President, directed the heads of Executive Departments and Agencies to consider delaying the effective dates of all regulations that had been published in the **Federal Register** but had not yet taken effect until 60 days following the date of the memorandum or beyond; the Tip Rule falls into this category. The Regulatory Freeze Memorandum states that the purpose of such delays is for agencies to review any questions of fact, law, and policy that the rules may raise. The memorandum notes certain exceptions that do not apply here. On January 20, 2021, the Office of Management and Budget (OMB) also published OMB Memorandum M–21–14, Implementation of Memorandum Concerning Regulatory Freeze Pending Review, which provides guidance regarding the Regulatory Freeze Memorandum. *See* M–21–14, Implementation of Memorandum Concerning Regulatory Freeze Pending Review, *https://www.whitehouse.gov/wp-content/uploads/2021/01/M-21-14-Regulatory-Review.pdf* (last visited Jan. 26, 2021). OMB Memorandum M–21–14 explains that pursuant to the Regulatory Freeze Memorandum, agencies ''should consider postponing the effective dates for 60 days and reopening [the] rulemaking processes'' for ''rules that have not yet taken effect and about which questions involving law, fact, or policy have been raised.'' *Id.* In accordance with the Regulatory Freeze Memorandum and OMB Memorandum M–21–14, WHD proposes to delay the effective date of the Tip Rule by 60 days to April 30, 2021.

Delaying the effective date of the Tip Rule for 60 days would provide WHD additional opportunity to review and consider the questions of law, policy, and fact raised by the rule, as contemplated by the Regulatory Freeze Memorandum and OMB Memorandum M–21–14, before the rule goes into effect. In particular, WHD could consider whether the Tip Rule properly implements the CAA Amendments to section 3(m) of the FLSA, which prohibit employers from keeping tips for any purpose, whether the Tip Rule adequately considered the possible costs, benefits, and transfers between employers and employees related to the codification of WHD's guidance regarding the tip credit's application to tipped employees who perform tipped and non-tipped duties, and whether the Tip Rule otherwise effectuates the CAA amendments to the FLSA, including the statutory provision for civil money penalties for violations of section 3(m)(2)(B) of the Act. Additionally, on January 19, 2021, eight states and the District of Columbia filed a complaint for declaratory and injunctive relief in the United States District Court for the Eastern District of Pennsylvania, in which they argued that the Department violated the Administrative Procedure Act in promulgating the Tip Rule. The delay of the Tip Rule's effective date would also give WHD the opportunity to review and consider the rule in light of the issues raised by that complaint.

WHD believes that the proposed delay, in accordance with the Regulatory Freeze Memorandum and OMB Memorandum M–21–14, is reasonable given the issues of fact, law, and policy raised by the rule, and will not be disruptive, given that the Tip Rule is not yet effective and WHD has not implemented the rule.

WHD seeks comment on its proposal to delay the Tip Rule's effective date to April 30, 2021 in order to further review and consider the rule. WHD will consider only comments about its proposal to delay the Tip Rule's effective date.

Milton A. Stewart,

Acting Secretary of Labor.

[FR Doc. 2021–02485 Filed 2–3–21; 11:15 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 780, 788, and 795

RIN 1235–AA34

Independent Contractor Status Under the Fair Labor Standards Act: Delay of Effective Date

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Proposed delay of effective date.

SUMMARY: In accordance with the Presidential directive as expressed in the memorandum of January 20, 2021 from the Assistant to the President and Chief of Staff, entitled ''Regulatory Freeze Pending Review,'' this action proposes to delay until May 7, 2021, the effective date of the rule entitled Independent Contractor Status Under the Fair Labor Standards Act (''Independent Contractor Rule''), published in the **Federal Register** on January 7, 2021. The rule's current effective date is March 8, 2021. The Wage and Hour Division seeks comments on this proposed delay, which would allow it additional opportunity for review and consideration of the new rule.

DATES: Submit written comments on or before February 24, 2021.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA34, by either of the following methods: *Electronic*

Comments: Submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. *Mail:* Address written submissions to Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit only one copy of your comments by only one method. Commenters submitting file attachments on *www.regulations.gov* are advised that uploading text-recognized documents—*i.e.,* documents in a native file format or documents which have undergone optical character recognition (OCR)—enable staff at the Department to more easily search and retrieve specific content included in your comment for consideration. Anyone who submits a comment (including duplicate comments) should understand and expect that the comment will become a matter of public record and will be posted without change to *https://www.regulations.gov,* including any personal information provided. All comments must be received by 11:59 p.m. on February 24, 2021, for consideration in this proposed delay of effective date. The Department strongly recommends that commenters submit their comments electronically via *http://www.regulations.gov* to ensure timely receipt prior to the close of the comment period, as the Department continues to experience delays in the receipt of mail. Submit only one copy of your comments by only one method. *Docket:* For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this proposal may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION: On January 7, 2021, the Department of Labor's Wage and Hour Division (''WHD'') published the Independent Contractor Rule in the **Federal Register** with an effective date of March 8, 2021. *See* 86 FR 1168. The Independent Contractor Rule would, among other actions, introduce into title 29 of the Code of Federal Regulations a new part (part 795) entitled ''Employee or Independent Contractor Classification under the Fair Labor Standards Act.'' *See id.*

In a memorandum dated January 20, 2021 and entitled ''Regulatory Freeze Pending Review,'' published in the **Federal Register** on January 28, 2021 (86 FR 7424) (''Regulatory Freeze Memorandum''), the Assistant to the President and Chief of Staff, on behalf of the President, directed the heads of Executive Departments and Agencies to review and consider delaying the effective dates of all regulations that had been published in the **Federal Register** but had not yet taken effect until 60 days following the date of the memorandum or beyond. The Independent Contractor Rule falls within this category. The Regulatory Freeze Memorandum states that the purpose of such delays is for agencies to review any questions of fact, law, and policy that the rules may raise. The memorandum notes certain exceptions that do not apply here. On January 20, 2021, the Office of Management and Budget (OMB) also published OMB Memorandum M–21–14, Implementation of Memorandum Concerning Regulatory Freeze Pending Review, which provides guidance regarding the Regulatory Freeze Memorandum. *See* M–21–14, Implementation of Memorandum Concerning Regulatory Freeze Pending Review, *https://www.whitehouse.gov/wp-content/uploads/2021/01/M-21-14-Regulatory-Review.pdf* (last visited Jan. 26, 2021). OMB Memorandum M–21–14 explains that pursuant to the Regulatory Freeze Memorandum, agencies ''should consider postponing the effective dates for 60 days and reopening the rulemaking process'' for ''rules that have not yet taken effect and about which questions involving law, fact, or policy have been raised.'' *Id.* In accordance with the Regulatory Freeze Memorandum and OMB Memorandum M–21–14, WHD proposes to delay the effective date of the Independent Contractor Rule to May 7, 2021, which would be 60 days beyond its original effective date.

The delay of the Independent Contractor Rule's effective date would give WHD additional opportunity to review and consider the rule as the Regulatory Freeze Memorandum and OMB Memorandum M–21–14 contemplate. The rule, which would be WHD's first generally applicable regulation addressing the question of who is an independent contractor and, thus, not an employee under the FLSA, would adopt a new legal standard for determining employee and independent contractor status under the FLSA. In light of the significance of this change, WHD is proposing to allow itself more time to further review and consider, among other important issues, the legal, policy, and/or enforcement implications of adopting that standard, such as: Whether the rule effectuates the FLSA's purpose, recognized repeatedly by the Supreme Court, to broadly cover workers as employees; [1] the costs and benefits attributed to the rule, including the assertion that workers as whole will benefit from the rule; [2] and/or whether the rule's explanation of the standard provides clarity for stakeholders and for the purposes of WHD enforcement, as was intended.

In addition, WHD believes that the proposed delay is reasonable and would not be disruptive. The Independent Contractor Rule is not yet effective, and WHD has not implemented the rule. For example, WHD's public guidance, including its longstanding Fact Sheet #13, entitled ''Employment Relationship under the Fair Labor Standards Act (FLSA),'' does not contain the rule's standard for determining whether a worker is an employee or independent contractor and will continue to be available to all. Moreover, Federal courts across the country have developed and applied legal analyses for determining employee and independent contractor status under the FLSA. In sum, employers and workers are already familiar with the standard that WHD and courts will apply when determining a worker's status under the FLSA during any delay of the rule's effective date.

WHD seeks comment on its proposal to delay the Independent Contractor Rule's effective date to May 7, 2021 in order to further review and consider the rule. WHD will consider only comments about its proposal to delay the rule's effective date.

Milton A. Stewart,

Acting Secretary of Labor.

[FR Doc. 2021–02484 Filed 2–3–21; 11:15 am]

BILLING CODE 4510–27–P

[1] *See, e.g., Rutherford Food Corp.* v. *McComb,* 331 U.S. 722, 728 (1947) (''The [FLSA] definition of 'employ' is broad.''); *United States* v. *Rosenwasser,* 323 U.S. 360, 362–63 (1945) (''A broader or more comprehensive coverage of employees [than that of the FLSA] . . . would be difficult to frame.'').

[2] *See* 86 FR 1209, 1223.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2020–0703]

RIN 1625–AA08

Special Local Regulation; Gasparilla Marine Parade; Hillsborough Bay; Tampa, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary special local regulation for the 2021 Gasparilla Marine Parade on the waters of Hillsborough Bay in the vicinity of Tampa, Florida. This event is expected to attract over 600 spectator craft along the parade route, with approximately 18 vessels participating in the official flotilla. This regulation is necessary to ensure the safety of public, the official flotilla, and spectator vessels before, during, and after the parade. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before March 8, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0703 using the Federal eRulemaking Portal at *https://www.regulations.gov*. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Marine Science Technician First Class Michael D. Shackleford, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *Michael.D.Shackleford@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On November 23, 2020, Ye Mystic Krewe of Gasparilla notified the Coast Guard that it will be rescheduling the Gasparilla Invasion and Parade from its normal day in Janaury, to April 17, 2021, from 11:30 to 2:00 p.m. The event will occur on certain waters of Hillborough bay, Tampa, Florida. The Captain of the Port St. Petersburg (COTP) has determined that potential hazards associated with the large gathering of vessels during the parade would be a safety concern for anyone within the event area.

The purpose of this rulemaking is to ensure the safety of public, the official flotilla, and spectator vessels on these navigable waters of the United States before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a special local regulation from 9:00 a.m. to 6:00 p.m. on April 17, 2021. The special local regulation would cover certain waters of Hillsborough Bay in Tampa, Florida and set forth specific requirements for vessels operating within the regulated area during the period of enforcement. Persons and vessels not meeting the requirements of this regulation may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port St. Petersburg by telephone at (727) 824–7506, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative. The Coast Guard will provide notice of the special local regulations by Local Notice to Mariners, Broadcast Notice to Mariners, and/or on-scene designated representatives.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on: (1) The special local regulation will be enforced for only nine hours; (2) although certain persons and vessels are prohibited to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port St. Petersburg or a designated representative, they may operate in the surrounding area during the enforcement period; (3) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and/or Broadcast Notice to Mariners; and (4) persons and vessels not meeting the requirements of this regulation may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port or a designated representative.

B. Impact on Small Entities

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

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121),

we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

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

G. Protest Activities

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

V. Public Participation and Request for Comments

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

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

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

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.T07–0703 to read as follows:

§ 100.T07-0703 Special Local Regulation; Gasparilla Marine Parade; Hillsborough Bay; Tampa, FL.

(a) *Regulated Areas:* (1) Waters of Hillsborough Bay and its tributaries north of 27°51′18″ N and south of the John F. Kennedy Bridge: Hillsborough Cut ''D'' Channel, Seddon Channel, Sparkman Channel and the Hillsborough River south of the John F. Kennedy Bridge,Tampa, Florida. All coordinates referenced use datum: NAD 83.

(2) All navigable waters within a 100 yards around the vessel JOSE GASPAR while docked at the Tampa Yacht Club and Tampa Convention Center, Tampa, Florida.

(3) When within the marked channels of the parade route, vessels participating in the Gasparilla Marine Parade may not exceed the minimum speed necessary to maintain steerage.

(b) *Special Local Regulations.* (1) All vessels within the regulated area in paragraph (a) of this section must stay 50 feet away from and give way to all officially entered vessels in parade formation in the Gasparilla Marine Parade.

(2) Jet skis and vessels without mechanical propulsion are prohibited from the parade route.

(3) Vessels less than 10 feet in length are prohibited from the parade route unless capable of safely participating.

(4) Vessels found to be unsafe to participate at the discretion of a present law enforcement officer are prohibited from the parade route.

(5) Northbound vessels in excess of 65 feet in length without mooring arrangement made prior to the date of the event are prohibited from entering Seddon Channel, unless the vessel is officially entered in the Gasparilla Marine Parade.

(6) Vessels not officially entered in the Gasparilla Marine Parade may not enter the parade staging area box within the following coordinates: 27°53′53″ N, 082°27′47″ W; 27°53′22″ N, 082°27′10″ W; 27°52′36″ N, 082°27′55″ W; 27°53′02″ N, 082°28′31″ W.

(7) Designated representatives may control vessel traffic throughout the enforcement area as determined by the prevailing conditions.

(8) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the COTP St. Petersburg by telephone at (727) 824–7506, or a designated representative via VHF radio on channel 16. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP St. Petersburg or a designated representative.

(d) *Enforcement Period.* This rule will be enforced from 9 a.m. to 6 p.m. on April 17, 2021.

Dated: January 13, 2021.

Matthew A. Thompson,

Captain, U.S. Coast Guard, Captain of the Port St. Petersburg.

[FR Doc. 2021–02172 Filed 2–4–21; 8:45 am]

BILLING CODE 9110–04–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3030

[Docket No. RM2021–2; Order No. 5816]

Market Dominant Products

AGENCY: Postal Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is initiating a review seeking input from the public about what additional regulations promulgated by the Commission may be necessary to achieve the objectives of the Postal Accountability and Enhancement Act (PAEA) particularly related to maximizing incentives to increase efficiency and reduce costs, maintaining high-quality service standards, and assuring financial stability (including retained earnings). This advance notice informs the public of the docket's initiation, invites public comment, and takes other administrative steps.

DATES:

Comments are due: April 15, 2021.

Reply comments are due: May 17, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Background
III. Substantive Areas for Further Refinement
IV. Administrative Actions
V. Ordering Paragraphs

I. Introduction

Pursuant to 39 U.S.C. 3622(d)(3), the Commission issues this advance notice of proposed rulemaking to seek input from the public about what additional regulations promulgated by the Commission may be necessary to achieve the objectives of the Postal Accountability and Enhancement Act (PAEA) [1] over the longer-term, particularly related to maximizing incentives to increase efficiency and reduce costs, maintaining high-quality service standards, and assuring financial stability (including retained earnings).

II. Background

In Docket No. RM2017–3, the Commission found that the existing Market Dominant ratemaking system did not achieve the PAEA's objectives during the 10 years following the PAEA's enactment.[2] The Commission's findings were premised in part on the existing ratemaking system's inability to assure financial stability (including retained earnings), maximize incentives to reduce costs and increase efficiency, and maintain high-quality service standards. *See* Order No. 4257 at 3–5, 274–275. During the PAEA era, the existing ratemaking system was inadequate, which resulted in an accumulated deficit,[3] maximum use of the Postal Service's borrowing authority and a sharp decline in capital investments,[4] operational efficiency increases and cost reductions that were insufficient to achieve overall financial stability and/or retained earnings,[5] and reduction of the high-quality service standards that were set in 2007.[6]

In response, the Commission modified the ratemaking system's design to encourage and enable the Postal Service to address its complex challenges by making prudent pricing and operational decisions. *See* Order No. 5763 at 285. Among other changes made, the modified rules provide additional rate authority to address two underlying drivers of the Postal Service's net losses that are largely outside of its direct and near-term control: (1) The increase in per-unit cost resulting from the decline in mail density for each fiscal year under subpart D of 39 CFR part 3030 of this chapter; and (2) the statutorily mandated amortization payments for particular retirement costs under subpart E of 39 CFR part 3030 of this chapter. *See id.* These principled adjustments to the price cap made by the Commission in Docket No. RM2017–

[1] Public Law 109–435, 201, 120 Stat. 3198, 3204 (2006).

[2] *See* Docket No. RM2017–3, Order Adopting Final Rules for the System of Regulating Rates and Classes for Market Dominant Products, November 30, 2020, at 2 (Order No. 5763); *see also* Docket No. RM2017–3, Revised Notice of Proposed Rulemaking, December 5, 2019, at 7 (Order No. 5337); Docket No. RM2017–3, Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products, December 1, 2017, at 26 (Order No. 4258); Docket No. RM2017–3, Order on the Findings and Determination of the 39 U.S.C. 3622 Review, December 1, 2017, at 3–5, 274–275 (Order No. 4257).

[3] *See* Order No. 4257 at 171–172 (describing how the consecutive net losses resulted in an accumulated deficit).

[4] The Postal Service lacks shareholders and instead must finance capital investments through revenue or through borrowing. Order No. 4258 at 48–49. Therefore, as consecutive years of net losses resulted in an accumulated deficit, the Postal Service relied heavily on its borrowing authority, deferred capital investments, and increased its cash reserves. *See id.* at 46–52.

[5] Order No. 4257 at 222, 274–275 (summarizing that while some cost reductions and efficiency gains were achieved post-PAEA, they were insufficient to achieve financial stability in the medium term and long term).

[6] *Id.* at 273. The two major service standard changes in the first 10 years after the passage of the PAEA were reviewed by the Commission, prior to implementation, in Docket Nos. N2012–1 and N2014–1. The ''Network Rationalization'' initiative implemented by the Postal Service included changes to the service standards for First-Class Mail, Periodicals, USPS Marketing Mail, and Package Services. The ''Load Leveling'' initiative included changes to the service standards for USPS Marketing Mail. *Id.* at 264–273.

3 are necessary to achieve the objectives of the PAEA, in conjunction with each other, and are focused on vital near-term improvements.

However, the objectives of the PAEA related to *maximizing* incentives to increase efficiency and reducing costs as well as *assuring* financial stability (including retained earnings) set forth ambitious goals that are difficult to achieve instantaneously or simultaneously. *See* 39 U.S.C. 3622(b)(1) and (5). These goals must also be achieved in conjunction with other priorities over time, such as *maintaining* high-quality service standards. *See id.* section 3622(b)(3). Consistent with the Commission's findings in Docket No. RM2017–3, Docket No. RM2021–2 is initiated to explore whether additional regulatory changes may be necessary to promote longer-term financial stability, increased efficiency and cost reductions, while maintaining high-quality service standards, and if so, how to best design these potential changes. *See* Order No. 5763 at 166. The Commission invites any interested party to submit comments on the following topics and asks the following questions to initiate a meaningful dialogue with stakeholders.

III. Substantive Areas for Further Refinement

A. Incentive Regulation

Performance-based regulation is a broad concept referring to a regulatory system that applies incentives to promote targeted behavior by the regulated entity.[7] More specifically, a performance incentive mechanism (PIM), also referred to as a targeted performance incentive (TPI), is used by regulators to set a target for acceptable performance by the regulated entity in a specific area and attach financial consequences to ensure compliance. *See* Zarakas, *supra.* This rulemaking is initiated to explore whether and how to introduce any potential modifications to the design of the ratemaking system that would further enhance (*i.e.,* maximize over the longer-term) the Postal Service's incentives to increase efficiency and reduce costs. Achieving such efficiencies could benefit the Postal Service by improving its longer-term financial viability and could benefit the ratepayers by leading to improved service performance. At the same time, the Commission remains mindful that further enhancing the Postal Service's incentives to increase efficiency and reduce costs may weaken the incentive to maintain high-quality service standards. The Commission also acknowledges that ratepayers may have different preferences with respect to the speed and/or the consistency of delivery service for Market Dominant products. Accordingly, to explore possible enhancements to the Market Dominant ratemaking system overall, through the introduction of direct financial consequences (such as an upward or downward adjustment to rate authority) using a PIM or a different method, the Commission raises the following discussion points:

1. Whether additional regulatory changes are needed to further enhance the Postal Service's incentives to increase efficiency and reduce costs while maintaining high-quality service standards. Why or why not?

2. How to identify and evaluate potential types of regulatory changes that would introduce direct financial consequences that would further enhance the Postal Service's incentives to increase efficiency and reduce costs while maintaining high-quality service standards? Are there any financial consequences that can be drawn from other postal systems or other regulated industries that should be considered?

3. How to identify and evaluate potential types of regulatory changes other than the connection of direct financial consequences that would further enhance the Postal Service's incentives to increase efficiency and reduce costs while maintaining high-quality service standards? Are there any non-financial incentives that can be drawn from other postal systems or other regulated industries that should be considered?

B. Mechanism for a Financial Incentive

The Commission is interested in exploring whether a regulatory mechanism connecting direct financial consequences with increasing efficiency and reducing costs and maintaining high-quality service standards would benefit the Market Dominant ratemaking system, and how to connect the Postal Service's behavior with the financial incentive introduced. The Commission acknowledges that every proposal has tradeoffs and that it is impossible to refine the connection to a level of absolute precision.[8] This rulemaking does not aim for this level of precision. Generally, the Commission seeks to identify an amount of a financial incentive that is both meaningful to the Postal Service (*i.e.,* would actually motivate it to engage in the desired behavior) and would neither be excessive to the ratepayers nor threaten the financial integrity of the Postal Service.

Preliminarily, the Commission is interested in exploring whether and how to introduce a financial incentive by modifying the Postal Service's authority to adjust its rates. Adjustments to rate authority could be upwards (increase rate authority), downwards (reduce rate authority), or both. *See* Zarakas, *supra.* An upward PIM would reward superior performance, whereas a downward PIM would penalize unsatisfactory performance. The PIM may be designed to operate simplistically: For instance, a specific upward or downward incentive is either provided or not provided, based on the observed performance. On the other hand, a more nuanced PIM could be designed to provide a particular tier of financial incentive based on the observed performance: For instance, progressively increasing rewards or penalties.[9] If any commenters have a basis for connecting particular requirement(s) with particular amount(s), they may include such proposals in their response to this Order.

One potential method to develop a PIM for both upward and downward adjustments would be to set a ''dead-band'' around historical performance.[10] This type of PIM would trigger a penalty when actual performance falls below the lower target (unsatisfactory performance) and trigger a reward when actual performance exceeds the upper target (superior performance).[11] The lower and upper targets could be derived by measuring the standard deviation(s) from historical

[7] *See* William Zarakas, *A New Face for PBR: Aligning Incentives in the Electric Utility Ecosystem,* PUB. UTILS. FORT., December 2017 (Zarakas), available at: *https://www.fortnightly.com/fortnightly/2017/12/new-face-pbr?authkey=e0a4230ee85eb602f123c1e633c0e5b5260f9bd3f297c094c055e7868e5a4589.*

[8] *See Nat'l Ass'n of Broadcasters* v. *F.C.C.,* 740 F.2d 1190, 1210 (D.C. Cir. 1984) (''But administrative action generally occurs against a shifting background in which facts, predictions, and policies are in flux and in which an agency would be paralyzed if all the necessary answers had to be in before any action at all could be taken.'').

[9] *See* Synapse Energy Economics, Inc., Melissa Whited, Tim Woolf, & Alice Napoleon, *Utility Performance Incentive Mechanisms: A Handbook for Regulators, Prepared for the Western Interstate Energy Board,* March 9, 2015 (2015 PIM Handbook), at 43–44 (demonstrating quadratic versus step functions).

[10] *See* 2015 PIM Handbook at 38; Paul L. Joskow, Incentive Regulation in Theory & Practice: Electricity Distribution & Transmission Networks, January 21, 2006 (2006 Joskow), at 8, available at: *https://economics.mit.edu/files/1181.*

[11] *See* 2015 PIM Handbook at 38; *see also* 2006 Joskow, *supra* at 8.

performance.[12] Actual performance within the dead-band (a neutral zone) would not result in a direct financial consequence.[13]

Therefore, to develop a mechanism that would balance simplicity with optimal refinement, the Commission raises the following discussion points:

1. How to identify the percentage of rate authority that would provide a meaningful incentive(s) to the Postal Service, while also not leading to excessive rate increases for mailers nor threatening the financial integrity of the Postal Service?

2. How to identify data and methods available to develop a connection between the amount of the financial incentive(s) at stake with the observed performance (*i.e.,* the change(s) in or level(s) of efficiency, costs, and/or service standards)?

3. How to identify the relative advantages of applying incentives as upward adjustments (increasing the amount of rate authority(ies)), downward adjustments (reducing the amount of rate authority(ies)), a combination mechanism (both), or another method?

4. How best to administer the chosen method?

C. Operational Efficiency-Based Requirement

The Commission intends to explore whether and how to translate the broad policy goals of the PAEA—incentivizing the Postal Service to increase efficiency and reduce costs—into a specific PIM.

For purposes of evaluating the Postal Service's operational efficiency, total factor productivity (TFP) is a highly comprehensive metric.[14] The Commission intends to further explore whether TFP or an alternative metric is capable of producing sufficiently reliable, accurate, and transparent results that would be appropriate for use as a potential benchmark on which to condition rate authority. While the Commission's preliminary expectation is that there is not a practical way to refine TFP to focus on only Market Dominant products (*see* Order No. 5337 at 134), the Commission would welcome any comments proposing a basis for doing so. There have been some changes in the TFP methodology over the years, and TFP results have been revised after-the-fact on occasion.[15] Accordingly, the Commission intends to review how these changes impact reliability and accuracy over time. While there is not necessarily a reason to believe that the Postal Service would attempt to influence TFP results by making unreasonable business decisions (*see* Order No. 5337 at 135), the Commission also intends to further explore how TFP could be refined methodologically to produce results that are adequately safeguarded against manipulation. A critical step to enable this study of TFP is to require the Postal Service to file the documentation and linked workpapers containing all formulae for its TFP methodology.[16] Therefore, this Order imposes a deadline for the Postal Service to file this information of February 16, 2021.

The Commission intends to explore whether TFP can be refined to better focus on efficiency gains within the Postal Service's control or whether an alternative metric should be developed. The Postal Service has used the Deliveries per Total Workhours (DPTWH) as an alternative efficiency metric in its annual reports to Congress and to develop its Integrated Financial Plan.[17] The Commission has expressed concerns with the underlying methodology, finding that DPTWH is less comprehensive than TFP for purposes of measuring productivity because DPTWH isolates workhours (labor) and because DPTWH does not recognize a major workload component: The collection, processing, transporting, and sequencing for delivery of mail.[18] However, it may be possible to develop an alternate methodology that is easier to calculate, understand, and apply than TFP but still comprehensive enough to reflect overall efficiency gains. If the Postal Service proposes that the Commission use a metric other than TFP for a PIM, then it shall file a detailed public explanation of the methodology along with its comments.

Some of the sources of inefficiency (and the potentially resulting lost opportunities to reduce costs and improve service performance) are known in theory but difficult to correct in practice. The following examples are not intended to exhaustively detail these types of issues and instead are intended to promote thoughtful engagement and exploration of the potential challenges and opportunities to enhance the design of the Market Dominant ratemaking system.[19]

For instance, while the Postal Service acknowledges that it must better align labor with volume, it has stated that this has been difficult to put into practice.[20] During a given day, there are periods of higher workload (peaks) and lower workload (valleys or off-peaks). More staff are needed to handle peaks, whereas, during the valleys, fewer staff are needed. These peaks and valleys do not naturally align with the traditional Postal Service labor structure, which operates in three tours, or 8-hour cycles, per day.[21] Therefore, Postal Service

[12] *See* 2015 PIM Handbook at 38; *see also* 2006 Joskow, *supra* at 8.

[13] *See* 2015 PIM Handbook at 38.

[14] *See* Docket No. RM2017–3, Northwest Postal Consulting (NWPC) for the Postal Regulatory Commission, Report 1, Adequacy of the Postal Service's TFP Model, Final Report, March 27, 2017, at 2 (NWPC Report 1) (opining that the Postal Service's TFP Model contains significant levels of detail regarding different aspects of Labor, Capital, Materials, Mail Volume, and Possible Deliveries).

[15] *Compare, e.g.,* United States Postal Service, USPS Annual Tables, FY 2017 TFP (Total Factor Productivity), February 28, 2018, Excel file ''table annual 2017 public (2017 cra).xlsx,'' tab ''Tfp–52'' (updating FY 2016 TFP result to 1.262) *with* United States Postal Service, USPS Annual Tables, FY 2016 TFP (Total Factor Productivity), March 1, 2017, Excel file ''table annual 2016 public (2016 cra).xlsx,'' tab ''Tfp–52'' (reporting FY 2016 TFP result as 1.260). While the Postal Service did not provide an explanation for the updated FY 2016 TFP result, Commission analysis identified updated source data for FY 2016. Additional technical changes to the TFP are detailed in the NWPC Report 2 filed by the Commission in conjunction with Order No. 5337. *See generally* Docket No. RM2017–3, Northwest Postal Consulting (NWPC) for the Postal Regulatory Commission, Report 2, Comparison of Postal Service Productivity Measurement: Before and After PAEA Enactment, March 27, 2017, at 8–11 (NWPC Report 2).

[16] By way of background, the TFP workpapers filed by the Postal Service contain hardcoded inputs and outputs rather than displaying the formulae used and links to related spreadsheets. *Compare, e.g.,* United States Postal Service, USPS Annual Tables, FY 2019 TFP (Total Factor Productivity), February 27, 2020 *with* 39 CFR 3050.2(c).

[17] *See* Docket No. ACR2019, Library Reference USPS–FY19–17, December 27, 2019, *United States Postal Service FY 2019 Annual Report to Congress,* at 34 (*FY 2019 Annual Report*). DPTWH is calculated by multiplying the total possible deliveries by the number of delivery days and dividing that product by total work hours. *FY 2019 Annual Report* at 34. ''Starting in FY 2021, the DPTWH metric will no longer be tracked as a corporate indicator.'' Docket No. ACR2020, Library Reference USPS–FY20–17, December 29, 2020, United States Postal Service FY 2020 Annual Report to Congress, at 52 (*FY 2020 Annual Report*).

[18] *See* Docket No. ACR2010, *Annual Compliance Determination,* March 29, 2011, at 39; *see also* Docket No. ACR2013, Review of Postal Service FY 2013 Performance Report and FY 2014 Performance Plan, July 7, 2014, at 25.

[19] Extremely detailed discussions of issues related to specific processing (referred to as pinch-points) may be found in a number of other proceedings. *See, e.g.,* Docket No. ACR2015, *Annual Compliance Determination,* March 28, 2016, at 165–180; Docket No. ACR2016, *Annual Compliance Determination,* March 28, 2017, at 165–170; Docket No. ACR2017, *Annual Compliance Determination,* March 29, 2018, at 175–181; Docket No. ACR2018, *Annual Compliance Determination,* April 12, 2019, at 215–222; Docket No. ACR2019, *Annual Compliance Determination,* March 25, 2020, at 161–174 (FY 2019 ACD).

[20] *See, e.g.,* Docket No. ACR2019, Library Reference USPS–FY19–29, December 27, 2019, PDF file ''FY19–29 Service Performance Report.pdf,'' at 7, 30.

[21] Tour 1 is from 11:00 p.m. to 07:00 a.m.; Tour 2 is from 07:00 a.m. to 3:00 p.m.; Tour 3 is from 3:00 p.m. to 11:00 p.m. United States Postal Service, Office of the Inspector General, Report No. 20–144–

management must plan carefully to minimize inefficient outcomes, such as insufficient staff during peaks or over-staffing during valleys.[22] Additionally, inefficient staffing may lead to mail failing to clear operational checkpoints as expected, which may lead to other negative effects such as the use of overtime hours or additional contract transportation to ''catch-up'' and/or late delivery.[23]

As another example, while the Postal Service acknowledges that it must better encourage preparation of the mail by mailers and/or mail service providers so as to facilitate more efficient handling by the Postal Service, existing practices do not maximize this opportunity.[24] For instance, certain ways of preparing mail for presentation to the Postal Service are more likely to result in bundle breakage.[25] Increased bundle breakage tends to reduce the ability to process the affected mail using machines and increase the likelihood that the affected mail will undergo manual processing instead. Manual processing is less efficient (slower and more costly) than machine processing.[26] Increased manual processing may lead to mail failing to clear operational checkpoints as expected, which may lead to other negative effects such as the use of overtime hours to ''catch-up'' and/or late delivery.[27]

Generally, the Commission aims to select targets that are outcome-oriented, consistent with the policy goals of the PAEA, objectively measureable and verifiable, readily interpretable, and achievable. Because the Commission is particularly focused on promoting the Postal Service's longer-term financial viability, the Commission is interested in selecting a metric(s) and target(s) for the PIM that would be consistent with ancillary benefits such as increasing the opportunities for reducing costs and improving service performance. Moreover, the Commission intends to consider potential safeguards to incorporate into the PIM, to ensure that results are adequately safeguarded against manipulation and that selection of a shorter-term target would not perversely incentivize behavior that would be detrimental in the longer-term.

Therefore the Commission raises the following discussion points:

1. How to identify possible refinements to TFP to increase its reliability, accuracy, and representativeness as a measure of efficiency gains within the Postal Service's control?

2. How to identify alternative potential metric(s) other than TFP that could be developed or refined as an accurate, reliable, and representative measure of efficiency gains within the Postal Service's control? Should the Commission consider industry-wide, economy-wide, or similar comparative benchmarks for efficiency? Are there any metrics that the Commission can learn from in adjacent industries, other sectors, or other posts?

3. How to identify potential target(s) for efficiency gains?

4. How to identify potential metric(s) and target(s) related to efficiency gains to promote the longer-term financial viability of the Postal Service, such as by increasing the opportunities for cost reduction and/or improved service performance?

5. How to identify potential safeguards designed to minimize manipulation by the operator and prevent the operator from engaging in behavior that would be detrimental over the longer-term?

D. Service Standards-Based Requirement

Additionally, the Commission intends to explore whether and how to translate the policy goal of the PAEA to maintain high-quality service standards into a specific PIM. This goal is intended to encourage the maintenance of high-quality service standards established pursuant to 39 U.S.C. 3691, and to hold the Postal Service accountable for consistently achieving those standards. *See* Order No. 4257 at 261.

The first aspect underlying this goal is referred to as ''service standards,'' which are the stated days-to-delivery for different types of mail. *See id.* at 250. Service standards are comprised of a delivery day range and business rules.[28] With respect to service standards, the Commission is interested in whether introducing direct financial consequences linked to maintenance of the existing service standards would enhance the system, and if so, how to calibrate that mechanism. *See* Order No. 5763 at 170.

The second aspect underlying this goal implicitly requires consistent achievement of service standards, which is referred to as ''service performance.'' *See id.* at 296; Order No. 4257 at 262–263. The existing regulatory system has a mechanism to hold the Postal Service accountable for its service performance: The annual compliance review proceeding.[29] If commenters have

R20, Transportation Network Optimization and Service Performance, June 5, 2020, at 15, available at: *https://www.uspsoig.gov/sites/default/files/document-library-files/2020/20-144-R20.pdf* (OIG Rep. No. 20–144–R20).

[22] *See* Docket No. N2010–1, Advisory Opinion on Elimination of Saturday Delivery, March 24, 2011, at 115–126 (Docket No. N2010–1 Advisory Opinion); *see also* OIG Rep. No. 20–144–R20 at 15–16 (finding insufficient management staff working during Tours 1 and 3); United States Postal Service, Office of the Inspector General, Report No. 19XG013NO000–R20, U.S. Postal Service's Processing Network Optimization and Service Impacts, October 15, 2018, at 17–18, available at: *https://www.uspsoig.gov/sites/default/files/document-library-files/2020/19XG013NO000-R20.pdf* (OIG Rep. No. 19XG013NO000–R20) (finding employee availability issues contributed to lower productivity, higher costs, and slower service performance).

[23] For example, if inefficient staffing leads to failure to complete origin processing by the applicable target time of day, the affected mail may miss its scheduled transportation. While the Postal Service may try to mitigate the downstream effects by catching-up during transit or destination processing, the Postal Service acknowledges that these types of delays often require extraordinary action to deliver the affected mail within the applicable service standard. FY 2019 ACD at 109 (The Postal Service asserts that if a mailpiece misses its scheduled transportation, then generally that mailpiece will not be delivered within the expected timeframe absent ''extraordinary measures at substantial cost, such as extra transportation along with clerk and carrier overtime at the delivery point.'') (quoting Docket No. ACR2018, Responses of the United States Postal Service to Questions 1–9 of Chairman's Information Request No. 13, February 21, 2019, question 2).

[24] *See, e.g.,* United States Postal Service, Office of the Inspector General, Report No. 20–088–R20, Cost Reduction Initiatives for Mail Products, Report Number, August 3, 2020, at 1, available at: *https://www.uspsoig.gov/sites/default/files/document-library-files/2020/20-088-R20.pdf* (OIG Rep. No. 20–008–R20) (finding that the Postal Service personnel did not regularly record mail preparation quality issues, report such issues to Postal Service management for updates to the guidance provided to mailers, or otherwise communicate with mailers concerning correction).

[25] *See, e.g.,* OIG Rep. No. 20–088–R20 at 5–9 (detailing that mailpieces that are relatively thinner, shrink-wrapped, bundled using rubber bands or strings, or presented in sacks tend to break more often than mailpieces that are relatively thicker, not shrink-wrapped, bundled using polypropylene (plastic) straps, or presented on pallets).

[26] *See, e.g.,* OIG Rep. No. 20–088–R20 at 6 (estimating that for FYs 2018–2019, broken bundles could have increased bundle processing costs by $96.9 million).

[27] For example, if bundle breakage triggers manual processing of the affected mail, the affected mail may miss its applicable time target to clear the next processing operation. *See, e.g.,* Docket No. ACR2019, Library Reference USPS–FY19–29, December 27, 2019, PDF file ''FY19–29 Service Performance Report.pdf,'' at 19. The Postal Service may try to use overtime hours to speed up manual processing in an effort to deliver the affected mail within the applicable service standard. *See, e.g.,* OIG Rep. No. 20–088–R20 at 8.

[28] *See id.* at 251–252. By way of example, there are three separate service standards for First-Class Mail: (1) 1-Day (referred to as ''overnight''); (2) 2-Day; and (3) 3–5-Day; business rules determine whether an individual mailpiece will be delivered overnight, in 2 days, or in 3–5 days. *See id.* at 250–251.

[29] Order No. 5763 at 296; Order No. 4257 at 264; Docket No. RM2009–11, Order Establishing Final Rules Concerning Periodic Reporting of Service Performance Measurements and Customer Satisfaction, May 25, 2010, at 32 (Order No. 465).

suggestions on how to improve upon that mechanism, they may propose changes in their response to this Order.

An effective price cap system maintains reliable, efficient, and economical service.[30] ''The Postal Service cannot be permitted to degrade service in order to comply with the revenue constraints associated with the price cap.'' Order No. 4257 at 255 (citing Docket No. N2010–1, Advisory Opinion at 8). ''A reduction in service must be warranted by declining demand for the service, rather than to ease the obligation of adhering to the price cap.'' Docket No. N2010–1, Advisory Opinion at 10. Introducing a direct financial incentive connected to operational efficiency gains and cost reductions may undermine the existing incentives to maintain high-quality service standards.[31] Accordingly, to give due consideration to a potential need to counterbalance such unintended consequences, the Commission raises the following discussion points:

1. How to identify potential regulatory changes that may be needed to counterbalance any perverse incentive to degrade service standards and/or service performance that may be created by introducing an operational-efficiency based requirement?

2. How to identify the relative advantages of designing a system that creates a direct financial link to changes in service standards?

3. What data and methods could be used to design a system that creates a direct financial link to changes in service standards?

IV. Administrative Actions

The Commission establishes Docket No. RM2021–2 for consideration of the matters discussed in the body of this advance notice of proposed rulemaking.

The Commission will accept comments and reply comments concerning the topics identified in this advance notice of proposed rulemaking. Comments are due April 15, 2021. Reply comments are due May 17, 2021. Pursuant to 39 U.S.C. 505, Richard A. Oliver is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

The Postal Service shall file the documentation and linked workpapers for its TFP methodology to aid in the evaluation of TFP by February 16, 2021. Materials filed in this docket will be available for review on the Commission's website (*http://www.prc.gov*).

The Regulatory Flexibility Act requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. *See* 5 U.S.C. 601, *et seq.* If the proposed or final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities, the head of the agency may certify that the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply. *See* 5 U.S.C. 605(b). In the context of this rulemaking, the Commission's primary responsibility is in the regulatory oversight of the United States Postal Service. The rules that are the subject of this rulemaking have a regulatory impact on the Postal Service, but do not impose any regulatory obligation upon any other entity. Based on these findings, the Chairman of the Commission certifies that the rules that are the subject of this rulemaking will not have a significant economic impact on a substantial number of small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

V. Ordering Paragraphs

It is ordered:

1. Docket No. RM2021–2 is established for the purpose of considering amendments to Chapter III of title 39 of the Code of Federal Regulations as discussed in this advance notice of proposed rulemaking.

2. The Postal Service shall file the documentation and linked workpapers for its total factor productivity methodology, in a manner that displays the formulae used and links to related spreadsheets by February 16, 2021.

3. If the Postal Service proposes to use a metric other than total factor productivity for a performance incentive mechanism, then it shall file a detailed public explanation of the methodology along with its comments.

4. Pursuant to 39 U.S.C. 505, Richard A. Oliver shall serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

5. Interested persons may submit comments no later than April 15, 2021.

6. Interested persons may submit reply comments no later than May 17, 2021.

7. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register on January 19, 2021.

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[30] Order No. 4257 at 255 (citing Docket No. N2010–1 Advisory Opinion at 7–10).

[31] *See* Order No. 5763 at 171 (citing Order No. 5337 at 142, 144; Order No. 4257 at 255); *see also* 2006 Joskow, *supra* at 8 (observing that regulatory mechanisms focusing on cost reductions exclusively may lead to the operator reducing its service).

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID FEMA–2020–0038]

RIN 1660–AA99

Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program; Public Meeting

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Announcement of meeting; extension of comment period.

SUMMARY: The Federal Emergency Management Agency (FEMA) is extending the public comment period for its proposed rule published December 14, 2020, and will hold a public meeting remotely via web conference to solicit feedback on the proposed rule. The rule proposed to substantively revise the ''estimated cost of the assistance'' disaster declaration factor that FEMA uses to review a Governor's request for a major disaster under the Public Assistance Program.

DATES: Written comments on the proposed rule published at 85 FR 80719 (December 14, 2020) may be submitted until 11:59 p.m. ET on Friday, March 12, 2021.

The meeting will take place on Wednesday, February 24, 2021, from 1 to 3 p.m. Eastern Time (ET).

To register in order to make remarks during the meeting, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below by 12 p.m. ET on Tuesday, February 23, 2021.

ADDRESSES: The meeting will be held via web conference. Members of the public may view the public portion of the meeting online at *https://fema.zoomgov.com/s/1617851830*.

Reasonable accommodations are available for people with disabilities. To request a reasonable accommodation, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below as soon as possible. Last minute requests will be accepted but may not be possible to fulfill.

Written comments must be submitted via the Federal eRulemaking Portal at *https://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All written comments must include the docket ID FEMA–2020–0038. All comments received, including any personal information provided, may be posted without alteration at *https://www.regulations.gov*.

Docket: For access to the docket and to read comments received by FEMA, go to *https://www.regulations.gov* and search for Docket ID FEMA–2020–0038.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Deputy Division Director, Recovery Directorate, Public Assistance, via email at *FEMA-PA-Policy-Questions@fema.dhs.gov* or via phone at (202) 646–2500.

SUPPLEMENTARY INFORMATION: On December 14, 2020, FEMA published a proposed rule titled Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program.[1] Pursuant to 44 CFR 206.48(a), FEMA considers several factors when determining whether to recommend that the President declare a major disaster authorizing the Public Assistance program. In the Disaster Recovery Reform Act of 2018 (DRRA),[2] Congress directed FEMA to generally review those factors, specifically the estimated cost of the assistance factor, and to update them through rulemaking, as appropriate.[3] Congress also directed FEMA to give greater consideration to the recent multiple disasters and localized impacts factors[4] when evaluating a request for a major disaster.[5]

On January 20, 2021, Assistant to the President and Chief of Staff Ronald A. Klain issued a memorandum titled ''Regulatory Freeze Pending Review'' to ensure that President Biden's appointees or designees have the opportunity to review pending rules.[6] This regulatory freeze does not require FEMA to withdraw pending notices of proposed rulemaking out for public comment, but the agency wants to ensure the memorandum's intent is met and all parties are given ample opportunity to provide input. FEMA is therefore extending the comment period for this rule from February 12 to March 12, 2021, and will also hold a public meeting on February 24, 2021, to solicit feedback on the proposed rule. These measures will help ensure all interested parties have sufficient opportunity to review and provide comments on the proposed changes.

As published on December 14, 2020, FEMA proposes to amend the estimated cost of the assistance factor in 44 CFR 206.48(a)(1) to raise the per capita indicator and the minimum threshold. As is detailed in the proposed rule, the current per capita indicator and minimum threshold do not provide an accurate measure of States' capabilities to respond to disasters.[7] FEMA does not propose to substantively revise the localized impacts factor because it is already sufficiently flexible to address the requirements of section 1232 of the DRRA. FEMA also does not propose any revisions to the recent multiple disasters factor, but requests comment on whether the 12-month time limit currently in place is sufficient to address this factor as required by the DRRA.

DRRA further provided that FEMA shall engage in meaningful consultation with relevant representatives of State regional, local, and Indian tribal government stakeholders.[8] FEMA's public meeting will solicit feedback on the proposed rule from these stakeholders in fulfillment of this requirement. FEMA welcomes input, both at the meeting and in written comments submitted separately, on considerations of local economic factors such as the local assessable tax base; the local sales tax; the median income and poverty rate of the local affected area as it compares to that of the State and the economic health of the State, including such factors as the State unemployment rate compared to the national rate; and how such factors can be used to evaluate whether the affected State and local governments have been overwhelmed.[9]

FEMA will carefully consider all relevant comments received during the meeting, and during the rest of the comment period for the proposed rule, which now runs through March 12, 2021, before issuing a final rule. All verbal comments or remarks provided on the proposed rule during the meeting will be recorded and posted to the rulemaking docket on *https://www.regulations.gov*.

MaryAnn Tierney,

Acting Deputy Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–02459 Filed 2–4–21; 8:45 am]

BILLING CODE 9111–23–P

[1] 85 FR 80719.

[2] Public Law 115–254, 132 Stat. 3438 (Oct. 5, 2018).

[3] DRRA sec. 1239.

[4] 44 CFR 206.48(a)(2), (5).

[5] DRRA sec. 1232.

[6] *See* Memorandum on Regulatory Freeze Pending Review for the Heads of Executive Departments and Agencies (Jan. 20, 2021), available at *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/regulatory-freeze-pending-review/* (last visited Jan. 22, 2021).

[7] *See* 85 FR 80719.

[8] *Id.*

[9] *See* Explanatory Statement for H.R.133, Consolidated Appropriations Act, 2021, 166 Cong. Rec. H8479 (daily ed. Dec. 21, 2020).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[GN Docket No. 20–32; Report No. 3165; FRS 17451]

Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petitions for Reconsideration; correction.

SUMMARY: This document corrects a date that appeared in the **Federal Register** on January 22, 2021. That **Federal Register** document, which invited comment on the Petitions for Reconsideration (Petitions) filed in the Commission's rulemaking proceeding, incorrectly listed the date by which replies to an opposition to the Petitions must be filed as February 16, 2021, rather than February 18, 2021.

DATES: Effective on February 5, 2021.

FOR FURTHER INFORMATION CONTACT: Valerie Barrish, Office of Economics and Analytics, Auctions Division, (202) 418–0660, or *Valerie.Barrish@fcc.gov*.

SUPPLEMENTARY INFORMATION: This document corrects the date by which by which replies to an opposition to the Petitions for Reconsideration (Petitions) filed in the Commission's rulemaking proceeding must be filed, published at 86 FR 6611 on January 22, 2021, which incorrectly listed that date as February 16, 2021, rather than February 18, 2021.

In FR Doc. 2021–00464 appearing on page 6611 in the **Federal Register** of Friday, January 22, 2021, the following corrections are made:

1. On page 6611, in the second column, in the **DATES** section, the statement ''Replies to an opposition must be filed on or before February 16, 2021'' is corrected to read ''Replies to an opposition must be filed on or before February 18, 2021.''

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2021–02437 Filed 2–4–21; 8:45 am]

BILLING CODE 6712–01–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1180

[Docket No. EP 282 (Sub-No. 21)]

Petition for Rulemaking—Railroad Consolidation Procedures—Exemption for Emergency Temporary Trackage Rights

AGENCY: Surface Transportation Board.

ACTION: Petition for rulemaking.

SUMMARY: The Board institutes a rulemaking proceeding to consider a proposal by the Association of American Railroads to establish a new emergency temporary trackage rights class exemption.

DATES: Published in the **Federal Register** on February 5, 2021. The Board will provide an opportunity for additional public participation in a subsequent decision.

ADDRESSES: Comments and replies may be filed with the Board via e-filing on the Board's website at *www.stb.gov* and will be posted to the Board's website.

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: On October 9, 2020, the Association of American Railroads (AAR) filed a petition requesting that the Board initiate a rulemaking proceeding to establish a new emergency temporary trackage rights class exemption that could be invoked in specific situations and would allow emergency temporary trackage rights to take effect immediately, without need to waive the 30-day notice requirement under 49 CFR 1180.4(g)(1). AAR argues that the current two-step approach for obtaining temporary trackage rights that take effect on less than 30 days' notice is inefficient, and AAR asserts that its proposed class exemption would benefit shippers, railroads, and the Board by providing a streamlined and simple approach for obtaining temporary trackage rights in emergency situations, ensuring the continued flow of commerce without any decrease in regulatory oversight. (Pet. 1–4.) On November 4, 2020, Samuel J. Nasca, for and on behalf of SMART-Transportation Division-New York State Legislative Board (SMART/TD–NY), filed a reply in opposition to AAR's petition.

The Board concludes that it is appropriate to institute a rulemaking proceeding to consider AAR's proposal. The Board will provide an opportunity for additional public participation in a subsequent decision.

List of Subjects in 49 CFR 1180

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

It is ordered:

1. AAR's request to initiate a rulemaking proceeding is granted, as discussed above.

2. Notice of this decision will be published in the **Federal Register**.

3. This decision is effective on its service date.

Decided: February 1, 2021.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2021–02452 Filed 2–4–21; 8:45 am]

BILLING CODE 4915–01–P

Notices

Federal Register
Vol. 86, No. 23
Friday, February 5, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 2, 2021.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 8, 2021 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: How States Safeguard Supplemental Nutrition Assistance Program Participant's Personally Identifiable Information (PII).

OMB Control Number: 0584–NEW.

Summary of Collection: Section 11(e)(8) of the Food, Conservation, and Energy Act of 2008 requires that these millions of households must submit personally identifiable information (PII) in order to receive SNAP benefits. PII includes information that directly identifies individuals, such as individuals' names and Social Security numbers, as well as information like home addresses, which can be used to deduce the identity of an individual. While State agencies (SAs) implement policies to safeguard SNAP PII, little is systematically known about the policies and practices that SAs have in place. Accordingly, FNS wants to assess the ways that States safeguard SNAP PII and identify best practices to protect such information.

Need and Use of the Information: FNS will use the information collected to provide information to SAs on ways they can improve how they safeguard SNAP PII. This study has five main objectives: (1) Describe legislation, regulations, and policies that address how participants' PII must be safeguarded; (2) describe methods that can be used to safeguard PII; (3) describe how States currently safeguard participants' PII; (4) examine the consistency of safeguarding practices across States; and (5) provide recommendations to States to improve safeguarding of PII.

Description of Respondents: State, Local, Tribal Government, Private Sector (Business-for-profit and not-for profit).

Number of Respondents: 186.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 132.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–02414 Filed 2–4–21; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Flathead Resource Advisory Committee (RAC) will meet in Kalispell, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: https://www.fs.usda.gov/main/flathead/workingtogether/advisorycommittees.

DATES: The meetings will be held on:

Monday, March 8, 2021 at 4:00 p.m. Mountain Standard Time;

Tuesday, March 9, 2021 at 4:00 p.m. Mountain Standard Time;

Wednesday, March 10, 2021 at 4:00 p.m. Mountain Standard Time;

Thursday, March 11, 2021 at 4:00 p.m. Mountain Standard Time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meetings will be held virtually.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Flathead National Forest, Supervisor's Office. Please call ahead at 406–758–5200 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Janette Turk, RAC Coordinator, by phone at 406–758–5335 or via email at *janette.turk@usda.gov.*

Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00

a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Discuss, recommend, and approve new Title II projects

The meetings are open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement at any of the meetings should request in writing by Friday, March 5, to be scheduled on that meeting's agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after any of the meetings. Written comments and requests for time for oral comments must be sent to Janette Turk, RAC Coordinator, 650 Wolfpack Way, Kalispell, Montana 59901; by email to *janette.turk@usda.gov,* or via facsimile to 406–758–5379.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: February 1, 2021.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2021–02366 Filed 2–4–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

El Dorado County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The El Dorado County Resource Advisory Committee (RAC) will hold two virtual meetings. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Act. RAC information can be found at the following website: *https://www.fs.usda.gov/main/eldorado/workingtogether/advisorycommittees.*

DATES: The meetings will be held at 4:00p.m., Pacific Standard Time on March 3, 2021 and March 17, 2021.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held with virtual attendance only. For virtual meeting information, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at: Eldorado National Forest Supervisor's Office, 100 Forni Road, Placerville, CA. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Kristi Schroeder, Public Affairs Specialist by phone at (530) 305–6864 or via email at *kristi.schroeder@usda.gov.*

Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to:

1. Review FACA regulations, update committee governing documents, review past practices and determine new process for project proposals, and solicit project proposals.

The meetings are open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing 7 days before either meeting to be scheduled on that meeting's agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meetings. Written comments and requests for time to make oral comments must be sent to Kristi Schroeder, Eldorado National Forest, 100 Forni Road, Placerville, California 95667; by email to *kristi.schroeder@usda.gov,* or via facsimile to (530) 621–5297.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case-by-case basis.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2021–02363 Filed 2–4–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Montana Resource Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Montana Resource Advisory Committee (RAC) will meet virtually. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information and virtual meeting information can be found at the following website: *https://www.fs.usda.gov/main/bdnf/workingtogether/advisorycommittees.*

DATES: The meeting will be held on Friday, March 19, 2021 at 9:00 a.m., Mountain Standard Time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held virtually.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Beaverhead-Deerlodge National Forest Supervisor's Office. Contact 406–683–3987 to facilitate that inspection.

FOR FURTHER INFORMATION CONTACT: Jeanne Dawson, RAC Coordinator, by phone at 406–683–3987 or by email at *jeanne.dawson@usda.gov.*

Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss and recommend new Title II projects. This meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Wednesday, March 10, 2021, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments, requests for time for oral comments or requests for instructions to participate virtually must be sent to Jeanne Dawson, RAC Coordinator, 420 Barrett Street, Dillon, Montana 59725, by email to *jeanne.dawson@usda.gov,* or by phone at 406–683–3987.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2021–02361 Filed 2–4–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tri-County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tri-County Resource Advisory Committee (RAC) will hold a virtual meeting. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information and virtual meeting information can be found at the following website: *https://www.fs.usda.gov/main/bdnf/workingtogether/advisorycommittees.*

DATES: The meeting will be held on Wednesday, March 10, 2021 at 9:00 a.m., Mountain Standard Time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held virtually.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Beaverhead-Deerlodge National Forest Supervisor's Office. Contact 406–683–3987 to facilitate that inspection.

FOR FURTHER INFORMATION CONTACT: Jeanne Dawson, RAC Coordinator, by phone at 406–683–3987 or by email at *jeanne.dawson@usda.gov.*

Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss and recommend new Title II projects. This meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Wednesday, February 24, 2021, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments, requests for time for oral comments or requests for instructions to participate virtually must be sent to Jeanne Dawson, RAC Coordinator, 420 Barrett Street, Dillon, Montana 59725, by email to *jeanne.dawson@usda.gov,* or by phone at 406–683–3987.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 1, 2021.

Cikena Reid,

USDA Committee Officer.

[FR Doc. 2021–02362 Filed 2–4–21; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Montana Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of webhearing.

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 Montana Advisory Committee (Committee) to the Commission will hold a web hearing from 1:00 p.m. to 3:30 p.m. (MT) on Tuesday, March 2, 2021. The purpose of the Montana Advisory Committee meeting is to hear testimony examining voting issues impacting Native Americans. This is the first of two web hearings focused on this topic. Meeting materials and presentations will be available before and after the event at *http://bit.ly/MTSAC2021.*

DATES: Tuesday, March 2, 2021 from 1:00 p.m. to 3:30 p.m. (MT).

Public Call-In Information (audio only): Dial: (800) 360–9505, Access code: 199 695 6272.

Web Access Information (visual only): The online portion of the meeting may be accessed through the following link Webex: *http://bit.ly/MTSAC3221.*

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer (DFO) at *afortes@usccr.gov* or by phone at (202) 681–0857.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–360–9505, Access code: 199 695 6272. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or email Ana Victoria Fortes at *afortes@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlyAAA.*

Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Opening Remarks (1:00 p.m.–1:15 p.m.)
II. Speaker Presentations (1:15 p.m.–2:15 p.m.)
III. Q & A (2:15 p.m.–3:10 p.m.)
IV. Public Comment (3:10 p.m.–3:25 p.m.)
V. Closing Remarks (3:25 p.m.–3:30 p.m.)

Dated: February 1, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–02378 Filed 2–4–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Montana Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of webhearing.

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 Montana Advisory Committee (Committee) to the Commission will hold a web hearing from 1:00 p.m. to 3:30 p.m. (MT) on Thursday, April 15, 2021. The purpose of the Montana Advisory Committee meeting is to hear testimony examining voting issues impacting Native Americans. This is the second of two web hearings focused on this topic. Meeting materials and presentations will be available before and after the event at *http://bit.ly/MTSAC2021.*

DATES: Thursday, April 15, 2021 from 1:00 p.m. to 3:30 p.m. (MT).

Public Call-In Information (audio only): Dial: (800) 360–9505, Access code: 199 941 4784.

Web Access Information (visual only): The online portion of the meeting may be accessed through the following link Webex: *http://bit.ly/MTSAC41521.*

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer (DFO) at *afortes@usccr.gov* or by phone at (202) 681–0857.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–360–9505, Access code: 199 941 4784. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or email Ana Victoria Fortes at *afortes@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlyAAA.*

Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Opening Remarks (1:00 p.m.–1:15 p.m.)
II. Speaker Presentations (1:15 p.m.–2:15 p.m.)
III. Q & A (2:15 p.m.–3:10 p.m.)
IV. Public Comment (3:10 p.m.–3:25 p.m.)
V. Closing Remarks (3:25 p.m.–3:30 p.m.)

Dated: February 1, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–02379 Filed 2–4–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–838, A–570–892]

Carbazole Violet Pigment 23 From India and the People's Republic of China: Final Results of Expedited Third Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable February 5, 2021.

SUMMARY: As a result of these sunset reviews, the Department of Commerce (Commerce) finds that revocation of the antidumping duty orders on carbazole violet pigment 23 (CVP–23) from India and the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Margaret Collins (India) or Marc Castillo (China), AD/CVD Operations, Office VI, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6250 or (202) 482–0519, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 2004, Commerce published the antidumping duty orders on CVP–23 from India and China.[1] On

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbazole Violet Pigment 23 from India,* 69 FR 77988 (December 29, 2004); and *Antidumping Duty Order: Carbazole Violet Pigment 23 from the People's Republic of China,* 69 FR 77987 (December 29, 2004) (collectively, the *Orders*).

October 1, 2020, Commerce published the notice of initiation of the third sunset reviews of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930 (the Act).[2] On October 9, 2020, Commerce received a notice of intent to participate in these sunset reviews from Sun Chemical Corporation (Sun Chemical), a petitioner in the original investigation, within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] Sun Chemical claimed interested party status under section 771(9)(C) of the Act as a domestic producer of CVP–23. On October 30, 2020, Sun Chemical provided complete substantive responses for these reviews within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] Commerce received no substantive responses from any other interested parties, nor was a hearing requested. On November 20, 2020, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[5] As a result, Commerce conducted expedited (120-day) sunset reviews of the *Orders,* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

Scope of the Orders

The merchandise subject to the *Orders* is certain CVP–23. Imports of merchandise included within the scope of this order are currently classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States. The Issues and Decision Memorandum, which is hereby adopted by this notice, provides a full description of the scope of the *Orders.*[6]

Analysis of Comments Received

All issues raised in these reviews, including the likelihood of continuation or recurrence of dumping in the event of revocation, and the magnitude of dumping margins likely to prevail if the *Orders* were revoked, are addressed in the accompanying Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *https://enforcement.trade.gov/frn.* The signed and electronic versions of the Decision Memorandum are identical in content.

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the antidumping duty orders on CVP–23 from India and China would likely lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail is up to 241.32 percent for China and up to 44.80 percent for India.[7]

Administrative Protective Order (APO)

This notice serves as the only reminder to interested parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218, and 19 CFR 351.221(c)(5)(ii).

Dated: January 29, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Orders
IV. History of the Orders
V. Legal Framework
VI. Discussion of the Issues
  a. Likelihood of Continuation or Recurrence of Dumping
  b. Magnitude of the Margins Likely to Prevail
VII. Final Results of Sunset Reviews
VIII. Recommendation

[FR Doc. 2021–02457 Filed 2–4–21; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Initiation of Five-Year ("Sunset") Reviews,* 85 FR 61928 (October 1, 2020).

[3] *See* Sun Chemical's Letter, "Carbazole Violet Pigment 23 from The Republic Of India: Notice Of Intent To Participate In 3rd Sunset Review Of Antidumping Duty Order," dated October 9, 2020; *see also* Sun Chemical's Letter, "Carbazole Violet Pigment 23 From The People's Republic of China: Notice Of Intent To Participate In 3rd Sunset Review Of Antidumping Duty Order," dated October 9, 2020.

[4] *See* Sun Chemical's Letters, "Carbazole Violet Pigment 23 from China: Substantive Response of the Domestic Industry to Commerce's Notice of Initiation of Five-Year ("Sunset") Reviews" and "Carbazole Violet Pigment 23 from India: Substantive Response of the Domestic Industry to Commerce's Notice of Initiation of Five-Year ("Sunset") Reviews," each dated October 30, 2020.

[5] *See* Commerce's Letter, "Sunset Review Initiated on October 1, 2020," dated November 20, 2020.

[6] *See* Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders on Carbazole Violet Pigment 23 from India and the People's Republic of China," dated concurrently with this notice.

[7] *Id.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA814]

Pacific Island Fisheries; Experimental Fishing Permit

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

ACTION: Notice; issuance of permit.

SUMMARY: NMFS is issuing an experimental fishing permit (EFP) to the Hawaii Longline Association (HLA) to test the conservation and management usefulness of tori lines (bird scaring streamers) in the Hawaii deep-set longline fishery.

DATES: The EFP is authorized from January 27, 2021, through January 26, 2022.

ADDRESSES: Copies of the EFP, HLA's application, and supporting documents are available at *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0155.*

FOR FURTHER INFORMATION CONTACT: Sarah Ellgen, Sustainable Fisheries, NMFS Pacific Islands Regional Office, tel (808) 725–5173.

SUPPLEMENTARY INFORMATION: NMFS is issuing an EFP to the HLA under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific, and regulations at 50 CFR 665.17. HLA will use up to four stern-setting vessels to test tori lines north of 23° N. Vessels will not be required to use strategic offal

discharge (discharging bait and fish offal) when seabirds are present, or blue-dyed bait, both of which are normally required north of 23° N.

On December 8, 2020, NMFS published a notice of HLA's EFP application and request for public comments (85 FR 78997); we did not receive any comments. More information about the EFP may be found in that notice, and in HLA's application (see **ADDRESSES**).

The EFP is effective for one year, unless revoked, suspended, or modified earlier.

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

Dated: February 2, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–02424 Filed 2–4–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA847]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; availability of draft Environmental Assessment for public comment.

SUMMARY: Notice is hereby given that a draft Environmental Assessment (EA) is available for public comment on a summer steelhead hatchery program and trap and haul program in the Skykomish River Basin, Washington. A Hatchery and Genetics Management Plan (HGMP) was submitted to NMFS for review and determination under the Endangered Species Act (ESA) 4(d) Rule. The trap and haul program would be permitted under section 10 of the ESA.

DATES: Comments must be received at the appropriate address (see **ADDRESSES**) no later than 5 p.m. Pacific time on March 8, 2021. Comments received after this date may not be considered.

ADDRESSES: Written responses should be addressed to the NMFS Sustainable Fisheries Division, 1201 NE Lloyd Blvd., Portland, OR 97232. Comments may be submitted by email. The mailbox address for providing email comments is: *Hatcheries.Public.Comment@noaa.gov.* Include in the subject line of the email comment the following identifier: Comments on the EA for the Skykomish River summer steelhead hatchery and/or Sunset Falls trap and haul program. The documents are available on the internet at *https://www.fisheries.noaa.gov/action/skykomish-summer-steelhead-hatchery-program-and-sunset-falls-trap-and-haul-program.*

FOR FURTHER INFORMATION CONTACT: Emi Melton at (503) 736–4739 or by email at *emi.melton@noaa.gov.*

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

- Puget Sound Chinook Salmon (*Oncorhynchus tshawytscha*): Threatened, naturally and artificially propagated
- Puget Sound Steelhead (*Oncorhynchus mykiss*): Threatened, naturally and artificially propagated

Background

The Tulalip Tribes and Washington Department of Fish and Wildlife (collectively the co-managers) have submitted an HGMP to NMFS pursuant to limit six of the ESA 4(d) Rule for a summer steelhead hatchery program in the Skykomish River Basin, Washington.

The hatchery program is intended to contribute to fulfilling federal tribal trust responsibilities and treaty rights guaranteed through treaties and affirmed in *U.S.* v. *Washington* (1974). It is also designed to contribute to the survival and recovery of Puget Sound steelhead and produce summer steelhead for sustainable fisheries.

The Washington Department of Fish and Wildlife also submitted an ESA section 10(a)(1)(A) permit application for operation of a trap and haul program in the Skykomish River Basin. This program collects various species of salmon, steelhead, and trout from the fish ladder at Sunset Falls and transports the fish upstream for release into high quality habitat above the falls.

Authority

16 U.S.C. 1531 *et seq.;* 16 U.S.C. 742a *et seq.;* Section 222.303 also issued under 16 U.S.C. 1361 *et seq.*

Dated: February 1, 2021.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–02380 Filed 2–4–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA851]

Marine Mammals; File No. 25462

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that America Films, Ltd., Embassy House, Queens Avenue, Bristol, BS8 1SB, United Kingdom, (Responsible Party: Tom Stephens), has applied in due form for a permit to conduct commercial or educational photography on gray whales (*Eschrichtius robustus*).

DATES: Written, telefaxed, or email comments must be received on or before March 8, 2021.

ADDRESSES: These documents are available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 25462 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Jordan Rutland, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to film migrating gray whales in California waters for an episode of a television series celebrating the wildlife of North America. Filmmakers may target up to 204 whales in April 2021 for filming topside from the vessel and from an unmanned aircraft system. Up to 68 California sea lions (*Zalophus californianus*), 68 harbor seals (*Phoca vitulina richardii*), 210 short-beaked common dolphins (*Delphinus delphis*), 210 bottlenose dolphins (*Tursiops truncatus*), and 210 Pacific white-side dolphins (*Lagenorhynchus obliquidens*) could be incidentally harassed during filming. The project is scheduled for broadcast globally in 2022 on the

National Geographic Channel and streamed on the Disney+ platform. To allow for scheduling changes, the permit would be valid until May 31, 2021.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 2, 2021.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–02431 Filed 2–4–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Alaska American Fisheries Act Reports

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on October 21, 2020, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: Alaska American Fisheries Act Reports.

OMB Control Number: 0648–0401.

Form Number(s): None.

Type of Request: Regular submission [extension of a current information collection].

Number of Respondents: 11.

Average Hours per Response: AFA Cooperative Contract 8 hours; AFA Annual Cooperative Report 16 hours; Incentive Plan Agreement amendment 50 hours; IPA Annual Report 80 hours; IPA administrative appeals 4 hours.

Total Annual Burden Hours: 486 hours.

Needs and Uses: The National Marine Fisheries Services (NMFS), Alaska Region, is requesting extension of a currently approved information collection for American Fisheries Act reporting requirements.

NMFS manages the groundfish fisheries of the Bering Sea and Aleutian Islands Management Area in the Exclusive Economic Zone off Alaska. The North Pacific Fishery Management Council (Council) prepared the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.,* and other applicable laws. Regulations implementing the FMP are at 50 CFR part 679.

The Bering Sea pollock fishery is managed under the American Fisheries Act (AFA). The purpose of the AFA was to tighten U.S. ownership standards for U.S. fishing vessels under the Anti-reflagging Act and to provide the Bering Sea pollock fleet the opportunity to conduct its fishery in a more rational manner while protecting non-AFA participants in the other fisheries. The AFA established sector allocations in the Bering Sea pollock fishery, determined eligible vessels and processors, allowed the formation of cooperatives, set limits on the participation of AFA vessels in other fisheries, and imposed special catch weighing and monitoring requirements on AFA vessels.

This information collection contains the annual and periodic reporting requirements for AFA cooperatives. These requirements include reports about on-going fishing operations of the cooperatives and reports specifically focused on efforts to minimize salmon bycatch in the Bering Sea pollock fishery. These reporting requirements are located at 50 CFR 679.21 and 679.61.

This information is used to manage the BS pollock fishery, to evaluate the salmon bycatch management measures, and to provide the public with information about how the program operates and information about bycatch reduction under this program. This information collection provides the Council and NMFS with information about the organization and fishing operations of the AFA cooperatives, allocations to the AFA cooperatives, and the effectiveness of the Chinook salmon and chum salmon bycatch management measures. This information is necessary to ensure long-term conservation and abundance of salmon and pollock, maintain a healthy marine ecosystem, and provide maximum benefit to fishermen and communities that depend on salmon and pollock.

Affected Public: Business or other for-profit organizations.

Frequency: Annually, On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits, Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act, American Fisheries Act.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0401.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–02443 Filed 2–4–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Application Forms for Membership on a National Marine Sanctuary Advisory Council

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on

proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before April 6, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0397 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Katie Denman, National Advisory Council Coordinator, Office of National Marine Sanctuaries, 1305 East-West Highway, Silver Spring, MD 20910, (240) 533–0702, and *katie.denman@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for revision and extension of an approved information collection.

Section 315 of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1445a) allows the Secretary of Commerce to establish one or more advisory councils to provide advice to the Secretary regarding the designation and management of national marine sanctuaries. Executive Order 13178 similarly established a Coral Reef Ecosystem Reserve Council pursuant to the NMSA for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve. Councils are individually chartered for each site to meet its specific needs. Once an advisory council has been chartered, a sanctuary superintendent starts a process to recruit members for that council by providing notice to the public and requesting interested parties to apply for the available seat(s) (*e.g.,* Research, Education) and position(s) (*i.e.,* council member or alternate). The information obtained through this application process will be used to determine the qualifications of the applicant for membership on the advisory council.

Two application forms are currently associated with this information collection: (a) National Marine Sanctuary Advisory Council Application form; and (b) National Marine Sanctuary Advisory Council Youth Seat Application form. Application form instructions will specify requirements imposed upon the agency when reviewing applicants as potential council members or alternates, including the need to assess potential conflicts of interest (or other issues). Questions posed to applicants are being reviewed and an additional question is being added to solicit new information pertinent to the function of advisory councils. Existing questions may be reordered, reworded, and at times, condensed to improve the organization of applicant responses and, thereby, simplify the applicant review process. We do not believe that revisions to the application would appreciably change the average annual number of respondents or the reporting burden for the information requirements supporting solicitation of new advisory council members.

II. Method of Collection

Complete applications may be submitted electronically via email (with attachments), by mail, or by facsimile transmission.

III. Data

OMB Control Number: 0648–0397.
Form Number: None.
Type of Review: Regular submission (revision and extension of a currently approved collection).
Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions.
Estimated Number of Respondents: 594.
Estimated Time per Response: 1 hour.
Estimated Total Annual Burden Hours: 594 hours.
Estimated Total Annual Cost to Public: $1,188.00.
Respondent's Obligation: Voluntary.
Legal Authority: 16 U.S.C. 1445a.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) 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; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our 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 may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–02442 Filed 2–4–21; 8:45 am]

BILLING CODE 3510–NK–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds product(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to the Procurement List:* March 07, 2021.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

On 10/2/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product(s) are added to the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7930–00–NIB–2207—Disinfectant, Hard-Surface, Ready-To-Use, 32 oz Spray Bottle
7930–00–NIB–2208—Disinfectant, Hard-Surface, Ready-To-Use, 1 Gallon Bottle
Designated Source of Supply: Lighthouse for the Blind and Visually Impaired, San Francisco, CA
Contracting Activity: Federal Acquisition Service, GSA/FSS Greater Southwest Acquisiti
List Designation: A-List
Mandatory For: Total Government Requirement

Michael R. Jurkowski,
Deputy Director, Business & PL Operations.

[FR Doc. 2021–02434 Filed 2–4–21; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the procurement list.

SUMMARY: The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and service(s) previously furnished by such agencies.

DATES: Comments must be received on or before: March 7, 2021.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Grounds Maintenance
Mandatory for: Federal Aviation Administration, Covington Air Traffic Control Tower (CVG ATCT), Erlanger, KY and Covington VHF Omni-Range Tactical Air Navigation (VORTAC), Burlington, KY
Designated Source of Supply: Greater Cincinnati Behavioral Health Services, Cincinnati, OH
Contracting Activity: Federal Aviation Administration, 697Dck Regional Acquisitions Svcs

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
8415–01–538–6057—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, Small/Regular
8415–01–538–6067—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, Medium/Regular
8415–01–538–6074—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, Large/Regular
8415–01–538–6080—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, X-Large/Regular
8415–01–546–8657—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, X-Small/Short
8415–01–546–8667—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, X-Small/Regular
8415–01–546–8745—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, Small/Short
8415–01–546–8758—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, Small/Long
8415–01–546–8809—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, Medium/Long
8415–01–546–8820—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, X-Large/X-Long
8415–01–546–8828—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, XX-Large/Regular
8415–01–546–8829—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, XX-Large/Long
8415–01–546–8834—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, XX-Large/X-Long
Mandatory Source of Supply: Blind Industries & Services of Maryland, Baltimore, MD
Contracting Activity: DLA Troop Support, Philadelphia, PA
NSN(s)—Product Name(s):
8415–01–538–6082—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, Large/Long
8415–01–538–6089—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, X-Large/Long
8415–01–580–0702—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, X-Small-Short
8415–01–580–0706—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, X-Small-Regular
8415–01–580–0713—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, Small-Short
8415–01–580–0724—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, Small-Regular
8415–01–580–0728—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, Small-Long
8415–01–580–0730—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, Medium-Regular
8415–01–580–0733—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, Medium-Long
8415–01–580–0744—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, Large-Regular
8415–01–580–0751—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, Large-Long
8415–01–580–0754—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, X-Large-Regular

8415–01–580–0759—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, X-Large-Long
8415–01–580–0760—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, X-Large-X-Long
8415–01–580–0925—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, XX-Large-Regular
8415–01–580–0936—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, XX-Large-Long
8415–01–580–0941—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, OEFCP, XX-Large-X-Long
Mandatory Source of Supply: Blind Industries & Services of Maryland, Baltimore, MD
Contracting Activity: DLA Troop Support, Philadelphia, PA
NSN(s)—Product Name(s):
MR 1104—Pop Up Mesh Hamper
MR 11063—Grocery Shopping Tote Bag, Collapsible
Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: Military Resale-Defense Commissary Agency
NSN(s)—Product Name(s):
MR 1069—Mop, Ratchet, Twist Action, Microfiber
MR 1079—Refill, Mop, Ratchet, Twist Action, Microfiber
Designated Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: Military Resale-Defense Commissary Agency
NSN(s)—Product Name(s):
7520–01–622–7154—Portable Desktop Clipboard, 10'' W x 2–3/5'' D x 16'' H, Army Green
7520–01–622–7155—Portable Desktop Clipboard with Calculator, 10'' W x 2–3/5'' D x 16'' H, Blue
7520–01–622–7157—Portable Desktop Clipboard with Calculator, 10'' W x 2–3/5'' D x 16'' H, Black
Designated Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: GSA/FAS Admin Svcs Acquisition Br(2, New York, NY
NSN(s)—Product Name(s):
7510–01–600–5977—Toner Cartridge, Laser, Double Yield, Compatible w/ Lexmark T640/T642/T644 Series Printers
Designated Source of Supply: TRI Industries NFP, Vernon Hills, IL
Contracting Activity: GSA/FAS Admin Svcs Acquisition Br(2, New York, NY
NSN(s)—Product Name(s):
5340–00–137–7767—Strap Assembly, 1'' x 67''
Designated Source of Supply: Cambria County Association for the Blind and Handicapped, Johnstown, PA
Contracting Activity: DLA Troop Support, Philadelphia, PA
NSN(s)—Product Name(s):
MR 3226—Fashion Claw Clip Rectangular
MR 3230—So Gelous Paddle Brush
MR 3239—Curl Contour Clips
Designated Source of Supply: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY
Contracting Activity: Military Resale-Defense Commissary Agency
NSN(s)—Product Name(s):
3990–00–NSH–0075—Pallet, Demolition Testing, 24″ x 48″
Contracting Activity: W4MM USA Joint Munitions Cmd, Rock Island, IL

Service(s)

Service Type: Administrative/General Support Services
Mandatory for: GSA, Southwest Supply Center: 819 Taylor Street, Fort Worth, TX
Designated Source of Supply: Beacon Lighthouse, Inc., Wichita Falls, TX
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Reproduction Service
Mandatory for: Fort Ord, Fort Ord, CA
Designated Source of Supply: Beacon Lighthouse, Inc., Wichita Falls, TX
Contracting Activity: Dept of the Army, W40M RHCO-Atlantic USAHCA
Service Type: Data Entry
Mandatory for: U.S. Department of Housing and Urban Development: 40 Marietta Street NW, 14th Floor, Atlanta, GA
Designated Source of Supply: Vision Rehabilitation Services of Georgia, Inc., Smyrna, GA
Contracting Activity: Housing and Urban Development, Department of, Dept of Housing and Urban Development

Michael R. Jurkowski,
Deputy Director, Business & PL Operations.

[FR Doc. 2021–02433 Filed 2–4–21; 8:45 am]
BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Market Risk Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of meeting.

SUMMARY: The Commodity Futures Trading Commission (CFTC) announces that on February 23, 2021, from 9:30 a.m. to 2:00 p.m. (Eastern Standard Time), the Market Risk Advisory Committee (MRAC) will hold a public meeting via teleconference. At this meeting, the MRAC will receive reports from its subcommittees: Climate-related Market Risk, CCP Risk and Governance, Market Structure, and Interest Rate Benchmark Reform. The meeting will also include a discussion regarding diversity, equity, and inclusion in the derivatives markets as well as other related financial markets.

DATES: The meeting will be held on February 23, 2021, from 9:30 a.m. to 2:00 p.m. (Eastern Standard Time). Please note that the teleconference may end early if the MRAC has completed its business. Members of the public who wish to submit written statements in connection with the meeting should submit them by February 16, 2021.

ADDRESSES: The meeting will be held via teleconference. You may submit public comments, identified by ''Market Risk Advisory Committee,'' through the CFTC website at *https://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the website. If you are unable to submit comments online, contact Alicia L. Lewis, Designated Federal Officer, via the information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice, to discuss alternate means of submitting your comments.

Any statements submitted in connection with the committee meeting will be made available to the public, including by publication on the CFTC website, *https://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Alicia L. Lewis, MRAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–5862.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Members of the public may listen to the meeting by telephone by calling a domestic toll-free telephone or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

Domestic Toll Free: 1–877–951–7311.

International Toll and Toll Free: Will be posted on the CFTC's website, *https://www.cftc.gov,* on the page for the meeting, under Related Links.

Pass Code/Pin Code: 2513365.

The meeting agenda may change to accommodate other MRAC priorities. For agenda updates, please visit the MRAC committee site at: *https://www.cftc.gov/About/CFTCCommittees/MarketRiskAdvisoryCommittee/mrac_meetings.html.*

All written submissions provided to the CFTC in any form will also be published on the CFTC's website. Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

(Authority: 5 U.S.C. app. 2 section 10(a)(2))

Dated: February 2, 2021.

Christopher Kirkpatrick,
Secretary of the Commission.

[FR Doc. 2021–02440 Filed 2–4–21; 8:45 am]
BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0016]

Agency Information Collection Activities; Comment Request; Privacy Act Request Form

AGENCY: Office of Management (OM), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before April 6, 2021.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2021–SCC–0016. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave SW, LBJ, Room 6W208B, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Elise Cook, (202) 401–3769.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Privacy Act Request Form.

OMB Control Number: 1880–0546.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: Individuals or Households *Total Estimated Number of Annual Responses:* 130.

Total Estimated Number of Annual Burden Hours: 65.

Abstract: The collection is necessary under 5 U.S.C. Section 552a(b) to collect information from individuals requesting information under the Privacy Act (PA). The Department will use the information to provide documents that are responsive to a Privacy Act or FOIA/Privacy Act request under the Freedom of Information Act.

Dated: February 2, 2021.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–02411 Filed 2–4–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0017]

Agency Information Collection Activities; Comment Request; Pell Grant Reporting Under the Common Origination and Disbursement (COD) System

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension to a currently approved collection.

DATES: Interested persons are invited to submit comments on or before April 6, 2021.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2021–SCC–0017. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the

information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Pell Grant Reporting under the Common Origination and Disbursement (COD) System.

OMB Control Number: 1845–0039.

Type of Review: An extension to a currently approved collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 6,609,456.

Total Estimated Number of Annual Burden Hours: 462,662.

Abstract: The Federal Pell Grant (Pell Grant) program is a student financial assistance program authorized under the Higher Education Act of 1965, as amended (HEA). The program provides grant assistance to an eligible student attending an institution of higher education. The institution determines the student's award and disburses program funds on behalf of the Department of Education (the Department). Institutions are required to report student Pell Grant payment information to the Department electronically. Electronic reporting is conducted through the Common Origination and Disbursement (COD) system. The COD system is used by institutions to request, report, and reconcile grant funds received from the Pell Grant program. The Department uses the information collected in the COD system to aid in ensuring compliance with fiscal and administrative requirements under the HEA for the Pell Grant program and under 34 CFR 690 for the Pell Grant program regulations.

Dated: February 2, 2021.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–02426 Filed 2–4–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1355–009.
Applicants: Southern California Edison Company.
Description: Notice of Change in Status of Southern California Edison Company.
Filed Date: 1/29/21.
Accession Number: 20210129–5313.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER10–2331–075.
Applicants: J.P. Morgan Ventures Energy Corporation.
Description: Notice of Non-Material Change in Status of J.P. Morgan Ventures Energy Corporation.
Filed Date: 1/29/21.
Accession Number: 20210129–5414.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER11–4506–003.
Applicants: Devonshire Energy LLC.
Description: Notice of Change in Status of Devonshire Energy LLC.
Filed Date: 1/29/21.
Accession Number: 20210129–5409.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER18–1906–007; ER16–221–008; ER18–1907–007; ER17–1757–008; ER10–1767–010; ER10–1532–010; ER10–1541–011; ER10–1642–012; ER13–2349–009; ER13–2350–009.
Applicants: Entergy Arkansas, LLC, Entergy Louisiana, LLC, Entergy Mississippi, LLC, Entergy New Orleans, LLC, Entergy Texas, Inc., Entergy Nuclear Palisades, LLC, Entergy Power, LLC, EWO Marketing, LLC, EAM Nelson Holding, LLC, RS Cogen, LLC.
Description: Notice of Non-Material Change in Status of Entergy Arkansas, LLC, et al.
Filed Date: 1/29/21.
Accession Number: 20210129–5312.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER18–2224–011; ER20–2603–002.
Applicants: Pegasus Wind, LLC, Skeleton Creek Wind, LLC.
Description: Notice of Non-Material Change in Status of Pegasus Wind, LLC, et al.
Filed Date: 1/29/21.
Accession Number: 20210129–5410.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER19–1575–004; ER10–2488–020; ER10–3050–006; ER10–3052–005; ER10–3053–006; ER10–3245–012; ER10–3249–012; ER10–3250–012; ER11–2639–013; ER13–1586–016; ER14–2871–015; ER15–110–014; ER15–463–014; ER15–621–014; ER15–622–014; ER16–182–010; ER16–72–010; ER16–902–007; ER17–47–007; ER17–48–008; ER18–2013–004; ER18–2240–003; ER18–2241–003; ER18–47–006; ER19–1660–003; ER19–1662–003; ER19–1667–003; ER19–426–003; ER19–427–003; ER20–71–002; ER20–72–002; ER20–75–002; ER20–76–004; ER20–77–002; ER20–79–002.
Applicants: Alta Oak Realty, LLC, Cabazon Wind Partners, LLC, Cameron Ridge, LLC, Cameron Ridge II, LLC, Coachella Hills Wind, LLC, Coachella Wind Holdings, LLC, DifWind Farms LTD VI, Foote Creek II, LLC, Foote Creek III, LLC, Foote Creek IV, LLC, Garnet Wind, LLC, LUZ Solar Partners VIII, Ltd., LUZ Solar Partners IX, Ltd., Mojave 3/4/5 LLC, Mojave 16/17/18 LLC, Oasis Alta, LLC, Oasis Power Partners, LLC, Pacific Crest Power, LLC, Painted Hills Wind Holdings, LLC, Ridge Crest Wind Partners, LLC, Ridgetop Energy, LLC, Rock River I, LLC, San Gorgonio Westwinds II, LLC, San Gorgonio Westwinds II—Windustries,LLC, Tehachapi Plains Wind, LLC, Terra-Gen Dixie Valley, LLC, Terra-Gen Energy Services, LLC, Terra-Gen Mojave Windfarms, LLC, Terra-Gen VG Wind, LLC, TGP Energy Management, LLC, Voyager Wind I, LLC, Voyager Wind II, LLC, Voyager Wind IV Expansion, LLC, Whitewater Hill Wind Partners, LLC, Yavi Energy, LLC.
Description: Notice of Non-Material Change in Status of Alta Oak Realty, LLC, et al.
Filed Date: 1/29/21.
Accession Number: 20210129–5329.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER20–491–001.
Applicants: Lake Lynn Generation, LLC.
Description: Report Filing: Refund Report to be effective N/A.
Filed Date: 2/1/21.
Accession Number: 20210201–5135.
Comments Due: 5 p.m. ET 2/22/21.

Docket Numbers: ER20–492–001.
Applicants: York Haven Power Company, LLC.
Description: Report Filing: Refund Report to be effective N/A.
Filed Date: 2/1/21.
Accession Number: 20210201–5136.
Comments Due: 5 p.m. ET 2/22/21.

Docket Numbers: ER20–1915–001; ER20–1916–001.
Applicants: Maverick Solar, LLC, Maverick Solar 4, LLC.
Description: Notice of Change in Status of Maverick Solar, LLC, et al. under ER20–1915, et al.

Filed Date: 1/29/21.
Accession Number: 20210129–5406.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER20–1980–003; ER20–1417–004; ER20–2049–002; ER20–2695–002.
Applicants: Cedar Springs Wind, LLC, Cedar Springs Wind III, LLC, Mohave County Wind Farm LLC, Roundhouse Renewable Energy, LLC.
Description: Notice of Non-Material Change in Status of Cedar Springs Wind, LLC, et al.
Filed Date: 1/29/21.
Accession Number: 20210129–5408.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–214–001.
Applicants: Baltimore Gas and Electric Company, PJM Interconnection, L.L.C.
Description: Compliance filing: BGE submits Compliance Filing re: Revisions to PJM Tariff, Attachment H–2B to be effective 1/1/2021.
Filed Date: 2/1/21.
Accession Number: 20210201–5132.
Comments Due: 5 p.m. ET 2/22/21.

Docket Numbers: ER21–521–001.
Applicants: Richmond Spider Solar, LLC.
Description: Compliance filing: Revised Rate Schedule FERC No. 1 Under Docket ER21–521 to be effective 12/2/2020.
Filed Date: 2/1/21.
Accession Number: 20210201–5182.
Comments Due: 5 p.m. ET 2/22/21.

Docket Numbers: ER21–1003–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2021–01–29 EIM Implementation Agreement—El Paso to be effective 4/5/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5265.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–1004–000.
Applicants: Florida Power & Light Company.
Description: Compliance filing: Florida Power & Light Company Notice of Succession to be effective N/A.
Filed Date: 1/29/21.
Accession Number: 20210129–5273.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–1005–000.
Applicants: Montana-Dakota Utilities Co.
Description: § 205(d) Rate Filing: Notice of Change in Status Under Schedule 2 of MISO's Tariff to be effective 4/1/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5277.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–1006–000.
Applicants: El Paso Electric Company.
Description: § 205(d) Rate Filing: Service Agreement No. 347, Nonconforming LGIA with Hecate to be effective 1/7/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5301.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–1007–000.
Applicants: El Paso Electric Company.
Description: § 205(d) Rate Filing: Service Agreement No. 348, Nonconforming LGIA with Hecate 2 to be effective 1/7/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5307.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–1008–000.
Applicants: New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: February 2021 Membership Filing to be effective 1/1/2021.
Filed Date: 2/1/21.
Accession Number: 20210201–5002.
Comments Due: 5 p.m. ET 2/22/21.

Docket Numbers: ER21–1009–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2021–02–01_SA 2963 MidAmerican-MidAmerican 2nd Rev GIA (J498) to be effective 1/20/2021.
Filed Date: 2/1/21.
Accession Number: 20210201–5057.
Comments Due: 5 p.m. ET 2/22/21.

Docket Numbers: ER21–1010–000.
Applicants: ISO New England Inc.
Description: Compliance filing: ISO–NE; Revisions in Compliance with Order to Remove the Price-Lock from the FCM to be effective 4/2/2021.
Filed Date: 2/1/21.
Accession Number: 20210201–5088.
Comments Due: 5 p.m. ET 2/22/21.

Docket Numbers: ER21–1011–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Tariff Cancellation: Notice of Cancellation of Rate Schedule to be effective 2/2/2021.
Filed Date: 2/1/21.
Accession Number: 20210201–5093.
Comments Due: 5 p.m. ET 2/22/21.

Docket Numbers: ER21–1012–000.
Applicants: Duquesne Light Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Duquesne Light Company 2021 MDTAC Filing to be effective 4/2/2021.
Filed Date: 2/1/21.
Accession Number: 20210201–5145.
Comments Due: 5 p.m. ET 2/22/21.

Docket Numbers: ER21–1013–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5680; Queue No. AC1–120/AC1–121 to be effective 6/11/2020.

Filed Date: 2/1/21.

Accession Number: 20210201–5160.

Comments Due: 5 p.m. ET 2/22/21.

Docket Numbers: ER21–1014–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Correction to Original ISA, SA No. 5772; Queue No. AC1–113/AC2–115 to be effective 8/24/2020.

Filed Date: 2/1/21.

Accession Number: 20210201–5187.

Comments Due: 5 p.m. ET 2/22/21.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES21–29–000.

Applicants: Rockland Electric Company.

Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities for Rockland Electric Company.

Filed Date: 1/29/21.

Accession Number: 20210129–5429.

Comments Due: 5 p.m. ET 2/19/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 1, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–02420 Filed 2–4–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–963–000]

Silverstrand Grid, 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 Silverstrand Grid, 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 February 18, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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: January 29, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–02416 Filed 2–4–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–43–000; QF87–237–024]

Midland Cogeneration Venture Limited Partnership; Notice of Request for Limited Waiver

Take notice that on January 25, 2021, pursuant to section 292.205(c) of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations,[1] implementing the Public Utility Regulatory Policies Act of 1978 (PURPA), Midland Cogeneration Venture Limited Partnership submitted a request for a limited and temporary waiver of the Commission's qualifying cogeneration facility efficiency standard set forth in 18 CFR 292.205(a)(2) for calendar years 2020 and 2021, due to the decrease in steam consumption by the facility's thermal host, Corteva Agriscience, caused by the unexpected and catastrophic flood that devastated Midland, Michigan, as more fully explained in the request.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

[1] 18 CFR 292.205 (2020).

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern time on February 16, 2021.

Dated: January 29, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–02415 Filed 2–4–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC21–48–000.

Applicants: Sun Streams PVS, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Sun Streams PVS, LLC.

Filed Date: 1/29/21.

Accession Number: 20210129–5128.

Comments Due: 5 p.m. ET 2/19/21.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–76–000; EG21–77–000; EG21–78–000.
Applicants: Copper Mountain Solar 5, LLC, Battle Mountain SP, LLC, Water Strider Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Copper Mountain Solar 5 et al.
Filed Date: 1/21/21.
Accession Number: 20210121–5442.
Comments Due: 5 p.m. ET 2/11/21.

Docket Numbers: EG21–79–000.
Applicants: Chevron Power Holdings Inc.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Chevron Power Holdings Inc.
Filed Date: 1/28/21.
Accession Number: 20210128–5241.
Comments Due: 5 p.m. ET 2/18/21.

Docket Numbers: EG21–80–000.
Applicants: BRP Alvin BESS LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of BRP Alvin BESS LLC.
Filed Date: 1/29/21.
Accession Number: 20210129–5105.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: EG21–81–000.
Applicants: Prospero II Master Tenant, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Prospero II Master Tenant, LLC.
Filed Date: 1/29/21.
Accession Number: 20210129–5106.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: EG21–82–000.
Applicants: Prospero Solar II, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Prospero Solar II, LLC.
Filed Date: 1/29/21.
Accession Number: 20210129–5112.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: EG21–83–000.
Applicants: BRP Magnolia BESS LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of BRP Magnolia BESS LLC.
Filed Date: 1/29/21.
Accession Number: 20210129–5117.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: EG21–84–000.
Applicants: BRP Odessa Southwest BESS LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of BRP Odessa Southwest BESS LLC.
Filed Date: 1/29/21.
Accession Number: 20210129–5119.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: EG21–85–000.
Applicants: BRP Angleton BESS LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of BRP Angleton BESS LLC.
Filed Date: 1/29/21.
Accession Number: 20210129–5130.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: EG21–86–000.
Applicants: BRP Heights BESS LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of BRP Heights BESS LLC.
Filed Date: 1/29/21.
Accession Number: 20210129–5131.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: EG21–87–000.
Applicants: BRP Brazoria BESS LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of BRP Brazoria BESS LLC.
Filed Date: 1/29/21.
Accession Number: 20210129–5132.
Comments Due: 5 p.m. ET 2/19/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3286–015; ER10–3299–014.
Applicants: Millennium Power Company, LLC, New Athens Generating Company, LLC.
Description: Notice of Change in Status of Millennium Power Company, LLC, et al.
Filed Date: 1/28/21.
Accession Number: 20210128–5253.
Comments Due: 5 p.m. ET 2/18/21.

Docket Numbers: ER11–3391–004; ER11–4589–002; ER11–4591–002;
ER10–2400–013; ER11–4592–002; ER11–4593–002.
Applicants: Dempsey Ridge Wind Farm, LLC, EcoGrove Wind LLC,
Red Hills Wind Project, L.L.C., Nevada Solar One, LLC,
Tatanka Wind Power, LLC, Blue Canyon Windpower LLC.
Description: Notice of Non-Material Change in Status of AENAC Sellers.
Filed Date: 1/28/21.
Accession Number: 20210128–5249.
Comments Due: 5 p.m. ET 2/18/21.

Docket Numbers: ER13–1562–008; ER12–1931–009; ER10–2504–010;
ER12–610–010; ER13–338–008; ER19–592–003.
Applicants: Catalina Solar Lessee, LLC, Pacific Wind Lessee, LLC, Shiloh Wind Project 2, LLC, Shiloh III Lessee, LLC, Shiloh IV Lessee, LLC, Valentine Solar, LLC.
Description: Notice of Change in Status of Catalina Solar Lessee, LLC, et al.
Filed Date: 1/28/21.
Accession Number: 20210128–5250.
Comments Due: 5 p.m. ET 2/18/21.

Docket Numbers: ER19–2626–001.
Applicants: Rosewater Wind Farm LLC.
Description: Notice of Change in Status of Rosewater Wind Farm LLC.
Filed Date: 1/28/21.
Accession Number: 20210128–5251.
Comments Due: 5 p.m. ET 2/18/21.

Docket Numbers: ER20–707–002.
Applicants: Eastern Shore Solar LLC.
Description: Compliance filing: Compliance Filing to be effective 1/1/2020.
Filed Date: 1/29/21.
Accession Number: 20210129–5186.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER20–1743–001.
Applicants: Gulf Power Company.
Description: Compliance filing: Notice of Effective Date and Compliance Filing to be effective 1/1/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5188.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER20–1851–003.
Applicants: Whitetail Solar 3, LLC.
Description: Compliance filing: Revised Rate Schedule FERC No. 1 to be effective 7/19/2020.
Filed Date: 1/29/21.
Accession Number: 20210129–5102.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER20–1970–001.
Applicants: Diamond Spring, LLC.
Description: Notice of Change in Status of Diamond Spring, LLC.
Filed Date: 1/28/21.
Accession Number: 20210128–5237.
Comments Due: 5 p.m. ET 2/18/21.

Docket Numbers: ER20–1986–001; ER20–2064–002; ER20–1907–002;
ER20–2237–002.
Applicants: Day County Wind I, LLC, High Majestic Wind I, LLC, Minco Wind I, LLC, Weatherford Wind, LLC.
Description: Notice of Non-Material Change in Status of Day County Wind I, LLC, et al.
Filed Date: 1/28/21.
Accession Number: 20210128–5248.
Comments Due: 5 p.m. ET 2/18/21.

Docket Numbers: ER21–968–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2021–01–28_SA 3324 Chandler Solar Project-ATC 1st Rev GIA (J849) to be effective 1/13/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5179.
Comments Due: 5 p.m. ET 2/18/21.

Docket Numbers: ER21–969–000.
Applicants: American Electric Power Service Corporation, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: AEP submits Update to Attachment 1 of ILDSA, SA No. 1336 to be effective 1/1/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5187.
Comments Due: 5 p.m. ET 2/18/21.

Docket Numbers: ER21–970–000.
Applicants: Millennium Power Partners, L.P.
Description: § 205(d) Rate Filing: Notice of Succession to be effective 1/29/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5199.
Comments Due: 5 p.m. ET 2/18/21.

Docket Numbers: ER21–971–000.
Applicants: Consolidated Edison Company of New York, Inc.
Description: § 205(d) Rate Filing: Amendment to EPS Surcharge 1–28–2021 to be effective 2/1/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5001.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–972–000.
Applicants: PJM Interconnection, L.L.C.
Description: Request for Waiver of Tariff Provisions, Expedited Consideration and shortened Comment Period of PJM Interconnection, L.L.C.
Filed Date: 1/28/21.
Accession Number: 20210128–5240.
Comments Due: 5 p.m. ET 2/2/21.

Docket Numbers: ER21–973–000.
Applicants: Jeffers Wind 20, LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 1/30/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5026.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–974–000.
Applicants: North Community Turbines LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 1/30/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5029.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–975–000.
Applicants: North Wind Turbines LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 1/30/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5030.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–976–000.
Applicants: Community Wind North 1 LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 1/30/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5032.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–977–000.
Applicants: Community Wind North 2 LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 1/30/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5034.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–978–000.
Applicants: Community Wind North 3 LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 1/30/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5035.
Comments Due: 5 p.m. ET 2/19/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 29, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–02419 Filed 2–4–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–965–000]

Ventura Energy Storage, 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 Ventura Energy Storage, 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 February 18, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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: January 29, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–02423 Filed 2–4–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Number: PR21–18–000.
Applicants: Houston Pipe Line Company LP.
Description: Tariff filing per 284.123(b),(e)/: Houston Pipe Line Company LP COFT Rate Election Effective January 1, 2021 to be effective 1/1/2021 under PR21–18.
Filed Date: 1/28/2021.
Accession Number: 202101285106.
Comments/Protests Due: 5 p.m. ET 2/18/2021.

Docket Number: PR21–19–000.
Applicants: Energy Transfer Fuel, LP.
Description: Tariff filing per 284.123(b),(e)/: Energy Transfer Fuel LP COFT Rate Election Effective January 1, 2021 to be effective 1/1/2021 under PR21–19
Filed Date: 1/28/2021.
Accession Number: 202101285108.
Comments/Protests Due: 5 p.m. ET 2/18/2021.

Docket Number: PR21–20–000.
Applicants: Red Bluff Express Pipeline, LLC.
Description: Tariff filing per 284.123(b),(e)/: Red Bluff Express Pipeline, LLC COFT Rate Election Effective January 1, 2021 to be effective 1/1/2021 under PR21–20.
Filed Date: 1/28/2021.
Accession Number: 202101285109.
Comments/Protests Due: 5 p.m. ET 2/18/2021.

Docket Number: PR21–21–000.
Applicants: Black Hills/Kansas Gas Utility Company, LLC.
Description: Tariff filing per 284.123(b),(e)/: BHKG Revised Statement of Rates to be effective 1/1/2021 under PR21–21.
Filed Date: 1/29/2021.
Accession Number: 202101295133.
Comments/Protests Due: 5 p.m. ET 2/19/2021.

Docket Number: PR21–22–000.
Applicants: Southern California Gas Company.
Description: Tariff filing per 284.123(b),(e)+: Offshore_Delivery_Service_Rate_Revision_January_2021 to be effective 1/1/2021 under PR21–22.
Filed Date: 1/29/2021.
Accession Number: 202101295147.
Comments Due: 5 p.m. ET 2/19/2021.
284.123(g) Protests Due: 5 p.m. ET 3/30/2021.

Docket Number: PR21–23–000.
Applicants: Moss Bluff Hub, LLC
Description: Tariff filing per 284.123(b),(e)/: Moss Bluff Title Transfer Process Update eff 3–4–21 to be effective 3/4/2021 under PR21–23.
Filed Date: 1/29/2021.
Accession Number: 202101295206.
Comments/Protests Due: 5 p.m. ET 2/19/2021.

Docket Number: PR21–24–000.
Applicants: Public Service Company of Colorado.
Description: Tariff filing per 284.123(b),(e)+: Statement of Rates_1.1.21 to be effective 1/1/2021 under PR21–24.
Filed Date: 1/29/2021.
Accession Number: 202101295276.
Comments Due: 5 p.m. ET 2/19/2021.
284.123(g) Protests Due: 5 p.m. ET 3/30/2021.

Docket Numbers: RP20–1060–002.
Applicants: Columbia Gas Transmission, LLC.
Description: Compliance filing Compliance to RP20–1060–000 to be effective 2/1/2021.
Filed Date: 1/28/21..
Accession Number: 20210128–5140.
Comments Due: 5 p.m. ET 2/9/21.
Docket Numbers: RP21–406–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 02–01–2021 to be effective 2/1/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5014.
Comments Due: 5 p.m. ET 2/9/21.

Docket Numbers: RP21–407–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Releases eff 02–01–2021 to be effective 2/1/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5030.
Comments Due: 5 p.m. ET 2/9/21.

Docket Numbers: RP21–408–000.
Applicants: Sierrita Gas Pipeline LLC.
Description: § 4(d) Rate Filing: FL&U Update Filing to be effective 3/1/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5055.
Comments Due: 5 p.m. ET 2/9/21.

Docket Numbers: RP21–409–000.
Applicants: TransColorado Gas Transmission Company LLC.
Description: § 4(d) Rate Filing: Housekeeping Matters Filing to be effective 3/1/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5084.
Comments Due: 5 p.m. ET 2/9/21.

Docket Numbers: RP21–410–000.
Applicants: Ruby Pipeline, L.L.C.
Description: § 4(d) Rate Filing: EPC and FL&U Percentage Quarterly Update and OPS Report to be effective 3/1/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5107.
Comments Due: 5 p.m. ET 2/9/21.

Docket Numbers: RP21–411–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing (Smith) to be effective 3/1/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5118.
Comments Due: 5 p.m. ET 2/9/21.

Docket Numbers: RP21–412–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Update (Upstream) to be effective 3/1/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5130.
Comments Due: 5 p.m. ET 2/9/21.

Docket Numbers: RP21–413–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Amended EAP 911573 eff 02–01–21 to be effective 2/1/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5160.
Comments Due: 5 p.m. ET 2/9/21.

Docket Numbers: RP21–414–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: REX 2021–01–28 Negotiated Rate Agreement Amendments to be effective 3/5/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5204.
Comments Due: 5 p.m. ET 2/9/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings

can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 1, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–02418 Filed 2–4–21; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–979–000.
Applicants: Community Wind North 5 LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 1/30/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5037.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–980–000.
Applicants: Community Wind North 6 LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 1/30/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5038.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–981–000.
Applicants: Community Wind North 7 LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 1/30/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5040.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–982–000.
Applicants: Community Wind North 8 LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 1/30/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5042.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–983–000.
Applicants: Community Wind North 9 LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 1/30/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5043.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–984–000.
Applicants: Community Wind North 10 LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 1/30/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5044.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–985–000.
Applicants: Community Wind North 11 LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 1/30/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5045.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–986–000.
Applicants: Community Wind North 13 LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 1/30/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5047.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–987–000.
Applicants: Community Wind North 15 LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 1/30/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5048.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–988–000.
Applicants: Crowned Ridge Wind II, LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 1/30/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5049.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–989–000.
Applicants: Deseret Generation & Transmission Co-operative, Inc.
Description: Initial rate filing: WAPA BASA and SRSA Filing to be effective 2/1/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5058.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–990–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2451R5 KEPCO NITSA NOA to be effective 1/1/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5063.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–991–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3761 KEPCO NITSA NOA and 2452R2 KEPCO NITSA CANCELLATION to be effective 1/1/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5087.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–992–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2021–01–29_SA 3263 MidAmerican-MidAmerican 1st Rev GIA (J530) to be effective 1/20/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5092.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–993–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Amendment to E&P Agrmt with CA High Speed Rail (RS 247) to be effective 1/30/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5101.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–994–000.
Applicants: Duke Energy Carolinas, LLC
Description: § 205(d) Rate Filing: DEC–NCEMC NITSA SA–210 to be effective 1/1/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5103.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–995–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3736 City of Fremont PTP Agreement to be effective 1/1/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5139
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–996–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: SEPA Network Agreement Amendment Filing (Revision No. 10) to be effective 1/1/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5140.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–997–000.
Applicants: Martinez Refining Company LLC.
Description: Baseline eTariff Filing: Martinez Refining Company LLC Notice of Non-Material Change in Status to be effective 2/1/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5195.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–998–000.
Applicants: Midway-Sunset Cogeneration Company.
Description: Initial rate filing: MSCC RMR Agreement Filing to be effective 2/1/2021.

Filed Date: 1/29/21.
Accession Number: 20210129–5213.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–999–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2021–01–29_SA 1756 METC-Consumers Energy 14th Rev GIA (G479B) to be effective 1/1/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5222.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–1000–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA SA No. 5452; NQ164 & Amendment to ISA SA No. 3504; NQ69 to be effective 12/31/2020.
Filed Date: 1/29/21.
Accession Number: 20210129–5227.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–1001–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: NYISO 205 filing of proposed tariff revisions to Implement CSR to be effective 3/30/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5249.
Comments Due: 5 p.m. ET 2/19/21.

Docket Numbers: ER21–1002–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to OATT for the Western Energy Imbalance Market to be effective 4/1/2021.
Filed Date: 1/29/21.
Accession Number: 20210129–5256.
Comments Due: 5 p.m. ET 2/19/21.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES21–28–000.
Applicants: El Paso Electric Company.
Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities for El Paso Electric Company.
Filed Date: 1/29/21.
Accession Number: 20210129–5272.
Comments Due: 5 p.m. ET 2/19/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 29, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–02417 Filed 2–4–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–25–000]

Richmond Spider Solar, LLC;

Notice of Institution of Section 206 Proceeding and Refund Effective Date

On January 29, 2021, the Commission issued an order in Docket No. EL21–25–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Richmond Spider Solar, LLC's proposed rate schedule is unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful. *Richmond Spider Solar, LLC,* 174 FERC ¶ 61,065 (2021).

The refund effective date in Docket No. EL21–25–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL21–25–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2020), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the

Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: January 29, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–02422 Filed 2–4–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–964–000]

Microsoft Energy 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 Microsoft Energy 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 February 18, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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: January 29, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–02421 Filed 2–4–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9055–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed January 25, 2021 10 a.m. EST Through February 1, 2021 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20210013, Final, USAF, NM, Special Use Airspace Optimization to Support Existing Aircraft at Holloman Air Force Base, New Mexico, Review Period Ends: 03/08/2021, Contact: Robin Divine 210–925–2730.

EIS No. 20210014, Final, USAF, VA, Fifth Generation Formal Training Unit Optimization, Review Period Ends: 03/08/2021, Contact: Nolan Swick 210–925–3392.

EIS No. 20210015, Final, USFS, OR, Government Camp—Cooper Spur Land Exchange, Review Period Ends: 04/06/2021, Contact: Michelle Lombardo 971–303–2083.

EIS No. 20210016, Draft, FHWA, OR, Earthquake Ready Burnside Bridge, Comment Period Ends: 03/22/2021, Contact: Emily Cline 503–316–2547.

Amended Notice

EIS No. 20200210, Draft, STB, UT, Uinta Basin Railway, Comment Period Ends: 02/12/2021, Contact: Joshua Wayland 202–245–0330.

Revision to FR Notice Published 12/18/2020; Extending the Comment Period from 01/28/2020 to 02/12/2021.

Dated: February 1, 2021.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2021–02412 Filed 2–4–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 20–89; DA 21–14; FRS 17428]

Wireline Competition Bureau Seeks Comment on Covid-19 Telehealth Program Application Evaluation Metrics

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) seeks comments on the metrics the Commission should use to evaluate applications for funding and how the Commission should treat applications filed during the funding rounds for awards from the COVID–19 Telehealth Program using amounts appropriated under the CARES Act.

DATES: Comments were initially due by January 19, 2021. The Bureau will continue to accept comments on the metrics at any time.

ADDRESSES: You may submit comments, identified by WC Docket No. 20–89, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
  - ○ Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - ○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - ○ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
  - ○ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Stephanie Minnock, Assistant Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, *stephanie.minnock@fcc.gov* or 202–418–7400 or TTY: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Public Notice in WC Docket No. 20–89; DA 21–14 released January 6, 2021. Due to the COVID–19 pandemic, the Commission's headquarters will be closed to the general public until further notice. The full text of this document is available at the following internet address: *https://docs.fcc.gov/public/attachments/DA-21-14A1.pdf*. The proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

I. Introduction

1. Telehealth is a critical tool in the fight against the ongoing COVID–19 pandemic. It can allow medical professionals to monitor non-critical COVID patients in a non-clinical setting, reduce demands on hospital staff and supplies, and avoid potential exposure to the coronavirus for patients seeking treatment for other conditions. The Commission's COVID–19 Telehealth Program awarded $200 million Congress previously appropriated for that purpose, targeting applications from providers in the hardest hit areas that would have the greatest impact on the pandemic. However, demand for the program significantly exceeded available funding.

2. To build on the success of the Commission's COVID–19 Telehealth Program, in the Consolidated Appropriations Act, 2021 Congress appropriated an additional $249.95 million for the Program. The Act requires the Commission to seek comment on ''the metrics the Commission should use to evaluate applications for funding'' and ''how the Commission should treat applications filed during the funding rounds for awards from the COVID–19 Telehealth Program using amounts appropriated under the CARES Act . . . .'' Through the Public Notice, the Bureau seeks comments on these matters, as well as how to meet the Act's other requirements for the COVID–19 Telehealth Program and other improvements to the application, review, and invoicing process.

II. Request for Comment

3. Prioritizing Round 2 Funding. The Act directs the Commission to seek comment on the metrics used to evaluate applications for Round 2 Program funding. During Round 1, the Bureau evaluated the Program applications on a rolling basis, targeting funding to areas that were hardest hit by COVID–19 and where the support would have the most impact on addressing health care needs. Although Round 1 funding was not targeted toward specific medical conditions, patient populations, or geographic areas, the Commission strongly encouraged applicants to target the funding received to high-risk and vulnerable patients to the extent practicable. The Commission encouraged applicants under pre-existing strain (*e.g.,* providing care for a large underserved or low-income patient population, facing health care provider shortages, or dealing with rural hospital closures) to document such factors in their applications. The Commission directed the Bureau to select as many applicants as reasonably possible within the funding appropriated by the CARES Act. To ensure that as many applicants as possible receive available funding, the Commission did not anticipate awarding more than $1 million to any single applicant.

4. The Bureau seeks comments on whether to continue to target funding to health care providers in areas ''hardest hit'' by COVID–19 at the time of the funding decision. During Round 1, the pandemic impacted some regions much more severely than others, thus allowing the Bureau to identify particular hotspots that were ''hardest hit'' in comparison to other parts of the country by referencing data published and collected by Johns Hopkins. Given the broader infection rate currently in the U.S., should the Bureau continue to target funding to hardest hit areas? If so, how should the ''hardest hit'' areas be defined?

5. Similarly, in Round 1 the Commission targeted funding to health care providers under pre-existing strain, which included health care providers that were facing difficulty providing telehealth services prior to the pandemic. In Round 2, what weight should the Bureau give pre-existing strain faced by applicant health care providers? Should pre-existing strains be distinguished from pandemic-related strains many providers now face?

6. During Round 1 of the Program, the Commission ''did not anticipate awarding more than $1 million'' per applicant to ensure that as many applicants as possible receive funding. Should the Bureau maintain this approach? How should the Bureau address applications filed by statewide entities, large health care providers or health care provider systems with numerous sites?

7. Are there other equitable limitations that will help the Program spread funding to a greater number of health care providers without sacrificing the needs of larger health care providers struggling to treat patients during the pandemic? Should applicants from Round 1 that did not receive $1 million be eligible to receive additional funding? Should applicants from Round 1 that did receive $1 million be eligible to receive additional support in Round 2?

8. Are there any other metrics the Bureau should use to prioritize applications during the evaluation process? Should the Bureau prioritize health care providers serving a large percentage of COVID–19 patients? Are there specific types of telehealth and connected care services that should be prioritized? Should the Bureau prioritize applications from health care providers that seek funding to treat specific at-risk populations, such as Tribal, low-income, or rural communities? If so, how should those populations be defined? Should these applicants be prioritized only if a

certain percentage of their patient base, *i.e.,* the total amount of patients who visited a facility in a year, is at-risk? What percentage would be reasonable to achieve the goal of prioritizing funding for at-risk populations? Are there other criteria the Bureau should prioritize?

9. Ensuring Nationwide Distribution of Funding. The Act directs the Commission, to the extent feasible, to ensure ''that not less than 1 applicant in each of the 50 States and the District of Columbia has received funding'' from the Program since the program's inception, ''unless there is no such applicant eligible for assistance in a State or in the District of Columbia.'' To fulfill this requirement, the Bureau proposes accepting Round 2 applications and establishing an application filing window rather than accepting applications on a rolling basis. Although accepting and evaluating applications on a rolling basis allowed the Bureau to quickly review applications and issue funding commitments for the funding appropriated by the CARES Act, this evaluation method will not ensure that funding will be available for applicants in each State and the District of Columbia. Establishing an application filing window would allow the Bureau to prioritize applications using pre-defined evaluation metrics and ensure that funding is provided, to the extent feasible, to at least one applicant in each of the 50 states and the District of Columbia. This approach would also provide all applicants the same period of time to prepare and file applications. The Bureau seeks comments on this approach. If an application filing window is established, how long should the window remain open?

10. Is there an alternative approach that would ensure that the Commission meets this legislative provision? Should the Bureau instead continue to accept applications on a rolling basis, but set aside a portion of funding, *e.g.,* $1 million for each state and the District of Columbia, to ensure that an applicant from each State and the District of Columbia receive Round 2 funding?

11. Treatment of Round 1 Applications. The Act directs the Commission to seek comment on ''how the Commission should treat applications filed during'' Round 1 of the Program. The Act also requires the Commission to allow an applicant who filed an application during Round 1 ''the opportunity to update or amend that application as necessary.''

12. The Bureau proposes to require applicants to update and resubmit applications that were filed during Round 1 if they want them to be considered for Round 2. The Bureau proposes that Round 1 applications that are not resubmitted during the filing window will not be considered for Round 2. The Bureau makes this proposal because many of the remaining Round 1 applications need to be refreshed and some require substantial amendments. From April to June 2020, the Commission received thousands of applications for Round 1, and committed funding to 539 applicants before the available funding was exhausted. Many of the remaining applications are from ineligible entities or require substantial supplementation to be considered materially complete. Some applicants no longer need funding because they received support for telehealth services from other sources. And, because these applications were filed between April and June 2020, all the remaining applications contain stale information—COVID–19 infection rates in many areas were dramatically lower at that time than they are today, the pandemic was less widespread, and health care providers have had time to refine their strategies for providing services during the pandemic, making it likely that these applicants would, given the opportunity, request different amounts and types of connected devices and eligible services. The Bureau seeks comments on this approach.

13. The Bureau also proposes this approach because the application system used during Round 1 of the Program, which was developed quickly given the emergency situation, is functionally limited, and is not designed to let applicants amend or update their applications after they have been filed. In addition, certain information required to comply with the Act, such as the new evaluation criteria, was not collected in Round 1. Thus, it would be less burdensome for both Round 1 applicants and Commission staff to have Round 1 applicants submit new applications during the Round 2 filing window than to update Round 1 applications in the existing portal. Requiring Round 1 applicants to submit new applicants will increase the speed at which Commission or Universal Service Administrative Company (USAC) staff are able to process and award Round 2 funding. Therefore, the Bureau proposes requiring Round 1 applicants that continue to seek funding to update or amend their applications by submitting a new application for Round 2.

14. Should the Bureau review Round 2 applications filed by Round 1 applicants before evaluating applications from new entities during the Round 2 review process? Should the Bureau prioritize funding applications submitted during Round 2 by applicants that applied, but did not receive any or all of the requested funding, during Round 1? Relatedly, how should the Bureau treat applicants for Round 2 funding that received the full amount of their requested funding during Round 1?

15. Additional Program Improvements. During the process of standing up this Program, the Bureau learned valuable lessons about the unique needs of connected care and health care providers. To build on the lessons learned during Round 1, the Bureau proposes updating the Program's application and invoicing processes and seeks comments on implementing these proposed improvements during Round 2. Specifically, the Bureau proposes using the Universal Service Administrative Company (USAC) to assist in administering the remaining work necessary to complete Round 1 of the Program as well as Round 2. The Bureau further proposes directing USAC to update the portal that will be used by Round 2 applicants, including Round 1 applicants that wish to renew their request for funding under the Program, to submit applications for the funding appropriated by the Act; to conduct an initial review of Round 2 invoices; and to provide outreach and guidance about the application process to applicants. Updating the portal will ensure that all applicants provide the information needed for review under the updated Round 2 application evaluation metrics, facilitate program administration, and reduce administrative burdens on both applicants and Commission staff. However, under this approach Commission staff would make final funding determinations, subject to the requirements of the Act. The Bureau seeks comments on this approach.

16. During Round 1, applicants were required to file FCC Forms 460 to obtain eligibility determinations for all participating health care provider sites. As part of the eligibility determination process, health care provider sites seeking an eligibility determination were assigned a health care provider number by USAC. The Bureau found that requiring health care providers to file FCC Forms 460 for each site delayed our ability to move quickly on many applications, especially those applications with a large number of sites in need of eligibility determinations. Using a different method to determine whether a site is eligible could reduce the administrative burden on applications, the Commission, and USAC during the application review process. Accordingly, the Bureau seeks

comments on directing USAC to include eligibility review as part of the application process, but not requiring applicants to file FCC Forms 460. Are there other means of identifying health care providers and determining their eligibility for support in the program that should be considered?

17. Finally, are there additional improvements the Bureau should consider making to the application, review, and invoicing processes? For example, during the Round 1 application process, applicants were required to submit documentation demonstrating that funding requests were for equipment and services eligible for Program support, and funding commitments were made based on the anticipated costs of the eligible services requested on their applications. After receiving Round 1 commitments, however, some health care providers seeking support for eligible services and equipment experienced supply chain disruptions and equipment shortages, while other health care providers determined that, due to shifting pandemic response strategies, they needed different services or equipment than those requested in their application. Anticipating these issues, the Commission gave health care providers flexibility to respond to changing circumstances by not requiring health care providers that received funding commitments to purchase only the services and connected devices identified in their applications. Accordingly, health care providers that received funding commitments may have been allowed to substitute vendors, eligible services, and/or eligible connected devices as long as the substituted items are eligible and the total amount sought for reimbursement does not exceed the commitment amount.

18. Should the Bureau maintain this flexibility, but streamline the application process by requiring applicants demonstrate the eligibility of the connected devices and services purchased using Round 2 support only during the invoicing process? Are health care providers still experiencing supply chain delays or noticing shortages of certain connected devices? Have health care providers' pandemic response strategies solidified to the point where they will be able to accurately identify the telecommunication services, information services, or connected devices needed on their application for Round 2? If the Bureau does not require applicants to demonstrate the eligibility of the services and connected devices for which they seek funding on their applications during Round 2, what documentation or demonstration should the Bureau require the applicant to submit to demonstrate that they will use the funding requested for services and devices that are eligible for support? What safeguards should the Bureau consider implementing to ensure that this proposal does not lead to waste, fraud, or abuse of Program funding? Should additional certifications be required on applications and for each invoice to ensure applicants/awardees understand what is expected of them and the potential penalties for waste, fraud, or abuse? Relatedly, should a list of eligible and ineligible equipment and services to provide applicants with specific guidance on what may be requested for reimbursement be published?

Federal Communications Commission.

Cheryl L. Callahan,

Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 2021–02255 Filed 2–4–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0018; Docket No. 2020–0053; Sequence No. 18]

Submission for OMB Review; Federal Acquisition Regulation Part 3: Improper Business Practices and Personal Conflicts of Interest

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and extension of a previously approved information collection requirements regarding improper business practices and personal conflicts of interest.

DATES: Submit comments on or before March 8, 2021.

ADDRESSES: Written comments and recommendations for this 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 Review—Open for Public Comments'' or by using the search function. Additionally, submit a copy to GSA through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

Instructions: All items submitted must cite ''OMB Control No. 9000–0018, Federal Acquisition Regulation Part 3: Improper Business Practices and Personal Conflicts of Interest.'' Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov* approximately two-to- three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Hawes, Procurement Analyst, at telephone 202–969–7386, or *jennifer.hawes@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and any Associated Form(s)

9000–0018, Federal Acquisition Regulation Part 3: Improper Business Practices and Personal Conflicts of Interest.

B. Need and Uses

DoD, GSA, and NASA are combining OMB Control Nos. for the Federal Acquisition Regulation (FAR) by FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify burdens associated with a given FAR part. The review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on industry. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with processing multiple information collections.

This justification supports the revision and extension of OMB Control No. 9000–0018 and combines it with the previously approved information collections under OMB Control No. 9000–0091, with the new title ''Federal Acquisition Regulation Part 3: Improper Business Practices and Personal Conflicts of Interest.'' Upon approval of this consolidated information collection, OMB Control No. 9000–0091

will be discontinued. The burden requirements previously approved under the discontinued number will be covered under OMB Control No. 9000–0018.

This clearance covers the information collection that offerors or contractors must submit to comply with the following requirements in FAR Part 3:

• *52.203–2, Certificate of Independent Price Determination.* This solicitation provision requires an offeror to certify that the prices in their offer have been arrived at independently, have not been or will not be knowingly disclosed, and have not been submitted for the purpose of restricting competition. This clause is used to ensure that Government contracts are not awarded to firms violating antitrust laws.

• *52.203–7, Anti-Kickback Procedures.* This contract clause requires contractors to report in writing to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General possible violations of 41 U.S.C. Chapter 87, Kickbacks, and to notify the contracting officer when monies are withheld from sums owed a subcontractor under the prime contract when the contracting officer has directed the prime contractor to do so to offset the amount of a kickback. The information reported by contractors will be used by the Federal agency to investigate potential violations.

• *52.203–13, Contractor Code of Business Ethics and Conduct.* This contract clause requires contractors and subcontractors to report to the agency Office of the Inspector General, whenever it has credible evidence that a principal, employee, agent, or subcontractor of the contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C., or a violation of the Civil False Claims Act (31 U.S.C. 3729–3733). The information will be used by the Federal agency to investigate suspected violations.

• *52.203–16, Preventing Personal Conflicts of Interest.* This contract clause requires contractors and subcontractors to obtain and maintain from employees assigned to a task under a contract, a disclosure of interests that might be affected by the task to which the employee has been assigned. Contractors must report to any personal conflict of interest violation by a covered employee and the proposed actions to be taken. In exceptional circumstances, the contractor may request the head of the contracting activity approve a plan to mitigate the personal conflict of interest or waive the requirement to prevent personal conflicts of interest. This information is used by the contractor and the contracting officer to identify and mitigate personal conflicts of interest.

C. Annual Burden

Respondents: 10,275.
Recordkeepers: 8,391.
Total Annual Responses: 342,019.
Total Burden Hours: 627,162 (123,702 reporting hours + 503,460 recordkeeping hours).

D. Public Comment

A 60-day notice was published in the **Federal Register** at 85 FR 75325, on November 25, 2020. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0018, Federal Acquisition Regulation Part 3: Improper Business Practices and Personal Conflicts of Interest.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2021–02401 Filed 2–4–21; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0188; Docket No. 2021–0053; Sequence No. 3]

Information Collection; Combating Trafficking in Persons

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision and renewal concerning combating trafficking in persons. DoD, GSA, and NASA invite comments on: whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through September 30, 2021. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by April 6, 2021.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *http://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0188, Combating Trafficking in Persons. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at telephone 703–605–2868, or *mahruba.uddowla@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB control number, Title, and any Associated Form(s): 9000–0188, Combating Trafficking in Persons.

B. Need and Uses

This clearance covers the information that offerors contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

52.222–50, Combating Trafficking in Persons.

Notification. Paragraph (d) of this clause requires contractors to notify the

contracting officer and the agency Inspector General of—

• Any credible information they receive from any source that alleges a contractor employee, subcontractor, or subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of the clause 52.222–50; and

• Any actions taken against a contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

Compliance Plan and Annual Certification. Paragraph (h) of the clause contains an additional requirement for contracts for supplies (other than commercially available off-the-shelf (COTS) items) to be acquired outside the United States and contracts for services to be performed outside the United States, with an estimated value exceeding $550,000, where the contractor is to maintain a compliance plan during the performance of the contract. This compliance plan must include an awareness program, a process for employees to report activity inconsistent with the zero-tolerance policy, a recruitment and wage plan, a housing plan, and procedures to prevent subcontractors from engaging in trafficking in persons.

• Contractors are required to provide the compliance plan to the contracting officer upon request.

• Contractors are required to submit a certification to the contracting officer annually after receiving an award, asserting that they have the required compliance plan in place and that there have been no abuses, or that appropriate actions have been taken if abuses have been found.

• For those subcontractors required to submit a certification (see next bullet on flow down), contractors shall require that submission prior to award of the subcontract and annually thereafter. Portions of this clause flows down to all subcontractors. The requirements related to the compliance plan only flow down to subcontracts exceeding $550,000 for supplies (other than COTS items) acquired and services performed outside the United States.

This clause applies to commercial item acquisitions, except the portions related to the compliance plan do not apply to acquisitions of COTS items.

52.222–56, Certification Regarding Trafficking in Persons Compliance Plan.

This provision requires apparently successful offerors to submit a certification, prior to award, that they have implemented a compliance plan and that there have been no abuses, or that appropriate actions have been taken if abuses have been found.

The provision requires this certification for the portion of contracts exceeding $550,000 for supplies (other than COTS items) acquired and services performed outside the United States.

This provision applies to commercial item acquisitions, except acquisitions of COTS items.

FAR 52.222–50, paragraph (d)—Notification. The Government uses this notification of potential violations of trafficking in persons requirements to investigate and take appropriate action if a violation has occurred.

FAR 52.222–50, paragraph (h)—Compliance Plan. The Government uses the compliance plan to ascertain compliance with the Trafficking Victims Protection Act (22 U.S.C. 7104), Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts dated September 25, 2012 (77 FR 60029, October 2, 2012) and Title XVII of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239, enacted January 2, 2013) or any other applicable law or regulation.

FAR 52.222–50, paragraph (h) and FAR 52.222–56—Certification. The Government uses the certification to obtain reasonable assurance that the contractor and its subcontractors are aware of and complying with the requirements of the Executive Order and statute.

C. Annual Burden

Respondents/Recordkeepers: 5,876.

Total Annual Responses: 11,702.

Total Burden Hours: 164,154. (25,722 reporting hours + 138,432 recordkeeping hours)

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0188, Combating Trafficking in Persons.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2021–02402 Filed 2–4–21; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–R–246]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by March 8, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Advantage, Medicare Part D, and Medicare Fee-For-Service Consumer Assessment of Healthcare Providers and Systems (CAHPS) Survey; *Use:* The Centers for Medicare & Medicaid Services (CMS) has authority to collect various types of quality data under section 1852(e) of the Act and use this information to develop and publicly post a 5-star rating system for Medicare Advantage (MA) plans based on its authority to disseminate comparative information, including about quality, to beneficiaries under sections 1851(d) and 1860D–1(c) of the Act. As codified at § 422.152(b)(3), Medicare health plans are required to report on quality performance data which CMS can use to help beneficiaries compare plans. Cost plans under section 1876 of the Act are also included in the MA Star Rating system, as codified at § 417.472(k), and are required by regulation (§ 417.472(j)) to make CAHPS survey data available to CMS.

The MMA under Sec. 1860D–4 (Information to Facilitate Enrollment) requires CMS to conduct consumer satisfaction surveys of enrollees in MA and Part D contracts and report the results to Medicare beneficiaries prior to the annual enrollment period. This request for approval is for CMS to continue conducting the Medicare CAHPS surveys annually to meet the requirement to conduct consumer satisfaction surveys regarding the experiences of beneficiaries with their health and prescription drug plans.

The primary purpose of the Medicare CAHPS surveys is to provide information to Medicare beneficiaries to help them make more informed choices among health and prescription drug plans available to them. Survey results are reported by CMS in the Medicare & You handbook published each fall and on the Medicare Plan Finder website. Beneficiaries can compare CAHPS scores for each health and drug plan as well as compare MA and FFS scores when making enrollment decisions. The Medicare CAHPS also provides data to help CMS and others monitor the quality and performance of Medicare health and prescription drug plans and identify areas to improve the quality of care and services provided to enrollees of these plans. CAHPS data are included in the Medicare Part C & D Star Ratings and used to calculate MA Quality Bonus Payments. *Form Number:* CMS–R–246 (OMB control number: 0938–1088); *Frequency:* Annually; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 537; *Total Annual Responses:* 745,350; *Total Annual Hours:* 179,108. (For policy questions regarding this collection contact Sarah Gaillot at 410–786–4637.)

Dated: February 2, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–02439 Filed 2–4–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS–10203, CMS–2088–17, CMS–1763, and CMS–1696]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by April 6, 2021.

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.html.*

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–10203 Medicare Health Outcomes Survey

CMS–2088–17 Community Mental Health Center Cost Report
CMS–1763 Request For Termination of Premium-Hospital and or Supplementary Medical Insurance
CMS–1696 Appointment of Representative

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Health Outcomes Survey (HOS); *Use:* The HOS is a longitudinal patient-reported outcome measure (PROM) that assesses self-reported beneficiary quality of life and daily functioning. As a PROM, the HOS measures the impact of services provided by MAOs, whereas process and patient experience measures only provide a snapshot of activities or experiences at a specific point in time. PROM data collected by the HOS allows CMS to continue to assess the health of the Medicare Advantage population. This older population is at increased risk of adverse health outcomes, including chronic diseases and mobility impairments that may significantly hamper quality of life. The HOS supports CMS's commitment to improve health outcomes for beneficiaries while reducing burden on providers. CMS accomplishes this by focusing on high-priority areas for quality measurement and improvement established in the agency's Meaningful Measures Framework. The HOS uses quality measures that ask beneficiaries about health outcomes related to specific mental and Physical Conditions. *Form Number:* CMS–10203 (OMB control number: 0938–0701); *Frequency:* Annually; *Affected Public:* Individuals and Households; *Number of Respondents:* 1,485; *Total Annual Responses:* 629,280; *Total Annual Hours:* 201,370. (For policy questions regarding this collection contact Debra Start at 410–786–6646.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Community Mental Health Center Cost Report *Use:* CMS requires the Form CMS–2088–17 to determine a provider's reasonable cost incurred in furnishing medical services to Medicare beneficiaries and reimbursement due to or from a provider. In addition, CMHCs may receive reimbursement through the cost report for Medicare reimbursable bad debts. CMS uses the Form CMS–2088–17 for rate setting; payment refinement activities, including market basket analysis; Medicare Trust Fund projections; and to support program operations. The primary function of the cost report is to determine provider reimbursement for services rendered to Medicare beneficiaries. Each CMHC submits the cost report to its contractor for reimbursement determination.

Section 1874A of the Act describes the functions of the contractor. CMHCs must follow the principles of cost reimbursement, which require they maintain sufficient financial records and statistical data for proper determination of costs. The S series of worksheets collects the provider's location, CBSA, date of certification, operations, and unduplicated census days. The A series of worksheets collects the provider's trial balance of expenses for overhead costs, direct patient care services, and non-revenue generating cost centers. The B series of worksheets allocates the overhead costs to the direct patient care and non-revenue generating cost centers using functional statistical bases. The Worksheet C computes the apportionment of costs between Medicare beneficiaries and other patients. The D series of worksheets are Medicare specific and calculate the reimbursement settlement for services rendered to Medicare beneficiaries. The Worksheet F collects the provider's revenues and expenses data from the provider's income statement. *Form Number:* CMS–2088–17 (OMB control number: 0938–0378); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for-profits, Not-for-profits institutions; *Number of Respondents:* 184; *Total Annual Responses:* 184; *Total Annual Hours:* 16,560. (For policy questions regarding this collection contact Jill Keplinger at 410–786–4550.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request For Termination of Premium-Hospital and or Supplementary Medical Insurance; *Use:* Form CMS–1763 provides the necessary information to process the enrollee's request for termination of Part B and/or premium Part A coverage. Sections 1818(c)(5), 1818A(c)(2)(B) and 1838(b)(1) of the Act and corresponding regulations at 42 CFR 406.28(a) and 407.27(c) require that a Medicare enrollee wishing to voluntarily terminate Part B and/or premium Part A coverage file a written request with CMS or SSA. The statute and regulations also specify when coverage ends based upon the date the request for termination is filed.

Form CMS–1763 collects the information necessary to process Medicare enrollment terminations. The Request for Termination of Premium Hospital and/or Supplementary Medical Insurance (Form CMS–1763) provides a standardized means to satisfy the requirements of law, as well as allow both agencies to protect the individual from an inappropriate decision. *Form Number:* CMS–1763 (OMB control number: 0938–0025); *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 114,215; *Total Annual Responses:* 114,215; *Total Annual Hours:* 19,074. (For policy questions regarding this collection contact Carla Patterson at 410–786–1000.)

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Appointment of Representative; *Use:* This form would be completed by beneficiaries, providers and suppliers (typically their billing clerk, or billing company), and any party who wish to appoint a representative to assist them with their initial Medicare claims determinations, and filing appeals on Medicare claims. The authority for collecting this information is under 42 CFR 405.910(a) of the Medicare claims appeal procedures.

The information supplied on the form is reviewed by Medicare claims and appeals adjudicators. The adjudicators make determinations whether the form was completed accurately, and if the form is correct and accepted, the form is appended to the claim or appeal that it pertains to. *Form Number:* CMS–1696 (OMB control number: 0938–0950); *Frequency:* Annually; Affected Public: Private Sector, Business or other for-profits; *Number of Respondents:* 270,544; *Total Annual Responses:*

270,544; *Total Annual Hours:* 67,637. (For policy questions regarding this collection contact Katherine E. Hosna at 410–786–4993.)

Dated: February 2, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–02441 Filed 2–4–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request Information Collection Request Title: Federal Tort Claims Act Program Deeming Applications for Health Centers, OMB No. 0906–0035 Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received no later than April 6, 2021.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Federal Tort Claims Act Program Deeming Applications for Health Centers, OMB No. 0906–0035—Extension.

Abstract: Section 224(g)–(n) of the Public Health Service (PHS) Act (42 U.S.C. 233(g)–(n)), as amended, authorizes the ''deeming'' of entities receiving funds under section 330 of the PHS Act as PHS employees for the purpose of receiving Federal Tort Claims Act (FTCA) coverage for the performance of medical, surgical, dental, and related functions for their officers, board members, employees, and certain contractors. The Health Center Program is administered by HRSA's Bureau of Primary Health Care. Health centers submit deeming applications annually to HRSA in the prescribed form and manner in order to obtain deemed PHS employee status, with the associated FTCA coverage.

Deemed PHS employment provides the covered individual with immunity from lawsuits and related civil actions resulting from the performance of medical, surgical, dental, and related functions within the scope of deemed employment.

The FTCA Program utilizes a web based application system, the Electronic Handbooks. The application includes the following: Contact information; Section 1: Review of Risk Management Systems; Section 2: Quality Improvement/Quality Assurance Attestations; Section 3: Credentialing and Privileging; Section 4: Claims Management; and Section 5: Additional Information, Certification, and Signatures.

HRSA is proposing no changes to the Application for Health Center Program Deemed Public Health Service Employment Status information collection request to be used for health center deeming applications for Calendar Year 2022 and thereafter.

Need and Proposed Use of the Information: Deeming applications must address certain specified criteria required by law in order for deeming determinations to be issued, and FTCA application forms are critical to HRSA's deeming determination process. The application submissions provide HRSA with the information essential for application evaluation and a deeming determination for the purposes of FTCA coverage. The application information is also used to determine whether a site visit is appropriate to assess issues relating to the health center's quality of care and to determine technical assistance needs.

Likely Respondents: Respondents include Health Center Program funds recipients seeking deemed PHS employee status for purposes of FTCA coverage.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Application for Health Center Program Deemed Public Health Service Employment Status (Initial)	35	1	35	2.5	87.5
Application for Health Center Program Deemed Public Health Service Employment Status (Redeeming)	1,125	1	1,125	2.5	2,812.5
Total	1,160		1,160		2,900

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2021–02393 Filed 2–4–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section.

Date: March 2–3, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting)

Contact Person: Paul Hewett-Marx, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room Bethesda, MD 20892 (856) 313–7960 *hewettmarxpn@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR20–117: Maximizing Investigators' Research Award (MIRA) for Early Stage Investigators (R35—Clinical Trial Optional).

Date: March 4–5, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Emily Foley, Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–3016, *emily.foley@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Hypersensitivity, Allergies and Mucosal Immunology.

Date: March 4–5, 2021.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Michelle Marie Arnold, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1199, *michelle.arnold@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 1, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02389 Filed 2–4–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biology of Development and Aging Integrated Review Group; Mechanisms of Cancer Therapeutics—2 Study Section.

Date: March 3–5, 2021.

Time: 1:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Careen K.Tang-Toth, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804 Bethesda, MD 20892, (301) 435–3504 *tothct@csr.nih.gov*.

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Bioengineering of Neuroscience, Vision and Low Vision Technologies Study Section.

Date: March 4–5, 2021.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Robert C. Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–3009, *elliotro@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Behavioral Neuroscience.

Date: March 4–5, 2021.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting)

Contact Person: Mei Qin, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213 Bethesda, MD 20892, (301) 875–2215 *qinmei@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Motivated Behavior Study Section.

Date: March 4–5, 2021.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Janita N. Turchi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, *turchij@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Risks, Prevention and Health Behavior.

Date: March 4–5, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Martha M. Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808 Bethesda, MD 20892, (301) 435–3575, *faradaym@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive

Sciences Integrated Review Group; Cell Signaling and Molecular Endocrinology Study Section.

Date: March 4–5, 2021,

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications,

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, EMNR IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182 MSC 7892 Bethesda, MD 20892, (301) 435–2514, *riverase@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Synapses, Cytoskeleton and Trafficking Study Section,

Date: March 4–5, 2021.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Christine A. Piggee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186 MSC 7850, Bethesda, MD 20892, (301) 435–0657, *christine.piggee@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuroscience AREA Grant Applications.

Date: March 4–5, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Richard D. Crosland, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, (301) 694–7084, *crosland@nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Social Sciences and Population Studies B Study Section.

Date: March 4–5, 2021.

Time: 10:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kate Fothergill, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3142, Bethesda, MD 20892, (301) 435–2309, *fothergillke@mail.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Neurodegeneration Study Section.

Date: March 4–5, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7850, Bethesda, MD 20892, (301) 435–1203, *laurent.taupenot@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Mechanisms of Memory and Sound Processing.

Date: March 4, 2021.

Time: 11:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sepandarmaz Aschrafi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040D, Bethesda, MD 20892, (301) 451–4251, *Armaz.aschrafi@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 1, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02388 Filed 2–4–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Patient-Oriented Research Review Committee.

Date: March 4–5, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Stephanie Johnson Webb, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–V, Bethesda, MD 20892, (301) 827–7992, *stephanie.webb@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 1, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02385 Filed 2–4–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; NIH Office of Intramural Training & Education—Application, Registration, and Alumni Systems Office of the Director

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Patricia Wagner, Program Analyst, Office of Intramural Training & Education (OITE), Office of Intramural Research (OIR),

Office of the Director (OD), National Institutes of Health (NIH); 2 Center Drive: Building 2/Room 2E06; Bethesda, Maryland 20892 or call non-toll-free number 240–476–3619 or Email your request, including your address to: *wagnerpa@od.nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on November 2, 2020, page 69337 (85 FR 69337) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The Office of the Director (OD), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: NIH Office of Intramural Training & Education—Application, Registration, and Alumni Systems, 0925–0299, exp., date, 06/30/2022, REVISION, Office of Intramural Training & Education (OITE), Office of Intramural Research (OIR), Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: The Office of Intramural Training & Education (OITE) administers a variety of programs and initiatives to recruit pre-college through pre-doctoral educational level individuals into the National Institutes of Health Intramural Research Program (NIH–IRP) to facilitate their development into future biomedical scientists. The proposed information collection is necessary in order to determine the eligibility and quality of potential awardees for traineeships in these programs. The applications for admission consideration solicit information including: Personal information, ability to meet eligibility criteria, contact information, university-assigned student identification number, training program selection, scientific discipline interests, educational history, standardized examination scores, reference information, resume components, employment history, employment interests, dissertation research details, letters of recommendation, financial aid history, sensitive data, and travel information, as well as feedback questions about interviews and application submission experiences. Sensitive data collected on the applicants: race, gender, ethnicity, relatives at NIH, and recruitment method, are made available only to OITE staff members or in aggregate form to select NIH offices and are not used by the admission committees for admission consideration. In addition, information to monitor trainee placement after departure from NIH is periodically collected.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 13,858.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time/ response (hours)	Total annual burden hours
High School Scientific Training & Enrichment Program (HiSTEP)—Orientation	25	1	10/60	4
HiSTEP2—Orientation	25	1	10/60	4
HiSTEP & HiSTEP2—Alumni Tracking	125	2	30/60	125
Summer Internship Program (SIP)—Application	8,000	1	45/60	6,000
SIP—Recommendation Letters	16,000	1	10/60	2,667
Amgen Scholars at NIH—Supplemental Application	535	1	10/60	89
Amgen Scholars at NIH—Feedback	20	1	15/60	5
Amgen Scholars at NIH—Alumni Tracking	127	1	30/60	64
Community College Summer Enrichment Program (CCSEP)—Alumni Tracking	158	1	10/60	26
College Summer Opportunities in Advanced Research (C–SOAR)—Alumni Tracking	158	1	10/60	26
Graduate Summer Opportunities in Advanced Research (G–SOAR)—Alumni Tracking	114	1	30/60	57
Graduate Data Science Summer Program (GDSSP)—Alumni Tracking	30	1	30/60	15
Native American Visit Week—Application	15	1	20/60	5
Native American Visit Week—Recommendation Letters	15	1	10/60	3
Native American Visit Week—Feedback	15	1	15/60	4
Undergraduate Scholarship Program (UGSP)—Application	125	1	60/60	125
UGSP—Recommendation Letters for Applicants	375	1	10/60	63
UGSP—Exceptional Financial Need (EFN)—Completed by Applicant	125	1	3/60	6
UGSP—EFN—Completed by University Staff	125	1	15/60	31
UGSP—Scholar Contract	25	1	10/60	4
UGSP—Evaluation of Scholar PayBack Period	30	1	15/60	8
UGSP—Renewal Application	15	1	45/60	11
UGSP—Recommendation Letters for Renewals	15	1	10/60	3
UGSP—Deferment Form—Completed by UGSP Scholar	25	1	3/60	1
UGSP—Deferment Form—Completed by University Staff	25	1	5/60	2
Postbaccalaureate Training Program (PBT)—Application	2,250	1	45/60	1,688
PBT—Recommendation Letters	6,750	1	10/60	1,125
NIH Academy—Fellow & Certificate Programs Application	300	1	15/60	75
NIH Academy—Enrichment Program Application	300	1	15/60	75
Graduate Partnerships Program (GPP)—Application	325	1	60/60	325
GPP—Recommendation Letters for Application	975	1	10/60	163
GPP—Interview Experience Survey	30	1	10/60	5

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Number of respondents	Number of responses per respondent	Average time/ response (hours)	Total annual burden hours
GPP—Registration	175	1	15/60	44
GPP—Awards Certificate	75	1	30/60	38
MyOITE—User Accounts	6,000	1	3/60	300
MyOITE—NIH Alumni	500	1	15/60	125
OITE Careers Blog—Success Stories	7	1	45/60	5
Academic Internship Program (AIP)—Application	500	1	45/60	375
AIP—Recommendation Letters	1,000	1	10/60	167
Totals	45,434	45,559		13,858

Dated: January 31, 2021.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2021–02461 Filed 2–4–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Center for Scientific Review Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

URL for virtual access:—*https://videocast.nih.gov*. For additional information, please visit: *https://public.csr.nih.gov/AboutCSR/Organization/CSRAdvisoryCouncil*.

Name of Committee: Center for Scientific Review Advisory Council.

Date: March 29, 2021.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: Provide advice to the Director, Center for Scientific Review (CSR), on matters related to planning, execution, conduct, support, review, evaluation, and receipt and referral of grant applications at CSR.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Bruce Reed, Ph.D., Deputy Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–9159, *reedbr@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://public.csr.nih.gov/aboutcsr/CSROrganization/Pages/CSRAC.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 1, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02390 Filed 2–4–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Transition to Independence Review Committee.

Date: March 11–12, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 205–H, Bethesda, MD 20892, (301) 827–7969, *Pintuccig@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 1, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02383 Filed 2–4–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Regenerative Medicine Innovation Project Review.

Date: March 3, 2021.

Time: 11:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rajiv Kumar, Ph.D., Branch Chief, Blood and Vascular Branch, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–W, Bethesda, MD 20892–7924, 301–827–4612, *rajiv.kumar@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Clinical Trials SEP (UG3, U24, R61, R34).

Date: March 11, 2021.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 207–P, Bethesda, MD 20892–7924, (301) 827–7942, *lismerin@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Early Phase Clinical Trials (R61, R33).

Date: March 12, 2021.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 207–P, Bethesda, MD 20892–7924, (301) 827–7942, *lismerin@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Mentored Career Development Awards—K24, K99.

Date: March 25, 2021.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lindsay M Garvin, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Suite 208–Y, Bethesda, MD 20892, (301) 827–7911, *lindsay.garvin@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 1, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02386 Filed 2–4–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Invasive Recording and Stimulating in Humans to Advance Neural Circuitry Understanding of Mental Health Disorders (R01, R21).

Date: March 1, 2021.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Erin E. Gray, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Boulevard, NSC 6152B, Bethesda, MD 20892, 301–402–8152, *erin.gray@nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIMH SERV Member Conflicts.

Date: March 5, 2021.

Time: 12:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marcy Ellen Burstein, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606, 301–443–9699, *bursteinme@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: February 2, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02432 Filed 2–4–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel NTU.

Date: March 3, 2021.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1080, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Barbara J. Nelson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1080; Bethesda, MD 20892–4874, 301–435–0806, *nelsonbj@mail.nih.gov.*

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel Rare Disease Clinical Trial Readiness.

Date: March 10–11, 2021

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1080, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Barbara J. Nelson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1080, Bethesda, MD 20892–4874, 301–435–0806, *nelsonbj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 1, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02391 Filed 2–4–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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: Heart, Lung, and Blood Initial Review Group; Heart, Lung, and Blood Program Project Review Committee.

Date: March 19, 2021.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Melissa H Nagelin, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–R, Bethesda, MD 20892, 301–827–7951, *nagelinmh2@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 1, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02384 Filed 2–4–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; ClinGen—SEP

Date: March 8, 2021.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20817, (301) 435–1580, *pozzattr@mail.nih.gov.*

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Functional Characterization—SEP.

Date: March 16–17, 2021.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute; National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20817, (301) 435–1580, *pozzattr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 1, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02392 Filed 2–4–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Special Volunteer and Guest Researcher Assignment (Office of Intramural Research, Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Arlyn Garcia-Perez, Director of Policy and Analysis, Office of Intramural Research, Office of the Director, National Institutes of Health, 1 Center Drive, MSC 0140, Building 1, Room 160, MSC–0140, Bethesda, Maryland 20892 or call non-toll-free number (301) 496–1921 or (301) 496–1381 or email your request, including your address to: *GarciaA@od.nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on November 13, 2020, pages 72672–72673 (85 FR 72672) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The Office of Intramural Research (OIR), Office of the Director, National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after

October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Special Volunteer and Guest Researcher Assignment form—EXTENSION OMB #0925–0177, exp., date February 28, 2021, Office of Intramural Research (OIR), Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: Form Number: NIH–590 is a single form completed by an NIH official for each Guest Researcher or Special Volunteer prior to his/her arrival at NIH. The information on the form is necessary for the approving official to reach a decision on whether to allow a Guest Researcher to use NIH facilities, or whether to accept volunteer services offered by a Special Volunteer. If the original assignment is extended, another form notating the extension is completed to update the file. In addition, each Special Volunteer and Guest Researcher reads and signs an NIH Agreement.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 652.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual hour burden hours
Special Volunteer and Guest Researcher Assignment.	Special Volunteers and Guest researchers.	2,100	2	6/60	460
NIH Special Volunteer Agreement	Special Volunteers	2,100	1	5/60	175
NIH Guest Researcher Agreement	Guest Researchers	200	1	5/60	17
Totals		2,300	6,900		652

Dated: January 31, 2021.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2021–02462 Filed 2–4–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Clinical and Basic Science Review.

Date: March 18–19, 2021.

Time: 11:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Keith A. Mintzer, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Suite 207–G, Bethesda, MD 20892–7924, (301) 827–7949, *mintzerk@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 1, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02382 Filed 2–4–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health.

The meeting will be held as a virtual meeting and is open to the public as indicated below. Individuals who plan to view the meeting and need special assistance or other reasonable accommodations to view the meeting should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

Name of Committee: Advisory Committee to the Director, National Institutes of Health.

Date: February 26, 2021.

Time: 3:00 p.m. to 5:30 p.m.

Agenda: Update on NIH Workforce Plans to Promote Diversity, Equity, and Inclusion in Biomedical Research.

Place: National Institutes of Health, Building 1, One Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Gretchen Wood, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 126, Bethesda, MD 20892, 301–496–4272, *Woodgs@od.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://acd.od.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan

Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 1, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–02387 Filed 2–4–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2106]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Colorado:						
Boulder.	City of Boulder (20–08–0969P).	The Honorable Sam Weaver, Mayor, City of Boulder, 1777 Broadway Street, Boulder, CO 80302.	Planning and Development Services Department, 1739 Broadway Street, Boulder, CO 80302.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2021	080024
Boulder.	Unincorporated areas of Boulder County 20–08–0969P).	The Honorable Deb Gardner, Chair, Boulder County Board of Commissioners, P.O. Box 471, Boulder, CO 80306.	Boulder County Community Planning and Permitting Department, 2045 13th Street, Boulder, CO 80302.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2021	080023

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Connecticut: Fairfield.	Town of Stratford 20–01–0502P).	The Honorable Laura R. Hoydick, Mayor, Town of Stratford, 2725 Main Street, Stratford, CT 06615.	Building Department, 2725 Main Street, Stratford, CT 06615.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 26, 2021	090016
Delaware: New Castle.	Unincorporated areas of New Castle County 20–03–1274P).	The Honorable Matthew Meyer, New Castle County Executive, 87 Read's Way, New Castle, DE 19720.	New Castle County Land Use Department, 87 Read's Way, New Castle, DE 19720.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 15, 2021	105085
Florida:						
Lee.	City of Bonita Springs 20–04–5188P).	The Honorable Rick Steinmeyer, Mayor, City of Bonita Springs, 9101 Bonita Beach Road, Bonita Springs, FL 34135.	Community Development Department, 9220 Bonita Beach Road, Bonita Springs, FL 34135.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 14, 2021	120680
Lee.	City of Sanibel (20–04–5855P).	The Honorable Mick Denham, Acting Mayor, City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957.	Community Services Department, 800 Dunlop Road, Sanibel, FL 33957.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2021	120402
Lee.	Unincorporated areas of Lee County 20–04–5420P).	Mr. Roger Desjarlais, Lee County Manager, 2120 Main Street, Fort Myers, FL 33901.	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 23, 2021	125124
Marion.	Unincorporated areas of Marion County 20–04–1412P).	The Honorable Mounir Bouyounes, Marion County Administrator, 601 Southeast 25th Avenue, Ocala, FL 34471.	Office of Marion County Administrator, 601 Southeast 25th Avenue, Ocala, FL 34471.	*https://msc.fema.gov/portal/advanceSearch.*	May 6, 2021	120160
Monroe.	City of Marathon 20–04–5597P).	The Honorable Steve Cook, Mayor, City of Marathon, 9805 Overseas Highway, Marathon, FL 33050.	Planning Department, 9805 Overseas Highway, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 5, 2021	120681
Monroe.	Unincorporated areas of Monroe County 20–04–4391P).	The Honorable Michelle Coldiron, Mayor, Monroe County Board of Commissioners, 25 Ships Way, Big Pine Key, FL 33042.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 26, 2021	125129
Palm Beach.	City of Westlake 20–04–3348P).	The Honorable Roger Manning, Mayor, City of Westlake, 4001 Seminole Pratt Whitney Road, Westlake, FL 33470.	City Hall, 4001 Seminole Pratt Whitney Road, Westlake, FL 33470.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2021	120018
Polk.	Unincorporated areas of Polk County 20–04–0306P).	The Honorable Bill Braswell, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Bartow, FL 33831.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33830.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 15, 2021	120261
Coweta.	Unincorporated areas of Coweta County 21–04–0345P).	The Honorable Paul Poole, Chairman, Coweta County Board of Commissioners, 22 East Broad Street, Newnan, GA 30263.	Coweta County Community Development Department, 22 East Broad Street, Newnan, GA 30263.	*https://msc.fema.gov/portal/advanceSearch.*	May 6, 2021	130298
Maine: York.	Town of Kennebunkport 20–01–0791P).	The Honorable Allen A. Daggett, Chairman, Town of Kennebunkport Board of Selectmen, 6 Elm Street, Kennebunkport, ME 04046.	Planning and Development Department, 6 Elm Street, Kennebunkport, ME 04046.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2021	230170
Maryland: Calvert.	Unincorporated areas of Calvert County 21–03–0019P).	Mr. Mark Willis, Calvert County Administrator, 175 Main Street, Prince Frederick, MD 20678.	Calvert County Services Department, 150 Main Street, Suite 300, Prince Frederick, MD 20678.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2021	240011
Mississippi:						
Copiah.	City of Hazlehurst 20–04–2010P).	The Honorable Shirley Sandifer, Mayor, City of Hazlehurst, P.O. Box 549, Hazlehurst, MS 39083.	City Hall, 209 South Extension Street, Hazlehurst, MS 39083.	*https://msc.fema.gov/portal/advanceSearch.*	May 6, 2021	280046

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Copiah.	Unincorporated areas of Copiah County 20–04–2010P).	The Honorable Ronnie Barlow, Copiah County Administrator, P.O. Box 551,, Hazlehurst, MS 39083.	Copiah County Courthouse, 122 South Lowe Street, Hazlehurst, MS 39083.	*https://msc.fema.gov/portal/advanceSearch.*	May 6, 2021	280221
New Mexico:						
Dona Ana.	City of Las Cruces 20–06–1381P).	The Honorable Ken Miyagishima, Mayor, City of Las Cruces, 700 North Main Street, Las Cruces, NM 88001.	City Hall, 700 North Main Street, Las Cruces, NM 88001.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 28, 2021	355332
Taos.	Unincorporated areas of Taos County 20–06–2426P).	Mr. Brent Jaramillo, Taos County Manager, 105 Albright Street, Suite G, Taos, NM 87571.	Taos County Planning Department, 105 Albright Street, Taos, NM 87571.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 16, 2021	350078
North Carolina:						
Chatham.	Town of Siler City 20–04–3577P).	Mr. Roy Lynch, Manager, Town of Siler City, P.O. Box 769, Siler City, NC 27344.	Public Works and Utilities Department, 311 North 2nd Avenue, Siler City, NC 27344.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 16, 2021	370058
Forsyth.	City of Winston-Salem 20–04–2834P).	The Honorable Allen Joines, Mayor, City of Winston-Salem, P.O. Box 2511, Winston-Salem, NC 27101.	Inspection Department, 100 East 1st Street, Suite 328, Winston-Salem, NC 27101.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 4, 2021	375360
Forsyth.	Unincorporated areas of Forsyth County 20–04–2834P).	The Honorable David R. Plyler, Chairman, Forsyth County Board of Commissioners, 201 North Chestnut Street, Winston-Salem, NC 27101.	Forsyth County Planning Board Office, 309 East Market Street Winston-Salem, NC 27577.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 4, 2021	375349
Chester.	Township of East Marlborough 20–03–1170P).	The Honorable Robert McKinstry, Chairman, Township of East Marlborough Board of Supervisors, 721 Unionville Road, Kennett Square, PA 19348.	Township Hall, 721 Unionville Road, Kennett Square, PA 19348.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2021	421480
Pennsylvania:						
Lackawanna.	Township of Clifton 20–03–1819P).	The Honorable Theodore Stout, Chairman, Township of Clifton Board of Supervisors, 361 State Road 435, Clifton Township, PA 18424.	Township Hall, 361 State Road 435, Clifton Township, PA 18424.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 6, 2021	421751
Texas:						
Anderson.	Unincorporated areas of Anderson County 20–06–1140P).	The Honorable Robert D. Johnston, Anderson County Judge, 703 North Mallard Street, Suite 101, Palestine, TX 75801.	Anderson County Geographic Information Systems (GIS) Department, 703 North Mallard Street, Suite 109, Palestine, TX 75801.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2021	480001
Dallas.	City of Dallas 20–06–2850P).	The Honorable Eric Johnson, Mayor, City of Dallas, 1500 Marilla Street, Suite 5EN, Dallas, TX 75201.	Floodplain and Drainage Management Department, 320 East Jefferson Boulevard, Room 307, Dallas, TX 75203.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2021	480171
Denton.	City of Justin 20–06–3405P).	The Honorable Alan Woodall, Mayor, City of Justin, P.O. Box 129, Justin, TX 76247.	Department of Development Services, 415 North College Street, Justin, TX 76247.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 23, 2021	480778
Denton.	City of New Fairview 20–06–2141P).	Mr. Ben Nibarger, City of New Fairview Administrator, 999 Illinois Lane, New Fairview, TX 76078.	Geographic Information Systems (GIS) Department, 999 Illinois Lane, New Fairview, TX 76078.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 15, 2021	481629
Denton.	Unincorporated areas of Denton County 20–06–2141P).	The Honorable Andy Eads, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Denton County Development Services Department, 3900 Morse Street, Denton, TX 76208.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 15, 2021	480774
Harris.	City of Houston 21–06–0023P).	The Honorable Sylvester Turner, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Public Works and Engineering, Floodplain Management Department, 1002 Washington Avenue, 3rd Floor, Houston, TX 77251.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 26, 2021	480296
Harris.	Unincorporated areas of Harris County 20–06–2992P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Department, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 26, 2021	480287

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Tarrant.	City of Arlington 20–06–2037P).	The Honorable Jeff Williams, Mayor, City of Arlington, 101 West Abram Street, Arlington, TX 76010.	City Hall, 101 West Abram Street, Arlington, TX 76010.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2021	485454
Virginia:						
Independent City.	City of Staunton 20–03–1605P).	Mr. Steven Rosenberg, City of Staunton Manager, 116 West Beverley Street, Staunton, VA 24401.	Community Development Department, 116 West Beverley Street, Staunton, VA 24401.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 30, 2021	510155
Loudoun.	Unincorporated areas of Loudoun County 20–03–1566P).	Mr. Tim Hemstreet, Loudoun County Administrator, P.O. Box 7000, Leesburg, VA 20177.	Loudoun County Mapping and Geographic Information (GIS) Department, 1 Harrison Street Southeast, Leesburg, VA 20175.	*https://msc.fema.gov/portal/advanceSearch.*	May 10, 2021	510090

[FR Doc. 2021–02428 Filed 2–4–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2105]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before May 6, 2021.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2105, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective

Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Ford County, Illinois and Incorporated Areas Project: 17–05–1609S Preliminary Date: October 1, 2019 and October 12, 2020	
City of Gibson City	City Hall, 101 East 8th Street, Gibson City, IL 60936.
Unincorporated Areas of Ford County	Ford County Courthouse, 200 West State Street, Paxton, IL 60957.
Ida County, Iowa and Incorporated Areas Project: 16–07–2280S Preliminary Date: March 17, 2020	
City of Arthur	City Hall, 217 South Main Street, Arthur, IA 51431.
City of Battle Creek	City Hall, 115 Main Street, Battle Creek, IA 51006.
City of Galva	City Hall, 116 South Main Street, Galva, IA 51020.
City of Holstein	City Hall, 119 South Main Street, Holstein, IA 51025.
City of Ida Grove	City Hall, 403 3rd Street, Ida Grove, IA 51445.
Unincorporated Areas of Ida County	Ida County Courthouse, 401 Moorehead Street, Ida Grove, IA 51445.
Johnson County, Iowa and Incorporated Areas Project: 17–07–0294S Preliminary Date: January 23, 2020	
City of Coralville	City Hall, 1512 7th Street, Coralville, IA 52241.
City of Hills	City Office, 201 North 1st Street, Hills, IA 52235.
City of Iowa City	Civic Center, 410 East Washington Street, Iowa City, IA 52240.
City of Lone Tree	City Hall, 123 North Devoe Street, Lone Tree, IA 52755.
City of North Liberty	City Hall, 3 Quail Creek Circle, North Liberty, IA 52317.
City of Oxford	City Hall, 205 North Augusta Avenue, Oxford, IA 52322.
City of Shueyville	Shueyville City Hall, 2863 120th Street Northeast, Swisher, IA 52338.
City of Solon	City Hall, 101 North Iowa Street, Solon, IA 52333.
City of Swisher	City Hall, 66 2nd Street Southwest, Swisher, IA 52338.
City of Tiffin	City Hall, 300 Railroad Street, Tiffin, IA 52340.
Unincorporated Areas of Johnson County	Johnson County Planning and Zoning, 913 South Dubuque Street, Iowa City, IA 52240.
Union County, Iowa and Incorporated Areas Project: 19–07–0031S Preliminary Date: March 2, 2020	
City of Creston	City Offices, 116 West Adams Street, Creston, IA 50801.
Unincorporated Areas of Union County	Union County Emergency Management Office, 705 East Taylor Street, Creston, IA 50801.
Harney County, Oregon and Incorporated Areas Project: 11–10–0409S Preliminary Date: June 28, 2019 and October 15, 2020	
Burns Paiute Reservation	Burns Paiute Tribal Office, 100 Pasigo Street, Burns, OR 97720.
City of Burns	City Hall, 242 South Broadway Avenue, Burns, OR 97720.
City of Hines	City Hall, 101 East Barnes Avenue, Hines, OR 97738.
Unincorporated Areas of Harney County	Harney County Planning Department, 360 North Alvord Avenue, Burns, OR 97720.

[FR Doc. 2021–02430 Filed 2–4–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports,

currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Alabama: Tuscaloosa (FEMA Docket No: B–2076).	City of Tuscaloosa (20–04–2661P).	The Honorable Walt Maddox, Mayor, City of Tuscaloosa, P.O. Box 2089, Tuscaloosa, AL 35403.	City Hall, 2201 University Boulevard, Tuscaloosa, AL 35401	Jan. 4, 2021	010203
Colorado:					
Boulder (FEMA Docket No.: B–2064).	City of Boulder (20–08–0376P).	The Honorable Sam Weaver, Mayor, City of Boulder, P.O. Box 791, Boulder, CO 80306.	Central Records Department, 1777 Broadway, Boulder, CO 80306.	Jan. 7, 2021	080024
Boulder (FEMA Docket No.: B–2064).	Town of Jamestown (20–08–0179P).	The Honorable Tara Schoedinger, Mayor, Town of Jamestown, P.O. Box 298, Jamestown, CO 80455.	Town Hall, 118 Main Street, Jamestown, CO 80455.	Jan. 11, 2021	080216
Connecticut: New Haven (FEMA Docket No.: B–2067).	Town of Branford (20–01–0799P).	The Honorable James B. Cosgrove, First Selectman, Town of Branford Board of Selectmen, 1019 Main Street, Branford, CT 06405.	Engineering Department, 1019 Main Street, Branford, CT 06405.	Jan. 15, 2021	090073
Florida:					
Lake (FEMA Docket No.: B–2067).	City of Leesburg (20–04–0931P).	Mr. Al Minner, Manager, City of Leesburg, 501 West Meadow Street, Leesburg, FL 34748.	Planning and Zoning Department, 204 North 5th Street, Leesburg, FL 34748.	Jan. 13, 2021	120136
Lake (FEMA Docket No.: B–2067).	Unincorporated areas of Lake County (20–04–0931P).	The Honorable Leslie Campione, Chair, Lake County Board of Commissioners, 315 West Main Street, Tavares, FL 32778.	Lake County Public Works Department, 323 North Sinclair Avenue, Tavares, FL 32778.	Jan. 13, 2021	120421
Monroe (FEMA Docket No.: B–2064).	Unincorporated areas of Monroe County (20–04–3334P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Jan. 4, 2021	125129
Georgia:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Mitchell (FEMA Docket No.: B–2064).	Unincorporated areas of Mitchell County (20–04–3145P).	The Honorable Benjamin Hayward, Chairman, Mitchell County Board of Commissioners, 26 North Court Street, Camilla, GA 31730.	Mitchell County Building and Zoning Department, 26 North Court Street, Camilla, GA 31730.	Jan. 7, 2021	130438
Oconee (FEMA Docket No.: B–2064).	City of Watkinsville, (19–04–6350P).	The Honorable Bob Smith, Mayor, City of Watkinsville, 191 VFW Drive, Watkinsville, GA 30677.	City Hall, 191 VFW Drive, Watkinsville, GA 30677.	Jan. 8, 2021	130369
North Carolina: Brunswick (FEMA Docket No.: B–2064).	Unincorporated areas of Brunswick County (20–04–4291P).	The Honorable Frank Williams, Chairman, Brunswick County Board of Commissioners, P.O. Box 249, Bolivia, NC 28422.	Brunswick County Department of Floodplain Management Department, 75 Courthouse Drive, Building 1, Bolivia, NC 28422.	Jan. 4, 2021	370295
Oregon: Washington (FEMA Docket No.: B–2059).	Unincorporated areas of Washington County, (19–10–1199P).	The Honorable Kathryn Harrington, Chair, Washington County Board of Commissioners, 155 North 1st Avenue, Suite 300, Hillsboro, OR 97124.	Washington County Land Use and Transportation Department, 1400 Southwest Walnut Street, Hillsboro, OR 97123.	Jan. 4, 2021	410238
Texas:					
Collin and Dallas (FEMA Docket No.: B–2064).	City of Sachse (20–06–1068P).	Ms. Gina Nash, Manager, City of Sachse, 3815 Sachse Road, Building B, Sachse, TX 75048.	Engineering Department, 3815 Sachse Road, Building B, Sachse, TX 75048.	Jan. 8, 2021	480186
Ellis (FEMA Docket No.: B–2064).	City of Midlothian (20–06–1890P).	The Honorable Richard Reno, Mayor, City of Midlothian, 104 West Avenue E, Midlothian, TX 76065.	City Hall, 104 West Avenue E, Midlothian, TX 76065.	Jan. 15, 2021	480801
Ellis (FEMA Docket No.: B–2064).	Unincorporated areas of Ellis County (20–06–1084P).	The Honorable Todd Little, Ellis County Judge, 101 West Main Street, Waxahachie, TX 75165.	Ellis County Engineering Department, 109 South Jackson Street, Waxahachie, TX 75165.	Jan. 4, 2021	480798
Guadalupe (FEMA Docket No.: B–2064).	City of Cibolo (20–06–0736P).	Mr. Robert T. Herrera, Manager, City of Cibolo, 200 South Main Street, Cibolo, TX 78108.	Geographic Information Systems (GIS) Department, 200 South Main Street, Cibolo, TX 78108.	Jan. 7, 2021	480267
Guadalupe (FEMA Docket No.: B–2064).	City of Schertz (20–06–0736P).	Mr. Mark Browne, Manager, City of Schertz, 1400 Schertz Parkway, Schertz, TX 78154.	Geographic Information Systems (GIS) Department, 10 Commercial Place, Schertz, TX 78154.	Jan. 7, 2021	480269
Johnson (FEMA Docket No.: B–2064).	City of Venus (20–06–1084P).	The Honorable James L Burgess, Mayor, City of Venus, 700 West Highway 67, Venus, TX 76084.	Public Works and Water/Sewer Department, 700 West Highway 67, Venus, TX 76084.	Jan. 4, 2021	480883
Utah: Davis (FEMA Docket No.: B–2064).	City of Clearfield (20-08-0267P).	Mr. J.J. Allen, Manager, City of Clearfield, 55 South State Street, Clearfield, UT 84015.	City Hall, 55 South State Street, Clearfield, UT 84015.	Jan. 4, 2021	490041
Virginia: Loudoun (FEMA Docket No.: B–2064).	Unincorporated areas of Loudoun County (20–03–0748P).	Mr. Tim Hemstreet, Loudoun County Administrator, P.O. Box 7000, Leesburg, VA 20177.	Loudoun County Mapping and Geographic Information Department, 1 Harrison Street Southeast, Leesburg, VA 20175.	Dec. 28, 2020	510090

[FR Doc. 2021–02429 Filed 2–4–21; 8:45 am]
BILLING CODE 9110–12–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1244]

Certain Batteries and Products Containing Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 30, 2020, under section 337 of the Tariff Act of 1930, as amended, on behalf of One World Technologies, Inc. of Anderson, South Carolina, and Techtronic Power Tools Technology Ltd. of the British Virgin Islands. A supplement to the complaint was filed on January 12, 2021. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain batteries and products containing same by reason of infringement of the sole claims of U.S. Patent No. D579,868 (''the '868 patent''); U.S. Patent No. D580,353 (''the '353 patent''); and U.S. Patent No. D593,944 (''the '944 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainants request that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2020).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 29, 2021, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of the sole claim of the '868 patent; the sole claim of the '353 patent; and the sole claim of the '944 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''rechargeable battery packs intended for use with battery-powered products.''

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

One World Technologies, Inc., 100 Innovation Way, Anderson, South Carolina 29621

Techtronic Power Tools Technology Ltd., Trident Chambers, P.O. Box 146, Road Town, Tortola, British Virgin Islands

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Darui Development Limited, No. 34, Jiancha South Lane, Xiaojiuya Street, Kuduer Town, Yakeshi, Neimenggu 022164, China

Dongguan Xinjitong Electronic Technology Co., Ltd., 27 Xiangrong Road, Songmushan, Dalang Town, Dongguan City, Guangdong 523795, China

Shenzhen Laipaili Electronics Co., Ltd., 1113B Huiyi Caifu Centre, No. 9 Zhongxin Road, Gaofeng Community, Dalang Street, Longhua New District, Shenzhen, Guangdong 518190, China

Shenzhen Liancheng Weiye Industrial Co., Ltd., Floor A152, Phase II Factory Building, Fuqiao Zone 3, Xinhe Community, Fuhai Street, Baoan District, Shenzhen, Guangdong 518133, China

Shenzhen MingYang Creation Electronic Co., Ltd., No. 4, 3F, Building 2, Huafeng Logistics Industry Park, Dayang Road, Dayangtian, Fuyong Street, Baoan District, Shenzhen, Guangdong 518103, China

Shenzhen Ollop Technology Co. Ltd., 602 Tongji Building, No. 555 Jihua Road, Bantian Street, Longgang District, Shenzhen, Guangdong 518129, China

Shenzhen Rich Hao Yuan Energy Technology Co., Ltd., 3rd Floor, Building A17, Fuqiao Industrial Park, Zone 3, Fuyong Street, Baoan District, Shenzhen, Guangdong 518103, China

Shenzhen Runsensheng Trading Co., Ltd., 2505, Building A, Xinghe World, No.1, Yabao Road, Bantian Street, Longgang District, Shenzhen, Guangdong 518129, China

Shenzhen Saen Trading Co., Ltd., No. A709 Guangfa Building, B804 Mabu Community, Xixiang Street, Baoan District, Shenzhen, Guangdong 518126, China

Shenzhen Shengruixiang E-Commerce Co., Ltd., 302, Building 42, Chaoyang New Village, Minzhi Street, Longhua New District, Shenzhen, Guangdong 518131, China

Shenzhen Tuo Yu Technology Co., Ltd., 407, Guohong Shopping Plaza, No. 98, Meilong RD, Longhua ST, Longhua District, Shenzhen, Guangdong 518110, China

Shenzhen Uni-Sun Electronics Co., Ltd., 101 Building A, No. 43 Lan Er Road, Long Xin Community, Baolong Street, Longgang District, Shenzhen, Guangdong 518172, China

Shenzhen Vmartego Electronic Commerce Co., Ltd., 1901, No. 15–1, Haitian Road, Block A, Excellent Times Square, N23, Haiwang Community, Xin'an Street, Bao'an District, Shenzhen, Guangdong 518101, China

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be

submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainants of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: February 1, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–02376 Filed 2–4–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain LTE-Compliant Cellular Communication Devices, DN 3531;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Evolved Wireless, LLC on February 1, 2021. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain LTE-compliant cellular communication devices. The complainant names as respondents: Samsung Electronics Co., Ltd. of South Korea; Samsung Electronics America, Inc. of Ridgefield Park, NJ; and Motorola Mobility LLC of Chicago, IL. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3531'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: February 1, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–02435 Filed 2–4–21; 8:45 am]

BILLING CODE 7020–02–P

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–772]

Bulk Manufacturer of Controlled Substances Application: Sterling Pharma USA, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Sterling Pharma USA LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before April 6, 2021. Such persons may also file a written request for a hearing on the application on or before April 6, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on January 5, 2021, Sterling Pharma USA, LLC., 1001 Sheldon Drive, Suite 101, Cary, North Carolina 27513–2078, applied to be registered as an bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Tetrahydrocannabinols	7370	I

The company plans to manufacture in bulk drug code 7370 (Tetrahydrocannabinols) exclusively from hemp extract, for distribution and sale to its customers. No other activity for this drug code is authorized for this registration.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2021–02455 Filed 2–4–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–771]

Bulk Manufacturer of Controlled Substances Application: Noramco, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Noramco Inc has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before April 6, 2021. Such persons may also file a written request for a hearing on the application on or before April 6, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on November 3, 2020, Noramco Inc, 1550 Olympic Drive, Athens Georgia 30601, applied to be registered as an bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Codeine-N-oxide	9053	I
Dihydromorphine	9145	I
Hydromorphinol	9301	I
Nabilone	7379	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Levorphanol	9220	II
Morphine	9300	II

The company plans to manufacture bulk active pharmaceutical ingredients (API) and reference standards for distribution to their customers.

In reference to drug codes 7350 (Marihuana Extract), 7360 (Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetics. No other activities for these drugs are authorized for this registration.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2021–02454 Filed 2–4–21; 8:45 am]

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DEPARTMENT OF JUSTICE

[OMB Number 1125–NEW]

Agency Information Collection Activities; Proposed Collection; Comments Requested; FOIAXpress/ FOIA Public Access Link

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until March 8, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

If you need a copy of the proposed information collection or additional information, please contact Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305–0289.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—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.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.

2. *The Title of the Form/Collection:* FOIAXpress Public Access Link.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* No agency form number, electronic collection. The applicable component of the Department of Justice is the Office of the General Counsel, Executive Office for Immigration Review.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Members of the public seeking to obtain records from the Executive Office for Immigration Review (EOIR). Abstract: This information collection is necessary to communicate with the requester community electronically regarding agency record requests and deliver agency records electronically subject to disclosure to the requester community.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 33,984 respondents will complete FOIA requests via FOIAXpress with an average of 3 minutes per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,699 total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: February 1, 2021.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S Department of Justice.

[FR Doc. 2021–02381 Filed 2–4–21; 8:45 am]

BILLING CODE 4410–30–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–21–0002; NARA–2021–013]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: NARA must receive comments by March 22, 2021.

ADDRESSES: You may submit comments by either of the following methods. You must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail:* Records Appraisal and Agency Assistance (ACR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov.* For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov,* by mail at the address above, or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule.

We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and

consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on regulations.gov a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at regulations.gov to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Defense, Defense Logistics Agency, Records of International Affairs and Foreign Military Sales (DAA–0361–2020–0001).
2. Department of Health and Human Services, Administration for Children and Families, Sexual Risk Avoidance Youth Outreach Records (DAA–0292–2020–0004).
3. Department of State, Bureau of Political-Military Affairs, Consolidated Schedule (DAA–0059–2019–0012).
4. Department of the Treasury, Treasury Inspector General for Tax Administration, Non-Evidentiary Audio-Visual Files (DAA–0056–2018–0001).
5. Federal Trade Commission, Bureau of Competition, Hart-Scott-Rodino (HSR) Files (DAA–0122–2020–0002).
6. National Archives and Records Administration, Agency-wide, Leadership and Operations Management (DAA–0064–2020–0001).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2021–02394 Filed 2–4–21; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 on or after the date of publication of this notice.

DATES: Comments should be received on or before March 8, 2021 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Dawn Wolfgang at (703) 548–2279, emailing *PRAComments@ncua.gov,* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0102.

Title: Truth in Lending (TILA), Regulation Z.

Abstract: The Truth in Lending Act (TILA) was enacted to foster comparison credit shopping and informed credit decision making by requiring accurate disclosure of the costs and terms of credit to consumers and to protect consumers against inaccurate and unfair credit billing practices. TILA has been revised numerous times since it took effect, notably by passage of the Fair Credit Billing Act of 1974, the Consumer Leasing Act of 1976, the Truth in Lending Simplification and Reform Act of 1980, the Fair Credit and Charge Card Disclosure Act of 1988, and the Home Equity Loan Consumer Protection Act of 1988. Historically, TILA was implemented by the Board of Governors of the Federal Reserve System's (FRB) Regulation Z, 12 CFR part 226. The Dodd-Frank Wall Street Reform and Consumer Protection Act transferred FRB's rulemaking authority for TILA to the Consumer Financial Protection Bureau (CFPB).

Regulation Z contains several provisions that impose information collection requirements: The information collection requirements for open-end credit products; the information collection requirements for closed-end credit; the information collection requirements that apply to both open- and closed-end mortgage credit; the information collection requirements for specific residential mortgage types-namely, reverse mortgages and high cost mortgages with rates and fees above specified thresholds; the information collection requirements for private education loans; and information collection requirements related to Regulation Z's advertising and record retention rules.

The collection of information pursuant to Part 1026 is triggered by specific events and disclosures and must be provided to consumers within the time periods established under the regulation. To ease the compliance cost (particularly for small credit unions), model forms and clauses are appended to the regulation.

Type of Review: Extension.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 2,906,986.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on February 2, 2021.

Dated: February 2, 2021.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2021–02450 Filed 2–4–21; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Survey of Doctorate Recipients

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 April 6, 2021 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 W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: 2021 Survey of Doctorate Recipients.

OMB Control Number: 3145–0020.

Expiration Date of Current Approval: August 31, 2022.

Type of Request: Intent to seek approval to extend an information collection for three years.

Abstract: Established within the NSF by the America COMPETES Reauthorization Act of 2010 § 505, codified in the National Science Foundation Act of 1950, as amended, the National Center for Science and Engineering Statistics (NCSES) serves as a central Federal clearinghouse for the collection, interpretation, analysis, and dissemination of objective data on science, engineering, technology, and research and development for use by practitioners, researchers, policymakers, and the public.

NCSES is the primary sponsor of the Survey of Doctorate Recipients (SDR); the National Institutes of Health (NIH) serves as a co-sponsor. The SDR has been conducted biennially since 1973 and is a longitudinal survey. The 2021 SDR will consist of a sample of individuals under 76 years of age who have earned a research doctoral degree in a science, engineering, or health (SEH) field from a U.S. academic institution. The purpose of this panel survey is to collect data to provide national estimates on the doctoral science and engineering workforce and changes in their employment, education, and demographic characteristics. NCSES uses these data to prepare essential congressionally mandated reports (explained below). Government agencies and academic researchers use SDR data and publications to make planning decisions regarding science and engineering research, training, and employment opportunities. Employers also use the SDR to understand trends in employment sectors, industry types, and salary. Students who want to learn about the relationship between graduate education and careers often obtain valuable information from the SDR. Data and publications from the SDR are available to the public on the NCSES website: *https://www.nsf.gov/statistics/srvydoctoratework/.*

The SDR will collect data by web survey, mail questionnaire, and computer-assisted telephone interviews beginning in July 2021. The survey will be collected in conformance with the Confidential Information Protection and Statistical Efficiency Act of 2002 and the individual's response to the survey is voluntary. NCSES will ensure that all information collected will be kept strictly confidential and will be used only for statistical purposes.

Use of the Information: NCSES uses the information from the SDR to prepare two congressionally mandated reports: *Women, Minorities, and Persons With Disabilities in Science and Engineering* and *Science and Engineering Indicators.* NCSES publishes statistics from the SDR in many reports, but primarily in the biennial series, *Characteristics of Scientists and Engineers with U.S. Doctorates.* As with prior SDR data collections, a cross-sectional public release file of collected data, designed to protect respondent confidentiality, will be made available to researchers on the NCSES website: *https://ncsesdata.nsf.gov/datadownload/.*

Expected Respondents: The U.S. Office of Management and Budget (OMB) previously directed that NCSES enhance and expand the sample to measure employment outcomes by the fine field of degree taxonomy used in the Survey of Earned Doctorates. NCSES initiated this change in the 2015 cycle and maintained it in each subsequent cycle. For the 2021 SDR, a statistical sample of approximately 131,000 individuals with U.S. earned doctorates in science, engineering, or health will be contacted. As with prior SDR data collection cycles, the sample consists of all eligible cases from the previous cycle (116,000), as well as a sample of 10,000 new doctoral graduates. In addition, the sample includes 5,000 cases that will be part of a non-production bridge panel designed to quantify the potential impact of question wording modifications on key survey estimates. For 2021, the new graduate sample received their doctorate between July 2017 and June 2019. Across the full sample, approximately 116,760 individuals will reside in the U.S. and 14,240 will reside abroad.

Estimate of Burden: NCSES expects the overall 2021 SDR response rate to be approximately 70 percent. The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, based on 2019 SDR completion times, NCSES estimates an average completion time of approximately 21 minutes. NCSES estimates that the average annual burden for the 2021 survey cycle over the course of the three-year OMB clearance period will be no more than 10,699 hours [(131,000 individuals × 70% response × 21 minutes)/3 years/60 minutes].

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of NCSES, including whether the information shall have practical utility; (b) the accuracy of NCSES's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, 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: February 2, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–02447 Filed 2–4–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Survey of Earned Doctorates

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and one comment was received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title of Collection: Survey of Earned Doctorates.

OMB Control Number: 3145–0019.

Summary of Collection: The SED has been conducted annually since 1958 and is jointly sponsored by four Federal agencies (NSF/NCSES, National Institutes of Health, U.S. Department of Education/National Center for Education Statistics, and National Endowment for the Humanities) to avoid duplication of effort in collecting such data. The authority to collect information for the Survey of Earned Doctorates (SED) is established under the National Science Foundation Act of 1950, as amended, Public Law 507 (42 U.S.C. 1862), Section 3(a) (6), which directs the NSF ''. . . to provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources and to provide a source of information for policy formation by other agencies of the federal government.''

This request to extend the information collection for three years is to cover the 2022 and 2023 SED survey cycles. Data are obtained primarily via Web survey from each person earning a research doctorate at the time they receive the degree. Graduate schools help distribute the SED to their graduating doctorate recipients.

The survey will be collected in conformance with the NSF Act of 1950, as amended, and the Privacy Act of 1974. Responses from individuals are voluntary. NCSES will ensure that all individually identifiable information collected will be kept strictly confidential and will be used for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

Use of the Information: NCSES, as the lead agency, publishes statistics from the survey in several reports, but primarily in the annual publication series reporting on all fields of study, titled *Doctorate Recipients from U.S. Universities.* Information from the SED is also used to prepare congressionally mandated reports such as *Science and Engineering Indicators* and *Women, Minorities and Persons with Disabilities in Science and Engineering.*

Expected Respondents: The SED is a census of all individuals receiving a research doctorate from an accredited U.S. academic institution in an academic year (AY) beginning 1 July and ending 30 June of the following year. Based on the historical trend, NCSES expects that approximately 57,000 individuals will receive a research doctorate from U.S. institutions in AY2022, and approximately 58,000 in AY2023. NCSES estimates the response rate will be 92 percent for both the 2022 and 2023 SED survey cycles. In addition to the survey completion of individuals receiving their research doctorates, the SED requires the collection of administrative data such as graduation lists from approximately 600 Institutional Coordinators at the participating institutions who help to distribute the Web survey link, track survey completions, and submit information to the SED survey contractor.

Estimate of Burden: Based on an average Web survey completion time of 20 minutes, the respondent burden for completing the SED is estimated at 17,480 hours in 2022 (57,000 doctorate recipients × 92% response × 20 minutes) and 17,787 hours in 2023 (58,000 doctorate recipients x 92% response x 20 minutes). With about 600 schools expected to participate in the 2022 and 2023 SED, the estimated burden to Institutional Coordinators is 12,000 hours for each survey cycle. Therefore, the total burden for the SED is estimated to be 29,480 (17,480 + 12,000) hours in the 2022 survey cycle and 29,787 (17,787 + 12,000) hours in the 2023 survey cycle. NCSES estimates that the average annual burden for the 2022 and 2023 survey cycles over the course of the three-year OMB clearance period will be no more than 19,756 hours [(29,480 hours + 29,787 hours)/3 years].

Comment: As required by 5 CFR 1320.8(d), comments on the information collection activities were solicited through publication of a 60-day notice in the **Federal Register** on 14 October 2020 at 85 FR 65078. NCSES received one public comment from the Federation of American Societies for Experimental Biology advocating for the collection of information on the participation of sexual and gender minorities in doctoral education. NCSES informed the commenter that it shares their interest in improving federal data collections and providing reliable measures for important segments of the population. NCSES also informed the commenter that it is conducting research to evaluate these measures with the goal that this research, in combination with on-going sexual orientation and gender identity (SOGI) survey content research being conducted by other federal agencies, will enable the development of standard guidance for collecting SOGI data in the near future.

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 burden of the proposed

collection of information; (c) ways to enhance the quality, utility and clarity of the information on respondents, including 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: February 2, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–02449 Filed 2–4–21; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8907; NRC–2019–0026]

United Nuclear Corporation Church Rock Project

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental impact statement; extension of comment period.

SUMMARY: On November 13, 2020, the U.S. Nuclear Regulatory Commission (NRC) issued for public comment a draft Environmental Impact Statement (EIS) for United Nuclear Corporation's (UNC) license amendment request. UNC is requesting authorization to amend its license (SUA–1475) to excavate approximately 1 million cubic yards (CY) of mine waste from the Northeast Church Rock Mine Site and dispose of it at the existing mill site in McKinley County, New Mexico. The public comment period was originally scheduled to close on December 28, 2020. On December 23, 2020, the NRC extended the public comment until February 26, 2021. The NRC has decided to further extend the public comment until May 27, 2021 to allow more time for members of the public to develop and submit their comments. The NRC plans to further engage the local communities to promote full understanding of the proposed action and facilitate public comment and will also hold a public comment meeting during the extended comment period.

DATES: The due date of comments requested in the document published December 23, 2020 (85 FR 84016) is extended. Comments should be filed no later than May 27, 2021. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking Website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0026. Address questions about Docket IDs to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, ATTN: Program Management, Announcements and Editing Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Email comments to: UNC-ChurchRockEIS.resource@nrc.gov.*

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

- *Leave a voicemail at:* 888–672–3425.

FOR FURTHER INFORMATION CONTACT: Ashley Waldron, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7317; email: *Ashley.Waldron@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0026 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this action by the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0026.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.
- *Project Web page:* Information related to the UNC Church Rock project can be accessed on the NRC's project web page at: *https://www.nrc.gov/info-finder/decommissioning/uranium/united-nuclear-corporation-unc-.html.*
- *Public Libraries:* A copy of the draft EIS can be accessed at the following public library:
  - Octavia Fellin Public Library Gallup, NM 87301

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2019–0026 in your comment submission. Written comments may be submitted during the draft EIS comment period as described in the **ADDRESSES** section of the document.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *https://www.regulations.gov* and enters all comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission because the NRC does not routinely edit comment submissions before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Discussion

On November 13, 2020 (85 FR 72706), the NRC issued for public comment the draft EIS for the UNC license amendment to excavate approximately 1 million CY of mine waste from the Northeast Church Rock Mine Site and dispose of it at the existing mill site in McKinley County, New Mexico.

The draft EIS for UNC's license amendment application includes the

NRC staff's preliminary analysis that evaluates the environmental impacts of the proposed action and alternatives to the proposed action. After comparing the impacts of the proposed action to reasonable alternatives and the no-action alternative, the NRC staff, in accordance with the requirements in part 51 of title 10 of the *Code of Federal Regulations* preliminarily recommends the proposed action, which would authorize UNC to transfer and dispose Northeast Church Rock mine waste on top of the UNC tailings impoundment. This recommendation is based on (i) UNC's license application request, which includes Environmental Report and supplemental documents, as well as UNC's responses to the NRC staff's requests for additional information; (ii) consultation with Federal, State, Tribal, and local agencies and input from other stakeholders; and (iii) independent NRC staff review as documented in the assessments summarized in this EIS.

The public comment period was originally scheduled to close on December 28, 2020. On December 23, 2020, the NRC extended the public comment until February 26, 2021 (85 FR 84016). The NRC has decided to further extend the public comment until May 27, 2021 to allow more time for members of the public to submit their comments. Comments of Federal, State, and local agencies, Indian Tribes or other interested persons will be made available for public inspection when received.

Stakeholders should monitor the NRC's public meeting website for information about future public meetings at: *https://www.nrc.gov/public-involve/public-meetings.html.*

Dated: February 1, 2021.

For the Nuclear Regulatory Commission.

Jessie M. Quintero,

Chief, Environmental Review Materials Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–02360 Filed 2–4–21; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This provides the consolidated notice of all agency specific excepted authorities, approved by the Office of Personnel Management (OPM), under Schedule A, B, and C, as of June 30, 2020, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Service and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires the U.S. Office of Personnel Management (OPM) to publish notice of exceptions granted under Schedule A, B, and C. Under 5 CFR 213.103(a) it is required that all Schedule A, B, and C appointing authorities available for use by all agencies to be published as regulations in the **Federal Register** (FR) and the Code of Federal Regulations (CFR). Excepted appointing authorities established solely for use by one specific agency do not meet the standard of general applicability prescribed by the **Federal Register** Act for regulations published in either the FR or the CFR. Therefore, 5 CFR 213.103(b) requires monthly publication, in the Notices section of the **Federal Register**, of any Schedule A, B, and C appointing authorities applicable to a single agency. Under 5 CFR 213.103(c) it is required that a consolidated listing of all Schedule A, B, and C authorities, current as of June 30 of each year, be published annually in the Notices section of the **Federal Register** at *www.federalregister.gov/agencies/personnel-management-office.* That notice follows. Governmentwide authorities codified in the CFR are not printed in this notice.

When making appointments under an agency-specific authority, agencies should first list the appropriate Schedule A, B, or C, followed by the applicable number, for example: Schedule A, 213.3104(x)(x). Agencies are reminded that all excepted authorities are subject to the provisions of 5 CFR part 302 unless specifically exempted by OPM at the time of approval.

OPM maintains continuing information on the status of all Schedule A, B, and C appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by writing to the Senior Executive Resource Services, Office of Personnel Management, 1900 E Street NW, Room 7412, Washington, DC 20415, or by calling (202) 606–2246.

The following exceptions are current as of June 30, 2020.

Schedule A

03. Executive Office of the President (Sch. A, 213.3103)

(a) Office of Administration—

(1) Not to exceed 75 positions to provide administrative services and support to the White House Office.

(b) Office of Management and Budget—

(1) Not to exceed 20 positions at grades GS–5/15.

(2) Not to Exceed 34 positions that require unique technical skills needed for the re-designing and re-building of digital interfaces between citizens, businesses, and government as a part of Smarter Information Technology Delivery Initiative. This authority may be used to make permanent, time-limited and temporary appointments to Digital Services Expert positions (GS–301) directly related to the implementation of the Smarter Information Technology Delivery Initiative at the GS–14 to 15 level. No new appointments may be made under this authority after September 30, 2017.

(c) Council on Environmental Quality—

(1) Professional and technical positions in grades GS–9 through 15 on the staff of the Council.

(d)–(f) (Reserved)

(g) National Security Council—

(1) All positions on the staff of the Council.

(h) Office of Science and Technology Policy—

(1) Thirty positions of Senior Policy Analyst, GS–15; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(i) Office of National Drug Control Policy—

(1) Not to exceed 18 positions, GS–15 and below, of senior policy analysts and other personnel with expertise in drug-related issues and/or technical knowledge to aid in anti-drug abuse efforts.

04. Department of State (Sch. A, 213.3104)

(a) Office of the Secretary—

(1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Director General of the Foreign Service and the Director of Personnel, Office of the Under Secretary for Management.

(2) (Reserved)

(b)–(f) (Reserved)

(g) Bureau of Population, Refugees, and Migration—

(1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the Bureau.

(h) Bureau of Administration—

(1) (Reserved)

(2) One position of the Director, Art in Embassies Program, GM–1001–15.

(3) (Reserved)

05. Department of the Treasury (Sch. A, 213.3105)

(a) Office of the Secretary—

(1) Not to exceed 20 positions at the equivalent of GS–13 through GS–15 or Senior Level (SL) to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Covering no more than 100 positions supplementing permanent staff studying domestic economic and financial policy, with employment not to exceed 4 years.

(3) Not to exceed 100 positions in the Office of the Under Secretary for Terrorism and Financial Intelligence.

(4) Up to 35 temporary or time-limited positions at the GS–9 through 15 grade levels to support the organization, design, and stand-up activities for the Consumer Financial Protection Bureau (CFPB), as mandated by Public Law 111–203. This authority may be used for the following series: GS–201, GS–501, GS–560, GS–1035, GS–1102, GS–1150, GS–1720, GS–1801, and GS–2210. No new appointments may be made under this authority after July 21, 2011, the designated transfer date of the CFPB.

(b)–(d) (Reserved)

(e) Internal Revenue Service—

(1) Twenty positions of investigator for special assignments.

(f) (Reserved)

(g) (Reserved, moved to DOJ)

(h) Office of Financial Stability—

(1) Positions needed to perform investment, risk, financial, compliance, and asset management requiring unique qualifications currently not established by OPM. Positions will be in the Office of Financial Stability and the General Schedule (GS) grade levels 12–15 or Senior Level (SL), for initial employment not to exceed 4 years. No new appointments may be made under this authority after December 31, 2012.

06. Department of Defense (Sch. A, 213.3106)

(a) Office of the Secretary—

(1)–(5) (Reserved)

(6) One Executive Secretary, US–USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force)—

(1) Dependent School Systems overseas—Professional positions in Military Dependent School systems overseas.

(2) Positions in Attaché 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the staffs of the chaplains in the military services.

(5) Positions under the program for utilization of alien scientists, approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense, when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the DOD when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or separation of a dependent's sponsor: Provided that

(i) A school employee may be permitted to complete the school year; and

(ii) An employee other than a school employee may be permitted to serve up to 1 additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Twenty secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1,040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(9) (Reserved)

(10) Temporary or time-limited positions in direct support of U.S. Government efforts to rebuild and create an independent, free and secure Iraq and Afghanistan, when no other appropriate appointing authority applies. Positions will generally be located in Iraq or Afghanistan, but may be in other locations, including the United States, when directly supporting operations in Iraq or in Afghanistan. No new appointments may be made under this authority after September 30, 2014.

(11) Not to exceed 3,000 positions that require unique cyber security skills and knowledge to perform cyber risk and strategic analysis, incident handling and malware/vulnerability analysis, program management, distributed control systems security, cyber incident response, cyber exercise facilitation and management, cyber vulnerability detection and assessment, network and systems engineering, enterprise architecture, investigation, investigative analysis and cyber-related infrastructure inter-dependency analysis. This authority may be used to make permanent, time-limited and temporary appointments in the following occupational series: Security (GS–0080), computer engineers (GS–0854), electronic engineers (GS–0855), computer scientists (GS–1550), operations research (GS–1515), criminal investigators (GS–1811), telecommunications (GS–0391), and IT specialists (GS–2210). Within the scope of this authority, the U.S. Cyber Command is also authorized to hire miscellaneous administrative and program (GS–0301) series when those positions require unique cyber security skills and knowledge. All positions will be at the General Schedule (GS) grade levels 09–15 or equivalent. No new appointments may be made under this authority after December 31, 2017.

(c) (Reserved)

(d) General—

(1) Positions concerned with advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM,

it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical, or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) Uniformed Services University of the Health Sciences—

(1) Positions of President, Vice Presidents, Assistant Vice Presidents, Deans, Deputy Deans, Associate Deans, Assistant Deans, Assistants to the President, Assistants to the Vice Presidents, Assistants to the Deans, Professors, Associate Professors, Assistant Professors, Instructors, Visiting Scientists, Research Associates, Senior Research Associates, and Postdoctoral Fellows.

(2) Positions established to perform work on projects funded from grants.

(f) National Defense University—

(1) Not to exceed 16 positions of senior policy analyst, GS–15, at the Strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) Defense Communications Agency—

(1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) Defense Acquisition University—

(1) The Provost and professors.

(i) George C. Marshall European Center for Security Studies, Garmisch, Germany—

(1) The Director, Deputy Director, and positions of professor, instructor, and lecturer at the George C. Marshall European Center for Security Studies, Garmisch, Germany, for initial employment not to exceed 3 years, which may be renewed in increments from 1 to 2 years thereafter.

(j) Asia-Pacific Center for Security Studies, Honolulu, Hawaii—

(1) The Director, Deputy Director, Dean of Academics, Director of College, deputy department chairs, and senior positions of professor, associate professor, and research fellow within the Asia Pacific Center. Appointments may be made not to exceed 3 years and may be extended for periods not to exceed 3 years.

(k) Business Transformation Agency—

(1) Fifty temporary or time-limited (not to exceed four years) positions, at grades GS–11 through GS–15. The authority will be used to appoint persons in the following series: Management and Program Analysis, GS–343: Logistics Management, GS–346; Financial Management Programs, GS–501; Accounting, GS–510; Computer Engineering, GS–854; Business and Industry, GS–1101; Operations Research, GS–1515; Computer Science, GS–1550; General Supply, GS–2001; Supply Program Management, GS–2003; Inventory Management, GS–2010; and Information Technology, GS–2210.

(l) Special Inspector General for Afghanistan—

(1) Positions needed to establish the Special Inspector General for Afghanistan Reconstruction. These positions provide for the independent and objective conduct and supervision of audits and investigations relating to the programs and operations funded with amounts appropriated and otherwise made available for the reconstruction of Afghanistan. These positions are established at General Schedule (GS) grade levels for initial employment not to exceed 3 years and may, with prior approval of OPM, be extended for an additional period of 2 years. No new appointments may be made under this authority after January 31, 2011.

07. Department of the Army (Sch. A, 213.3107)

(a)–(c) (Reserved)

(d) U.S. Military Academy, West Point, New York—

(1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, Chapel Organist and Choir-Master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, Coaches, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and Librarian when filled by an officer of the Regular Army retired from active service, and the Military Secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e)–(f) (Reserved)

(g) Defense Language Institute—

(1) All positions (professors, instructors, lecturers) which require proficiency in a foreign language or knowledge of foreign language teaching methods.

(h) Army War College, Carlisle Barracks, PA—

(1) Positions of professor, instructor, or lecturer associated with courses of instruction of at least 10 months duration for employment not to exceed 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

(i) (Reserved)

(j) U.S. Military Academy Preparatory School, West Point, New York—

(1) Positions of Academic Director, Department Head, and Instructor.

(k) U.S. Army Command and General Staff College, Fort Leavenworth, Kansas—

(1) Positions of professor, associate professor, assistant professor, and instructor associated with courses of instruction of at least 10 months duration, for employment not to exceed up to 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

08. Department of the Navy (Sch. A, 213.3108)

(a) General—

(1)–(14) (Reserved)

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) Naval Academy, Naval Postgraduate School, and Naval War College—

(1) Professors, Instructors, and Teachers; the Director of Academic Planning, Naval Postgraduate School; and the Librarian, Organist-Choirmaster, Registrar, the Dean of Admissions, and Social Counselors at the Naval Academy.

(c) Chief of Naval Operations—

(1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) Military Sealift Command—

(1) All positions on vessels operated by the Military Sealift Command.

(e)–(f) (Reserved)

(g) Office of Naval Research—

(1) Scientific and technical positions, GS–13/15, in the Office of Naval Research International Field Office which covers satellite offices within the Far East, Africa, Europe, Latin America, and the South Pacific. Positions are to be filled by personnel having specialized experience in scientific and/or technical disciplines of current interest to the Department of the Navy.

09. Department of the Air Force (Sch. A, 213.3109)

(a) Office of the Secretary—

(1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) General—

(1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) Two hundred positions, serviced by Hill Air Force Base, Utah, engaged in interdepartmental activities in support of national defense projects involving scientific and technical evaluations.

(c) Norton and McClellan Air Force Bases, California—

(1) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) U.S. Air Force Academy, Colorado—

(1) (Reserved)

(2) Positions of Professor, Associate Professor, Assistant Professor, and Instructor, in the Dean of Faculty, Commandant of Cadets, Director of Athletics, and Preparatory School of the United States Air Force Academy.

(e) (Reserved)

(f) Air Force Office of Special Investigations—

(1) Positions of Criminal Investigators/Intelligence Research Specialists, GS–5 through GS–15, in the Air Force Office of Special Investigations.

(g) Wright-Patterson Air Force Base, Ohio—

(1) Not to exceed eight positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Material Management, Office of Special Activities, Wright-Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) Air University, Maxwell Air Force Base, Alabama—

(1) Positions of Professor, Instructor, or Lecturer.

(i) Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio—

(1) Civilian deans and professors.

(j) Air Force Logistics Command—

(1) One Supervisory Logistics Management Specialist, GM–346–14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

(k) Wright-Patterson AFB, Ohio—

(1) One position of Supervisory Logistics Management Specialist, GS–346–15, in the 2762nd Logistics Squadron (Special), at Wright-Patterson Air Force Base, Ohio.

(l) Air National Guard Readiness Center—

(1) One position of Commander, Air National Guard Readiness Center, Andrews Air Force Base, Maryland.

10. Department of Justice (Sch. A, 213.3110)

(a) General—

(1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) Positions at GS–15 and below on the staff of an office of a special counsel.

(3)–(5) (Reserved)

(6) Positions of Program Manager and Assistant Program Manager supporting the International Criminal Investigative Training Assistance Program in foreign countries. Initial appointments under this authority may not exceed 2 years, but may be extended in 1-year increments for the duration of the in-country program.

(7) Positions necessary throughout DOJ, for the excepted service transfer of NDIC employees hired under Schedule A, 213.3110(d). Authority expires September 30, 2012.

(b) (Reserved)

(c) Drug Enforcement Administration—

(1) (Reserved)

(2) Four hundred positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11.

(d) (Reserved, moved to Justice)

(e) Bureau of Alcohol, Tobacco, and Firearms—

(1) One hundred positions of Criminal Investigator for special assignments.

(2) One non-permanent Senior Level (SL) Criminal Investigator to serve as a senior advisor to the Assistant Director (Firearms, Explosives, and Arson).

11. Department of Homeland Security (Sch. A, 213.3111)

(a) (Revoked 11/19/2009)

(b) Law Enforcement Policy—

(1) Ten positions for oversight policy and direction of sensitive law enforcement activities.

(c) Homeland Security Labor Relations Board/Homeland Security Mandatory Removal Board—

(1) Up to 15 Senior Level and General Schedule (or equivalent) positions.

(d) General—

(1) Not to exceed 800 positions to perform cyber risk and strategic analysis, incident handling and malware/vulnerability analysis, program management, distributed control systems security, cyber incident response, cyber exercise facilitation and management, cyber vulnerability detection and assessment, network and systems engineering, enterprise architecture, intelligence analysis, investigation, investigative analysis and cyber-related infrastructure interdependency analysis requiring unique qualifications currently not established by OPM. Positions will be in the following occupations: Security (GS–0080), intelligence analysts (GS–0132), investigators (GS–1810), investigative analyst (GS–1805), and criminal investigators (GS–1811) at the General Schedule (GS) grade levels 09–15. No new appointments may be made under this authority after January 5, 2021 or the effective date of the completion of regulations

(e) Papago Indian Agency—Not to exceed 25 positions of Immigration and Customs Enforcement (ICE) Tactical Officers (Shadow Wolves) in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood. (Formerly 213.3105(b)(9))

(f) U.S. Citizenship and Immigration Services

(1) Reserved. (Formerly 213.3110(b)(1))

(2) Not to exceed 500 positions of interpreters and language specialists, GS–1040–5/9. (Formerly 213.3110(b)(2))

(3) Reserved. (Formerly 213.3110(b)(3))

(g) U.S. Immigration and Customs Enforcement—

(1) Not to exceed 200 staff positions, GS–15 and below for an emergency staff to provide health related services to foreign entrants. (Formerly 213.3116(b)(16))

(h) Federal Emergency Management Agency—

(1) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to

unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort. (Formerly 213.3195(a))

(2) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority. (Formerly 213.3195(b))

(3) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS). (Formerly 213.3195(c))

(i) U.S. Coast Guard—

(1) Reserved. (Formerly 213.3194(a))

(2) Lamplighters. (Formerly 213.3194(b))

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Connecticut. (Formerly 213.3194(c))

12. Department of the Interior (Sch. A, 213.3112)

(a) General—

(1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent, in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: Provided, that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term ''Indian.''

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in nonprofessional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators, and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum wage rate. Employment under this authority may not exceed 10 weeks.

(b) (Reserved)

(c) Indian Arts and Crafts Board—

(1) The Executive Director

(d) (Reserved)

(e) Office of the Assistant Secretary, Territorial and International Affairs—

(1) (Reserved)

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) (Reserved)

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) National Park Service—

(1) (Reserved)

(2) Positions established for the administration of Kalaupapa National Historic Park, Molokai, Hawaii, when filled by appointment of qualified patients and Native Hawaiians, as provided by Public Law 95–565.

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95–250.

(4) One Special Representative of the Director.

(5) All positions in the Grand Portage National Monument, Minnesota, when filled by the appointment of recognized members of the Minnesota Chippewa Tribe.

(g) Bureau of Reclamation—

(1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entry men-review projects where knowledge of local values on conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: Provided, that such

employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) Office of the Deputy Assistant Secretary for Territorial Affairs—

(1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

13. Department of Agriculture (Sch. A, 213.3113)

(a) General—

(1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the National Agricultural Statistics Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural commodity grader (grain) and (meat), (poultry), and (dairy), agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) (Reserved)

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for sub professional services; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: Provided, that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraph (i) of Sec. 213.3102 or positions within the Forest Service.

(6)–(7) (Reserved)

(b)–(c) (Reserved)

(d) Farm Service Agency—

(1) (Reserved)

(2) Members of State Committees: Provided, that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) Rural Development—

(1) (Reserved)

(2) County committeemen to consider, recommend, and advise with respect to the Rural Development program.

(3)–(5) (Reserved)

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) Agricultural Marketing Service—

(1) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists, GS–11 and below; Clerks, Office Automation Clerks, and Computer Clerks at GS–5 and below; Clerk-Typists at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1,280 hours or 180 days in a service year.

(2) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, peanut, and processed and fresh fruit and vegetable commodities and the following positions in support of these commodities: Clerks, Office Automation Clerks, and Computer Clerks and Operators at GS–5 and below; Clerk-Typists at grades GS–4 and below; and, under the Federal Wage System, High Volume Instrumentation (HVI) Operators and HVI Operator Leaders at WG/WL–2 and below, respectively, Instrument Mechanics/Workers/Helpers at WG–10 and below, and Laborers. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators

(4) All positions on the staffs of the Milk Market Administrators.

(g)–(k) (Reserved)

(l) Food Safety and Inspection Service—

(1)–(2) (Reserved)

(3) Positions of Meat and Poultry Inspectors (Veterinarians at GS–11 and below and non-Veterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) Grain Inspection, Packers and Stockyards Administration—

(1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

(n) Alternative Agricultural Research and Commercialization Corporation—

(1) Executive Director

14. Department of Commerce (Sch. A, 213.3114)

(a) General—

(1)–(2) (Reserved)

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b)–(c) (Reserved)

(d) Bureau of the Census—

(1) Positions in support of decennial operations (including decennial pre-tests). Appointments may be made on a time limited basis that lasts the duration of decennial operations but may not exceed 7 years. Extensions beyond 7 years may be requested on a case-by-case basis

(2) Positions of clerk, field representative, field leader, and field supervisor in support of data collection operations (non-decennial operations). Appointments may be made on a permanent or a time-limited basis. Appointments made on a time limited basis may not exceed 4 years. Extensions beyond 4 years may be requested on a case-by-case basis.

(e)–(h) (Reserved)

(i) Office of the Under Secretary for International Trade—

(1) Fifteen positions at GS–12 and above in specialized fields relating to

international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) (Reserved)

(3) Not to exceed 15 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit procedures applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period not to exceed 2 years and may, with prior OPM approval, be extended for an additional 2 years.

(j) National Oceanic and Atmospheric Administration—

(1)–(2) (Reserved)

(3) All civilian positions on vessels operated by the National Ocean Service.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Service. Appointment to such positions shall not exceed 8 months in any 1 calendar year.

(k) (Reserved)

(l) National Telecommunication and Information Administration—

(1) Thirty-eight professional positions in grades GS–13 through GS–15.

15. Department of Labor (Sch. A, 213.3115)

(a) Office of the Secretary—

(1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b)–(c) (Reserved)

(d) Employment and Training Administration—

(1) Not to exceed 10 positions of Supervisory Manpower Development Specialist and Manpower Development Specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

16. Department of Health and Human Services (Sch. A, 213.3116)

(a) General—

(1) Intermittent positions, at GS–15 and below and WG–10 and below, on teams under the National Disaster Medical System including Disaster Medical Assistance Teams and specialty teams, to respond to disasters, emergencies, and incidents/events involving medical, mortuary and public health needs.

(b) Public Health Service—

(1) (Reserved)

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) (Reserved)

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the participating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5)–(6) (Reserved)

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term ''Indian.''

(9) (Reserved)

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11)–(15) (Reserved)

(c)–(e) (Reserved)

(f) Reserved

17. Department of Education (Sch. A, 213.3117)

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

18. Environmental Protection Agency (sch. A, 213.3118)

24. Board of Governors, Federal Reserve System (Sch. A, 213.3124)

(a) All positions

27. Department of Veterans Affairs (Sch. A, 213.3127)

(a) Construction Division—

(1) Temporary construction workers paid from ''purchase and hire'' funds and appointed for not to exceed the duration of a construction project.

(b) Alcoholism Treatment Units and Drug Dependence Treatment Centers—

(1) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) Board of Veterans' Appeals—

(1) Positions, GS–15, when filled by a member of the Board. Except as provided by section 201(d) of Public Law 100–687, appointments under this authority shall be for a term of 9 years, and may be renewed.

(2) Positions, GS–15, when filled by a non-member of the Board who is awaiting Presidential approval for appointment as a Board member.

(d) Vietnam Era Veterans Readjustment Counseling Service—

(1) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

(e) Not to Exceed 75 positions that require unique technical skills needed for the re-designing and re-building of digital interfaces between citizens, businesses, and government as a part of Smarter Information Technology Delivery Initiative. This authority may be used to make permanent, time-limited and temporary appointments to non-supervisory Digital Services Expert positions (GS–301) directly related to the implementation of the Smarter Information Technology Delivery Initiative at the GS–15 level. No new appointments may be made under this authority after September 30, 2017.

32. Small Business Administration (Sch. A, 213.3132)

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in

the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office of Personnel Management approval. Appointments under this authority may not be used to extend the 2-year service limit contained below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

33. Federal Deposit Insurance Corporation (Sch. A, 213.3133)

(a)–(b) (Reserved)

(c) Temporary or time-limited positions that are directly related with resolving failing insured depository institutions; financial companies; or brokers and dealers; covered by the Dodd-Frank Wall Street Reform and Consumer Protection Act, including but not limited to, the marketing and sale of institutions and any associated assets; paying insured depositors; and managing receivership estates and all associated receivership management activities, up to termination. Time limited appointments under this authority may not exceed 7 years.

36. U.S. Soldiers' and Airmen's Home (Sch. A, 213.3136)

(a) (Reserved)

(b) Positions when filled by member-residents of the Home.

37. General Services Administration (Sch. A, 213.3137)

(a) Not to Exceed 203 positions that require unique technical skills needed for the re-designing and re-building of digital interfaces between citizens, businesses, and government as a part of Smarter Information Technology Delivery Initiative. This authority may be used nationwide to make permanent, time-limited and temporary appointments to Digital Services Expert positions (GS–301) directly related to the implementation of the Smarter Information Technology Delivery Initiative at the GS–11 to 15 level. No new appointments may be made under this authority after September 30, 2017.

46. Selective Service System (Sch. A, 213.3146)

(a) State Directors

48. National Aeronautics and Space Administration (Sch. A, 213.3148)

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

55. Social Security Administration (Sch. A, 213.3155)

(a) Arizona District Offices—

(1) Six positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(b) New Mexico—

(1) Seven positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(c) Alaska—

(1) Two positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointments of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

62. The President's Crime Prevention Council (Sch. A, 213.3162)

(a) (Reserved)

65. Chemical Safety and Hazard Investigation Board (Sch. A, 213.3165)

(a) (Reserved)

(b) (Reserved)

66. Court Services and Offender Supervision Agency of the District of Columbia (Sch. A, 213.3166)

(a) (Reserved, expired 3/31/2004)

70. Millennium Challenge Corporation (MCC) (Sch. A, 213.3170)

(a) (Reserved, expired 9/30/2007)

(b)

(1) Positions of Resident Country Director and Deputy Resident Country Director, Threshold Director and Deputy Threshold Director. The length of appointments will correspond to the length or term of the compact agreements made between the MCC and the country in which the MCC will work, plus one additional year to cover pre- and post-compact agreement related activities.

74. Smithsonian Institution (Sch. A, 213.3174)

(a) (Reserved)

(b) Smithsonian Tropical Research Institute—All positions located in Panama which part are of or which support the Smithsonian Tropical Research Institute.

(c) National Museum of the American Indian—Positions at GS–15 and below requiring knowledge of, and experience in, tribal customs and culture. Such positions comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative, or program support positions.

75. Woodrow Wilson International Center for Scholars (Sch. A, 213.3175)

(a) One Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, two Social Science Program Administrators, one Middle East Studies Program Administrator, one African Studies Program Administrator, one Global Sustainability and Resilience Program Administrator, one Canadian Studies Program Administrator; one China Studies Program Administrator, and one Science, Technology and Innovation Program Administrator.

78. Community Development Financial Institutions Fund (Sch. A, 213.3178)

(a) (Reserved, expired 9/23/1998)

80. Utah Reclamation and Conservation Commission (Sch. A, 213.3180)

(a) Executive Director

82. National Foundation on the Arts and the Humanities (Sch. A, 213.3182)

(a) National Endowment for the Arts—

(1) Artistic and related positions at grades GS–13 through GS–15 engaged in the review, evaluation and administration of applications and grants supporting the arts, related research and assessment, policy and program development, arts education, access programs and advocacy, or

evaluation of critical arts projects and outreach programs. Duties require artistic stature, in-depth knowledge of arts disciplines and/or artistic-related leadership qualities.

90. African Development Foundation (Sch. A, 213.3190)

(a) One Enterprise Development Fund Manager. Appointment is limited to four years unless extended by OPM.

91. Office of Personnel Management (Sch. A, 213.3191)

(a)–(c) (Reserved)

(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

94. Department of Transportation (Sch. A, 213.3194)

(a)–(d) (Reserved)

(e) Maritime Administration—

(1)–(2) (Reserved)

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) (Reserved)

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers, including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

(f) Up to 40 positions at the GS–13 through 15 grade levels and within authorized SL allocations necessary to support the following credit agency programs of the Department: the Federal Highway Administration's Transportation Infrastructure Finance and Innovation Act Program, the Federal Railroad Administration's Railroad Rehabilitation and Improvement Financing Program, the Federal Maritime Administration's Title XI Program, and the Office of the Secretary's Office of Budget and Programs Credit Staff. This authority may be used to make temporary, time-limited, or permanent appointments, as the DOT deems appropriate, in the following occupational series: Director or Deputy Director SL–301/340, Origination Team Lead SL–301, Deputy Director/Senior Financial Analyst GS–1160, Origination Financial Policy Advisor GS–301, Credit Budgeting Team Lead GS–1160, Credit Budgeting Financial Analysts GS–1160, Portfolio Monitoring Lead SL–1160, Portfolio Monitoring Financial Analyst GS–1160, Financial Analyst GS–1160. No new appointments may be made under this authority after December 31, 2014.

95. (Reserved)

Schedule B

03. Executive Office of the President (Sch. B, 213.3203)

(a) (Reserved)

(b) Office of the Special Representative for Trade Negotiations—

(1) Seventeen positions of economist at grades GS–12 through GS–15.

04. Department of State (Sch. B, 213.3204)

(a) (1) One non-permanent senior level position to serve as Science and Technology Advisor to the Secretary.

(b)–(c) (Reserved)

(d) Seventeen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) (Reserved)

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

05. Department of the Treasury (Sch. B, 213.3205)

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b)–(c) (Reserved)

(d) (Reserved) Transferred to 213.3211(b)

(e) (Reserved) Transferred to 213.3210(f)

06. Department of Defense (Sch. B, 213.3206)

(a) Office of the Secretary—

(1) (Reserved)

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) (Reserved)

(5) Four Net Assessment Analysts.

(b) Interdepartmental activities—

(1) Seven positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(2) Eight positions, GS–15 or below, in the White House Military Office, providing support for airlift operations, special events, security, and/or administrative services to the Office of the President.

(c) National Defense University—

(1) Sixty-one positions of Professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in any increment from 1 to 6 years indefinitely thereafter.

(d) General—

(1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(2) Acquisition positions at grades GS–5 through GS–11, whose incumbents have successfully completed the required course of education as participants in the Department of Defense scholarship program authorized under 10 U.S.C. 1744.

(e) Office of the Inspector General—

(1) Positions of Criminal Investigator, GS–1811–5/15.

(f) Department of Defense Polygraph Institute, Fort McClellan, Alabama—

(1) One Director, GM–15.

(g) Defense Security Assistance Agency—

All faculty members with instructor and research duties at the Defense Institute of Security Assistance Management, Wright Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

07. Department of the Army (Sch. B, 213.3207)

(a) U.S. Army Command and General Staff College—

(1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

08. Department of the Navy (Sch. B, 213.3208)

(a) Naval Underwater Systems Center, New London, Connecticut—

(1) One position of Oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) Armed Forces Staff College, Norfolk, Virginia—All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) Defense Personnel Security Research and Education Center—One Director and four Research Psychologists at the professor or GS–15 level.

(d) Marine Corps Command and Staff College—All civilian professor positions.

(e) Executive Dining facilities at the Pentagon—One position of Staff Assistant, GS–301, whose incumbent will manage the Navy's Executive Dining facilities at the Pentagon.

(f) (Reserved)

09. Department of the Air Force (Sch. B, 213.3209)

(a) Air Research Institute at the Air University, Maxwell Air Force Base, Alabama—Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1-, 2-, or 3-years indefinitely thereafter.

(b)–(c) (Reserved)

(d) Air University—Positions of Instructor or professional academic staff at the Air University associated with courses of instruction of varying durations, for employment not to exceed 3 years, which may be renewed for an indefinite period thereafter.

(e) U.S. Air Force Academy, Colorado—One position of Director of Development and Alumni Programs, GS–301–13.

10. Department of Justice (Sch. B, 213.3210)

(a) Drug Enforcement Administration—Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) (Reserved)

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) (Reserved)

(e) United States Trustees—Positions, other than secretarial, GS–6 through GS–15, requiring knowledge of the bankruptcy process, on the staff of the offices of United States Trustees or the Executive Office for U.S. Trustees.

(f) Bureau of Alcohol, Tobacco, and Firearms—

(1) Positions, grades GS–5 through GS–12 (or equivalent), of Criminal Investigator. Service under this authority may not exceed 3 years and 120 days.

11. Department of Homeland Security (Sch. B, 213.3211)

(a) Coast Guard.

(1) (Reserved)

(b) Secret Service—Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed:

(1) A total of 4 years; or

(2) 120 days following completion of the service required for conversion under Executive Order 11203.

13. Department of Agriculture (Sch. B, 213.3213)

(a) Foreign Agricultural Service—

(1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 5 years on a single project for any individual unless delayed completion of a project justifies an extension up to but not exceeding 2 years.

(b) General—

(1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service, Economic Research Service, and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to 2 additional years. Extensions beyond 4 years, up to a maximum of 2 additional years, may be granted, but only in very rare and unusual circumstances, as determined by the Human Resources Officer for the Research, Education, and Economics Mission Area, or the Human Resources Officer, Forest Service.

(2) Not to exceed 55 Executive Director positions, GM–301–14/15, with the State Rural Development Councils in support of the Presidential Rural Development Initiative.

14. Department of Commerce (Sch. B, 213.3214)

(a) Bureau of the Census—

(1) (Reserved)

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through 12.

(b)–(c) (Reserved)

(d) National Telecommunications and Information Administration—

(1) Not to exceed 10 Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

15. Department of Labor (Sch. B, 213.3215)

(a) Administrative Review Board—Chair and a maximum of four additional Members.

(b) (Reserved)

(c) Bureau of International Labor Affairs—

(1) Positions in the Office of Foreign Relations, which are paid by outside funding sources under contracts for specific international labor market technical assistance projects. Appointments under this authority may not be extended beyond the expiration date of the project.

17. Department of Education (Sch. B, 213.3217)

(a) Seventy-five positions, not to exceed GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in mid-career development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on

education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

27. Department of Veterans Affairs (Sch. B, 213.3227)

(a) Not to exceed 800 principal investigatory, scientific, professional, and technical positions at grades GS–11 and above in the medical research program.

(b) Not to exceed 25 Criminal Investigator (Undercover) positions, GS–1811, in grades 5 through 12, conducting undercover investigations in the Veterans Health Administration (VA) supervised by the VA, Office of Inspector General. Initial appointments shall be greater than 1 year, but not to exceed 4 years and may be extended indefinitely in 1-year increments.

28. Broadcasting Board of Governors (Sch. B, 213.3228)

(a) International Broadcasting Bureau—

(1) Not to exceed 200 positions at grades GS–15 and below in the Office of Cuba Broadcasting. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

36. U.S. Soldiers' and Airmen's Home (Sch. B, 213.3236)

(a) (Reserved)

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.

40. National Archives and Records Administration (Sch. B, 213.3240)

(a) Executive Director, National Historical Publications and Records Commission.

48. National Aeronautics and Space Administration (Sch. B, 213.3248)

(a) Not to exceed 40 positions of Astronaut Candidates at grades GS–11 through 15. Employment under this authority may not exceed 3 years.

50. Consumer Financial Protection Bureau (Sch. B, 213.3250)

(a) One position of Deputy Director; and one position of Associate Director of the Division of Supervision, Enforcement, and Fair Lending.

55. Social Security Administration (Sch. B, 213.3255)

(a) (Reserved)

74. Smithsonian Institution (Sch. B, 213.3274)

(a) (Reserved)

(b) Freer Gallery of Art—

(1) Not to exceed four Oriental Art Restoration Specialists at grades GS–9 through GS–15.

76. Appalachian Regional Commission (Sch. B, 213.3276)

(a) Two Program Coordinators.

78. Armed Forces Retirement Home (Sch. B, 213.3278)

(a) Naval Home, Gulfport, Mississippi—

(1) One Resource Management Officer position and one Public Works Officer position, GS/GM–15 and below.

82. National Foundation on the Arts and the Humanities (Sch. B, 213.3282)

(a) (Reserved)

(b) National Endowment for the Humanities—

(1) Professional positions at grades GS–11 through GS–15 engaged in the review, evaluation, and administration of grants supporting scholarship, education, and public programs in the humanities, the duties of which require in-depth knowledge of a discipline of the humanities.

91. Office of Personnel Management (Sch. B, 213.3291)

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Center for Leadership Development—No more than 72 positions of faculty members at grades GS–13 through GS–15. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1, 2, or 3-year increments.

Schedule C

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Office of the Under Secretary for Farm Production and Conservation.	Policy Advisor	DA200035	01/09/2020
	Agricultural Marketing Service	Chief of Staff	DA190173	07/22/2019
		Special Assistant	DA190200	09/12/2019
	Farm Service Agency	State Executive Director—Tennessee.	DA200040	01/23/2020
		State Executive Director—North Carolina.	DA200070	04/16/2020
	Foreign Agricultural Service	Senior Advisor	DA200064	04/24/2020
	National Institute of Food and Agriculture.	Policy Advisor	DA200049	03/04/2020
	Natural Resources Conservation Service.	Chief of Staff	DA200065	03/23/2020
	Office of Communications	Deputy Director of Communications.	DA200087	06/17/2020
		Press Secretary	DA200082	06/23/2020
		Press Assistant	DA190211	11/19/2019
	Office of the Assistant Secretary for Administration.	Senior Advisor	DA190203	09/13/2019
	Office of the Assistant Secretary for Congressional Relations.	Director of Intergovernmental Affairs (2).	DA200042	01/22/2020
			DA200080	06/24/2020
		Senior Policy Advisor	DA200097	06/26/2020
		Chief of Staff	DA190207	09/17/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
		Congressional and Policy Advisor (2).	DA200008	10/25/2019
			DA200024	12/03/2019
	Office of the Secretary	Advance Associate	DA200043	03/30/2020
		Advance Lead	DA190187	09/04/2019
		Confidential Assistant (3)	DA190180	07/29/2019
			DA190217	10/01/2019
			DA200010	10/29/2019
		Deputy Director of Advance	DA190193	08/27/2019
		Deputy Director of Scheduling (2)	DA190186	08/16/2019
			DA190208	09/16/2019
		Director of Operations	DA190195	08/26/2019
		Legislative Correspondent (3)	DA200051	03/30/2020
			DA200095	06/26/2020
			DA200017	11/13/2019
		Special Assistant	DA200028	12/17/2019
		Special Assistant and Advisor	DA200016	11/19/2019
		Staff Assistant	DA190192	08/23/2019
		White House Liaison	DA200005	10/22/2019
	Office of the Under Secretary for Food Safety.	Staff Assistant	DA200020	11/25/2019
	Office of the Under Secretary for Research, Education, and Economics.	Chief of Staff	DA200091	06/17/2020
	Office of the Under Secretary for Rural Development.	Confidential Assistant (2)	DA190188	08/16/2019
			DA200025	12/03/2019
	Office of the Under Secretary for Trade and Foreign Agricultural Affairs.	Chief of Staff	DA200066	06/26/2020
	Office of Under Secretary for Natural Resources and Environment.	Senior Policy Advisor	DA200021	01/10/2020
		Staff Assistant	DA190167	07/12/2019
	Risk Management Agency	Policy Advisor	DA200015	11/13/2019
	Rural Business Service	Confidential Assistant (2)	DA200047	02/12/2020
			DA190171	07/23/2019
	Rural Development	Confidential Assistant	DA200074	06/10/2020
	Rural Housing Service	Confidential Assistant	DA190201	09/12/2019
		Policy Advisor	DA200004	07/12/2019
		State Director—Hawaii	DA190214	09/25/2019
		State Director—Louisiana	DA200007	10/25/2019
		State Director—Mississippi	DA200085	06/09/2020
		State Director—New Mexico	DA200079	05/08/2020
		State Director—North Carolina	DA190160	07/02/2019
		State Director—Wyoming	DA190168	07/09/2019
DEPARTMENT OF COMMERCE	Advocacy Center	Policy Advisor	DC190137	09/05/2019
	Office of the Assistant Secretary for Industry and Analysis.	Senior Advisor (2)	DC200109	04/24/2020
			DC190162	10/24/2019
	Bureau of Industry and Security	Senior Advisor	DC200059	01/30/2020
		Legislative Affairs Specialist	DC200095	05/04/2020
		Director of Congressional and Public Affairs.	DC200022	12/13/2019
	Bureau of the Census	Senior Advisor	DC200146	06/24/2020
	Director General of the United States and Foreign Commercial Service and Assistant Secretary for Global Markets.	Senior Advisor	DC190143	08/15/2019
	Immediate Office	Special Advisor (2)	DC200068	03/04/2020
			DC190124	08/08/2019
	International Trade Administration	Advisor	DC200118	05/07/2020
		Chief of Staff	DC190125	09/05/2019
		Senior Advisor	DC200108	05/11/2020
		Special Advisor	DC200065	03/04/2020
	Minority Business Development Agency.	Associate Director	DC200074	04/17/2020
		Confidential Assistant	DC200120	05/19/2020
		Executive Director	DC190123	12/06/2019
		Senior Advisor	DC200005	10/25/2019
		Special Assistant (2)	DC190170	10/04/2019
			DC190153	11/04/2019
	National Telecommunications and Information Administration.	Senior Advisor (2)	DC200034	03/06/2020
			DC200127	06/04/2020
	Office—Federal Coordinator—Meteorology.	Confidential Assistant	DC200139	06/30/2020
	Office of Advance, Scheduling and Protocol.	Advance Assistant	DC200111	05/07/2020
		Advance Representative	DC190119	07/11/2019
		Special Assistant	DC190132	08/06/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
		Advance Specialist	DC190134	08/06/2019
	Office of Business Liaison	Senior Advisor for Policy and Engagement.	DC200048	01/31/2020
		Deputy Director, Office of Business Liaison.	DC200016	02/03/2020
	Office of Executive Secretariat	Special Assistant	DC200092	04/24/2020
		Confidential Assistant	DC190135	08/16/2019
	Office of Legislative and Intergovernmental Affairs.	Associate Director for Legislative Affairs.	DC190155	10/10/2019
		Confidential Assistant	DC200014	01/31/2020
		Intergovernmental Affairs Specialist	DC190156	10/10/2019
		Legislative Affairs Specialist	DC190154	10/11/2019
	Office of Policy and Strategic Planning.	Strategic Advisor	DC200077	02/26/2020
		Special Assistant	DC200067	03/04/2020
		Senior Advisor	DC200113	05/14/2020
	Office of Public Affairs	Deputy Director of Public Affairs	DC200131	06/30/2020
		Press Assistant	DC190122	07/24/2019
		Deputy Press Secretary	DC200017	12/11/2019
	Office of the Assistant Secretary for Economic Development.	Special Advisor	DC190127	07/23/2019
	Office of the Chief Financial Officer and Assistant Secretary for Administration.	Special Assistant (2)	DC200050	01/17/2020
			DC200072	05/06/2020
		Confidential Assistant	DC190171	10/17/2019
	Office of the Chief of Staff	Senior Advisor	DC200003	01/17/2020
		Deputy Chief of Staff for Strategic Initiatives.	DC200062	02/11/2020
		Confidential Assistant	DC200007	02/19/2020
		Deputy Director of Advance	DC200066	04/13/2020
	Office of the Deputy Secretary	Senior Advisor (3)	DC200044	01/22/2020
			DC200100	04/08/2020
			DC190128	07/24/2019
		Special Advisor	DC190148	11/04/2019
		Special Assistant	DC200088	04/20/2020
	Office of the General Counsel	Confidential Assistant (2)	DC200019	01/27/2020
			DC200046	02/12/2020
		Counsel (6)	DC200028	01/03/2020
			DC200021	01/31/2020
			DC190129	07/24/2019
			DC190166	10/11/2019
			DC200004	11/22/2019
			DC190157	12/03/2019
		Director of Operations for Special Projects.	DC190159	10/24/2019
		Senior Counsel (2)	DC190130	07/24/2019
			DC190152	11/04/2019
	Office of the Under Secretary	Policy Advisor	DC190142	08/13/2019
		Special Advisor	DC190136	07/25/2019
		Senior Advisor (2)	DC200058	02/25/2020
			DC190138	09/05/2019
		Deputy Director of Public Affairs	DC190117	08/06/2019
	Office of the Under Secretary for Economic Affairs.	Confidential Assistant	DC190121	07/18/2019
	Office of White House Liaison	Confidential Assistant (3)	DC200030	01/03/2020
			DC200105	04/10/2020
			DC200140	06/18/2020
		Deputy White House Liaison	DC200080	03/09/2020
		Director, Office of White House Liaison.	DC200043	01/31/2020
		White House Liaison	DC200084	03/13/2020
COMMODITY FUTURES TRADING COMMISSION.	Commodity Futures Trading Commission.	Legislative and Policy Analyst	CT200004	04/20/2020
	Division of Clearing and Risk	Director	CT190005	07/15/2019
	Office of External Affairs	Director	CT190008	07/15/2019
	Office of the Chairperson	Executive Assistant	CT190004	07/15/2019
		Senior Advisor	CT190006	07/15/2019
		Director of Legislative and Intergovernmental Affairs.	CT190009	07/29/2019
DEPARTMENT OF DEFENSE	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant (6)	DD200075	02/12/2020
			DD200157	04/20/2020
			DD190188	09/09/2019
			DD190210	10/16/2019
			DD200058	01/14/2020
			DD200046	12/09/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Assistant to the Secretary of Defense (Public Affairs).	Special Assistant (4)	DD200117	02/26/2020
			DD200122	03/11/2020
			DD200136	03/27/2020
			DD200115	03/30/2020
	Office of the Chief Management Officer.	Special Assistant	DD200105	02/14/2020
	Office of the Deputy Under Secretary of Defense (Policy).	Deputy Assistant Secretary of Defense (China).	DD200063	01/14/2020
		Special Assistant (2)	DD200121	02/28/2020
			DD200011	10/18/2019
	Office of the Secretary	Defense Fellow	DD190207	09/27/2019
	Protocol Officer (3)	DD200185	05/27/2020	
		DD200186	05/30/2020	
		DD190179	09/06/2019	
		Special Assistant (2)	DD190168	08/06/2019
			DD200041	12/05/2019
	Office of the Secretary of Defense	Defense Fellow	DD200074	02/12/2020
		Speechwriter (2)	DD200189	06/05/2020
			DD190154	08/29/2019
	Office of the Under Secretary of Defense (Acquisition and Sustainment).	Special Assistant	DD190196	09/18/2019
	Office of the Under Secretary of Defense (Comptroller).	Special Assistant	DD190183	09/09/2019
	Office of the Under Secretary of Defense (Personnel and Readiness).	Special Assistant (2)	DD200078	02/06/2020
			DD190158	07/09/2019
	Office of the Under Secretary of Defense (Policy).	Special Assistant (5)	DD200113	03/25/2020
			DD190166	07/29/2019
			DD190155	09/03/2019
			DD190195	09/13/2019
			DD190198	09/20/2019
	Washington Headquarters Services	Advance Officer	DD200039	11/26/2019
		Defense Fellow (2)	DD200059	01/27/2020
			DD200023	11/20/2019
		Special Advisor	DD200167	05/06/2020
DEPARTMENT OF THE AIR FORCE.	Office of Administrative Assistant to the Secretary.	Special Assistant	DF190032	07/15/2019
	Office of Assistant Secretary of the Air Force for Acquisition.	Personal and Confidential Assistant.	DF200001	10/24/2019
	Office of Assistant Secretary of the Air Force, Installations, Environment, and Energy.	Special Assistant	DF180033	06/26/2020
	Office of the General Counsel	Special Assistant	DF200006	01/14/2020
	Office of the Secretary	Special Assistant	DF200008	05/08/2020
DEPARTMENT OF THE ARMY	Office Assistant Secretary of the Army (Civil Works).	Special Assistant (Civil Works)	DW190051	09/03/2019
	Office Assistant Secretary of the Army (Financial.	Special Assistant	DW200027	03/27/2020
	Management and Comptroller)	Special Advisor Assistant Security of the Army (Financial Management and Comptroller).	DW200026	04/10/2020
	Office Assistant Secretary of the Army (Installations, Energy and Environment).	Special Assistant (Installations, Energy and Environment).	DW200015	12/09/2019
	Office Assistant Secretary of the Army (Manpower and Reserve Affairs).	Special Assistant (Manpower and Reserve Affairs) (2).	DW190046	07/08/2019
			DW190050	09/19/2019
DEPARTMENT OF THE NAVY	Office of the Assistant Secretary of the Navy (Manpower and Reserve Affairs).	Special Assistant (Manpower and Reserve Affairs).	DN200024	05/11/2020
	Department of the Navy	Special Assistant	DN200027	05/27/2020
DEPARTMENT OF EDUCATION	Office for Civil Rights	Confidential Assistant (2)	DB200037	02/06/2020
			DB200044	03/23/2020
		Attorney Advisor	DB200043	03/25/2020
		Attorney Advisor (Senior Counsel) (2).	DB190124	09/03/2019
			DB190133	10/02/2019
	Office of Communications and Outreach.	Confidential Assistant (3)	DB200053	05/04/2020
			DB200060	06/02/2020
			DB190126	09/05/2019
		Director of Outreach	DB200052	05/04/2020
		Director, Center for Faith and Opportunity Initiatives.	DB200050	04/28/2020

Agency name	Organization name	Position title	Authorization No.	Effective date
		Executive Director, White House Initiative on Educational Excellence for African Americans.	DB200051	04/28/2020
		Special Assistant	DB190104	07/12/2019
	Office of Legislation and Congressional Affairs.	Confidential Assistant	DB200006	12/05/2019
	Office of Planning, Evaluation and Policy Development.	Confidential Assistant	DB200013	11/26/2019
	Office of Postsecondary Education	Special Assistant	DB200035	02/05/2020
		Confidential Assistant (3)	DB200064	06/26/2020
			DB190108	07/02/2019
			DB190109	07/03/2019
	Office of Special Education and Rehabilitative Services.	Confidential Assistant	DB200055	05/07/2020
		Special Assistant	DB200054	05/11/2020
	Office of the General Counsel	Attorney Advisor (3)	DB200026	01/15/2020
			DB190118	08/22/2019
			DB200007	11/19/2019
		Attorney Advisor (Deputy Special Counsel).	DB190132	10/02/2019
		Attorney Advisor	DB200049	04/27/2020
		Confidential Assistant (3)	DB200058	06/11/2020
			DB200059	06/11/2020
			DB200004	11/14/2019
	Office of the Secretary	Confidential Assistant (3)	DB200042	03/05/2020
			DB200056	05/15/2020
			DB200012	12/03/2019
		Director, White House Liaison	DB200045	03/19/2020
		Special Assistant (3)	DB200008	12/05/2019
			DB200009	12/05/2019
			DB200010	12/11/2019
	Office of the Under Secretary	Confidential Assistant	DB190111	07/03/2019
DEPARTMENT OF ENERGY	Office of Advanced Research Projects Agency—Energy.	Senior Advisor	DE200120	05/08/2020
	Office of Assistant Secretary for Congressional and Intergovernmental Affairs.	Associate Deputy Assistant Secretary for Senate Affairs (2).	DE190163	08/05/2019
			DE190164	08/05/2019
		Deputy Assistant Secretary for Senate Affairs.	DE200006	10/07/2019
		Director of Intergovernmental and External Affairs (2).	DE190168	08/05/2019
			DE200013	11/07/2019
		Legislative Affairs Advisor (2)	DE200075	02/10/2020
			DE200008	10/28/2019
	Office of Assistant Secretary for Electricity Delivery and Energy Reliability.	Special Advisor (4)	DE200109	04/23/2020
			DE200110	04/23/2020
			DE200117	04/30/2020
			DE190199	09/17/2019
		Special Assistant	DE190179	08/29/2019
	Office of Assistant Secretary for Energy Efficiency and Renewable Energy.	Chief of Staff	DE200033	12/04/2019
		Senior Advisor (4)	DE200116	04/24/2020
			DE200165	05/19/2020
			DE190178	08/29/2019
			DE200004	10/08/2019
		Special Assistant	DE200057	01/16/2020
	Office of Assistant Secretary for Environmental Management.	Chief of Staff (2)	DE190200	09/24/2019
			DE190207	10/07/2019
		Senior Advisor	DE200086	05/19/2020
		Special Assistant	DE190188	08/29/2019
	Office of Assistant Secretary for Fossil Energy.	Senior Advisor	DE200056	01/16/2020
		Chief of Staff	DE200028	12/03/2019
	Office of Assistant Secretary for International Affairs.	Deputy Chief of Staff	DE200045	01/06/2020
		Senior Advisor (2)	DE190146	07/11/2019
			DE190173	08/21/2019
		Special Advisor (3)	DE190147	07/11/2019
			DE190148	07/11/2019
			DE200037	11/22/2019
	Loan Programs Office	Senior Advisor	DE190145	08/07/2019
	National Nuclear Security Administration.	Program Analyst (2)	DE200166	01/23/2020
			DE200091	06/16/2020
		Senior Advisor	DE200082	06/16/2020

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Cybersecurity, Energy Security and Emergency Response.	Senior Advisor	DE190161	08/05/2019
		Senior Advisor and Director of Strategic Initiatives.	DE200169	10/30/2019
		Special Assistant for Integration Services.	DE200038	12/19/2019
	Office of Economic Impact and Diversity.	Chief of Staff	DE200003	10/09/2019
		Chief, Energy Workforce Division	DE200024	12/09/2019
		Senior Advisor	DE200027	11/20/2019
		Special Advisor	DE200026	11/20/2019
	Office of General Counsel	Attorney Advisor (2)	DE200044	12/09/2019
			DE190159	08/01/2019
		Counselor	DE200046	12/09/2019
		Senior Advisor (2)	DE200099	06/30/2020
			DE190201	09/23/2019
	Office of Management	Advance Lead	DE200021	11/15/2019
		Deputy Director of Operations for Advance.	DE200020	11/15/2019
		Deputy Director of Operations for Scheduling.	DE200017	11/14/2019
		Deputy Director of Scheduling	DE200016	11/04/2019
		Director of Operations	DE200009	10/28/2019
		Operations Assistant	DE200114	06/10/2020
		Operations Manager	DE200111	03/31/2020
		Senior Advisor (2)	DE200100	04/23/2020
			DE200155	06/11/2020
		Special Assistant (2)	DE190169	08/07/2019
			DE190174	08/21/2019
	Office of Policy	Senior Advisor	DE190156	08/05/2019
		Deputy Director	DE200051	12/20/2019
	Office of Public Affairs	Content Creator	DE190172	09/09/2019
		Deputy Director, Office of Public Affairs (2).	DE190170	08/13/2019
			DE190177	08/29/2019
		Deputy Press Secretary	DE190191	09/18/2019
		Press Assistant	DE190150	07/23/2019
		Senior Content Creator	DE190208	10/08/2019
		Special Assistant	DE190175	08/21/2019
		Writer-Editor (3)	DE190162	08/05/2019
			DE200103	05/04/2020
			DE200119	05/18/2020
	Office of Scheduling and Advance	Director of Scheduling	DE190203	10/07/2019
	Office of Science	Senior Advisor (4)	DE200070	03/03/2020
			DE190155	07/30/2019
			DE190192	09/26/2019
			DE200036	12/03/2019
		Special Advisor	DE190160	08/02/2019
	Office of Strategic Planning and Policy.	Deputy Director	DE200105	04/13/2020
		Policy Coordinator	DE200127	06/26/2020
	Office of Technology Transition	Special Advisor	DE190180	08/29/2019
	Office of the Deputy Secretary	Scheduler	DE200115	04/27/2020
		Senior Advisor (2)	DE190183	08/28/2019
			DE190184	08/28/2019
		Special Advisor	DE190139	07/11/2019
	Office of the Secretary	Deputy Chief of Staff	DE200047	12/09/2019
		Director of Operations	DE200089	04/23/2020
		Senior Advisor for International Affairs.	DE190181	08/26/2019
		Special Assistant (3)	DE190202	09/23/2019
			DE200002	10/07/2019
			DE200015	11/05/2019
	Office of the Secretary of Energy Advisory Board.	Senior Advisor	DE200087	06/16/2020
	Office of the Under Secretary for Science.	Senior Advisor (2)	DE200168	04/15/2020
			DE200107	04/23/2020
		Special Advisor	DE190167	08/05/2019
	Office of the Under Secretary of Energy.	Scheduler	DE190176	08/21/2019
		Special Advisor	DE190190	08/28/2019
ENVIRONMENTAL PROTECTION AGENCY.	Office of Public Affairs	Assistant Deputy Associate Administrator for Policy.	EP200048	03/05/2020
		Senior Advisor for Strategic and Regional Communications.	EP190111	07/29/2019
		Senior Advisor for Strategic Communications and Policy.	EP190120	08/13/2019
		Special Assistant for Digital Media	EP190124	08/26/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
		Special Assistant for Video and Media.	EP200064	04/30/2020
	Office of Public Engagement and Environmental Education.	Associate Administrator	EP200041	02/25/2020
		Special Advisor (2)	EP200060	03/19/2020
			EP190114	08/06/2019
		Special Assistant	EP190109	08/06/2019
	Office of the Administrator	Deputy Director for Advance	EP200059	03/31/2020
		Principal Deputy Chief of Staff	EP200047	03/05/2020
		Senior Advisor for Strategic Initiatives.	EP200073	06/18/2020
		Senior Deputy White House Liaison (2).	EP200044	04/28/2020
			EP190110	07/29/2019
		Special Advisor for Operations	EP200028	01/22/2020
		White House Liaison	EP200043	04/28/2020
	Office of the Assistant Administrator for Air and Radiation.	Executive Assistant for the Office of Air and Radiation.	EP200009	10/22/2019
		Policy and Communications Advisor for the Office of Air and Radiation.	EP190133	09/03/2019
		Senior Policy Advisor for the Office of Air and Radiation.	EP190127	08/28/2019
		Special Assistant for the Office of Air and Radiation.	EP200014	12/03/2019
	Office of the Assistant Administrator for Chemical Safety and Pollution Prevention.	Special Advisor	EP190113	08/01/2019
	Office of the Assistant Administrator for Enforcement and Compliance Assurance.	Policy Advisor	EP200024	12/19/2019
	Office of the Assistant Administrator for International and Tribal Affairs.	Senior Advisor	EP200057	03/10/2020
		Senior Advisor for Policy and Management.	EP190106	07/12/2019
	Office of the Assistant Administrator for Research and Development.	Senior Science Advisor	EP200027	01/13/2020
		Special Advisor	EP190107	07/30/2019
	Office of the Assistant Administrator for Water.	Attorney Advisor (General)	EP190121	08/19/2019
	Office of the Associate Administrator for Congressional and Intergovernmental Relations.	Principal Deputy Associate Administrator for the Office of Congressional and Intergovernmental Relations.	EP200037	02/10/2020
		Assistant Deputy Associate Administrator for Intergovernmental Affairs.	EP200045	02/27/2020
		Director of House Relations	EP200050	03/27/2020
		Special Advisor for Oversight	EP200033	03/31/2020
	Office of the Associate Administrator for Policy.	Associate Chief of Staff for the Office of Policy.	EP200004	10/07/2019
		Deputy Associate Administrator for Strategic Planning.	EP200019	12/13/2019
		Policy Assistant (2)	EP200069	05/13/2020
			EP200001	10/17/2019
		Senior Advisor for Policy	EP200065	04/28/2020
		Senior Advisor for Science and Policy.	EP190128	10/01/2019
	Office of the Chief Financial Officer	Senior Advisor for Budget and Accountability.	EP190123	08/29/2019
	Office of the Executive Secretariat	Attorney Advisor	EP200030	01/22/2020
		Special Advisor (2)	EP200061	04/20/2020
			EP200005	10/24/2019
	Office of the General Counsel	Attorney Advisor (General)	EP190143	10/04/2019
	Region VI—Dallas, Texas	Chief of Staff for Region VI	EP200031	04/13/2020
	Region VIII—Denver, Colorado	Chief of Staff for Region VIII	EP190129	09/09/2019
	Region IV—San Francisco, California.	Senior Advisor for Policy and Congressional Affairs.	EP200023	01/24/2020
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.	Office of the Chair	Policy Analyst (Special Assistant)	EE200004	06/18/2020
	Office of the General Counsel	Executive Staff Assistant	EE190006	09/12/2019
EXPORT-IMPORT BANK	Office of Communications	Speechwriter	EB200011	03/24/2020
		Vice President of Communications	EB200014	06/01/2020
		Deputy Press Secretary	EB200005	10/31/2019
	Office of Congressional and Intergovernmental Affairs.	Special Advisor	EB190013	07/17/2019
		Senior Advisor	EB190004	07/19/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
		Senior Vice President	EB190014	07/31/2019
	Office of External Engagement	Deputy for External Engagement	EB190017	09/04/2019
		Principal Deputy	EB190018	09/12/2019
	Office of the Chairman	Assistant	EB200002	10/10/2019
		Special Advisor and Deputy Scheduler (3).	EB200009	01/30/2020
			EB200004	10/25/2019
			EB200006	10/29/2019
	Office of the Chief Banking Officer	Senior Advisor	EB200012	03/30/2020
	Office of the Chief of Staff	Senior Advisor, National Security	EB190012	07/16/2019
	Office of the Chief of Staff	Deputy Chief of Staff	EB200007	11/04/2019
FEDERAL HOUSING FINANCE AGENCY.	Office of the Director	Assistant Chief of Staff	HA200001	11/05/2019
		Deputy Chief of Staff	HA200002	11/14/2019
		Senior Congressional Affairs Advisor.	HA200003	12/02/2019
FEDERAL LABOR RELATIONS AUTHORITY.	Office of the Chairman	Confidential Assistant	FA200002	01/08/2020
FEDERAL MARITIME COMMISSION.	Office of the Members	Counsel	MC200001	04/24/2020
GENERAL SERVICES ADMINISTRATION.	Northwest/Arctic Region	Regional Administrator	GS200029	02/25/2020
	Office of Congressional and Intergovernmental Affairs.	Congressional Policy Analyst	GS200025	01/30/2020
		Policy Advisor	GS200026	01/30/2020
		Deputy Associate Administrator	GS200002	12/17/2019
	Office of Strategic Communication	Speechwriter	GS200024	01/23/2020
		Senior Communications Advisor	GS190039	09/13/2019
	Office of the Administrator	Confidential Assistant	GS200037	06/30/2020
		Deputy White House Liaison	GS200035	03/24/2020
		Special Assistant (2)	GS200031	02/28/2020
			GS190037	08/07/2019
		White House Liaison	GS200027	03/03/2020
		White House Liaison and Senior Advisor.	GS190038	08/19/2019
	Public Buildings Service	Executive Assistant	GS190035	07/29/2019
	Rocky Mountain Region	Regional Administrator	GS200028	02/25/2020
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Administration for Children and Families.	Communications Advisor	DH190245	09/09/2019
		Policy Advisor	DH190266	10/09/2019
		Advisor	DH190120	10/31/2019
		Senior Advisor for Communications	DH200035	12/03/2019
	Agency for Healthcare Research and Quality.	Advisor	DH200071	02/07/2020
	Centers for Disease Control and Prevention.	Senior Advisor	DH200118	06/02/2020
		Senior Advisor for Communications	DH200119	06/02/2020
	Centers for Medicare and Medicaid Services.	Advisor for Medicare	DH190216	08/06/2019
		Director of Strategic Communications.	DH190171	07/11/2019
		Senior Advisor (2)	DH200011	01/10/2020
			DH200003	11/07/2019
	Office for Civil Rights	Senior Advisor for Conscience and Religious Freedom.	DH200107	05/05/2020
		Special Advisor for Civil Rights	DH190238	08/20/2019
	Office of Communications	Senior Speechwriter	DH200083	06/26/2020
		Speechwriter	DH190232	08/13/2019
	Office of Global Affairs	Senior Advisor	DH200015	11/05/2019
		Special Representative	DH200004	11/07/2019
		Chief of Staff and Senior Advisor	DH200007	11/07/2019
	Office of Intergovernmental and External Affairs.	Director of External Affairs	DH200041	12/05/2019
		External Affairs Specialist (2)	DH190252	09/04/2019
			DH190240	09/09/2019
		Regional Director, Atlanta, Georgia, Region IV.	DH200081	04/23/2020
		Regional Director, Denver, Colorado, Region VIII.	DH200049	01/10/2020
		Special Assistant (2)	DH200102	04/08/2020
			DH190244	08/29/2019
	Office of Refugee Resettlement/Office of the Director.	Chief of Staff	DH200099	03/23/2020
		Senior Advisor	DH200124	06/18/2020
		Policy Advisor	DH190256	09/17/2019
	Office of the Assistant Secretary for Financial Resources.	Senior Advisor	DH200130	06/19/2020
		Associate Deputy Assistant Secretary.	DH200038	12/06/2019
		Chief of Staff, Office of the Assistant Secretary for Financial Resources.	DH200044	12/13/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Assistant Secretary for Health.	Advisor	DH190255	10/02/2019
		Chief of Staff	DH190235	08/27/2019
		Director of External Affairs	DH190218	08/06/2019
		Executive Director, President's Council on Sports, Fitness, and Nutrition.	DH200079	02/25/2020
	Office of the Assistant Secretary for Legislation.	Chief of Staff	DH190227	08/21/2019
		Director of Congressional Liaison	DH200018	11/13/2019
		Policy Advisor—Oversight and Investigations.	DH200045	12/11/2019
		Senior Advisor	DH200008	10/31/2019
		Special Assistant	DH190228	08/21/2019
	Office of the Assistant Secretary for Preparedness and Response.	Senior Advisor	DH200051	01/27/2020
		Advisor	DH200101	04/03/2020
	Office of the Assistant Secretary for Public Affairs.	Advisor—Strategic Communications.	DH200010	11/05/2019
		Content Strategy and Marketing Associate.	DH190168	07/02/2019
		Deputy Assistant Secretary, National Spokesperson.	DH200042	12/04/2019
		Deputy Press Secretary	DH190226	07/29/2019
		Deputy Speechwriter	DH200009	11/06/2019
		Director of Communication Strategy and Campaigns.	DH200019	02/05/2020
		Director, Speechwriting and Editorial Services.	DH190246	08/27/2019
		Press Secretary	DH190223	08/13/2019
		Senior Advisor	DH200109	05/04/2020
		Special Assistant (2)	DH200120	05/28/2020
			DH200122	06/11/2020
	Office of the General Counsel	Advisor and Legal Counsel	DH200047	01/07/2020
		Associate Deputy General Counsel	DH190229	07/29/2019
		Law Clerk	DH190201	07/17/2019
	Office of the Secretary	Advisor	DH200111	05/13/2020
		Advisor for Value-Based Transformation.	DH200059	01/16/2020
		Briefing Book Coordinator	DH190233	08/13/2019
		Deputy Scheduler (2)	DH200054	01/03/2020
			DH200121	06/09/2020
	Deputy White House Liaison (2)	DH200016	11/05/2019	
		DH200046	12/12/2019	
		Special Assistant (6)	DH200112	05/13/2020
			DH200137	06/26/2020
			DH190170	07/11/2019
			DH190225	07/29/2019
			DH200050	12/17/2019
			DH200040	12/17/2019
DEPARTMENT OF HOMELAND SECURITY.	Cybersecurity and Infrastructure Security Agency (CISA).	Legislative Advisor	DM190246	07/11/2019
		Policy Advisor	DM200011	10/29/2019
		Special Assistant (2)	DM200300	06/26/2020
			DM200022	10/25/2019
	Federal Emergency Management Agency.	Advisor	DM190316	09/27/2019
		Deputy Press Secretary (2)	DM200116	01/28/2020
			DM190315	10/29/2019
		Senior Advisor (2)	DM200262	05/29/2020
			DM200210	05/30/2020
	Office of Assistant Secretary for Legislative Affairs.	Confidential Assistant	DM190083	02/14/2020
		Legislative Manager	DM200218	04/16/2020
		Chief of Staff	DM190293	09/06/2019
	Office of Countering Weapons of Mass Destruction.	Senior Advisor (3)	DM200292	06/16/2020
			DM200117	01/27/2020
			DM200019	10/25/2019
		Special Advisor	DM200194	04/15/2020
	Office of Partnership and Engagement.	Partnership and Engagement Specialist.	DM200036	11/26/2019
		Special Assistant	DM200018	12/19/2019
	Office of Assistant Secretary for Policy.	Confidential Assistant (3)	DM200281	06/16/2020
			DM200002	10/17/2019
			DM200054	12/03/2019
		Policy Advisor	DM200248	05/01/2020
		Senior Advisor	DM200138	03/25/2020
		Special Assistant (2)	DM200164	03/27/2020
			DM200289	06/16/2020

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Assistant Secretary for Public Affairs.	Assistant Press Secretary	DM190319	10/03/2019
		Director of Strategic Communications.	DM200038	01/02/2020
		Director of Strategic Outreach and Engagement.	DM190267	08/13/2019
		Press Secretary	DM200083	01/09/2020
		Special Assistant	DM200255	06/01/2020
		Speechwriter (2)	DM200102	01/09/2020
			DM200257	06/02/2020
	Office of the Chief Information Officer.	Special Assistant	DM200301	06/26/2020
	Office of the Chief of Staff	Advance Representative (2)	DM190301	10/01/2019
			DM200024	10/25/2019
		Briefing Book Coordinator	DM200238	04/28/2020
		Deputy Director of Advance	DM190308	09/19/2019
		Deputy White House Liaison (2)	DM200142	02/05/2020
			DM200220	04/22/2020
		Senior Advisor (3)	DM200170	04/11/2020
			DM200288	06/11/2020
			DM190279	08/27/2019
		Special Assistant	DM200028	10/29/2019
	Office of the General Counsel	Oversight Counsel	DM200097	01/09/2020
		Senior Counsel and Senior Advisor	DM200203	04/29/2020
		Deputy General Counsel	DM200058	12/11/2019
	Office of the Secretary	White House Liaison	DM200188	03/10/2020
	Office of the Transportation Security Administration.	Senior Counselor	DM190255	07/16/2019
	Office of United States Citizenship and Immigration Services.	Advisor (2)	DM190302	09/20/2019
			DM200064	12/13/2019
		Deputy Chief of Staff	DM190276	08/21/2019
		Senior Advisor (5)	DM200023	01/02/2020
			DM200081	01/02/2020
			DM200091	01/08/2020
			DM200184	04/11/2020
			DM190275	08/21/2019
		Senior Policy Advisor	DM200061	12/13/2019
		Special Assistant (2)	DM190235	07/03/2019
			DM190314	10/03/2019
	Office of United States Customs and Border Protection.	Assistant Press Secretary	DM200098	01/09/2020
		Chief of Staff, Office of Policy and Planning.	DM200285	06/23/2020
		Deputy Press Secretary	DM200282	06/24/2020
		Executive Director for Policy and Planning (2).	DM190303	09/19/2019
			DM190310	09/24/2019
		Policy Analyst	DM190280	08/27/2019
		Policy Management and Program Analyst.	DM200286	06/11/2020
		Special Assistant	DM200016	10/29/2019
	Office of United States Immigration and Customs Enforcement.	Senior Advisor	DM200246	05/05/2020
		Special Advisor	DM200021	10/29/2019
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Community Planning and Development.	Senior Advisor (3)	DU200039	01/03/2020
			DU200045	01/14/2020
			DU200054	03/05/2020
		Senior Policy Advisor	DU200037	12/17/2019
		Special Assistant (2)	DU200094	05/05/2020
			DU190114	09/04/2019
	Office of Congressional and Intergovernmental Relations.	Senior Advisor	DU190091	07/09/2019
		Congressional Liaison	DU190109	08/13/2019
		Congressional Relations	DU200016	12/03/2019
	Office of Faith-Based and Community Initiatives.	Special Advisor	DU200038	01/24/2020
	Office of Field Policy and Management.	Advisor	DU200087	03/23/2020
		Special Assistant	DU190103	07/29/2019
	Office of Housing	Senior Advisor	DU200009	12/11/2019
	Office of Policy Development and Research.	Special Assistant	DU200015	11/22/2019
	Office of Public Affairs	Assistant Press Secretary	DU190122	09/06/2019
		Deputy Assistant Secretary for Strategic Communication.	DU190111	08/21/2019
		Digital Strategist	DU200080	03/17/2020
		Director of Strategic Communications.	DU190128	10/01/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
		Press Secretary	DU200034	12/09/2019
		Special Assistant	DU200106	06/22/2020
	Office of the Administration	Advance Coordinator	DU190090	07/09/2019
		Senior Advisor (2)	DU200079	06/15/2020
			DU190108	08/08/2019
		Special Assistant	DU190100	07/31/2019
	Office of the Chief Financial Officer	Senior Advisor	DU200097	05/12/2020
		Program Analyst	DU190099	07/24/2019
	Office of the Chief Information Officer.	Management Analyst	DU190101	07/24/2019
	Office of the General Counsel	Senior Counsel	DU200044	01/27/2020
	Office of the Secretary	Special Assistant	DU200115	06/22/2020
DEPARTMENT OF THE INTERIOR	Office of the Assistant Secretary—Land and Minerals Management.	Counselor—Land and Minerals Management.	DI200005	10/29/2019
	Bureau of Reclamation	Advisor (2)	DI190076	07/29/2019
			DI190093	09/13/2019
	Office of Congressional and Legislative Affairs.	Advisor	DI190080	07/12/2019
	Secretary's Immediate Office	Advance Representative	DI200006	12/03/2019
		Advisor	DI200016	12/03/2019
		Deputy Director, Office of Advance	DI200012	11/22/2019
		Deputy Director, Office of Intergovernmental and External Affairs.	DI190092	09/13/2019
		Deputy Press Secretary	DI200018	12/11/2019
		Press Secretary	DI200068	04/30/2020
		Special Assistant (2)	DI190081	07/12/2019
			DI190082	07/23/2019
DEPARTMENT OF JUSTICE	Antitrust Division	Counsel (2)	DJ190242	11/26/2019
			DJ190243	12/17/2019
	Civil Division	Counsel (3)	DJ200049	03/06/2020
			DJ200066	03/06/2020
			DJ190214	10/09/2019
	Civil Rights Division	Counsel	DJ190228	10/22/2019
	Community Oriented Policing Services.	Senior Advisor	DJ200122	06/02/2020
	Criminal Division	Chief of Staff and Counselor	DJ200118	06/15/2020
	Environment and Natural Resources Division.	Senior Counsel	DJ190176	09/12/2019
		Counsel (2)	DJ190182	09/20/2019
			DJ200019	12/21/2019
	Executive Office for United States Attorneys.	Program Support Specialist	DJ200094	04/22/2020
		Secretary	DJ190164	07/24/2019
	Office of Justice Programs	Chief of Staff	DJ200081	03/03/2020
		Counsel	DJ190157	07/30/2019
		Legislative Assistant	DJ190239	12/04/2019
		Outreach Coordinator	DJ200069	04/20/2020
		Senior Advisor (4)	DJ190201	03/17/2020
			DJ200075	03/23/2020
			DJ190203	09/23/2019
			DJ200026	12/12/2019
		Special Advisor for Policy and Communications.	DJ200065	01/30/2020
		Staff Assistant	DJ190230	09/12/2019
	Office of Legal Policy	Counsel	DJ200070	02/05/2020
		Senior Counsel (3)	DJ190245	10/17/2019
			DJ200006	11/15/2019
			DJ200033	12/05/2019
	Office of Public Affairs	Press Assistant (2)	DJ200045	03/06/2020
			DJ200089	04/22/2020
		Advance and National Coordinator	DJ190184	07/29/2019
		Senior Advisor for Strategic Communications and Chief Speechwriter.	DJ190185	08/08/2019
		Senior Advisor	DJ200001	12/03/2019
	Office of the Attorney General	Director of Scheduling	DJ190238	10/24/2019
		Special Assistant (2)	DJ200086	03/06/2020
			DJ190237	09/24/2019
		White House Liaison Officer and Special Assistant.	DJ200041	01/06/2020
	Office of the Deputy Attorney General.	Senior Counsel	DJ190219	09/09/2019
		Counsel	DJ190244	10/24/2019
	Office on Violence Against Women	Advisor	DJ200017	01/23/2020
		Special Advisor	DJ200106	05/07/2020

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF LABOR	Employee Benefits Security Administration.	Chief of Staff (2)	DL190156	08/16/2019
			DL190183	09/26/2019
		Policy Advisor (2)	DL190148	09/13/2019
			DL190176	09/18/2019
		Senior Policy Advisor (3)	DL190184	10/11/2019
			DL190124	07/03/2019
			DL190146	08/06/2019
		Special Assistant (2)	DL200101	04/06/2020
			DL200135	06/22/2020
	Mine Safety and Health Administration.	Senior Policy Advisor	DL190145	08/19/2019
	Occupational Safety and Health Administration.	Special Assistant	DL190179	09/24/2019
	Office of Congressional and Intergovernmental Affairs.	Case Officer	DL200057	02/10/2020
		Regional Representative (8)	DL200043	01/14/2020
			DL200083	03/05/2020
			DL200074	03/15/2020
			DL190178	09/24/2019
			DL190157	10/01/2019
			DL200010	10/11/2019
			DL200011	10/11/2019
			DL200019	11/15/2019
		Senior Legislative Officer (5)	DL190103	07/01/2019
			DL190106	07/02/2019
			DL190107	07/02/2019
			DL190143	08/06/2019
			DL200028	11/22/2019
	Office of Federal Contract Compliance Programs.	Senior Policy Advisor (2)	DL190149	08/06/2019
			DL200013	10/11/2019
	Office of Labor-Management Standards.	Policy Advisor	DL200022	11/19/2019
	Office of Public Affairs	Communications Advisor	DL190115	07/02/2019
		Deputy Press Secretary	DL190108	07/09/2019
		Press Secretary	DL190147	08/06/2019
		Senior Advisor for Digital Strategy and Creative Services.	DL190109	07/02/2019
		Senior Advisor for Policy and Media.	DL200103	06/19/2020
		Special Assistant	DL190168	09/12/2019
	Office of Public Liaison	Deputy Director	DL200093	03/31/2020
		Senior Advisor	DL200124	05/28/2020
		Special Assistant	DL200119	06/04/2020
	Office of the Assistant Secretary for Administration and Management.	Special Assistant	DL190068	08/15/2019
	Office of the Assistant Secretary for Policy.	Deputy Chief Economist	DL190162	08/22/2019
		Senior Counsel and Policy Advisor	DL200040	01/09/2020
		Senior Counselor for Compliance Initiatives.	DL200072	02/12/2020
		Senior Policy Advisor	DL190125	07/03/2019
		Senior Policy Advisor for Workforce Health Initiatives.	DL190131	07/17/2019
		Special Assistant (2)	DL200111	05/05/2020
			DL200152	06/30/2020
	Office of the Chief Financial Officer	Chief of Staff	DL200099	05/15/2020
	Office of the Deputy Secretary	Counselor	DL190177	09/18/2019
	Office of the Secretary	Advance Lead	DL200141	06/03/2020
		Advance Representative (2)	DL200052	01/24/2020
			DL190105	07/02/2019
		Deputy Chief of Staff	DL190137	07/24/2019
		Deputy Director of Scheduling	DL200029	11/19/2019
		Deputy Director, Office of Faith-Based and Community Initiatives.	DL190167	09/12/2019
		Deputy White House Liaison	DL200131	05/15/2020
		Director of Scheduling and Operations.	DL200128	06/04/2020
		Director, Office of Faith-Based and Community Initiatives.	DL190166	08/27/2019
		Director, Office of the White House Liaison.	DL200122	05/01/2020
		Executive Assistant	DL190191	09/27/2019
		Executive Secretary	DL200014	10/24/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
		Principal Travel Aide	DL200089	03/13/2020
		Senior Policy Advisor	DL190144	08/06/2019
		Special Assistant (7)	DL200045	01/14/2020
			DL200042	01/30/2020
			DL200055	02/06/2020
			DL200075	02/10/2020
			DL200108	04/20/2020
			DL200110	05/27/2020
			DL200018	10/31/2019
		Speechwriter	DL200027	11/13/2019
	Office of the Solicitor	Senior Counsel (3)	DL190141	08/01/2019
			DL190160	08/22/2019
			DL190172	09/04/2019
	Office of Workers Compensation Programs.	Senior Policy Advisor	DL190182	10/11/2019
	Office of Veterans Employment and Training Service.	Special Assistant	DL200080	03/23/2020
		Chief of Staff and Policy Advisor	DL190111	07/09/2019
		Senior Policy Advisor	DL190142	08/06/2019
		Policy Advisor	DL200090	05/21/2020
	Office of Wage and Hour Division	Senior Policy Advisor (3)	DL200051	01/23/2020
			DL190123	07/03/2019
			DL190126	07/17/2019
	Office of the Women's Bureau	Senior Advisor	DL200097	04/06/2020
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of the Administrator	Executive Assistant	NN200028	02/06/2020
	Office of Legislative and Intergovernmental Affairs.	Regional Affairs Specialist	NN200012	12/11/2019
NATIONAL CREDIT UNION ADMINISTRATION.	National Credit Union Administration.	Staff Assistant	CU190005	08/12/2019
		Confidential Assistant	CU200001	08/12/2019
	Office of the Board	Staff Assistant	CU190003	07/25/2019
		Senior Policy Advisor	CU190002	08/12/2019
		Director, Office of External Affairs and Communications/Deputy Chief of Staff.	CU200002	10/15/2019
	Office of Public and Congressional Affairs.	Deputy Director, Office of External Affairs and Communications.	CU190007	08/12/2019
		Senior Advisor for Communications and Engagement.	CU200003	10/24/2019
NATIONAL ENDOWMENT FOR THE ARTS.	National Endowment for the Arts	Special Assistant for Events & Development.	NA190013	09/13/2019
NATIONAL ENDOWMENT FOR THE HUMANITIES.	National Endowment for the Humanities.	Program Analyst	NH200001	04/10/2020
		Supervisory Public Affairs Specialist.	NH200003	06/09/2020
NATIONAL LABOR RELATIONS BOARD.	Office of the Board Members	Director Congressional and Public Affairs Officer.	NL190011	07/01/2019
		Congressional Liaison Specialist	NL190014	09/25/2019
NATIONAL TRANSPORTATION SAFETY BOARD.	National Transportation Safety Board.	Confidential Assistant	TB200004	03/23/2020
	Office of the Board Members	Special Assistant	TB200006	05/05/2020
		Confidential Assistant (3)	TB200007	06/11/2020
			TB200001	10/18/2019
			TB200003	12/09/2019
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.	Occupational Safety and Health Review Commission.	Confidential Assistant	SH200001	04/07/2020
	Office of the Commissioners	Counsel	SH200002	05/21/2020
		Confidential Assistant	SH190001	07/02/2019
OFFICE OF MANAGEMENT AND BUDGET.	Office of Communications	Deputy for Communication	BO200027	05/18/2020
		Deputy Press Secretary	BO200028	05/30/2020
	Office of Education, Income Maintenance and Labor Programs.	Special Assistant	BO200024	03/30/2020
		Confidential Assistant	BO190035	07/03/2019
	Office of General Counsel	Special Counsel	BO190039	08/06/2019
		Confidential Assistant	BO190048	09/18/2019
	Office of General Government Programs.	Confidential Assistant	BO200026	05/01/2020
	Office of the Health Division	Confidential Assistant	BO200003	10/17/2019
	Office of Legislative Affairs	Deputy for Legislative Affairs (House).	BO190036	08/05/2019
	National Security Programs	Special Assistant	BO190044	08/29/2019
	Natural Resource Programs	Confidential Assistant	BO200004	10/25/2019
	Office of E-Government and Information Technology.	Special Assistant	BO200013	12/05/2019
	Office of Information and Regulatory Affairs.	Senior Advisor	BO200019	01/27/2020
		Counselor	BO190037	08/20/2019
		Confidential Assistant	BO200016	12/13/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Director	Confidential Assistant (3)	BO200020	01/30/2020
			BO200025	03/31/2020
			BO190040	07/25/2019
		Senior Advisor (2)	BO200017	12/13/2019
			BO190045	08/29/2019
		Special Assistant	BO190038	08/02/2019
OFFICE OF NATIONAL DRUG CONTROL POLICY.	Office of Legislative Affairs	Public Affairs Specialist (2)	QQ200006	05/07/2020
			QQ190015	10/07/2019
		Deputy Assistant Director, Office of Legislative Affairs.	QQ200001	10/07/2019
	Office of Public Affairs	Public Affairs Specialist	QQ200002	02/11/2020
	Office of the Director	Special Advisor	QQ200003	02/28/2020
		Confidential Assistant	QQ200007	06/11/2020
OFFICE OF PERSONNEL MANAGEMENT.	Office of Congressional, Legislative, and Intergovernmental Affairs.	Congressional Relations Officer	PM190054	09/24/2019
		Deputy Director, Congressional, Legislative and Intergovernmental Affairs.	PM200051	05/08/2020
		Legislative Analyst (3)	PM200012	01/10/2020
			PM200053	06/15/2020
			PM200063	06/29/2020
		Senior Congressional Relations Officer.	PM200052	06/15/2020
	Employee Services	Executive Assistant	PM200058	05/18/2020
		Senior Advisor (4)	PM200049	04/21/2020
			PM200061	06/11/2020
			PM200062	06/29/2020
			PM200064	06/29/2020
	Office of Communications	Confidential Assistant	PM190047	07/08/2019
		Public Affairs Specialist	PM190053	08/28/2019
		Senior Press Officer	PM200001	12/10/2019
	Office of the Director	Clerk	PM200010	12/20/2019
		Confidential Clerk	PM200011	12/20/2019
		Director of Advance and Speechwriter.	PM200005	10/25/2019
		Executive Secretariat and Resources Management Officer.	PM200043	03/31/2020
	Senior Advisor (3)	PM200007	11/19/2019	
		PM200023	12/19/2019	
		PM200038	03/27/2020	
		Special Assistant	PM200050	05/04/2020
	President's Commission on White House Fellowships.	Confidential Assistant	PM200014	01/31/2020
		Associate Director	PM200056	05/30/2020
		Deputy Director	PM200003	11/04/2019
OFFICE OF SCIENCE AND TECHNOLOGY POLICY.	Office of Science and Technology Policy.	Confidential Assistant	TS200004	05/20/2020
		Press Secretary	TS200002	12/19/2019
OFFICE OF SPECIAL COUNSEL	Headquarters, Office of Special Counsel.	Deputy Special Counsel for Public Policy.	SC200001	04/06/2020
		Deputy Special Counsel for Congressional Affairs.	SC200002	04/06/2020
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.	Office of the Ambassador	Executive Secretary	TN200003	03/18/2020
OFFICIAL RESIDENCE OF THE VICE PRESIDENT.	Official Residence of the Vice President.	Deputy Social Secretary	RV200001	03/10/2020
OVERSEAS PRIVATE INVESTMENT CORPORATION.	Overseas Private Investment Corporation.	Confidential Assistant	PQ200008	02/04/2020
		Special Assistant	PQ200014	04/27/2020
SECURITIES AND EXCHANGE COMMISSION.	Office of the Chairman	Attorney Advisor	SE190009	07/22/2019
		Confidential Assistant (2)	SE190010	08/06/2019
			SE200002	12/05/2019
SMALL BUSINESS ADMINISTRATION.	Office of Administration	Special Assistant	SB190028	07/22/2019
	Office of Capital Access	Special Assistant	SB200011	03/30/2020
		Senior Advisor	SB200026	06/11/2020
	Office of Communications and Public Liaison.	Digital Media Manager	SB200009	01/23/2020
		Speechwriter	SB200008	02/14/2020
		Senior Advisor	SB190029	08/08/2019
	Office of Congressional and Legislative Affairs.	Deputy Assistant Administrator	SB200020	03/27/2020
	Office of Entrepreneurial Development.	Director Faith-Based and Community Initiatives.	SB200022	04/30/2020
		Senior Advisor	SB200024	05/28/2020
	Office of Investment and Innovation.	Senior Advisor	SB200006	01/22/2020
		Special Assistant	SB190032	10/04/2019
	Office of the Administrator	Deputy White House Liaison	SB200023	05/08/2020
		Director of Scheduling	SB200002	11/22/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
		Senior Advisor	SB200003	12/19/2019
		Special Assistant	SB200016	05/19/2020
		White House Liaison	SB200019	03/30/2020
	Office of the General Counsel	Senior Counsel	SB200029	06/08/2020
SOCIAL SECURITY ADMINISTRATION.	Office of the Commissioner	Special Assistant	SZ200013	01/31/2020
		Special Advisor	SZ200018	04/22/2020
	Office of Information Security	Program Analyst	SZ190003	08/07/2019
DEPARTMENT OF STATE	Bureau of Administration	Special Assistant	DS200013	10/31/2019
	Bureau of African Affairs	Special Envoy for the Sahel Region of Africa.	DS200044	02/25/2020
	Bureau of Arms Control, Verification, and Compliance.	Senior Advisor	DS200014	10/31/2019
	Bureau of Democracy, Human Rights and Labor.	Special Assistant	DS190112	07/03/2019
	Bureau of East Asian and Pacific Affairs.	Deputy Assistant Secretary	DS200067	06/18/2020
	Bureau of Economic and Business Affairs.	Special Advisor	DS200001	10/08/2019
	Bureau of Education and Cultural Affairs.	Special Advisor	DS200047	02/14/2020
	Bureau of European and Eurasian Affairs.	Strategic Advisor	DS190130	08/26/2019
	Bureau of Global Public Affairs	Special Advisor	DS200032	01/27/2020
		Deputy Spokesperson	DS190141	09/10/2019
	Bureau of International Organizational Affairs.	Special Assistant	DS190120	07/16/2019
	Bureau of Legislative Affairs	Special Advisor (2)	DS200036	01/22/2020
			DS190131	08/26/2019
		Legislative Management Officer	DS190129	10/09/2019
	Bureau of Near Eastern Affairs	Deputy Assistant Secretary	DS200045	03/03/2020
	Bureau of Overseas Buildings Operations.	Senior Strategic Advisor	DS200033	01/16/2020
		Senior Advisor	DS200080	06/23/2020
	Bureau of Political and Military Affairs.	Deputy Assistant Secretary	DS190145	09/20/2019
		Senior Advisor	DS190146	09/20/2019
	Bureau of Western Hemisphere Affairs.	Special Assistant	DS200015	11/12/2019
	Office of Global Women's Issues	Special Advisor	DS200008	11/14/2019
	Office of Policy Planning	Writer-Editor (Speechwriter)	DS200007	10/31/2019
		Special Assistant	DS190126	11/22/2019
	Office of the Chief of Protocol	Protocol Officer (Visits)	DS200066	06/10/2020
		Senior Protocol Officer	DS190113	07/03/2019
		Protocol Officer (Visits)	DS190119	07/23/2019
		Protocol Officer (Ceremonials)	DS200005	10/10/2019
		Protocol Officer (Gifts)	DS200025	12/19/2019
	Office of the Counselor	Special Assistant	DS200053	02/26/2020
		Staff Assistant	DS200070	06/10/2020
	Office of the Deputy Secretary	Special Advisor	DS190125	07/30/2019
	Office of the Director of US Foreign Assistance.	Special Advisor	DS190144	09/24/2019
	Office of the Legal Adviser	Attorney Adviser	DS200023	12/19/2019
	Office of the Secretary	Senior Advisor (6)	DS200048	02/14/2020
			DS200002	10/08/2019
			DS200003	10/08/2019
			DS200016	11/26/2019
			DS200018	12/04/2019
			DS200019	12/09/2019
		Special Advisor (3)	DS200040	02/28/2020
			DS190042	07/08/2019
			DS200011	10/31/2019
		Special Assistant (2)	DS200077	06/18/2020
			DS190127	07/31/2019
		Staff Assistant (3)	DS200050	02/25/2020
			DS200012	11/13/2019
			DS200017	12/03/2019
		Writer-Editor (Speechwriter)	DS200049	04/06/2020
	Office of the Under Secretary for Civilian Security, Democracy, and Human Rights.	Senior Advisor	DS200063	05/06/2020
		Special Assistant (2)	DS200042	04/06/2020
			DS190142	09/10/2019
	Office of the Under Secretary for Economic Growth, Energy, and the Environment.	Deputy Chief Economist	DS190140	09/04/2019
		Senior Economist	DS190143	09/20/2019
	Office of the Under Secretary for Management.	Deputy White House Liaison	DS190151	09/25/2019
		Senior Advisor	DS190123	07/24/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
		Special Assistant	DS200009	10/29/2019
DEPARTMENT OF TRANSPORTATION.	Office of the Administrator	Director of Governmental Affairs (3).	DT200096	03/24/2020
			DT200082	04/06/2020
			DT200027	11/07/2019
		Director of Governmental and Legislative Affairs.	DT200075	02/11/2020
		Director of Public Affairs	DT200023	11/04/2019
		Governmental and Legislative Affairs Officer.	DT200076	02/11/2020
		Senior Governmental Affairs Officer.	DT200019	10/28/2019
		Senior Policy Advisor	DT200080	02/27/2020
		Special Assistant	DT190126	10/10/2019
	Office of the Assistant Secretary for Administration.	Special Assistant	DT200029	11/12/2019
	Office of the Assistant Secretary for Governmental Affairs.	Senior Governmental Affairs Officer (3).	DT200094	03/16/2020
			DT200107	05/05/2020
			DT200018	11/12/2019
		Special Assistant (2)	DT200116	05/27/2020
			DT200025	11/13/2019
	Office of the Assistant Secretary for Research and Technology.	Special Assistant	DT190096	07/17/2019
	Office of the Assistant Secretary for Transportation Policy.	Public Liaison and Engagement Advisor.	DT200072	03/27/2020
		Senior Advisor for Public Outreach and Communications.	DT200031	11/13/2019
		Senior Director of Public Liaison	DT190120	08/28/2019
		Special Assistant (3)	DT200065	01/14/2020
			DT200001	11/08/2019
			DT200091	03/16/2020
	Office of the Associate Administrator for Highway Policy and Governmental Affairs.	Associate Administrator for Policy and Governmental Affairs.	DT200003	10/16/2019
	Chief Information Officer	Associate Director for Strategic IT Initiatives.	DT200110	05/08/2020
		Associate Director for Technology and Information Services.	DT200034	12/11/2019
	Office of the Executive Secretariat	Deputy Director	DT190119	08/28/2019
		Special Assistant (3)	DT200070	01/30/2020
			DT200117	06/10/2020
			DT190125	10/07/2019
	Immediate Office of the Administrator.	Governmental Affairs Officer	DT200088	03/27/2020
		Special Assistant for Strategic Communications.	DT190112	07/31/2019
		Director of Governmental, International and Public Affairs.	DT200005	10/29/2019
	Office of Government and Industry	Governmental Affairs and External Outreach Advisor.	DT200078	02/12/2020
	Office of the Deputy Secretary	Special Assistant	DT200002	11/14/2019
		Executive Assistant	DT200026	11/19/2019
	Office of Pipeline and Hazardous Materials Safety Administration.	Senior Policy Advisor	DT200008	10/16/2019
	Office of Public Affairs	Deputy Director for Public Affairs	DT200098	04/21/2020
		Digital Communications Manager	DT200093	03/16/2020
		Press Secretary	DT200030	11/15/2019
		Senior Deputy Press Secretary	DT200114	06/05/2020
		Senior Media Affairs Coordinator	DT200115	05/27/2020
		Special Assistant	DT200085	03/27/2020
	Office of the Secretary	Deputy Director for Scheduling and Advance Operations.	DT190124	09/23/2019
		Deputy White House Liaison	DT200064	01/09/2020
		Press Advance	DT200015	11/12/2019
		Senior Advisor	DT190123	08/28/2019
		Senior Assistant for Scheduling and Advance.	DT200028	11/12/2019
		Special Assistant (4)	DT200103	04/21/2020
			DT200074	02/11/2020
			DT200092	03/19/2020
			DT200090	03/16/2020
DEPARTMENT OF THE TREASURY.	Office of the Assistant Secretary (Economic Policy).	Senior Advisor	DY200074	04/01/2020
		Special Advisor (2)	DY200077	04/08/2020
			DY200011	11/12/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Assistant Secretary (Legislative Affairs).	Special Advisor (2)	DY200032	01/24/2020
			DY200021	12/19/2019
		Special Assistant	DY190091	07/29/2019
	Office of the Assistant Secretary (Public Affairs).	Confidential Assistant	DY190101	08/26/2019
		Director of Public Affairs (Digital Strategies).	DY190090	07/29/2019
		Director, Public Affairs (Terrorism and Financial Intelligence).	DY200014	11/20/2019
		Public Affairs Specialist	DY200090	05/13/2020
		Senior Advisor	DY190100	08/21/2019
		Special Assistant for Public Affairs	DY200091	05/13/2020
	Office of the Assistant Secretary (Tax Policy).	Senior Advisor for Tax Policy	DY200094	05/13/2020
	Office of the Assistant Secretary for Financial Institutions.	Senior Advisor for Financial Institutions.	DY200101	05/31/2020
	Office of the Assistant Secretary for Financial Markets.	Special Advisor for Financial Markets.	DY200093	05/13/2020
		Special Advisor	DY200005	10/29/2019
	Office of the General Counsel	Special Assistant	DY200017	12/03/2019
	Secretary of the Treasury	Advance Representative	DY200030	01/10/2020
		Associate Director of Scheduling and Advance.	DY190086	07/11/2019
		Special Advisor (2)	DY200078	04/13/2020
			DY200012	11/12/2019
		Special Assistant (2)	DY200041	01/30/2020
			DY200075	04/02/2020
		White House Liaison	DY200073	03/23/2020
	Treasurer of the United States	Senior Advisor	DY200033	01/16/2020
	Office of the Under Secretary for International Affairs.	Special Assistant	DY190102	08/26/2019
		Special Advisor	DY190120	10/01/2019
	Office of the Under Secretary for Terrorism and Financial Intelligence.	Special Assistant	DY200042	01/22/2020
UNITED STATES INTERNATIONAL TRADE COMMISSION.	Office of the Chairman	Confidential Assistant	TC190006	08/06/2019
	Office of Commissioner Johanson	Staff Assistant	TC190005	08/07/2019
	Office of Commissioner Stayin	Staff Assistant (Legal)	TC200001	10/22/2019
	Office of Commissioner Schmidtlein.	Staff Assistant (Legal)	TC200003	10/22/2019
	Office of Commissioner Karpel	Staff Assistant (Legal)	TC200006	12/03/2019
DEPARTMENT OF VETERANS AFFAIRS.	Board of Veterans' Appeals	Senior Advisor	DV200060	05/12/2020
	Office of Public Affairs	Press Secretary	DV190078	07/23/2019
	Office of the Assistant Secretary for Congressional and Legislative Affairs.	Special Advisor	DV200048	03/18/2020
		Special Assistant	DV200011	11/20/2019
	Office of the Assistant Secretary for Public and Intergovernmental Affairs.	Director of Media Affairs	DV190086	09/30/2019
	Office of the General Counsel	Special Assistant (Attorney Advisor).	DV200003	10/11/2019

Authority: 5 U.S.C. 3301 and 3302; E.O.10577, 3 CFR, 1954–1958 Comp., p.218.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2021–02257 Filed 2–4–21; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91028; File No. SR–CBOE–2021–008]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

February 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 19, 2021, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule in connection with Related Future Cross (''RFC'') orders, effective January 19, 2021.

By way of background, from March 16 to June 12, 2020, the Exchange closed its trading floor in response to the coronavirus pandemic. As a result, the Exchange operated in an all-electronic configuration. Because the trading floor was closed during this time, floor brokers could not execute crosses of option combos (*i.e.,* synthetic futures) on the trading floor on behalf of market participants who were exchanging futures contracts in either VIX or SPX for related options positions in order to swap related exposures, and there was no means to electronically pair and execute the options legs of these transactions on the Exchange. To enable Trading Permit Holders (''TPHs'') to execute the options part of these transactions when the floor was closed, the Exchange adopted the electronic RFC order type for when the trading floor facilities were inoperable.[3] Footnote 12 of the Fees Schedule was also amended to, among other things, (1) provide a waiver for SPX/SPXW Execution Surcharges[4] for RFC orders, and (2) adopt an RFC Execution Surcharge for all SPX/SPXW and VIX initiating orders, applicable while the trading floor remained inoperable.[5] More specifically, pursuant to the Underlying Symbol List A Rate Table in the Fees Schedule, a $0.05 per contract fee is assessed for SPX and SPXW RFC initiating orders and a $0.04 per contract fee is assessed for VIX RFC initiating orders while the trading floor is inoperable.

After the Exchange reopened its trading floor, the Exchange submitted a rule filing which permanently adopted RFC orders for trading in the Exchange's normal hybrid trading environment under Rule 5.33(b)(5).[6] The Exchange plans to launch the RFC order type for its normal hybrid trading environment on January 19, 2021. For purposes of electronic trading, an RFC order is an SPX or VIX complex order comprised of an option combo order coupled with a contra-side order or orders totaling an equal number of option combo orders. For purposes of open outcry trading, an RFC order is an SPX or VIX complex order comprised of an option combo that may execute against a contra-side RFC order or orders totaling an equal number of option combo orders. An RFC order must be identified to the Exchange as being part of an exchange of option contracts for related futures positions.

The Exchange proposes to amend the Fees Schedule in light of the adoption of RFC orders on a permanent basis. As noted above, footnote 12 currently provides that the SPX and SPXW Execution Surcharges will be waived for SPX/SPXW RFC orders, and that the RFC Execution Surcharge for SPX/SPXW and VIX will apply to all SPX/SPXW and VIX RFC initiating orders, only when the trading floor is inoperable.[7] The proposed rule change removes the SPX/SPXW Execution Surcharge waiver language in connection with RFC orders from footnote 12 and relocates it to footnote 21, which footnote sets forth other exceptions to the SPX and SPXW Execution Surcharges.[8] Particularly, the Exchange proposes to relocate the language as the waiver will now apply at all times (once the RFC order type is implemented on the Exchange), as RFC orders will be available at all times rather than only when the trading floor is inoperable. Additionally, the Exchange believes it is appropriate to include the waiver language in a footnote that already contains other exceptions to the SPX and SPXW Execution Surcharges. Specifically, footnote 25 as proposed provides that all electronic executions in SPX, SPXW and SPESG shall be assessed the SPX, SPXW and SPESG Execution Surcharge, respectively, except that this fee shall not apply to SPX/SPXW Related Future Cross (''RFC'') orders (among the current list of other orders). Likewise, the proposed rule change also removes the language from footnote 12 providing that the RFC Execution Surcharge for SPX/SPXW and VIX RFC initiating orders will apply to all SPX/SPXW and VIC RFC initiating orders, and relocates it to new footnote 25, as the RFC Execution Surcharges will now apply at all times.[9] As a result of the proposed relocation of the RFC execution surcharge language from footnote 12 to footnote 25, the proposed rule change also removes footnote 12 appended to the RFC Execution Surcharge Fee in the ''Rate Table—Underlying Symbol List A'' section of the Fees Schedule. The Exchange notes that the proposed rule change does not alter the current waiver language or surcharge rates already in place pursuant to footnote 12 for transactions in temporary RFC orders (while the Exchange's trading floor was inoperable), but merely removes the applicable RFC waiver and execution surcharge language in footnote 12 and relocates it to footnotes 21 and 25, respectively so that the same waiver and

[3] *See* Securities Exchange Act Release No. 88447 (March 20, 2020), 85 FR 17129 (March 26, 2020) (CBOE–2020–023).

[4] *See* Cboe Options Fees Schedule, ''Rate Table—Underlying Symbol List A'', which assesses an SPX Execution Surcharge of $0.21 per contract and a SPXW Execution Surcharge of $0.13 per contract for non-Market Maker orders in SPX and SPXW, respectively.

[5] *See* Securities Exchange Act Release No. [sic]

[6] *See* Securities Exchange Act Release No. 89768 (September 4, 2020), 85 FR 55869 (September 10, 2020) (SR–CBOE–2020–060).

[7] Footnote 12 also provides that contracts executed as an RFC order during a time when the Exchange operates in a screen-based only environment will not count towards the 1,000 contract thresholds for the SPX/SPXW, VIX and RUT Tier Appointment Fees. The Exchange notes that the proposed rule change does not amend this exclusion applicable during which the trading floor may be inoperable because if the trading floor become inoperable then a TPH would only have the option of using electronic RFC orders, which may cause a TPH to hit the Electronic Tier Appointment surcharge where a TPH may not have hit the threshold before when using the trading floor to execute RFC orders.

[8] The proposed rule change appends footnote 21 to the RFC Execution Surcharge Fee in the ''Rate Table—Underlying Symbol List A'' section of the Fees Schedule.

[9] The proposed rule change appends footnote 25 to the RFC Execution Surcharge Fee in the ''Rate Table—Underlying Symbol List A'' section of the Fees Schedule.

surcharge rates may apply to permanent RFC orders trading in the Exchange's normal hybrid environment.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed rule change is consistent with the Act, in that, it is reasonable, equitable and not unfairly discriminatory. The proposed rule change is reasonable because it does not alter the SPX/SPXW Execution Surcharge fee waiver and SPX/SPXW and VIX RFC Execution Surcharges currently applicable to RFC orders (while the trading floor may be inoperable), but merely updates the waiver and surcharge language to appropriately reflect its application to the permanent RFC orders recently adopted by the Exchange. The Exchange believes that, generally, the SPX/SPXW Execution Surcharge waiver in place for RFC orders is reasonable and equitable because it will encourage market participants to submit volume executed as RFC orders both electronically and on the trading floor, assisting the Exchange in maintaining a robust hybrid environment. Also, the Exchange believes that, generally, the RFC Execution Surcharges currently in place are reasonable and equitable, as they are generally in line with or lower than other execution surcharges assessed under the Fees Schedule,[13] and are less than the SPX/SPXW Execution Surcharges ($0.21 and $0.13, respectively) that will ultimately be waived for RFC transactions. Finally, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because the SPX/SPXW Execution Surcharge waiver and the RFC Execution Surcharge will continue to apply in the same uniform manner for the same transactions, both electronically and in open outcry, for all TPHs that submit RFC orders to the Exchange.

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 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 intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the SPX/SPXW Execution Surcharge waiver and the RFC Execution Surcharges will continue to apply to all TPHs that submit RFC orders to the Exchange as it does today, and will uniformly apply to RFC orders executed electronically and in open outcry. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the transaction fee waiver will continue to apply to RFC orders available only for Exchange proprietary products, SPX/SPXW and VIX.

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[14] and paragraph (f) of Rule 19b–4[15] 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–CBOE–2021–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2021–008. 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 offices of the Exchange. All comments

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(4).

[13] *See* Cboe Options Fees Schedule, ''Rate Table—Underlying Symbol List A'', which assesses a VIX Customer Priority Surcharge of $0.20 per contract, and AIM Surcharge fees (while the trading floor is operating in an all-electronic environment) ranging between $0.04 and $0.10 per contract depending on the type of AIM order and options class (*i.e.,* SPX, SPXW, SPESG or VIX).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2021–008, and should be submitted on or before February 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02396 Filed 2–4–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91038; File No. SR–NYSEArca–2021–09]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend Rule 6.86–O To Eliminate the Use of Dark Series on the Exchange

February 1, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 26, 2021, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.86–O (Firm Quotes) to eliminate the use of dark series on the Exchange. The proposed 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.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 this rule change is to eliminate the exclusion of inactive or ''dark'' series (as described below) from the requirements of Rule 6.86–O (Firm Quotes) and to delete in its entirety Commentary .03 to Rule 6.86–O in its entirety.

Rule 6.86–O describes the obligations of the Exchange to collect, process and make available to quotation vendors the best bid and best offer for each option series that is a reported security.[4] However, under Commentary .03 to Rule 6.86–O, the only quote messages that the Exchange sends to Options Price Reporting Authority (''OPRA'') are quotes for ''active'' series, which are defined as any series that: (i) Has traded on any options exchange in the previous 14 calendar days; (ii) is solely listed on the Exchange; (iii) has been trading ten days or less; or (iv) is a series in which the Exchange has an order.[5] Any options series that falls outside of the above categories of ''active'' series are deemed inactive or ''dark'' series. As such, under the Rule, the Exchange still accepts quotes from OTP Holders in these series; however, such quotes are not disseminated to OPRA. The Exchange proposes to modify Rule 6.86–O and to delete Commentary. 03 to Rule 6.86–O to eliminate the use of ''dark'' series.

By way of background, Commentary .03 to Rule 6.86 was adopted over a decade ago in connection with the Penny Pilot Program, which has since been made permanent.[6] At that time, there were five options exchanges and an industry-wide concern about ''capacity issues related to excessive quoting rates.''[7] However, since that time, 11 new exchanges launched, resulting in a total 16 options exchanges. With the increase in the number of exchanges, and associated quote traffic, OPRA capacity has been increased without issue.

As discussed further below, the Exchange believes that OPRA has the capacity to accommodate any increase in quote traffic from the Exchange arising from the publication of quotes in ''dark series.'' As an OPRA participant, the Exchange makes capacity requests to OPRA. Notwithstanding Commentary .03 to Rule 6.86–O, when the Exchange makes capacity requests to OPRA, it has always factored the total quote traffic it receives from Market Makers, including quotes in dark series.[8] In other words, the Exchange presumes that all series will be active and therefore requests capacity to accommodate sending quotes for all series to OPRA. As such, the Exchange does not believe the proposed rule change would impact or change its capacity requests to OPRA. Nor would it change the total amount of capacity needed at OPRA to accommodate quotes in dark series from the Exchange because those series have already been factored into the Exchange's capacity requests to OPRA.

[4] *See* Rule 6.86–O. *See also* Securities Exchange Act Release No. 55156 (January 23, 2007), 72 FR 4759 (February 21, 2007) (SR–NYSEArca–2006–73) (order approving the Rule).

[5] A series may be considered ''active'' on an intraday basis if: (i) The series trades at any options exchange; (ii) NYSE Arca receives an order in the series; or (iii) NYSE Arca receives a request for quote from a customer in that series.'' *See* Commentary .03 to Rule 6.86–O.

[6] *See* Securities Exchange Act Release No. 54590 (October 12, 2006), 71 FR 61525 (October 18, 2006) (SR–NYSEArca-2006–73) (notice regarding proposed adoption of the Rule) (''Notice''). *See also* Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545 (April 7, 2020) (File No. 4–443) (order approving Amendment No. 5 to the Plan for the Purpose of Developing and Implementing Procedures to Facilitate the Listing and Trading of Standardized Options).

[7] *See id.,* Notice, 71 FR at 61527. For example, in 2006–2007, OPRA had the capacity to process 360,000 message per second and, at its peak message rate, the Exchange accounted for 15% of OPRA capacity, sending 55, 248 message per second for active series.

[8] OPRA has delegated certain functions pertaining to planning the capacity of the OPRA System to an Independent System Capacity Advisor (''ISCA'') that ''may provide less than all of the capacity that has been requested if it determines (a) that the capacity requests of one or more of the parties are unreasonable, or (b) that it is not reasonable to develop or maintain a System that has capacity sufficient to satisfy the requests of the parties.'' *See* the OPRA Capacity Guidelines, at p. 1, *available here, https://assets.website-files.com/5ba40927ac854d8c97bc92d7/5bf419b52de21fff3e88107f_capacity_guidelines.pdf.* The Exchange has never been informed by the ISCA that the capacity it has requested cannot be met for any reason, including because the ISCA had deemed the request to be unreasonable. Thus, the Exchange believes that any increase in quote traffic that might be sent to OPRA as a result of the current proposal should not impact any other exchange's capacity at OPRA.

Similarly, because OPRA publishes quote capacity information to the market (which already incorporates capacity planning that includes quotes in dark series that would be disseminated to OPRA), market participants (including data vendors and subscribers) have the opportunity to prepare for and make any necessary accommodations for anticipated quote traffic. Accordingly, the elimination of the Exchange's suppression of quotes in dark series should not impact market participants or downstream users that consume Exchange or OPRA data. Thus, the Exchange believes that this proposal would not impact its capacity requests to OPRA nor would it impact market participants or downstream consumers of OPRA data.

The Exchange also believes that the proposed discontinuation of its suppression of quotes in dark series would increase transparency and enhance price discovery. Specifically, as proposed, all Market Maker quotes (including in ''inactive series'' under the current Rule) would be displayed and reflected in the market to the benefit of all market participants who would be on notice of such liquidity. The Exchange also notes that, over the years, certain market participants have expressed confusion regarding what quotes are being published and which are being suppressed. Therefore, the Exchange believes that the proposal would remove the element of potential confusion among market participants by publishing all quotes (not just those in active series) in the disseminated quote feed.

Importantly, since the adoption of Commentary .03 to Rule 6.86–O, the Exchange has implemented the following measures that serve as additional safeguards against excessive quoting:

Monitoring: The Exchange actively monitors the quotation activity of its Market Makers. When the Exchange detects that a Market Maker is disseminating an unusual number of quotes, the Exchange contacts that Market Maker and alerts it to such activity. Such monitoring may reveal that the Market Maker may have internal system issues or has incorrectly set system parameters that were not immediately apparent. Alerting a Market Maker to the heightened levels of activity will usually result in a change that reduces the number of quotes sent to the Exchange by the Market Maker.

—Codification of select provisions of the Options Listing Procedures Plan (''OLPP'') in Rule 6.4A–O.[9] The OLPP is a national market system plan that, among other things, sets forth procedures governing the listing of new options series. From the OLPP, the Exchange incorporated in Rule 6.4A–O ''applied uniform standards to the range of options series exercise (or strike) prices available for trading on the [Exchange] as a quote mitigation strategy.'' [10] In approving the OLPP provisions, subsequently incorporated in Rule 6.4A–O, the Commission indicated that ''adopting uniform standards to the range of options series exercise (or strike) prices available for trading on the [Exchange] should reduce the number of option series available for trading, and thus should reduce increases in the options quote message traffic because market participants will not be submitting quotes in those series.'' [11] The Exchange believes that adherence to the OLPP standard for strike listings has contributed to the decline of the number of strikes listed, which has in turn, reduced the amount of quotes in ''dark series.'' that were held back from OPRA.[12]

—Refined Market Maker Quoting Obligations: One year after adopting select provisions of the OLPP, the Exchange refined the quoting obligations applicable to Market Makers as a quote mitigation strategy.[13] Specifically, the Exchange adopted Commentary .01 to Rule 6.37A–O, which states that Lead Market Makers' and Market Makers' continuous quoting obligations ''shall not apply to Market Makers with respect to adjusted option series, and series with a time to expiration of nine months or greater, for options on equities and Exchange Traded Fund Shares, and series with a time to expiration of twelve months or greater for Index options.'' [14] Because there are no Market Maker quoting obligations associated with adjusted options series, there is a reduction in quote traffic that is sent to OPRA. Indeed, in approving the text of Commentary .01 to Rule 6.37A–O, the Commission noted, ''. . . the Exchange's proposal would reduce the burden on market makers to submit continuous quotes that the Exchange may not submit to OPRA.'' [15]

The Exchange believes that these quote mitigation strategies would allow the Exchange to continue to effectively mitigate quote message traffic.

In connection with the foregoing, the Exchange proposes to amend paragraphs (b)(1) and (b)(2) of Rule 6.86–O to delete references to the ''Quote Mitigation Plan,'' and to delete in its entirety Commentary .03 to Rule 6.86–O.

Implementation

The Exchange will announce the implementation date of the proposed rule change in a Trader Update within 60 days of rule approval.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (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 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 the proposed elimination of Commentary .03 to Rule 6.86–O (and references to quote mitigation in Rule 6.86–O) would promote just and equitable principles of trade, as well as serve to remove impediments to and perfect the mechanism of a free and open market because the Exchange's systems capacity is more than sufficient to accommodate any increase in quote traffic to OPRA as a result of the proposed rule change. First, the Exchange believes that the proposed rule change would promote just and equitable principles of trade, as well as serve to remove impediments to and perfect the mechanism of a free and open market because the proposed change would increase transparency and enhance price discovery. Specifically, as proposed, all Market Maker quotes (including those in ''inactive series'' under the current Rule) would be displayed and reflected in the market to the benefit of all market participants who would be on notice of such liquidity. The Exchange also believes that the proposal would remove the element of potential confusion among market participants by publishing all quotes (not just those in active series) in the disseminated quote feed.

[9] *See* Securities Exchange Act Release No. 61977 (April 23, 2010), 75 FR 22884 (April 30, 2010) (SR–NYSEArca–2010–30). *See also* OLPP, *available at, http://www.theocc.com/clearing/industry-services/olpp.jsp.*

[10] Rule 6.4A–O codified Amendment No. 3 to the OLPP. *See* Securities Exchange Act Release No. 60531 (August 19, 2009), 74 FR 43173 (File No. 4–443). *See also* Rule 6.4A–O.

[11] *Id.,* 74 FR at 43174.

[12] When the Exchange adopted its quote mitigation rule, which the Exchange copied, it estimated that deployment of the rule would reduce its quote traffic by 20–30%. *See supra* note 6, Notice, 71 FR at 61527. In actuality, the rule has resulted in a reduction of approximately 10% of quote message traffic to OPRA. The Exchange believes this disparity was a result of the number of ''inactive'' series being much lower than anticipated because of increased competition and quoting activity as well as limitations on proliferation of unnecessary strikes, per the OLPP.

[13] *See* Securities Exchange Act Release No. 65573 (October 14, 2011), 76 FR 65305 (October 20, 2011) (SR–NYSEArca–2011–59).

[14] An ''adjusted series'' is ''an option series wherein, as a result of a corporate action by the issuer of the underlying security, one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares.'' *See* Commentary .01 to Rule 6.37A–O.

[15] *See supra* note 13, 76 FR at 65306.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

In addition, the proposed change would promote just and equitable principles of trade, as well as serve to remove impediments to and perfect the mechanism of a free and open market because the Exchange's capacity requests already presume that all series are active. Hence, the Exchange believes that the existing capacity planning at OPRA already factors in quotes in dark series being lit and therefore does not believe that the elimination of this rule (and any resulting increase in quote traffic) would have a negative impact on capacity.

The Exchange further believes that the existing quote mitigation strategies (*i.e.,* monitoring of quoting activity, codification of the OLPP, and refined Market Maker quoting obligations) employed by the Exchange serve to reduce the potential for excessive quoting and therefore reduce quote traffic.

Importantly, the circumstances giving rise to Commentary .03 to Rule 6.86–O—industry-wide concern about ''capacity issues related to excessive quoting rates''—has subsided given that OPRA capacity has increased exponentially over the last decade coincident with the influx of new options exchanges. In addition, the proposed increase in quote traffic as a result of this proposal is minimal and therefore unlikely to adversely impact the flow of message traffic and/or harm downstream consumers of OPRA data. As noted above, the increase in quotes message traffic in dark series is already considered in the Exchange's capacity requests to OPRA and already published to downstream users of OPRA data. As such, the Exchange believes the proposed change would not impede the protection of investors and the public interest. Thus, the Exchange believes there is sufficient capacity at OPRA to accommodate any additional quote traffic that will result from elimination of dark series. The Exchange therefore believes that its proposal will not impact the protection of investors and the public interest.

Finally, as discussed above, the Exchange does not anticipate that its proposal would negatively impact systems capacity. However, to the extent it does, the Exchange has analyzed its capacity and represents that it and the OPRA have the necessary systems capacity to handle any incremental additional traffic associated with this proposed rule change.

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. Specifically, as discussed above, the Exchange believes that any increase in quote traffic that might be sent to OPRA as a result of the proposed rule change would be minimal and should not impact any other exchange's capacity at OPRA. The Exchange likewise believes that there would be no adverse impact on any downstream consumers of OPRA data given that any increase in quote traffic would be minimal and has already been included in the Exchange's capacity planning requests to OPRA.

Intramarket Competition. The elimination of ''dark series'' would increase intra market competition and improve quote quality, because prices and sizes of all Exchange quotations would be sent to OPRA to be published and updated. At present, Market Makers cannot ''see'' the internal best bid and offer in a dark series, nor can they improve upon the displayed market to establish price/time priority. This proposal to publish the quotes in inactive series will enhance intramarket competition because Market Makers will be able to submit more competitive quotes.

Intermarket Competition. For reasons similar to those described in the Intramarket Competition section, eliminating the use of dark series and publishing to OPRA the Exchange's previously unpublished quotes on such series would increase competition between markets, because NYSE Arca's quotes would now be visible and included in the calculation of the NBBO. Including all of NYSE Arca's quotes in the NBBO (including those in dark series), an options participant will know if an order should be sent to NYSE Arca to get the best price. Market Makers that use a strategy to ''match'' the NBBO will now need to factor NYSE Arca quotes into their calculations.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2021–09 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–NYSEArca–2021–09. 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–NYSEArca–2021–09 and

should be submitted on or before February 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02410 Filed 2–4–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34184; 812–15166]

The Advisors' Inner Circle Fund and Pathstone Family Office, LLC; Notice of Application

February 1, 2021.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements''). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

APPLICANTS: The Advisors' Inner Circle Fund (the ''Trust''), a Massachusetts business trust registered under the Act as an open-end management investment company that offers the Cornerstone Advisors Core Plus Bond Fund and the Cornerstone Advisors Global Public Equity Fund (the ''Existing Funds''), and Pathstone Family Office, LLC (the ''Adviser''), a Delaware limited liability company that is registered as an investment adviser under the Investment Advisers Act of 1940 (collectively with the Trust, the ''Applicants'').

FILING DATES: The application was filed on September 29, 2020, and amended on January 15, 2021.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 25, 2021, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: the Trust, *mbeattie@seic.com,* and the Adviser, *lwilmott@pathstone.com* (with a copy to *sean.graber@morganlewis.com*).

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. The Adviser will serve as the investment adviser to each Sub-Advised Fund pursuant to an investment advisory agreement with the Trust (the ''Investment Management Agreement'').[1] Under the terms of each Investment Management Agreement, the Adviser, subject to the supervision of the board of trustees of the Trust (the ''Board'') will provide continuous investment management of the assets of each Sub-Advised Fund. Consistent with the terms of each Investment Management Agreement, the Adviser may, subject to the approval of the Board, delegate portfolio management responsibilities of all or a portion of the assets of a Sub-Advised Fund to one or more Sub-Advisers.[2] The Adviser will continue to have overall responsibility for the management and investment of the assets of each Sub-Advised Fund. The Adviser will evaluate, select and recommend Sub-Advisers to manage the assets of a Sub-Advised Fund and will oversee, monitor, and review the Sub-Advisers and their performance and recommend the removal or replacement of Sub-Advisers.

2. Applicants request an order to permit the Adviser, subject to Board approval, to enter into investment sub-advisory agreements with the Sub-Advisers (each, a ''Sub-Advisory Agreement'') and materially amend such Sub-Advisory Agreements without obtaining the shareholder approval required under section 15(a) of the Act and rule 18f–2 under the Act.[3] Applicants also seek an exemption from the Disclosure Requirements to permit a Sub-Advised Fund to disclose (as both a dollar amount and a percentage of the Sub-Advised Fund's net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Adviser; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, ''Aggregate Fee Disclosure'').

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Sub-Advised Fund shareholders and

[18] 17 CFR 200.30–3(a)(12).

[1] Applicants request relief with respect to the named Applicants, including the Existing Funds, as well as to any future series of the Trust and any other registered open-end management investment company or series thereof that: (a) Is advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser or its successors (each, an ''Adviser''); (b) uses the multi-manager structure described in the application; and (c) complies with the terms and conditions set forth in the application (each, a ''Sub-Advised Fund''). For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] A ''Sub-Adviser'' for a Sub-Advised Fund is (1) an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the Adviser for that Sub-Advised Fund, or (2) a sister company of the Adviser for that Sub-Advised Fund that is an indirect or direct ''wholly-owned subsidiary'' of the same company that, indirectly or directly, wholly owns the Adviser (each of (1) and (2) a ''Wholly-Owned Sub-Adviser'' and collectively, the ''Wholly-Owned Sub-Advisers''), or (3) not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Sub-Advised Fund, the Trust, or the Adviser, except to the extent that an affiliation arises solely because the Sub-Adviser serves as a sub-adviser to a Sub-Advised Fund or as an investment adviser or sub-adviser to any series of the Trust other than the Sub-Advised Funds (''Non-Affiliated Sub-Adviser'').

[3] The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Sub-Advised Fund or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Sub-Advised Funds or as an investment adviser or sub-adviser to any series of the Trust other than the Sub-Advised Funds (''Affiliated Sub-Adviser'').

notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Sub-Advised Fund's shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the application, the Investment Management Agreements will remain subject to shareholder approval while the role of the Sub-Advisers is substantially equivalent to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Sub-Advised Funds. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Adviser's ability to negotiate fees paid to the Sub-Advisers that are more advantageous for the Sub-Advised Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02372 Filed 2–4–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91025; File No. SR–NYSE–2020–96]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Its Rules Establishing Maximum Fee Rates To Be Charged by Member Organizations for Forwarding Proxy and Other Materials to Beneficial Owners

February 1, 2021.

On December 2, 2020, New York Stock Exchange LLC (''NYSE'') 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 delete the maximum fee rates for processing and forwarding proxy and other materials to beneficial owners of stock set forth in NYSE Rules 451 and 465 and Section 402.10 of the NYSE Listed Company Manual, and establish in their place a requirement for member organizations to comply with any schedule of approved charges set forth in the rules of any other national securities organization or association of which such member organization is a member. The proposed rule change was published for comment in the **Federal Register** on December 21, 2020.[3]

Section 19(b)(2) of the Act [4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 4, 2021. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposal so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates March 21, 2021, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2020–96).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02400 Filed 2–4–21; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 90677 (December 15, 2020), 85 FR 83119. Comments received on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nyse-2020-96/srnyse202096.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91029; File No. SR–NYSE–2020–86]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change To Adopt NYSE Rule 5.2(j)(8) Governing the Listing and Trading of Exchange-Traded Fund Shares

February 1, 2021.

I. Introduction

On December 18, 2020, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to, among other things, adopt new NYSE Rule 5.2(j)(8) to permit the generic listing and trading of Exchange-Traded Fund Shares. The proposed rule change was published for comment in the **Federal Register** on December 30, 2020.[3] The Commission has received no comments on the proposed rule change. The Commission is approving the proposed rule change.

II. Exchange's Description of the Proposed Rule Change

Under the proposal, the Exchange states that the Commission recently adopted Rule 6c–11 under the Investment Company Act of 1940 (''1940 Act'') [4] to permit Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 90775 (December 22, 2020), 85 FR 86584 (''Notice'').

[4] According to the Exchange, NYSE currently trades securities, including ETPs, on its Pillar trading platform on an unlisted trading privileges (''UTP'') basis, subject to NYSE Pillar Platform Rules 1P—13P. ''UTP Security'' is defined as a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges. *See* NYSE Rule 1.1. ETPs traded on a UTP basis on the Exchange are not assigned to a Designated Market Maker (''DMM'') but are available for Floor brokers to trade in Floor-based crossing transactions. *See* Securities Exchange Act Release No. 82945 (March 26, 2018), 83 FR 13553, 13568 (March 29, 2018) (SR–NYSE–2017–36) (approving Exchange rules to trade securities on a UTP basis on the Pillar trading platform). The Exchange states that its rules permit it to list ETPs under NYSE Rules 5P and 8P. Specifically, NYSE Rules 5P (Securities Traded) and 8P (Trading of Certain Exchange-Traded Products) provide for the listing of certain ETPs on the Exchange that (1) meet the applicable requirements set forth in those rules, and (2) do not have any component NMS Stock that is listed on the Exchange or is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange. According to the Exchange, ETPs listed under NYSE Rules 5P and 8P would be ''Tape

Traded Products (''ETPs'')[5] that are exchange-traded funds (''ETF'')[6] shares (''Exchange-Traded Fund Shares'')[7] and that satisfy certain conditions to operate without obtaining an exemptive order from the Commission under the 1940 Act.[8] According to the Exchange, the regulatory framework provided in Rule 6c–11 streamlines procedures and reduces the costs and timeframes associated with bringing ETFs to market, thereby enhancing competition among ETF issuers and reducing costs for investors. The Exchange proposes to adopt new NYSE Rule 5.2(j)(8) to establish generic listing standards allowing the Exchange to list and trade Exchange-Traded Fund Shares in a manner consistent with Rule 6c–11 under the 1940 Act. The Exchange represents that proposed NYSE Rule 5.2(j)(8) is based on NYSE Arca, Inc. (''NYSE Arca'') Rule 5.2–E(j)(8).[9] In addition, the Exchange proposes to adopt new NYSE Rule 7.18(d)(2) based on NYSE Arca Rule 7.18–E(d)(2) that would govern trading halts for listed ETPs (which would include Exchange-Traded Fund Shares).

Proposed NYSE Rule 5.2(j)(8)

The Exchange proposes standards that would pertain to Exchange-Traded Fund Shares to qualify for listing and trading pursuant to Rule 19b–4(e) under the Act, as follows:

Proposed NYSE Rule 5.2(j)(8)(a) would provide that the Exchange would consider for trading, whether by listing or on a UTP basis, Exchange-Traded Fund Shares that meet the criteria of proposed NYSE Rule 5.2(j)(8). Proposed NYSE Rule 5.2(j)(8)(a) is based on NYSE Arca Rule 5.2–E(j)(8)(a) without any differences.

Proposed NYSE Rule 5.2(j)(8)(b) would specify applicability of proposed NYSE Rule 5.2(j)(8) and would provide that it is applicable only to Exchange-Traded Fund Shares. Proposed NYSE Rule 5.2(j)(8)(b) would further provide that, except to the extent inconsistent with proposed NYSE Rule 5.2(j)(8) or unless the context otherwise requires, Exchange rules would be applicable to the trading on the Exchange of such securities and that Exchange-Traded Fund Shares would be included within the definition of NMS Stock as defined in NYSE Rule 1.1. Proposed NYSE Rule 5.2(j)(8)(b) is based on NYSE Arca Rule 5.2–E(j)(8)(b) without any differences.

Proposed NYSE Rule 5.2(j)(8)(c) would set forth the proposed rule's applicable definitions, which are based on NYSE Arca Rule 5.2–E(j)(8)(c) without any differences, as follows:

- Proposed NYSE Rule 5.2(j)(8)(c)(1) would define the term ''1940 Act'' to mean the Investment Company Act of 1940, as amended.
- Proposed NYSE Rule 5.2(j)(8)(c)(2) would define the term ''Exchange-Traded Fund'' as having the same meaning as the term ''exchange-traded fund'' as defined in Rule 6c–11(a)(1) under the 1940 Act.[10]
- Proposed NYSE Rule 5.2(j)(8)(c)(3) would define the term ''Exchange-Traded Fund Share'' to mean a share of stock issued by an Exchange-Traded Fund.[11]
- Proposed NYSE Rule 5.2(j)(8)(c)(4) would define the term ''Reporting Authority'' to mean with respect to a particular series of Exchange-Traded Fund Shares, the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Exchange-Traded Fund 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, any current index or portfolio value, the current value of the portfolio of any securities required to be deposited in connection with issuance of Exchange-Traded Fund Shares, the amount of any dividend equivalent payment or cash distribution to holders of Exchange-Traded Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Exchange-Traded Fund Shares. A series of Exchange-Traded Fund Shares may have more than one Reporting Authority, each having different functions.

Proposed NYSE Rule 5.2(j)(8)(d) would specify the limitations on Exchange liability and relates to limitations of the Exchange, the Reporting Authority, or any agent of the Exchange as a result of specified events and conditions. Specifying such limitations of liability is standard in the Exchange's rules governing the listing of Exchange-Traded Products and the proposed rule text is substantively identical to NYSE Rules 5.2(j)(3)(D), 8.100(f), 8.201(f), 8.200(f), 8.202(f), 8.203(f), 8.204(g), 8.300(f), 8.400(f), 8.500(e), 8.600(e), and 8.700(g). Proposed NYSE Rule 5.2(j)(8)(d) is based on NYSE Arca Rule 5.2–E(j)(8)(d) without any differences.

Proposed NYSE Rule 5.2(j)(8)(e) would provide that the Exchange may approve Exchange-Traded Fund Shares for listing and/or trading (including on a UTP basis) pursuant to Rule 19b–4(e) under the Exchange Act provided that each series of Exchange-Traded Fund Shares must be eligible to operate in reliance on Rule 6c–11 under the 1940 Act and must satisfy the requirements of proposed NYSE Rule 5.2(j)(8)(as described below) upon initial listing and, except for subparagraph (1)(A) of proposed Rule NYSE 5.2(j)(8)(e), on a continuing basis. As further proposed, an issuer of such securities must notify the Exchange of any failure to comply with such requirements. Proposed NYSE Rule 5.2(j)(8)(e) is based on NYSE Arca Rule 5.2–E(j)(8)(e) without any differences.

Proposed NYSE Rule 5.2(j)(8)(e)(1) sets forth the initial and continued listing standards for Exchange-Traded Fund Shares to be listed on the NYSE and would provide that Exchange-Traded Fund Shares will be listed and traded on the Exchange subject to the requirement that the investment

A'' listings and traded pursuant to the rules applicable to NYSE-listed securities. Accordingly, once an ETP is listed, it would be assigned to a DMM pursuant to NYSE Rule 103B and the assigned DMM would have obligations vis-à-vis such securities as specified in NYSE Rule 104, including facilitating the opening, reopening, and closing of such securities. *See* Securities Exchange Act Release No. 87056 (September 23, 2019), 84 FR 51205 (September 27, 2019) (SR–NYSE–2019–34) (order approving amendments to NYSE Rule 104 to specify DMM requirements for ETPs listed on the Exchange pursuant to NYSE Rules 5P and 8P).

[5] NYSE Rule 1.1(k) defines ''Exchange Traded Product'' as a security that meets the definition of ''derivative securities product'' in Rule 19b–4(e) under the Act. According to the Exchange, ETPs include, for example, securities listed and traded on NYSE pursuant to the following rules: NYSE Rule 5.2(j)(3) (Investment Company Units); NYSE Rule 5.2(j)(5) (Equity Gold Shares); NYSE Rule 5.2 (j)(6)(Index-Linked Securities); NYSE Rule 8.100 (Portfolio Depositary Receipts); NYSE Rule 8.200 (Trust Issued Receipts); NYSE Rule 8.201 (Commodity-Based Trust Shares); NYSE Rule 8.202 (Currency Trust Shares); NYSE Rule 8.203 (Commodity Index Trust Shares); NYSE Rule 8.204 (Commodity Futures Trust Shares); NYSE Rule 8.600 (Managed Fund Shares); and NYSE Rule 8.700 (Managed Trust Securities).

[6] *See infra* note 10.

[7] *See infra* note 11.

[8] *See* Release Nos. 33–10695; IC–33646; File No. S7–15–18 (ETFs) (September 25, 2019), 84 FR 57162 (October 24, 2019).

[9] *See* Securities Exchange Act Release No. 88625 (April 13, 2020), 85 FR 21479 (April 17, 2020) (SR–NYSEArca–2019–81) (Notice of filing of Amendment No. 2 and Order granting accelerated approval of proposed rule change, as modified by Amendment No. 2, to adopt NYSE Arca Rule 5.2–E(j)(8) establishing generic listing standards for Exchange-Traded Fund Shares).

[10] Rule 6c–11(a)(1) defines ''exchange-traded fund'' as a registered open-end management company: (i) That issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any; and (ii) Whose shares are listed on a national securities exchange and traded at market-determined prices. The terms ''authorized participant,'' ''basket'' and ''creation unit'' are defined in Rule 6c–11(a).

[11] The definition of Exchange-Traded Fund Shares is the same as the definition of ''exchange-traded fund shares'' in Rule 6c–11(a) under the 1940 Act.

company issuing a series of Exchange-Traded Fund Shares is eligible to operate in reliance on the requirements of Rule 6c–11(c) on an initial and continued listing basis. Proposed NYSE Rule 5.2(j)(8)(e)(1) is based on NYSE Arca Rule 5.2–E(j)(8)(e)(1) without any differences.

Proposed NYSE Rule 5.2(j)(8)(e)(1)(A) provides that, for each series of Exchange-Traded Fund Shares, the Exchange will establish a minimum number of Exchange-Traded Fund Shares required to be outstanding at the time of commencement of trading on the Exchange. Proposed NYSE Rule 5.2(j)(8)(e)(1)(A) is based on NYSE Arca Rule 5.2–E(j)(8)(e)(1)(A) without any differences.

Proposed NYSE Rule 5.2(j)(8)(e)(2) would set forth the standards for suspension of trading or removal of Exchange-Traded Fund Shares from listing on the Exchange and would provide that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under NYSE Rule 5.5(m) of, a series of Exchange-Traded Fund Shares under any of the following circumstances:

(A) If the Exchange becomes aware that the investment company is no longer eligible to operate in reliance on Rule 6c–11;

(B) if the investment company no longer complies with the requirements set forth in NYSE Rule 5.2(j)(8);

(C) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Exchange-Traded Fund Shares, there are fewer than 50 beneficial holders of such series of Exchange-Traded Fund Shares; or

(D) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable (*see* proposed NYSE Rule 5.2(j)(8)(e)(2)(D)).

Proposed NYSE Rule 5.2(j)(8)(e)(2) is based on NYSE Arca Rule 5.2–E(j)(8)(e)(2) without any differences.

Proposed NYSE Rule 5.2(j)(8)(f) would provide that transactions in Exchange-Traded Fund Shares would occur during the trading hours specified in Rule 7.34(a) for Exchange-listed securities. Proposed NYSE Rule 5.2(j)(8)(f) is based on NYSE Arca Rule 5.2–E(j)(8)(f) with a difference to cross reference the Exchange's rule governing the hours of trading. In addition, unlike NYSE Arca, Exchange-listed securities trade on the Exchange only during Core Trading Hours.

Proposed NYSE Rule 5.2(j)(8)(g) would provide that the Exchange would implement and maintain written surveillance procedures for Exchange-Traded Fund Shares. This proposed rule is based, for example, on Commentary .01(f) to NYSE Rule 5.2(j)(3) (for Investment Company Units); Commentary .03 to NYSE Rule 8.600 (for Managed Fund Shares); and Commentary .04 to NYSE Rule 8.700 (for Managed Trust Securities). Proposed NYSE Rule 5.2(j)(8)(g) is based on NYSE Arca Rule 5.2–E(j)(8)(g) without any differences.

Proposed NYSE Rule 5.2(j)(8)(h) would provide that, upon termination of an investment company issuing Exchange-Traded Fund Shares, the Exchange would require that Exchange-Traded Fund Shares issued in connection with such entity be removed from Exchange listing. Proposed NYSE Rule 5.2(j)(8)(h) is based on NYSE Arca Rule 5.2–E(j)(8)(h) without any differences.

Proposed Commentary .01 to NYSE Rule 5.2(j)(8) would provide that a security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in NYSE Rule 5.2(j)(3) or Commentary .01 to NYSE Rule 8.600, or pursuant to a proposed rule change approved or subject to a notice of effectiveness by the Commission, may be considered approved for listing solely under NYSE Rule 5.2(j)(8) if such security is eligible to operate in reliance on Rule 6c–11 under the 1940 Act. Once so approved for listing, the continued listing requirements applicable to such previously-listed security will be those specified in paragraph (e) of NYSE Rule 5.2(j)(8). Any requirements for listing as specified in NYSE Rule 5.2(j)(3) or Commentary .01 to NYSE Rule 8.600, or an approval order or notice of effectiveness of a separate proposed rule change that differ from the requirements of NYSE Rule 5.2(j)(8) will no longer be applicable to such security. Commentary .01 to proposed NYSE Rule 5.2(j)(8) is based on Commentary .01 to NYSE Arca Rule 5.2–E(j)(8) without any differences.[12]

Proposed Commentary .02 to NYSE Rule 5.2(j)(8) is based on Commentary .02 to NYSE Arca Rule 5.2–E(j)(8)(a) without any differences, and would establish the following requirements that each series of Exchange-Traded Fund Shares based on an index would be required to meet on an initial and continued listing basis:

(1) If the underlying index is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser will erect and maintain a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index will be calculated by a third party who is not a broker-dealer or fund adviser, and

(2) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.[13]

In addition, with respect to series of Exchange-Traded Fund Shares that are actively managed, if the investment adviser to the investment company issuing Exchange-Traded Fund Shares is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such portfolio. Personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable portfolio. The Reporting Authority that provides information relating to the portfolio of a series of Exchange-Traded Fund Shares must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of such portfolio.[14]

The Exchange represents that Exchange-Traded Fund Shares will be subject to all Exchange rules applicable to equities trading. With respect to Exchange-Traded Fund Shares, all obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and the Financial Industry Regulatory Authority, Inc. (''FINRA'') will continue to monitor Exchange members for compliance with such requirements, which are not changing as a result of Rule 6c–11 under the 1940 Act.

With respect to trading halts, the Exchange represents that it may consider all relevant factors in

[12] NYSE represents that there are currently no securities listed on the Exchange that would be eligible for approval under proposed Commentary .01 to NYSE Rule 5.2(j)(8).

[13] *See* proposed Commentary .02(a) to NYSE Rule 5.2(j)(8)). Proposed Commentary .02(a) is based on Commentary .01(b)(1) to NYSE Rule 5.2(j)(3) and Commentary .02(b)(1) and (b)(3) to NYSE Rule 5.2(j)(3).

[14] *See* proposed Commentary .02(b) to NYSE Rule 5.2(j)(8)). Proposed Commentary .02(b) is based in part on Commentary .06 to NYSE Rule 8.600.

exercising its discretion to halt or suspend trading in a series of Exchange-Traded Fund Shares.[15] Trading in Exchange-Traded Fund Shares will be halted if the circuit breaker parameters in NYSE Rule 7.12 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 Exchange-Traded Fund Shares inadvisable. These may include: (1) The extent to which certain information about the Exchange-Traded Fund Shares that is required to be disclosed under Rule 6c11(c) of the 1940 Act is not being made available, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Proposed NYSE Rule 7.18(d)(2)

The Exchange proposes to adopt new NYSE Rule 7.18(d)(2) modeled on NYSE Arca Rule 7.18–E(d)(2) that would govern trading halts for listed ETPs (which would include Exchange-Traded Fund Shares). Proposed NYSE Rule 7.18(d)(2) would provide that, with respect to an ETP listed on the Exchange for which a Net Asset Value (''NAV'') (and in the case of Managed Fund Shares under NYSE Rule 8.600 and Managed Trust Securities under NYSE Rule 8.700, a Disclosed Portfolio) is disseminated, if the Exchange becomes aware that the NAV (or in the case of Managed Fund Shares or Managed Trust Securities, the Disclosed Portfolio) is not being disseminated to all market participants at the same time, it will halt trading in the affected Exchange Traded Product on the NYSE until such time as the NAV (or in the case of Managed Fund Shares or Managed Trust Securities, the Disclosed Portfolio, as applicable) is available to all market participants.[16]

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Exchange-Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange will implement and maintain written surveillance procedures to monitor trading in Exchange-Traded Fund Shares on the NYSE.[17] The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in Exchange-Traded Fund Shares and certain of their applicable underlying components with other markets that are members of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Exchange-Traded Fund Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of Exchange-Traded Fund Shares reported to FINRA's TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (''EMMA'') system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of Exchange-Traded Fund Shares, to the extent that a series of Exchange-Traded Fund Shares holds municipal securities. As noted below, the issuer of a series of Exchange-Traded Fund Shares will be required to comply with Rule 10A–3 under the Act for the initial and continued listing of Exchange-Traded Fund Shares, as provided under NYSE Rule 5.2.

Pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. As provided for under proposed NYSE Rule 5.2(j)(8)(e)(2), if the investment company or series of Exchange-Traded Fund Shares is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Rule 5.5(m).

The Exchange will implement and maintain written surveillance procedures to monitor issuer compliance with the requirements of proposed NYSE Rule 5.2(j)(8) for Exchange-Traded Funds on the NYSE. For example, the Exchange will use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that certain disclosures are not being made accurately or that other unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require periodic certification from the issuer of a series of Exchange-Traded Fund Shares that it is in compliance with Rule 6c–11 and the requirements of NYSE Rule 5.2(j)(8).

Proposed NYSE Rule 5.2(j)(8)(e)(2)(i) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under NYSE Rule 5.5(m) of, a series of Exchange-Traded Fund Shares if the Exchange becomes aware that the investment company is no longer eligible to operate in reliance on Rule 6c–11. The Exchange's awareness for purposes of determining whether to suspend trading or delist a series of Exchange-Traded Fund Shares may result from notification by the investment company or by the Exchange learning, through its own efforts, of non-compliance with NYSE Rule 5.2(j)(8).[18] In addition, the Exchange will periodically review issuer websites to monitor whether disclosures are being made for a series of Exchange-Traded Fund Shares as required by Rule 6c–11(c)(1). The Exchange also notes that proposed NYSE Rule 5.2(j)(8)(e) would require an issuer of Exchange-Traded Fund Shares to notify the Exchange that it is no longer eligible to operate in reliance on Rule 6c–11 or that it does not comply with the requirements of proposed NYSE Rule 5.2(j)(8). The Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of NYSE Rule 5.2(j)(8). Proposed NYSE Rule 5.2(j)(8)(e)(2)(i) is based on NYSE Arca Rule 5.2–E(j)(8)(e)(2)(i) without any differences.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[20] which

[15] *See* NYSE Rule 7.12.

[16] In addition, the Exchange states that it may halt trading in ETPs if there is an interruption or disruption in the dissemination of an underlying index value, if applicable, if there are major interruptions in securities trading in U.S. or global markets, or in the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.

[17] The Exchange represents that the surveillance procedures applicable to Exchange-Traded Fund Shares on the NYSE would be substantially similar to those in place for Investment Company Units, Exchange-Traded Fund Shares, and Managed Fund Shares, among other product types, on NYSE Arca.

[18] As proposed, NYSE Rule 5.2(j)(8) does not impose index dissemination requirements, the Exchange does not plan to conduct a specific index dissemination surveillance for securities listed pursuant to such rule.

[19] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange proposes to adopt new NYSE Rule 5.2(j)(8) to establish generic listing standards pursuant to Rule 19b–4(e) under the Act [21] that would permit the Exchange to list and trade Exchange-Traded Fund Shares in a manner consistent with Rule 6c–11 under the 1940 Act. The Exchange represents that proposed NYSE Rule 5.2(j)(8) is based on recently adopted NYSE Arca Rule 5.2–E(j)(8).[22] The Commission believes that NYSE's proposed Rule 5.2(j)(8) is substantively identical to proposals that the Commission has previously approved relating to the listing and trading of Exchange-Traded Fund Shares that are permitted to operate in reliance on Rule 6c–11 under the 1940 Act.[23] Accordingly, for the reasons discussed in the Prior Rule 6c–11 Generic Listing Orders, the Commission finds that this proposed rule change is consistent with Section 6(b)(5) of the Act [24] and the rules and regulations thereunder applicable to a national securities exchange.[25]

In addition, as stated above, the Exchange represents that proposed NYSE Rule 7.18(d)(2) governing trading halts for NYSE-listed ETPs (which would include Exchange-Traded Fund Shares), is based on NYSE Arca Rule 7.18–E(d)(2). The Commission believes that NYSE's proposed Rule 7.18(d)(2) is substantively identical to NYSE Arca Rule 7.18–E(d)(2) and concludes that this proposed rule does not present any novel or unique regulatory issues. The Commission therefore finds that this proposed rule change relating to trading halts is consistent with Section 6(b)(5) of the Act [26] and the rules and regulations thereunder applicable to a national securities exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, including the Exchange's representations relating to its surveillance procedures. Specifically, the Exchange represents, among other things, that its surveillance procedures are adequate to properly monitor the trading of the Exchange-Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules, and that the Exchange will implement and maintain written surveillance procedures to monitor trading in Exchange-Traded Fund Shares on the NYSE.[27]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [28] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NYSE–2020–86) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02397 Filed 2–4–21; 8:45 am]

BILLING CODE 8011–01–P

[21] Rule 19b–4(e)(1) under the Act states that ''[t]he listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of this section, if the Commission has approved, pursuant to section 19(b) of the Act (15 U.S.C. 78s(b)), the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class.'' 17 CFR 240.19b–4(e)(1). ''New derivative securities product'' is defined as ''any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument.'' 17 CFR 240.19b–4(e).

[22] *See supra* note 9 and accompanying text.

[23] *See* Securities Exchange Act Release Nos. 88625 (April 13, 2020), 85 FR 21479 (April 17, 2020) (SR–NYSEArca–2019–81); 88566 (April 6, 2020), 85 FR 20312 (April 10, 2020) (SR–CboeBZX–2019–097); and 88561 (April 3, 2020), 85 FR 19984 (April 9, 2020) (SR–NASDAQ–2019–090). These releases are referred to collectively as the ''Prior Rule 6c–11 Generic Listing Orders.''

[24] 15 U.S.C. 78f(b)(5).

[25] When relying on Rule 19b–4(e) under the Act to list and trade a new derivative securities product, the Commission notes that NYSE must submit Form 19b–4(e) (17 CFR 249.820) to the Commission within five business days after commencement of trading the new derivative securities product. *See* 17 CFR 240.19b–4(e)(2)(ii). *See also* 17 CFR 240.19b–4(e)(2)(i) (setting forth NYSE's recordkeeping requirements relating to all relevant records and information pertaining to each new derivative securities product traded pursuant to Rule 19b–4(e)).

[26] 15 U.S.C. 78f(b)(5).

[27] *See supra* note 17 and accompanying text. *See also supra* note 21 (citing to Rule 19b–4(e)(1) under the Act requiring the self-regulatory organization to have a surveillance program for the product class of a new derivative securities product).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78f(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91037; File No. SR–NYSENAT–2021–01]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing of Proposed Rule Change To Amend its Schedule of Fees and Rebates Related to Co-Location Services

February 1, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 19, 2021, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Rebates (''Fee Schedule'') related to co-location services to add two Partial Cabinet Solution bundles. 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 Exchange proposes to amend its Fee Schedule related to co-location[4] services to add two Partial Cabinet Solution (''PCS'') bundles that would be offered to Users.[5]

Proposed Addition of Option E and Option F PCS Bundles

The Fee Schedule currently lists four PCS bundles, Options A through D. As originally formulated, each PCS bundle option included a partial cabinet powered to a maximum of 2 kilowatts (''kW''); access to the liquidity center network (''LCN'') and internet protocol (''IP'') networks, the local area networks available in the data center; two fiber cross connections; and connectivity to one of two time feeds.[6] The PCS bundles are designed to attract smaller Users, including those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet are too burdensome.[7] Users are only eligible to purchase PCS bundles if they meet specified requirements, set forth in General Note 2 of the Fee Schedule.[8]

In May 2020, the Exchange amended PCS bundle Options C and D to each include two 10 Gb connections to the NMS Network, an alternate dedicated network connection that Users could use to access the NMS feeds for which the Securities Industry Automation Corporation (''SIAC'') is engaged as the securities information processor (''SIP'').[9] These two 10 Gb NMS Network connections were added to the Option C and D bundles at no additional cost.

In response to customer interest, the Exchange now proposes to add two new PCS bundles to the Fee Schedule. Proposed Options E and F would be substantially similar to Options C and D, respectively, with the difference that each connection included in the proposed bundles would be upgraded to 40 Gb from 10 Gb: That is, proposed Options E and F would include a 1 kw (Option E) or 2 kw (Option F) partial cabinet, one 40 Gb LCN connection, one 40 Gb IP network connection, two 40 Gb NMS Network connections, and either the Network Time Protocol Feed or the Precision Timing Protocol. Users selecting an Option E or F bundle would be charged the same initial charge of $10,000 that currently applies to Options C and D. In addition, Users would be charged monthly recurring charges (''MRC'') of $18,000 for an Option E bundle and $19,000 for an Option F bundle. The Exchange proposes that Users that purchase Option E or F bundles on or before December 31, 2021 would receive a 50% reduction in the MRC for the first 12 months.

The amended portion of the Fee Schedule would read as follows (proposed additions *italicized*):

Type of service	Description	Amount of charge
Partial Cabinet Solution bundles Note: A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 2 under ''General Notes.''.	*Option E: 1 kW partial cabinet, 1 LCN connection (40 Gb), 1 IP network connection (40 Gb), 2 NMS Network connections (40 Gb each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.*	*$10,000 initial charge per bundle plus monthly charge per bundle as follows:* • *For Users that order on or before December 31, 2021: $9,000 monthly for first 12 months of service, and $18,000 monthly thereafter.* • *For Users that order after December 31, 2021: $18,000 monthly.*
	Option F: 2 kW partial cabinet, 1 LCN connection (40 Gb), 1 IP network connection (40 Gb), 2 NMS Network connections (40 Gb each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	*$10,000 initial charge per bundle plus monthly charge per bundle as follows:* • *For Users that order on or before December 31, 2021: $9,500 monthly for first 12 months of service, and $19,000 monthly thereafter* • *For Users that order after December 31, 2021: $19,000 monthly*

The Exchange proposes that General Note 2 of the Fee Schedule—which currently applies to PCS bundle Options A through D—would also apply to proposed Option E and F bundles, without alteration. Specifically, a User and its Affiliates would be limited to one PCS bundle at a time, and a User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a PCS bundle.

The Exchange is not proposing any changes to PCS bundle Options A through D.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally.

Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, is completely voluntary and the Fee Schedule is applied uniformly to all Users.

Competitive Environment

A User may host another entity in its space within the data center. Such Users

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2018. *See* Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07) (''NYSE National Co-location Notice'').

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See id., supra* note 4, at 26314 n.9. As specified in the Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE''), NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (together, the ''Affiliate SROs''). *See id.* at 26314 n.11. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2021–05, SR–NYSEAMER–2021–04, SR–NYSEArca–2021–07, and SR–NYSECHX–2021–01.

[6] *See id.* at 26315.

[7] *See id.*

[8] *See id.* The definitions of ''Affiliate'' and ''Aggregate Cabinet Footprint'' were added to the Fee Schedule at the same time.

[9] *See* Securities Exchange Act Release Nos. 88837 (May 7, 2020), 85 FR 28671 (May 13, 2020) (SR–NYSE–2019–46, SR–NYSEAMER–2019–34, SR–NYSEArca–2019–61, SR–NYSENAT–2019–19) (''NMS Network Approval Order'') and 88972 (May 29, 2020), 85 FR 34472 (June 4, 2020) (''NYSE Chicago NMS Network Approval Order'').

are called ''Hosting Users,'' and their customers are ''Hosted Customers.'' [10]

Based on conversations with Users and potential customers, the Exchange believes that Hosting Users offer bundles (''Hosting User Bundles'') that include cabinet space and space on shared LCN, IP, and NMS network connections, and that the Hosting User Bundles provide their end users with a service similar to that of the PCS bundles.[11]

The Exchange operates in a highly competitive market in which exchanges and other vendors (*e.g.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [12]

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[15] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, for the following reasons.

The Exchange believes that it is reasonable to expand its PCS bundle options by offering the proposed Option E and F bundles. Currently, the Exchange offers Users the ability to purchase connectivity to the LCN/NMS and IP/NMS networks in 10 Gb and 40 Gb bandwidths, but within the Exchange's existing PCS bundle options, 40 Gb connections are not available. This means that at present, Users interested in the PCS bundled services—either because they have minimal power and cabinet space demands or because the costs attendant with having a dedicated cabinet are too burdensome—cannot access 40 Gb connections and are limited to the 10 Gb connections offered as part of the Option C and D bundles. Users and potential customers have requested that the Exchange provide them the opportunity to purchase PCS bundles that include 40 Gb connections, which would enable them to connect to more of the Included Data Products and Third Party Data Feeds or have the same size connection in co-location that they have everywhere. The Exchange believes that it is reasonable to offer the proposed Option E and F bundles to satisfy this customer demand, while continuing to offer the existing bundle offerings, in order to provide potential Users of the PCS bundled services an additional 40 Gb option for their network connection requirements.

Additionally, the Exchange believes that the proposed change may make PCS bundles more competitive with the services that Hosting Users offer. Without this proposed rule change, potential Users choosing between a PCS bundle and a Hosting User Bundle would have fewer options.

The Exchange believes that the proposed charges for the Option E and F bundles are reasonable. The Exchange proposes that Users choosing the Option E or F bundles would pay the same $10,000 initial charge that Users currently pay when choosing the Option C or D bundles, which reflects the fact that setting up each of these four cabinet options involves a similar amount of work for the Exchange. It is also reasonable for the Exchange to set MRC charges of $18,000 for an Option E bundle (a $4,000 increase over Option C) and $19,000 for an Option F bundle (a $4,000 increase over Option D) which reflects the fact that the Exchange will have to supply multiple 40 Gb connections in the Option E and F bundles, as opposed to the 10 Gb connections included in the Option C and D bundles.

The Exchange believes that it is reasonable to provide a period of eligibility for a 50% MRC reduction as an incentive to Users to utilize the Option E and F bundles. Similar 50% MRC reductions were proposed and approved for Options A through D when those product offerings were added to the Fee Schedule.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. The Exchange would continue to offer the four existing PCS bundles (Options A through D) with different cabinet footprints and network connection options, in addition to the proposed Option E and F bundles. Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, would be completely voluntary.

The Exchange believes that the proposed charges for Option E and F bundles are not unfairly discriminatory. The proposed initial charges and MRCs for Options E and F would apply equally to all Users that purchase an Option E or F bundle, and the proposed 50% reduction of MRC for the first 12

[10] A Hosting User is required to be a User, but because only Users can be Hosting Users, a Hosted Customer is not able to provide hosting services to any other entities in the space in which it is hosted. The Exchange allows Users to act as Hosting Users for a monthly fee. *See* NYSE National Co-location Notice, *supra* note 4, at 26318.

[11] Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public or disclose it to the Exchange. The Exchange therefore does not have direct visibility into the specific range of options, or cost thereof, offered by Hosting Users, and relies on third parties for information.

[12] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

months would apply to any User that orders an Option E or F bundle on or before December 31, 2021.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among its market participants.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. Specifically, the proposed initial charges and MRCs for Options E and F would apply equally to all Users that purchase an Option E or F bundle, and the proposed 50% reduction of MRC for the first 12 months would apply to any User that orders an Option E or F bundle on or before December 31, 2021. The Exchange would continue to offer the four existing PCS bundles (Options A through D) with different cabinet footprints and network connection options, in addition to the proposed Option E and F bundles. Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, would be completely voluntary.

Without this proposed rule change, potential Users choosing between a PCS bundle and a Hosting User Bundle would have fewer options. Potential Users could benefit from having an additional 40 Gb option for their network connection requirements, which would allow them to connect to more of the Included Data Products and Third Party Data Feeds or have the same size connection in co-location that they have elsewhere.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[16]

Intramarket Competition

The Exchange believes that the proposed changes would not place any burden on intramarket competition that is not necessary or appropriate.

The Exchange's offering of the proposed Option E and F bundles would provide potential Users of PCS bundles a wider range of choices, which would be especially beneficial for potential Users with minimal power and cabinet space demands, but which could nevertheless benefit from an additional 40 Gb option for their network connection requirements. The Exchange believes that the proposed change may make PCS bundles more attractive to potential Users who might otherwise opt to become Hosted Customers, and thus would enhance the competitive environment for potential Users, who would then have more options from which to select. At the same time, however, no potential User would be obligated to purchase a PCS bundle, and it would still have the options offered by Hosting Users.

Intermarket Competition

The Exchange believes that the proposed changes will not impose any burden on intermarket competition that is not necessary or appropriate. The proposed change is not meant to affect competition among national securities exchanges. Rather, the Exchange believes that the proposed change is a reasonable attempt to maintain a more level playing field between the Exchange and the Hosting Users, who compete for Hosted Customer business. Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public. The Exchange believes that the proposed change may make PCS bundles more attractive to potential users who might otherwise opt to become Hosted Customers.

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, an exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining price, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognizing that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17]

For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

[16] 15 U.S.C. 78f(b)(8).

[17] *See* Regulation NMS Adopting Release, *supra* note 12, at 37499.

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2021–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2021–01. 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–NYSENAT–2021–01 and should be submitted on or before February 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

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[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91032; File No. SR–EMERALD–2021–02]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Port Fees and Increase Certain Network Connectivity Fees

February 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 22, 2021, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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 Fee Schedule to: (1) Adopt Port fees; and (2) increase the Exchange's network connectivity fees for its 10 gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection for Members[3] and non-Members (collectively, the ''Proposed Access Fees''). On September 15, 2020, the Exchange issued a Regulatory Circular which announced, among other things, that the Exchange would adopt Port fees, thereby terminating the Waiver Period[4] for such fees, and increase the fees for its 10Gb ULL connection for Members and non-Members, beginning October 1, 2020.[5]

The Exchange initially filed this proposal on October 1, 2020.[6] The First Proposed Rule Change was published for comment in the **Federal Register** on October 20, 2020.[7] The Exchange notes that the First Proposed Rule Change did not receive any comment letters. Nonetheless, the Exchange withdrew the First Proposed Rule Change on November 25, 2020[8] and resubmitted a replacement proposal.[9] The Second Proposed Rule Change was published for comment in the **Federal Register** on December 14, 2020.[10] The Exchange notes that the Second Proposed Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] ''Waiver Period'' means, for each applicable fee, the period of time from the initial effective date of the MIAX Emerald Fee Schedule until such time that the Exchange has an effective fee filing establishing the applicable fee. The Exchange will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. *See* the Definitions Section of the Fee Schedule.

[5] *See* MIAX Emerald Regulatory Circular 2020–41 available at *https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2020_41.pdf.*

[6] *See* Securities Exchange Act Release No. 90184 (October 14, 2020), 85 FR 66636 (October 20, 2020) (SR–EMERALD–2020–12) (the ''First Proposed Rule Change'').

[7] *See id.*

[8] *See* Comment Letter from Joseph Ferraro, SVP, Deputy General Counsel, the Exchange, dated November 20, 2020, notifying the Commission that the Exchange would withdraw the First Proposed Rule Change.

[9] *See* Securities Exchange Act Release No. 90600 (December 8, 2020), 85 FR 80831 (December 14, 2020) (SR–EMERALD–2020–17) (the ''Second Proposed Rule Change'').

[10] *See id.*

Change did not receive any comment letters. Nonetheless, the Exchange withdrew the Second Proposed Rule Change on January 22, 2021 and resubmitted this proposal.[11]

Port Fees

The Exchange proposes to adopt fees for ''Ports'', which are used by Members and non-Members to access the Exchange. MIAX Emerald provides four Port types: (i) The Financial Information Exchange (''FIX'') Port,[12] which allows Members to electronically send orders in all products traded on the Exchange; (ii) the MIAX Emerald Express Interface (''MEI'') Port,[13] which allows Market Makers [14] to submit electronic orders and quotes to the Exchange; (iii) the Clearing Trade Drop Port (''CTD'') Port,[15] which provides real-time trade clearing information to the participants to a trade on MIAX Emerald and to the participants' respective clearing firms; and (iv) the FIX Drop Copy (''FXD'') Port,[16] which provides a copy of real-time trade execution, correction and cancellation information through a FIX Port to any number of FIX Ports designated by an Electronic Exchange Member (''EEM'') [17] to receive such messages. The Exchange also proposes to increase the monthly fee for each additional Limited Service MEI Port per matching engine for Market Makers over and above the two (2) Limited Service MEI Ports per matching engine that are allocated with the Full Service MEI Ports, as described below.

Since the launch of the Exchange, all Port fees have been waived by the Exchange in order to incentivize market participants to connect to the Exchange, except for additional Limited Service MEI Ports. However, also at launch, the Exchange introduced the structure of Port fees on its Fee Schedule (without proposing the actual fee amounts), in order to indicate to market participants that Port fees would ultimately apply upon expiration of the Waiver Period. The Exchange now proposes to assess monthly Port fees for Members and non-Members in each month the market participant is credentialed to use a Port in the production environment and based upon the number of credentialed Ports that a user is entitled to use. MIAX Emerald has Primary and Secondary Facilities and a Disaster Recovery Facility. Each type of Port provides access to all Exchange facilities for a single fee. The Exchange notes that, unless otherwise specifically set forth in the Fee Schedule, the Port fees include the information communicated through the Port. That is, unless otherwise specifically set forth in the Fee Schedule, there is no additional charge for the information that is communicated through the Port apart from what the user is assessed for each Port.[18]

FIX Port Fees

Since the launch of the Exchange, fees for FIX Ports have been waived for the Waiver Period. The Exchange now proposes to assess a monthly FIX Port fee to Members in each month the Member is credentialed to use a FIX Port in the production environment and based upon the number of credentialed FIX Ports, as follows: $550 for the first FIX Port; $350 for FIX Ports two through five; and $150 for each FIX Port over five.

Below is the proposed table showing the FIX Port fees:

FIX port fees	MIAX Emerald monthly port fees includes connectivity to the primary, secondary and disaster recovery data centers
1st FIX Port	$550.00
FIX Ports 2 through 5	350.00
Additional FIX Ports over 5	150.00

MEI Port Fees

MIAX Emerald offers different options of MEI Ports depending on the services required by Market Makers. Since the launch of the Exchange, fees for MEI Ports have been waived for the Waiver Period. The Exchange now proposes to assess monthly MEI Port Fees to Market Makers based upon the number of classes or class volume accessed by the Market Maker. Market Makers are allocated two (2) Full Service MEI Ports [19] and two (2) Limited Service MEI Ports [20] per Matching Engine [21] to which they connect. The Full Service MEI Ports, Limited Service MEI Ports and the additional Limited Service MEI Ports all include access to the Exchange's Primary and Secondary data centers and its Disaster Recovery center.

Specifically, the Exchange proposes to adopt MEI Port fees assessable to Market Makers based upon the number of classes or class volume accessed by the Market Maker. The Exchange proposes to adopt the following MEI Port fees: (i) $5,000 for Market Maker Assignments in up to 5 option classes or up to 10% of option classes by volume; (ii) $10,000 for Market Maker Assignments in up to

[11] *See* Comment Letter from Joseph Ferraro, SVP, Deputy General Counsel, the Exchange, dated January 15, 2021, notifying the Commission that the Exchange would withdraw the Second Proposed Rule Change.

[12] ''FIX Port'' means an interface with MIAX Emerald systems that enables the Port user to submit simple and complex orders electronically to MIAX Emerald. *See* the Definitions Section of the Fee Schedule.

[13] MIAX Emerald Express Interface is a connection to the MIAX Emerald System that enables Market Makers to submit simple and complex electronic quotes to MIAX Emerald. ''Full Service MEI Ports'' means a port which provides Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX Emerald System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per Matching Engine. ''Limited Service MEI Ports'' means a port which provides Market Makers with the ability to send simple and complex eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX Emerald System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per Matching Engine. *See* the Definitions Section of the Fee Schedule.

[14] ''Market Maker'' refers to ''Lead Market Maker'' (''LMM''), ''Primary Lead Market Maker'' (''PLMM'') and ''Registered Market Maker'' (''RMM''), collectively. *See* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

[15] ''CTD Port'' or ''Clearing Trade Drop Port'' provides an Exchange Member with a real-time clearing trade updates. The updates include the Member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) Trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); and (v) Exchange MPID for each side of the transaction, including Clearing Member MPID. *See* the Definitions Section of the Fee Schedule.

[16] The FIX Drop Copy (''FXD'') Port is a messaging interface that will provide a copy of real-time trade execution, trade correction and trade cancellation information to FXD Port users who subscribe to the service. FXD Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM. FXD Port Fees will be assessed in any month the Member is credentialed to use the FXD Port in the production environment. *See* Fee Schedule, Section 5)d)iv).

[17] ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

[18] An example of one such exception where there is an additional charge for information that is communicated through a Port is for certain market data products, such as ToM, AIS, and MOR, that are received via a direct connection to the Exchange. *See* Sections 6(a)–(c) of the Fee Schedule.

[19] *See supra* note 13.

[20] *See id.*

[21] A ''matching engine'' is a part of the MIAX Emerald electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will be processed by one single matching engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines. *See* the Definitions Section of the Fee Schedule.

10 option classes or up to 20% of option classes by volume; (iii) $14,000 for Market Maker Assignments in up to 40 option classes or up to 35% of option classes by volume; (iv) $17,500 for Market Maker Assignments in up to 100 option classes or up to 50% of option classes by volume; and (v) $20,500 for Market Maker Assignments in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Emerald.

The Exchange also proposes to adopt new footnote ''▪'' for its MEI Port fees that will apply to the Market Makers who fall within the following MEI Port fee levels, which represent the 4th and 5th levels of the fee table: Market Makers who have (i) Assignments in up to 100 option classes or up to 50% of option classes by volume and (ii) Assignments in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Emerald. Specifically, the Exchange proposes for these monthly MEI Port tier levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.025% of the total monthly executed volume reported by OCC in the customer account type for MIAX Emerald-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level.

The purpose of this proposed lower monthly MEI Port fee is to provide a lower fixed cost to those Market Makers who are willing to quote the entire Exchange market (or substantial amount of the Exchange market), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on the Exchange. The Exchange believes that, by offering lower fixed costs to Market Makers that execute less volume, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option industry marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers utilize less Exchange capacity due to lower overall volume executed, the Exchange believes it is reasonable and appropriate to offer such Market Makers a lower fixed cost. The Exchange notes that other options exchanges assess certain of their fees at different rates, based upon a member's participation on that exchange,[22] and, as such, this concept is not novel. The proposed changes to the MEI Port fees for Market Makers who fall within the 4th and 5th levels of the fee table are based upon a business determination of current Market Maker assignments and trading volume.

For the calculation of the monthly MEI Port Fees that apply to Market Makers, the number of classes is defined as the greatest number of classes the Market Maker was assigned to quote in on any given day within the calendar month and the class volume percentage is based on the total national average daily volume in classes listed on MIAX Emerald in the prior calendar quarter.[23] Newly listed option classes are excluded from the calculation of the monthly MEI Port Fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume. The Exchange proposes to assess Market Makers the monthly MEI Port Fees based on the greatest number of classes listed on MIAX Emerald that the Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement.

The Exchange currently charges $50 per month for each additional Limited Service MEI Port per matching engine for Market Makers over and above the two (2) Limited Service MEI Ports per matching engine that are allocated with the Full Service MEI Ports. The Full Service MEI Ports, Limited Service MEI Ports and the additional Limited Service MEI Ports all include access to the Exchange's Primary and Secondary data centers and its Disaster Recovery center. Currently, footnote ''*'' in the MEI Port Fee table provides that the fees for Additional Limited Service MEI Ports are not subject to the Waiver Period. Accordingly, in connection with this proposal, the Exchange proposes to delete footnote ''*'' since the Exchange proposes to begin assessing MEI Port fees, which will no longer be subject to the Waiver Period. The Exchange also proposes to increase the monthly fee from $50 to $100 for each additional Limited Service MEI Port per matching engine for Market Makers over and above the two (2) Limited Service MEI Ports per matching engine that are allocated with the Full Service MEI Ports.

Below is the proposed table showing the MEI Port fees:

Monthly MIAX Emerald MEI fees	Market maker assignments (the lesser of the applicable measurements below)	
	Per class	% of national average daily volume
$5,000.00	Up to 5 Classes	Up to 10% of Classes by volume.
10,000.00	Up to 10 Classes	Up to 20% of Classes by volume.
14,000.00	Up to 40 Classes	Up to 35% of Classes by volume.
$17,500.00▪	Up to 100 Classes	Up to 50% of Classes by volume.
$20,500.00▪	Over 100 Classes	Over 50% of Classes by volume up to all Classes listed on MIAX Emerald.

▪ For these Monthly MIAX Emerald MEI Port tier levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.025% of the total monthly executed volume reported by OCC in the customer account type for MIAX Emerald-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level.

[22] *See, e.g.,* Cboe BZX Options Exchange (''BZX Options'') assesses the Participant Fee, which is a membership fee, according to a member's ADV. *See* Cboe BZX Options Exchange Fee Schedule under ''Membership Fees''. The Participant Fee is $500 if the member ADV is less than 5000 contracts and $1,000 if the member ADV is equal to or greater than 5000 contracts.

[23] The Exchange will use the following formula to calculate the percentage of total national average daily volume that the Market Maker assignment is for purposes of the MEI Port Fee for a given month: Market Maker assignment percentage of national average daily volume = [total volume during the prior calendar quarter in a class in which the Market Maker was assigned]/[total national volume in classes listed on MIAX in the prior calendar quarter].

Purge Port Fees

The Exchange also offers Market Makers the ability to request and be allocated two (2) Purge Ports [24] per Matching Engine to which it connects. Purge Ports provide Market Makers with the ability to send quote purge messages to the MIAX Emerald System. Purge Ports are not capable of sending or receiving any other type of messages or information. Since the launch of the Exchange, fees for Purge Ports have been waived for the Waiver Period. The Exchange now proposes to amend its Fee Schedule to adopt fees for Purge Ports. For each month in which the MIAX Emerald Market Maker has been credentialed to use Purge Ports in the production environment and has been assigned to quote in at least one class, the Exchange proposes to assess the MIAX Emerald Market Maker a flat fee $1,500, regardless of the number of Purge Ports allocated to the MIAX Emerald Market Maker.

CTD Port Fees

The Exchange proposes to assess a CTD Port fee as a monthly fixed amount, not tied to transacted volume of the Member. This fixed fee structure is the same structure in place at Nasdaq PHLX with respect to the proposed CTD Port Fees.[25] Since the launch of the Exchange, CTD Port Fees have been waived for the Waiver Period. CTD provides Exchange members with real-time clearing trade updates. The updates include the Member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) Trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); (v) Exchange Member Participant Identifier (''MPID'') for each side of the transaction, including Clearing Member MPID; and (vi) strategy specific information for complex transactions. CTD Port fees will be assessed in any month the Member is credentialed to use the CTD Port in the production environment. The Exchange proposes to assess a CTD Port fee of $450 per month.

Below is the proposed table for the CTD Port fees:

Description	Monthly fee
Real-Time CTD Information	$450.00

FXD Port Fee

The Exchange proposes to assess an FXD Port Fee as a monthly fixed amount, not tied to transacted volume of the Member. This fixed fee structure is the same structure in place at Nasdaq PHLX with respect to FXD Port Fees.[26] Since the launch of the Exchange, FXD Port Fees have been waived for the Waiver Period. FXD is a messaging interface that will provide a copy of real-time trade execution, trade correction and trade cancellation information to FXD Port users who subscribe to the service. FXD Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM. FXD Port fees will be assessed in any month the Member is credentialed to use the FXD Port in the production environment. The Exchange proposes to assess an FXD Port fee of $500 per month. Below is the proposed table for the FXD Port fees:

Description	MIAX Emerald monthly port fees includes connectivity to the primary, secondary and disaster recovery data centers
FIX Drop Copy Port	$500.00

10Gb ULL Connectivity Fee

The Exchange proposes to amend Sections (5a) and (b) of the Fee Schedule to increase the monthly network connectivity fees for the 10Gb ULL fiber connection, which is charged to both Members and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange offers to both Members and non-Members two bandwidth alternatives for connectivity to the Exchange, to its primary and secondary facilities, consisting of a 1Gb fiber connection and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange now proposes to increase its monthly network connectivity fee for its 10Gb ULL connection to $10,000 for Members and non-Members.

* * * * *

MIAX Emerald believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. MIAX Emerald believes this high standard is especially important when an exchange imposes various access fees for market participants to access an exchange's marketplace. MIAX Emerald deems Port fees and Connectivity fees to be access fees, and that Ports and Connectivity are inextricably linked components of the network. Accordingly, the Exchange believes that it is reasonable and appropriate that the costs and revenues for both should be considered together, as the services associated with connectivity and ports are linked pieces of the network's infrastructure, both of which are necessary for a market participant to access and use the trading System of the Exchange. Finally, both Connectivity fee and Port fee revenue are consolidated into a single line item (''Access Fees'') on the Exchange's financial statements. The Exchange believes that it is important to demonstrate that these fees are based on its costs to provide access to the Exchange's network and reasonable business needs. Accordingly, the Exchange believes the Proposed Access Fees will allow the Exchange to offset expense the Exchange has and will incur, and that the Exchange is providing sufficient transparency (as described below) into how the Exchange determined to charge such fees. Accordingly, the Exchange is providing an analysis of its revenues, costs, and profitability associated with the Proposed Access Fees. This analysis includes information regarding its methodology for determining the costs and revenues associated with the Proposed Access Fees.

In order to determine the Exchange's costs associated with providing the Proposed Access Fees, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the services included in the Proposed Access Fees. The sum of all

[24] ''Purge Ports'' provide Market Makers with the ability to send quote purge messages to the MIAX Emerald System. Purge Ports are not capable of sending or receiving any other type of messages or information. *See* the Definitions Section of the Fee Schedule.

[25] *See* Nasdaq PHLX Pricing Schedule, Options 7, Section 9, Other Member Fees, B. Port Fees.

[26] *Id.*

such portions of expenses represents the total cost of the Exchange to provide the Proposed Access Fees. For the avoidance of doubt, no expense amount was allocated twice. The Exchange is also providing detailed information regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the total cost to the Exchange to provide the Proposed Access Fees.

In order to determine the Exchange's projected revenues associated with providing the Proposed Access Fees, the Exchange analyzed the number of Members and non-Members currently utilizing the Exchange's services associated with the Proposed Access Fees, and, utilizing a recent monthly billing cycle representative of 2020 monthly revenue, extrapolated annualized revenue on a going-forward basis. The Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its projections for purposes of these calculations, given the uncertainty of such projections due to the continually changing access needs of market participants, discounts that can be achieved through reaching certain tiers, market participant consolidation, etc. Additionally, the Exchange similarly does not factor into its analysis future cost growth or decline.

The Exchange is presenting its revenue and expense associated with the Proposed Access Fees in this filing in a manner that is consistent with how the Exchange presents its revenue and expense in its Audited Unconsolidated Financial Statements. The Exchange's most recent Audited Unconsolidated Financial Statement is for 2019. However, since the revenue and expense associated with the Proposed Access Fees were not in place in 2019 or for the first three quarters of 2020, the Exchange believes its 2019 Audited Unconsolidated Financial Statement is not useful for analyzing the reasonableness of the total annual revenue and costs associated with the Proposed Access Fees. Accordingly, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2020 revenue and costs, as described herein, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements. Based on this analysis, the Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit when comparing the Exchange's total annual expense associated with providing the services associated with the Proposed Access Fees versus the total projected annual revenue the Exchange will collect for providing those services.

* * * * *

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[27] On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees.[28] On December 20, 2019, the Exchange adopted Connectivity Fees in a filing utilizing a cost-based justification framework that is substantially similar to the cost-based justification framework utilized for the instant Proposed Access Fees.[29] Accordingly, the Exchange believes that the Proposed Access Fees are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable because they do not result in excessive pricing or supra-competitive profit; and (iv) utilize a cost-based justification framework that is substantially similar to a framework previously used by the Exchange to establish Connectivity Fees. Accordingly, the Exchange believes that the Commission should find that the Proposed Fees are consistent with the Act.

The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[30] in general, and furthers the objectives of Section 6(b)(4) of the Act[31] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[32] 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 and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Exchange launched trading on March 1, 2019. For the month of December 2020, the Exchange had a market share of only approximately 3.58% of the U.S. options industry.[33] The Exchange is not aware of any evidence that a market share of approximately 3.6% provides the Exchange with anti-competitive pricing power. If the Exchange were to attempt to establish unreasonable pricing, then no market participant would join or connect, and existing market participants would disconnect.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their connections to an exchange (or not connect to an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such market participant, did not make business or economic sense for such market participant to connect to such exchange. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact that market participants can and do disconnect from exchanges based on non-transaction fee pricing, R2G Services LLC (''R2G'') filed a comment letter after BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).[34] The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data

[27] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[28] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[29] *See* Securities Exchange Act Release No. 87877 (December 31, 2019), 84 FR 738 (January 7, 2020) (SR–EMERALD–2019–39).

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(4).

[32] 15 U.S.C. 78f(b)(5).

[33] *See* The Options Clearing Corporation (''OCC'') publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/market-data/volume/default.jsp*.

[34] *See* Letter from Stefano Durdic, R2G, to Vanessa Countryman, Acting Secretary, Commission, dated March 27, 2019 (the ''R2G Letter'').

relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' [35] Since the Exchange issued its notice for the Proposed Access Fees, one Member discontinued the use of the Exchange's connectivity and port services as a result of the Proposed Access Fees. Accordingly, these examples show that if an exchange sets too high of a fee for connectivity and/or other non-transaction fees for its relevant marketplace, market participants can choose to disconnect from such exchange.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Access Fees will not result in excessive or supra-competitive profit. The costs associated with providing access to Exchange Members and non-Members, as well as the general expansion of a state-of-the-art infrastructure, are extensive, have increased year-over-year, and are projected to increase year-over-year in the future. In particular, the Exchange has experienced a material increase in its costs in 2020, in connection with a project to make its network environment more transparent and deterministic, based on customer demand. This project will allow the Exchange to enhance its network architecture with the intent of ensuring a best-in-class, transparent and deterministic trading system while maintaining its industry leading latency and throughput capabilities. In order to provide this greater amount of transparency and higher determinism, MIAX Emerald has made significant capital expenditures (''CapEx''), incurred increased ongoing operational expenditures (''OpEx''), and undertaken additional engineering research and development (''R&D'') in the following areas: (i) Implementing an improved network design to ensure the minimum latency between multicast market data signals disseminated by the Exchange across the extranet switches, improving the unicast jitter profile to reduce the occurrence of message sequence inversions from Members to the Exchange quoting gateway processors, and introducing a new optical fiber network infrastructure that ensures the optical fiber path for participants within extremely tight tolerances; (ii) introducing a re-architected and engineered participant quoting gateway that ensures the delivery of messages to the match engine with absolute determinism, eliminating the message processing inversions that can occur with messages received nanoseconds apart; and (iii) designing an improved monitoring platform to better measure the performance of the network and systems at extremely tight tolerances and to provide Members with reporting on the performance of their systems. The CapEx associated with only phase 1 of this project in 2020 was approximately $1.85 million. This expense does not include the significant increase in employee time and other resources necessary to maintain and service this network, which expense is captured in the operating expense discussed below. This project, which results in a material increase in expense of the Exchange, is a primary driver for the increase in network connectivity fees proposed by the Exchange.

The Exchange believes the proposed increase to the 10Gb ULL connection is an equitable allocation of reasonable fees because 10Gb ULL purchasers: (1) Consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high touch network support services provided by the Exchange and its staff, including more costly network monitoring, reporting and support services, resulting in a much higher cost to the Exchange. Further, the Exchange believes the Proposed Access Fees are equitably allocated because of customer demand for an even more transparent and deterministic network, as described above, which has resulted in higher CapEx, increasingly higher OpEx, and increased costs to engineering R&D. The Proposed Access Fees are equitably allocated in this regard because the majority of customer demand is coming from purchasers of the 10Gb ULL connections, which Member and non-Member firms transact the vast majority of volume on the Exchange. Accordingly, the Exchange believes it is reasonable, equitably allocated and not unfairly discriminatory to recoup the majority of its costs associated with the project to make the network more transparent and deterministic from market participants utilizing 10Gb ULL connections on the Exchange.

The Exchange believes that the proposed increase to the 10Gb ULL fees are equitably allocated among users of the network connectivity alternatives, as the users of the 10Gb ULL connections consume the most bandwidth and resources of the network. Specifically, the Exchange notes that these users account for approximately greater than 99% of message traffic over the network, while the users of the 1Gb connections account for approximately less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have a business need for the high performance network solutions required by 10Gb ULL users. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 18 million quote messages per second. On an average day, the Exchange handles over approximately 3 billion total messages. Of those, users of the 10Gb ULL connections generate approximately 3 billion messages, and users of the 1Gb connections generate 500,000 messages. However, in order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb ULL users pay for the vast majority of the shared network resources from which all Member and non-Member users benefit, but is designed and maintained from a capacity standpoint to specifically handle the message rate and performance requirements of 10Gb ULL users.

The Exchange also believes that the connectivity fees are equitably allocated amongst users of the network connectivity alternatives, when these fees are viewed in the context of the overall trading volume on the Exchange. To illustrate, the purchasers of the 10Gb ULL connectivity account for approximately 98% of the volume on the Exchange for the month of October 2020. This overall volume percentage (98% of total Exchange volume) is in line with the amount of network connectivity revenue collected from 10Gb ULL purchasers (99% of total Exchange connectivity revenue). For example, utilizing a recent billing cycle, Exchange Members and non-Members that purchased 10Gb ULL connections accounted for approximately 99% of the total network connectivity revenue collected by the Exchange from all connectivity alternatives; and (ii) Members and non-Members that purchased 1Gb connections accounted for approximately 1% of the revenue collected by the Exchange from all connectivity alternatives.

The Exchange further believes that the increased fee for the 10Gb ULL

[35] *See id.*

connection is an equitable allocation of reasonable fees as the fees for the various connectivity alternatives are directly related to the actual costs associated with providing the respective connectivity alternatives. That is, the cost to the Exchange of providing a 1Gb network connection is significantly lower than the cost to the Exchange of providing a 10Gb ULL network connection. Pursuant to its extensive cost review described above and in connection with the Exchange's new project to increase transparency and determinism, the Exchange believes that the average cost to provide a 10Gb ULL network connection is approximately 8 times more than the average cost to provide a 1Gb connection. The simple hardware and software component costs alone of a 10Gb ULL connection are not 8 times more than the 1Gb connection. Rather, it is the associated premium-product level network monitoring, reporting, and support services costs that accompany a 10Gb ULL connection which cause it to be 8 times more costly to provide than the 1Gb connection. Accordingly, the Exchange believes it is equitable to allocate those network infrastructure costs that accompany a 10Gb ULL connection to the purchasers of those connections, and not to purchasers of 1Gb connections.

The Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which network can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 750,000 distinct trading products (per exchange), and the capacity to handle approximately 18 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 750,000 distinct trading products. There is a significant, quantifiable amount of R&D effort, employee compensation and benefits expense, and other expense associated with providing the high touch network monitoring and reporting services that are utilized by the 10Gb ULL connections offered by the Exchange. These value add services are fully-discussed herein, and the actual costs associated with providing these services are the basis for the differentiated amount of the fees for the various connectivity alternatives.

In order to provide more detail and to quantify the Exchange's costs associated with providing access to the Exchange in general, the Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the services associated with the Proposed Access Fees increase. For example, new 10Gb ULL connections and Ports require the purchase of additional hardware to support those connections as well as enhanced monitoring and reporting of customer performance that MIAX Emerald and its affiliates provide. Further, as the total number of all connections and Ports increase, MIAX Emerald and its affiliates need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to MIAX Emerald and its affiliates is not fixed. The Exchange believes the Proposed Access Fees are reasonable in order to offset the costs to the Exchange associated with providing access to its network infrastructure.

Further, because the costs of operating its own data center are significant and not economically feasible for the Exchange at this time, the Exchange does not operate its own data centers, and instead contracts with a third-party data center provider. The Exchange notes that other competing exchange operators own/operate their data centers, which offers them greater control over their data center costs. Because those exchanges own and operate their data centers as profit centers, the Exchange is subject to additional costs. The Proposed Access Fees, which are charged for accessing the Exchange's data center network infrastructure, are directly related to the network and offset such costs.

The Exchange invests significant resources in network R&D to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. In fact, the Exchange often receives inquiries from other industry participants regarding the status of networking issues outside of the Exchange's own network environment that are impacting the industry as a whole via the SIPs, including inquiries from regulators, because the Exchange has a superior, state-of the-art network that, through its enhanced monitoring and reporting solutions, often detects and identifies industry-wide networking issues ahead of the SIPs. The Exchange also incurs costs associated with the maintenance and improvement of existing tools and the development of new tools.

Additionally, certain Exchange-developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, routine R&D projects to improve the performance of the network's hardware infrastructure result in additional cost. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network in the U.S. options industry is a significant expense for the Exchange that also increases year-over-year, and thus the Exchange believes that it is reasonable to offset those costs through the Proposed Access Fees. The Exchange invests in and offers a superior network infrastructure as part of its overall options exchange services offering, resulting in significant costs associated with maintaining this network infrastructure, which are directly tied to the amount of the Proposed Access Fees that must be charged to access it, in order to recover those costs.

The Exchange believes it is reasonable to consider the expense and revenue for ports and connectivity alternatives together because ports and connectivity are inextricably linked components of the network infrastructure, and that both are necessary for a market participant to access the Exchange. The various types of connectivity and port alternatives that the Exchange offers provide a wide array of access alternatives necessary for a market participant to conduct its business using the Exchange, which is a business decision to be made by each particular type of market participant. The different types of connectivity and port

alternatives allows Members to conduct their different business strategies—some Members put an emphasis on speed, while others emphasize other strategies, such as redundancy and certainty of execution. The Exchange does not require a Member to have a certain framework for accessing the Exchange, but provides various connectivity and port alternatives for each Member's distinct business lines.

The Exchange offers various types of ports with differing prices because each port accomplishes different tasks, are suited to different types of Members, and consume varying capacity amounts of the network. For instance, MEI ports allow for a higher throughput and can handle much higher quote/order rates than FIX ports. Members that are Market Makers or high frequency trading firms utilize these ports (typically coupled with 10Gb ULL connectivity) because they transact in significantly higher amounts of messages being sent to and from the Exchange, versus FIX port users, who are traditionally customers sending only orders to the Exchange (typically coupled with 1Gb connectivity). The different types of ports cater to the different types of Exchange Memberships and different capabilities of the various Exchange Members. Market Makers have quoting and other obligations that traditional customers do not. Market Makers, therefore, need ports and connections that can handle using far more of the network's capacity for message throughput, risk protections, and the amount of information that has to be assessed. Market Makers account for the vast majority of network capacity utilization and volume executed on the Exchange, as discussed throughout.[36] Accordingly, the Exchange believes that it is reasonable and appropriate to charge market participants more for MEI ports versus FIX ports and other lower capacity ports.

The Exchange only has four primary sources of revenue: Transaction fees, access fees (of which the Proposed Access Fees constitute the majority), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense that the Exchange projects to incur in connection with providing these services versus the total annual revenue that the Exchange projects to collect in connection with providing these services. For 2020,[37] the total annual expense for providing the services associated with the Proposed Access Fees for MIAX Emerald is projected to be approximately $9.3 million. The $9.3 million in expense includes expense associated with providing all ports and all connectivity alternatives. The Exchange is unable to separate out its expense by connectivity alternative, as all connectivity alternatives are intricately combined in a single network infrastructure. Nevertheless, the Exchange attributes the majority of connectivity expense to the 10Gb ULL connections because the majority of network capacity is used by 10Gb ULL purchasers.[38] The $9.3 million in projected total annual expense is comprised of the following, all of which are directly related to the services associated with the Proposed Access Fees: (1) Third-party expense, relating to fees paid by MIAX Emerald to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of MIAX Emerald to provide the services associated with the Proposed Access Fees. As noted above, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2020 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[39] The $9.3 million in projected total annual expense is directly related to the services associated with the Proposed Access Fees, and not any other product or service offered by the Exchange. It does not include general costs of operating matching systems and other trading technology, and no expense amount was allocated twice.

As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the services associated with the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to those services. The sum of all such portions of expenses represents the total cost of the Exchange to provide services associated with the Proposed Access Fees.

For 2020, total third-party expense, relating to fees paid by MIAX Emerald to third-parties for certain products and services for the Exchange to be able to provide the services associated with the Proposed Access Fees, is projected to be $1,932,519. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the MIAX Emerald trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for network services (fiber and bandwidth products and services) linking MIAX Emerald's office locations in Princeton, NJ and Miami, FL to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''),[40] which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members and non-Members

[36] *See supra* page 64 (discussing how purchasers of the 10Gb ULL connectivity accounted for approximately 98% of the volume on the Exchange for the month of October 2020; 99% of total Exchange connectivity revenue; Members and non-Members that purchased 10Gb ULL connections accounted for approximately 99% of the total network connectivity revenue collected by the Exchange from all connectivity alternatives; and Members and non-Members that purchased 1Gb connections accounted for approximately 1% of the revenue collected by the Exchange from all connectivity alternatives).

[37] The Exchange has not yet finalized its 2020 year end results.

[38] *See supra* note 36.

[39] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87877 (December 31, 2019), 85 FR 738 (January 7, 2020) (SR–EMERALD–2019–39). Accordingly, the third-part expense described in this filing is attributed to the same line item for the Exchange's 2020 Form 1 Amendment, which will be filed in 2021.

[40] In fact, on October 22, 2019, the Exchange was notified by SFTI that it is again raising its fees charged to the Exchange by approximately 11%, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

connect to the network to trade, receive market data, etc.).

For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, MIAX Emerald does not allocate its entire information technology and communication costs to the services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to provide the services associated with the Proposed Access Fees. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide the services associated with the Proposed Access Fees to its Members and non-Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the services associated with the Proposed Access Fees, only that portion which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 73% of the total Equinix expense (68% allocated towards the cost of providing the provision of network connectivity and 5% allocated towards the cost of providing ports). The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking MIAX Emerald with its affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX PEARL, LLC (''MIAX PEARL''), as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide the services associated with the Proposed Access Fees. The Exchange did not allocate all of the Zayo expense toward the cost of providing the services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the Proposed Access Fees, approximately 66% of the total Zayo expense (62% allocated towards the cost of providing the provision of network connectivity and 4% allocated towards the cost of providing ports). The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portions of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry, as well as the content, connectivity services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide access to its Members and non-Members and their customers. The Exchange did not allocate all of the SFTI and other service providers' expense toward the cost of providing the services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 94% of the total SFTI and other service providers' expense (89% allocated towards the cost of providing the provision of network connectivity and 5% allocated towards the cost of providing ports).[41] The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide access to its Members and non-Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing the services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 57% of the total hardware and software provider expense (54% allocated towards the cost of providing the provision of network connectivity and 3% allocated towards the cost of providing ports). The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees.

For 2020, total projected internal expense, relating to the internal costs of MIAX Emerald to provide the services associated with the Proposed Access Fees, is projected to be $7,367,259. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the services associated with the Proposed Access Fees, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions (including an increase as a result of the higher determinism project); (2) depreciation and amortization of hardware and software used to provide the services associated with the Proposed Access Fees, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide

[41] The Exchange notes an increase to the SFTI and other service providers' expense percentage contained herein versus the same expense category percentage the Exchange used in its initial filing to adopt connectivity fees. *See* Securities Exchange Act Release No. 87877 (December 31, 2019), 85 FR 738 (January 7, 2020) (SR–EMERALD–2019–39). This is because at the time the Exchange performed its cost analysis for the initial connectivity fee filing, the Exchange was operational for only part of the year. Since that time, the Exchange has been fully operational, increased market share and number of market participants, and undertaken significant performance upgrades, resulting in increased expense. Accordingly, the Exchange believes it is appropriate to analyze its SFTI and other service providers' expense more in line with its affiliate options exchanges, MIAX and MIAX PEARL.

the services associated with the Proposed Access Fees. The breakdown of these costs is more fully-described below. For clarity, only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, MIAX Emerald does not allocate its entire costs contained in those items to the services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to provide the services associated with the Proposed Access Fees. In particular, MIAX Emerald's employee compensation and benefits expense relating to providing the services associated with the Proposed Access Fees is projected to be $4,489,924, which is only a portion of the $9,354,009 total projected expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), Trade Operations, Finance (who provide billing and accounting services relating to the network), and Legal (who provide legal services relating to the network, such as rule filings and various license agreements and other contracts). As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the provision of services associated with the Proposed Access Fees. Without these employees, the Exchange would not be able to provide the services associated with the Proposed Access Fees to its Members and non-Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of the services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 48% of the total employee compensation and benefits expense (39% allocated towards the cost of providing the provision of network connectivity and 9% allocated towards the cost of providing ports). The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

MIAX Emerald's depreciation and amortization expense relating to providing the services associated with the Proposed Access Fees is projected to be $2,630,687, which is only a portion of the $3,812,590 total projected expense for depreciation and amortization. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network and provide the services associated with the Proposed Access Fees. Without this equipment, the Exchange would not be able to operate the network and provide the services associated with the Proposed Access Fees to its Members and non-Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 69% of the total depreciation and amortization expense, as these services would not be possible without relying on such equipment (65% allocated towards the cost of providing the provision of network connectivity and 4% allocated towards the cost of providing ports). The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

MIAX Emerald's occupancy expense relating to providing the services associated with the Proposed Access Fees is projected to be $246,648, which is only a portion of the $474,323 total projected expense for occupancy. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the services associated with the Proposed Access Fees. This amount consists primarily of rent for the Exchange's Princeton, NJ office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (''NOC'') and Security Operations Center (''SOC'') from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has approximately 150 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the services associated with the Proposed Access Fees. Without this office space, the Exchange would not be able to operate and support the network and provide the services associated with the Proposed Access Fees to its Members and non-Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and the services associated with the Proposed Access Fees. The Exchange did not allocate all of the occupancy expense toward the cost of providing the services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 52% of the total occupancy expense (48% allocated towards the cost of providing the provision of network connectivity and 4% allocated towards the cost of providing ports). The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange notes that a material portion of its total overall expense is allocated to the provision of services associated with the Proposed Access Fees. The Exchange believes this is reasonable and in line, as the Exchange operates a technology-based business that differentiates itself from its competitors based on its trading systems that rely on its high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. As described above, the Exchange has only four primary sources

of fees in to recover its costs, thus the Exchange believes it is reasonable to allocate a material portion of its total overall expense towards the Proposed Access Fees.

The Exchange's monthly projected revenue for the Proposed Access Fees is based on the following projected purchases by Members and non-Members, which is based on a recent billing cycle: (i) 63 10Gb ULL connections; (ii) 14 CTD Ports; (iii) 8 FXD Ports; (iv) 113 FIX Ports; (v) 352 Limited Service MEI Ports; (vi) 37 Full Service MEI Ports;[42] and (vii) 10 Purge Ports. As described above, the fee charged to each Market Maker for MEI Ports can vary from month to month depending on the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, and upon certain class volume percentages. The Exchange also provides a further discount for a Market Maker's MEI Port fees if the Market Maker's total monthly executed volume during the relevant month is less than 0.025% of the total monthly executed volume reported by OCC in the customer account type for MIAX Emerald-listed option classes for that month. The Exchange has at least one Member consistently quoting in the highest tier for MEI Port fees, but receiving this discount, resulting in lower revenue for the Exchange. Further, the projected revenue from FIX Port fees is subject to change from month to month depending on the number of FIX Ports purchased. Accordingly, based on current assumptions and approximations, the Exchange projects total monthly Port revenue of approximately $251,600 and total 10Gb ULL connectivity revenue of approximately $630,000. The Exchange notes that the port revenue projections are subject to change depending on the number of classes that Market Makers are quoting in and the tiers achieved. As such, the projection of $251,600 per month is not a static number and fluctuates month to month. Further, as noted above, one Member recently dropped its connections and ports as a direct result of the introduction of the Proposed Access Fees. Accordingly, reflecting that cancellation, which took effect following the recent billing cycle, the Exchange projects annualized revenue of $10.2 million from all connectivity alternatives and port types.[43]

Accordingly, based on the facts and circumstances presented, the Exchange believes that its provision of the services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit. To illustrate, on a going-forward, fully-annualized basis, the Exchange projects that its annualized revenue for providing the services associated with the Proposed Access Fees would be approximately $10.2 million per annum, based on a recent billing cycle. The Exchange projects that its annualized expense for providing the services associated with the Proposed Access Fees would be approximately $9.3 million per annum. Accordingly, on a fully-annualized basis, the Exchange believes its total projected revenue for the providing the services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit, as the Exchange will make only a 9% profit margin on the Proposed Access Fees ($10.2 million − $9.3 million = $900,000 per annum). This profit margin does not take into account the cost of the CapEx the Exchange is projected to spend in 2020 of $1.85 million, or the amounts the Exchange is projected to spend each year on CapEx going forward.

For the avoidance of doubt, none of the expenses included herein relating to the services associated with the Proposed Access Fees relate to the provision of any other services offered by MIAX Emerald. Stated differently, no expense amount of the Exchange is allocated twice. The Exchange notes that, with respect to the MIAX Emerald expenses included herein, those expenses only cover the MIAX Emerald market; expenses associated with the Exchange's affiliate exchanges, MIAX and MIAX PEARL, are accounted for separately and are not included within the scope of this filing. Stated differently, no expense amount of the Exchange is also allocated to MIAX or MIAX PEARL.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the services associated with the Proposed Access Fees because the Exchange performed a line-by-line item analysis of all the expenses of the Exchange, and has determined the expenses that directly relate to operation and support of the network. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to operate and support the network, including providing the services associated with the Proposed Access Fees to its Members and non-Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to the operation and support of the network. The Proposed Access Fees are intended to recover the Exchange's costs of operating and supporting the network. Accordingly, the Exchange believes that the Proposed Access Fee Increases are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual network operation and support costs to the Exchange versus the projected annual revenue from the Proposed Access Fees, including the increased amount.

The Exchange also points out that it is not seeking to recoup any of its past costs associated with the provision of any Ports during the Waiver Period. The Exchange currently has 35 Members,[44] all of whom did not pay Port fees during the Waiver Period from the time these firms all became Members of the Exchange. Further, the majority of firms that are Members of the Exchange's affiliate options exchanges, MIAX and MIAX PEARL, also became Members of those exchanges during similar Waiver Periods for the MIAX and MIAX PEARL Port fees. Accordingly, the Exchange (and MIAX and MIAX PEARL) have assumed approximately 100% of the costs associated with providing Ports for the majority of Member firms of the Exchange, MIAX, and MIAX PEARL during their respective Waiver Periods. Accordingly, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to now adopt Port fees that are reasonably related to (and designed to recover) the

[42] The Exchange's projections included 9 firms or their affiliates purchasing Full Service MEI Ports. Of those firms, the Exchange projects that 6 firms will achieve the highest tier in the MEI Port fee table, 2 firms will achieve the lowest tier in the MEI Port fee table, and 1 firm will achieve the middle tier in the MEI Port fee table.

[43] This $10.2 million revenue projection includes revenue from all connectivity sources, including all 10Gb ULL connections discussed above (after giving effect to the recent cancellation), two 1Gb connections (the Exchange is not increasing fees for 1Gb connections, however, those connections are included in total connectivity revenue in order to have a true comparison between all connectivity revenue and all connectivity expense), and all port types discussed above (after giving effect to the recent cancellation).

[44] *See https://www.miaxoptions.com/exchange-members/emerald.*

Exchange's cost associated with the provision of such Ports.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete.

Intra-Market Competition

The Exchange believes that the Proposed Access Fees do not place certain market participants at a relative disadvantage to other market participants because the Proposed Access Fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the Proposed Access Fees reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the Proposed Access Fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges. The Exchange had one of its member firms cancel its membership with the Exchange as a direct result of the Proposed Access Fees. The Exchange also notes that it has far less Members as compared to the much greater number of members at other options exchanges. Not only does MIAX Emerald have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX Emerald. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX Emerald. The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Access Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect, as described above.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. For the month of December 2020, the Exchange had a market share of approximately 3.58% of executed multiply-listed equity options [45] and the Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[46] and Rule 19b–4(f)(2) [47] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EMERALD–2021–02 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 Number SR–EMERALD–2021–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2021–02 and should be submitted on or before February 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02404 Filed 2–4–21; 8:45 am]

BILLING CODE 8011–01–P

[45] *See supra* note 33.

[46] 15 U.S.C. 78s(b)(3)(A)(ii).

[47] 17 CFR 240.19b–4(f)(2).

[48] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91036; File No. SR–NYSECHX–2021–01]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing of Proposed Rule Change To Amend Its Fee Schedule Related to Co-Location Services

February 1, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 19, 2021, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fee Schedule (the ''Fee Schedule'') related to co-location services to add two Partial Cabinet Solution bundles. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule related to co-location [4] services to add two Partial Cabinet Solution (''PCS'') bundles that would be offered to Users.[5]

Proposed Addition of Option E and Option F PCS Bundles

The Fee Schedule currently lists four PCS bundles, Options A through D. As originally formulated, each PCS bundle option included a partial cabinet powered to a maximum of 2 kilowatts (''kW''); access to the liquidity center network (''LCN'') and internet protocol (''IP'') networks, the local area networks available in the data center; two fiber cross connections; and connectivity to one of two time feeds.[6] The PCS bundles are designed to attract smaller Users, including those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet are too burdensome.[7] Users are only eligible to purchase PCS bundles if they meet specified requirements, set forth in General Note 2 of the Fee Schedule.[8]

In May 2020, the Exchange amended PCS bundle Options C and D to each include two 10 Gb connections to the NMS Network, an alternate dedicated network connection that Users could use to access the NMS feeds for which the Securities Industry Automation Corporation (''SIAC'') is engaged as the securities information processor (''SIP'').[9] These two 10 Gb NMS Network connections were added to the Option C and D bundles at no additional cost.

In response to customer interest, the Exchange now proposes to add two new PCS bundles to the Fee Schedule. Proposed Options E and F would be substantially similar to Options C and D, respectively, with the difference that each connection included in the proposed bundles would be upgraded to 40 Gb from 10 Gb: That is, proposed Options E and F would include a 1 kw (Option E) or 2 kw (Option F) partial cabinet, one 40 Gb LCN connection, one 40 Gb IP network connection, two 40 Gb NMS Network connections, and either the Network Time Protocol Feed or the Precision Timing Protocol. Users selecting an Option E or F bundle would be charged the same initial charge of $10,000 that currently applies to Options C and D. In addition, Users would be charged monthly recurring charges (''MRC'') of $18,000 for an Option E bundle and $19,000 for an Option F bundle. The Exchange proposes that Users that purchase Option E or F bundles on or before December 31, 2021 would receive a 50% reduction in the MRC for the first 12 months.

The amended portion of the Fee Schedule would read as follows (proposed additions *italicized*):

Type of service	Description	Amount of charge
Partial Cabinet Solution bundles Note: A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 2 under ''General Notes.''.	*Option E: 1 kW partial cabinet, 1 LCN connection (40 Gb), 1 IP network connection (40 Gb), 2 NMS Network connections (40 Gb each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.*	*$10,000 initial charge per bundle plus monthly charge per bundle as follows:* • *For Users that order on or before December 31, 2021: $9,000 monthly for first 12 months of service, and $18,000 monthly thereafter.* • *For Users that order after December 31, 2021: $18,000 monthly.*

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2019. *See* Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR–NYSECHX–2019–12) (''NYSE Chicago Co-location Notice'').

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See id., supra* note 4, at 58778 n.6. As specified in the Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE''), NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. (together, the ''Affiliate SROs''). *See id.* at 58779. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2021–05, SR–NYSEAMER–2021–04, SR–NYSEArca–2021–07, and SR–NYSENAT–2021–01.

[6] *See id.* at 58779–80.

[7] *See id.*

[8] *See id.* The definitions of ''Affiliate'' and ''Aggregate Cabinet Footprint'' were added to the Fee Schedule at the same time.

[9] *See* Securities Exchange Act Release Nos. 88837 (May 7, 2020), 85 FR 28671 (May 13, 2020) (SR–NYSE–2019–46, SR–NYSEAMER–2019–34, SR–NYSEArca–2019–61, SR–NYSENAT–2019–19) (''NMS Network Approval Order'') and 88972 (May 29, 2020), 85 FR 34472 (June 4, 2020) (''NYSE Chicago NMS Network Approval Order'').

Type of service	Description	Amount of charge
	Option F: 2 kW partial cabinet, 1 LCN connection (40 Gb), 1 IP network connection (40 Gb), 2 NMS Network connections (40 Gb each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	*$10,000 initial charge per bundle plus monthly charge per bundle as follows:* • *For Users that order on or before December 31, 2021: $9,500 monthly for first 12 months of service, and $19,000 monthly thereafter.* • *For Users that order after December 31, 2021: $19,000 monthly.*

The Exchange proposes that General Note 2 of the Fee Schedule—which currently applies to PCS bundle Options A through D—would also apply to proposed Option E and F bundles, without alteration. Specifically, a User and its Affiliates would be limited to one PCS bundle at a time, and a User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a PCS bundle.

The Exchange is not proposing any changes to PCS bundle Options A through D.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally.

Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, is completely voluntary and the Fee Schedule is applied uniformly to all Users.

Competitive Environment

A User may host another entity in its space within the data center. Such Users are called ''Hosting Users,'' and their customers are ''Hosted Customers.'' [10]

Based on conversations with Users and potential customers, the Exchange believes that Hosting Users offer bundles (''Hosting User Bundles'') that include cabinet space and space on shared LCN, IP, and NMS network connections, and that the Hosting User Bundles provide their end users with a service similar to that of the PCS bundles.[11]

The Exchange operates in a highly competitive market in which exchanges and other vendors (*e.g.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [12]

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[15] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, for the following reasons.

The Exchange believes that it is reasonable to expand its PCS bundle options by offering the proposed Option E and F bundles. Currently, the Exchange offers Users the ability to purchase connectivity to the LCN/NMS and IP/NMS networks in 10 Gb and 40 Gb bandwidths, but within the Exchange's existing PCS bundle options, 40 Gb connections are not available. This means that at present, Users interested in the PCS bundled services—either because they have minimal power and cabinet space demands or because the costs attendant with having a dedicated cabinet are too burdensome—cannot access 40 Gb connections and are limited to the 10 Gb connections offered as part of the Option C and D bundles. Users and potential customers have requested that the Exchange provide them the opportunity to purchase PCS bundles that include 40 Gb connections, which would enable them to connect to more of the Included Data Products and Third Party Data Feeds or have the same size connection in co-location that they have everywhere. The Exchange believes that it is reasonable to offer the proposed Option E and F bundles to satisfy this customer demand, while continuing to offer the existing bundle offerings, in order to provide potential Users of the PCS bundled services an additional 40

[10] A Hosting User is required to be a User, but because only Users can be Hosting Users, a Hosted Customer is not able to provide hosting services to any other entities in the space in which it is hosted. The Exchange allows Users to act as Hosting Users for a monthly fee. *See* NYSE Chicago Co-location Notice, *supra* note 4, at 58782–83.

[11] Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public or disclose it to the Exchange. The Exchange therefore does not have direct visibility into the specific range of options, or cost thereof, offered by Hosting Users, and relies on third parties for information.

[12] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

Gb option for their network connection requirements.

Additionally, the Exchange believes that the proposed change may make PCS bundles more competitive with the services that Hosting Users offer. Without this proposed rule change, potential Users choosing between a PCS bundle and a Hosting User Bundle would have fewer options.

The Exchange believes that the proposed charges for the Option E and F bundles are reasonable. The Exchange proposes that Users choosing the Option E or F bundles would pay the same $10,000 initial charge that Users currently pay when choosing the Option C or D bundles, which reflects the fact that setting up each of these four cabinet options involves a similar amount of work for the Exchange. It is also reasonable for the Exchange to set MRC charges of $18,000 for an Option E bundle (a $4,000 increase over Option C) and $19,000 for an Option F bundle (a $4,000 increase over Option D) which reflects the fact that the Exchange will have to supply multiple 40 Gb connections in the Option E and F bundles, as opposed to the 10 Gb connections included in the Option C and D bundles.

The Exchange believes that it is reasonable to provide a period of eligibility for a 50% MRC reduction as an incentive to Users to utilize the Option E and F bundles. Similar 50% MRC reductions were proposed and approved for Options A through D when those product offerings were added to the Fee Schedule.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. The Exchange would continue to offer the four existing PCS bundles (Options A through D) with different cabinet footprints and network connection options, in addition to the proposed Option E and F bundles. Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, would be completely voluntary.

The Exchange believes that the proposed charges for Option E and F bundles are not unfairly discriminatory. The proposed initial charges and MRCs for Options E and F would apply equally to all Users that purchase an Option E or F bundle, and the proposed 50% reduction of MRC for the first 12 months would apply to any User that orders an Option E or F bundle on or before December 31, 2021.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among its market participants.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. Specifically, the proposed initial charges and MRCs for Options E and F would apply equally to all Users that purchase an Option E or F bundle, and the proposed 50% reduction of MRC for the first 12 months would apply to any User that orders an Option E or F bundle on or before December 31, 2021. The Exchange would continue to offer the four existing PCS bundles (Options A through D) with different cabinet footprints and network connection options, in addition to the proposed Option E and F bundles. Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, would be completely voluntary.

Without this proposed rule change, potential Users choosing between a PCS bundle and a Hosting User Bundle would have fewer options. Potential Users could benefit from having an additional 40 Gb option for their network connection requirements, which would allow them to connect to more of the Included Data Products and Third Party Data Feeds or have the same size connection in co-location that they have elsewhere.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[16]

Intramarket Competition

The Exchange believes that the proposed changes would not place any burden on intramarket competition that is not necessary or appropriate.

The Exchange's offering of the proposed Option E and F bundles would provide potential Users of PCS bundles a wider range of choices, which would be especially beneficial for potential Users with minimal power and cabinet space demands, but which could nevertheless benefit from an additional 40 Gb option for their network connection requirements. The Exchange believes that the proposed change may make PCS bundles more attractive to potential Users who might otherwise opt to become Hosted Customers, and thus would enhance the competitive environment for potential Users, who would then have more options from which to select. At the same time, however, no potential User would be obligated to purchase a PCS bundle, and it would still have the options offered by Hosting Users.

Intermarket Competition

The Exchange believes that the proposed changes will not impose any burden on intermarket competition that is not necessary or appropriate. The proposed change is not meant to affect competition among national securities exchanges. Rather, the Exchange believes that the proposed change is a reasonable attempt to maintain a more level playing field between the Exchange and the Hosting Users, who compete for Hosted Customer business. Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public. The Exchange believes that the proposed change may make PCS bundles more attractive to potential users who might otherwise opt to become Hosted Customers.

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location

[16] 15 U.S.C. 78f(b)(8).

services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, an exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining price, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognizing that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17]

For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSECHX–2021–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2021–01. 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–2021–01 and should be submitted on or before February 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02408 Filed 2–4–21; 8:45 am]

BILLING CODE 8011–01–P

[17] *See* Regulation NMS Adopting Release, *supra* note 12, at 37499.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91034; File No. SR–NYSE–2021–05]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend the Exchange's Price List Related to Co-Location Services

February 1, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 19, 2021, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Price List related to co-location services to add two Partial Cabinet Solution bundles. 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,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List related to co-location [4] services to add two Partial Cabinet Solution (''PCS'') bundles that would be offered to Users.[5]

Proposed Addition of Option E and Option F PCS Bundles

The Price List currently lists four PCS bundles, Options A through D. As originally formulated, each PCS bundle option included a partial cabinet powered to a maximum of 2 kilowatts (''kW''); access to the liquidity center network (''LCN'') and internet protocol (''IP'') networks, the local area networks available in the data center; two fiber cross connections; and connectivity to one of two time feeds.[6] The PCS bundles are designed to attract smaller Users, including those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet are too burdensome.[7] Users are only eligible to purchase PCS bundles if they meet specified requirements, set forth in General Note 2 of the Price List.[8]

In May 2020, the Exchange amended PCS bundle Options C and D to each include two 10 Gb connections to the NMS Network, an alternate dedicated network connection that Users could use to access the NMS feeds for which the Securities Industry Automation Corporation (''SIAC'') is engaged as the securities information processor (''SIP'').[9] These two 10 Gb NMS Network connections were added to the Option C and D bundles at no additional cost.

In response to customer interest, the Exchange now proposes to add two new PCS bundles to the Price List. Proposed Options E and F would be substantially similar to Options C and D, respectively, with the difference that each connection included in the proposed bundles would be upgraded to 40 Gb from 10 Gb: That is, proposed Options E and F would include a 1 kw (Option E) or 2 kw (Option F) partial cabinet, one 40 Gb LCN connection, one 40 Gb IP network connection, two 40 Gb NMS Network connections, and either the Network Time Protocol Feed or the Precision Timing Protocol. Users selecting an Option E or F bundle would be charged the same initial charge of $10,000 that currently applies to Options C and D. In addition, Users would be charged monthly recurring charges (''MRC'') of $18,000 for an Option E bundle and $19,000 for an Option F bundle. The Exchange proposes that Users that purchase Option E or F bundles on or before December 31, 2021 would receive a 50% reduction in the MRC for the first 12 months.

The amended portion of the Price List would read as follows (proposed additions *italicized*):

Type of service	Description	Amount of charge
Partial Cabinet Solution bundles. Note: A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 2 under ''General Notes.''.	*Option E: 1 kW partial cabinet, 1 LCN connection (40 Gb), 1 IP network connection (40 Gb), 2 NMS Network connections (40 Gb each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.*	*$10,000 initial charge per bundle plus monthly charge per bundle as follows:* • *For Users that order on or before December 31, 2021: $9,000 monthly for first 12 months of service, and $18,000 monthly thereafter.* • *For Users that order after December 31, 2021: $18,000 monthly.*
	Option F: 2 kW partial cabinet, 1 LCN connection (40 Gb), 1 IP network connection (40 Gb), 2 NMS Network connections (40 Gb each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	*$10,000 initial charge per bundle plus monthly charge per bundle as follows:* • *For Users that order on or before December 31, 2021: $9,500 monthly for first 12 months of service, and $19,000 monthly thereafter.* • *For Users that order after December 31, 2021: $19,000 monthly.*

The Exchange proposes that General Note 2 of the Price List—which currently applies to PCS bundle Options A through D—would also apply to proposed Option E and F bundles, without alteration. Specifically, a User and its Affiliates would be limited to one PCS bundle at a time, and a User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a PCS bundle.

The Exchange is not proposing any changes to PCS bundle Options A through D.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally.

Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, is

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56).

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEAMER–2021–04, SR–NYSEArca–2021–07, SR–NYSECHX–2021–01, and SR–NYSENAT–2021–01.

[6] *See* Securities Exchange Act Release No. 77072 (February 5, 2016), 81 FR 7394 (February 11, 2016) (SR–NYSE–2015–53).

[7] *See id.* at 7396.

[8] *See id.* The definitions of ''Affiliate'' and ''Aggregate Cabinet Footprint'' were added to the Price List at the same time.

[9] *See* Securities Exchange Act Release Nos. 88837 (May 7, 2020), 85 FR 28671 (May 13, 2020) (SR–NYSE–2019–46, SR–NYSEAMER–2019–34, SR–NYSEArca–2019–61, SR–NYSENAT–2019–19) (''NMS Network Approval Order'') and 88972 (May 29, 2020), 85 FR 34472 (June 4, 2020) (''NYSE Chicago NMS Network Approval Order'').

completely voluntary and the Price List is applied uniformly to all Users.

Competitive Environment

A User may host another entity in its space within the data center. Such Users are called ''Hosting Users,'' and their customers are ''Hosted Customers.'' [10]

Based on conversations with Users and potential customers, the Exchange believes that Hosting Users offer bundles (''Hosting User Bundles'') that include cabinet space and space on shared LCN, IP, and NMS network connections, and that the Hosting User Bundles provide their end users with a service similar to that of the PCS bundles.[11]

The Exchange operates in a highly competitive market in which exchanges and other vendors (*e.g.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [12]

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[15] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, for the following reasons.

The Exchange believes that it is reasonable to expand its PCS bundle options by offering the proposed Option E and F bundles. Currently, the Exchange offers Users the ability to purchase connectivity to the LCN/NMS and IP/NMS networks in 10 Gb and 40 Gb bandwidths, but within the Exchange's existing PCS bundle options, 40 Gb connections are not available. This means that at present, Users interested in the PCS bundled services—either because they have minimal power and cabinet space demands or because the costs attendant with having a dedicated cabinet are too burdensome—cannot access 40 Gb connections and are limited to the 10 Gb connections offered as part of the Option C and D bundles. Users and potential customers have requested that the Exchange provide them the opportunity to purchase PCS bundles that include 40 Gb connections, which would enable them to connect to more of the Included Data Products and Third Party Data Feeds or have the same size connection in co-location that they have everywhere. The Exchange believes that it is reasonable to offer the proposed Option E and F bundles to satisfy this customer demand, while continuing to offer the existing bundle offerings, in order to provide potential Users of the PCS bundled services an additional 40 Gb option for their network connection requirements.

Additionally, the Exchange believes that the proposed change may make PCS bundles more competitive with the services that Hosting Users offer. Without this proposed rule change, potential Users choosing between a PCS bundle and a Hosting User Bundle would have fewer options.

The Exchange believes that the proposed charges for the Option E and F bundles are reasonable. The Exchange proposes that Users choosing the Option E or F bundles would pay the same $10,000 initial charge that Users currently pay when choosing the Option C or D bundles, which reflects the fact that setting up each of these four cabinet options involves a similar amount of work for the Exchange. It is also reasonable for the Exchange to set MRC charges of $18,000 for an Option E bundle (a $4,000 increase over Option C) and $19,000 for an Option F bundle (a $4,000 increase over Option D) which reflects the fact that the Exchange will have to supply multiple 40 Gb connections in the Option E and F bundles, as opposed to the 10 Gb connections included in the Option C and D bundles.

The Exchange believes that it is reasonable to provide a period of eligibility for a 50% MRC reduction as an incentive to Users to utilize the Option E and F bundles. Similar 50% MRC reductions were proposed and approved for Options A through D when those product offerings were added to the Price List.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. The Exchange would continue to offer the four existing PCS bundles (Options A through D) with different cabinet footprints and network connection options, in addition to the proposed Option E and F bundles. Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, would be completely voluntary.

[10] A Hosting User is required to be a User, but because only Users can be Hosting Users, a Hosted Customer is not able to provide hosting services to any other entities in the space in which it is hosted. The Exchange allows Users to act as Hosting Users for a monthly fee. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40).

[11] Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public or disclose it to the Exchange. The Exchange therefore does not have direct visibility into the specific range of options, or cost thereof, offered by Hosting Users, and relies on third parties for information.

[12] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

The Exchange believes that the proposed charges for Option E and F bundles are not unfairly discriminatory. The proposed initial charges and MRCs for Options E and F would apply equally to all Users that purchase an Option E or F bundle, and the proposed 50% reduction of MRC for the first 12 months would apply to any User that orders an Option E or F bundle on or before December 31, 2021.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among its market participants.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. Specifically, the proposed initial charges and MRCs for Options E and F would apply equally to all Users that purchase an Option E or F bundle, and the proposed 50% reduction of MRC for the first 12 months would apply to any User that orders an Option E or F bundle on or before December 31, 2021. The Exchange would continue to offer the four existing PCS bundles (Options A through D) with different cabinet footprints and network connection options, in addition to the proposed Option E and F bundles. Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, would be completely voluntary.

Without this proposed rule change, potential Users choosing between a PCS bundle and a Hosting User Bundle would have fewer options. Potential Users could benefit from having an additional 40 Gb option for their network connection requirements, which would allow them to connect to more of the Included Data Products and Third Party Data Feeds or have the same size connection in co-location that they have elsewhere.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[16]

Intramarket Competition

The Exchange believes that the proposed changes would not place any burden on intramarket competition that is not necessary or appropriate.

The Exchange's offering of the proposed Option E and F bundles would provide potential Users of PCS bundles a wider range of choices, which would be especially beneficial for potential Users with minimal power and cabinet space demands, but which could nevertheless benefit from an additional 40 Gb option for their network connection requirements. The Exchange believes that the proposed change may make PCS bundles more attractive to potential Users who might otherwise opt to become Hosted Customers, and thus would enhance the competitive environment for potential Users, who would then have more options from which to select. At the same time, however, no potential User would be obligated to purchase a PCS bundle, and it would still have the options offered by Hosting Users.

Intermarket Competition

The Exchange believes that the proposed changes will not impose any burden on intermarket competition that is not necessary or appropriate. The proposed change is not meant to affect competition among national securities exchanges. Rather, the Exchange believes that the proposed change is a reasonable attempt to maintain a more level playing field between the Exchange and the Hosting Users, who compete for Hosted Customer business. Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public. The Exchange believes that the proposed change may make PCS bundles more attractive to potential users who might otherwise opt to become Hosted Customers.

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, an exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining price, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognizing that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17]

For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or *up to 90 days* (i) as the

[16] 15 U.S.C. 78f(b)(8).

[17] *See* Regulation NMS Adopting Release, *supra* note 12, at 37499.

Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2021–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2021–05. 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–NYSE–2021–05 and should be submitted on or before February 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02406 Filed 2–4–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91024; File No. SR–ICC–2021–003]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Operational Risk Management Framework

February 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 21, 2021, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the ICC Operational Risk Management Framework. These revisions do not require any changes to the ICC Clearing Rules (the ''Rules'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICC proposes to revise the Operational Risk Management Framework, which details ICC's dynamic and independent program of risk assessment and oversight that aims to reduce operational incidents, encourage process and control improvement, bring transparency to operational performance standard monitoring, and fulfill regulatory obligations. ICC believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. ICC proposes to make such changes effective following Commission approval of the proposed rule change. The proposed revisions are described in detail as follows.

The proposed amendments incorporate reference to the Intercontinental Exchange, Inc. (''ICE, Inc.'') Enterprise Risk Management Policy (''ERM Policy'') and relevant regulations applicable to ICC as a covered clearing agency. The ICE, Inc. Enterprise Risk Management Department (''ERM'') provides the oversight and framework for identifying, assessing, managing, monitoring and reporting on risk across the ICE, Inc. organization and has dedicated resources focused on the various ICE, Inc. business units, including ICC. ERM, in conjunction with relevant ICC individuals, oversees the management of this Operational Risk Management Framework.

ICC proposes updates to the risk assessment process in the Operational Risk Management Framework, which includes identifying, assessing, monitoring, and mitigating plausible sources of operational risk. Under the ''identify'' component, ICC proposes to more generally refer to its ''risk-scenario-based assessment methodology'' as its ''risk-based assessment methodology,'' which more appropriately describes the methodology. ICC proposes similar changes throughout the risk assessment process to replace ''risk scenarios'' with ''risks.'' The proposed changes also cross reference the ERM Policy, noting that ERM maintains an inventory of material risks faced by the clearing house. Under the ''assess'' component, ICC proposes to incorporate the ERM

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Policy and its relevant guidelines. ICC proposes minor clarifications with respect to the assessment of material risks and the controls and mitigations used to prevent risks from materializing. ICC proposes additional specifics relating to the determination of residual risk ratings for identified risks. ICC further proposes to reference the ERM Policy regarding risk scores and guidance relating to control identification, effectiveness assessment and testing, among others. With respect to the ''mitigate'' component, the proposed changes cross reference relevant guidelines in the ERM Policy and include minor updates regarding documenting output and reviewing risk assessments. The proposed changes also update the ''report'' component to more clearly state that ERM is responsible for operational risk reporting to appropriate parties.

ICC proposes updates to Appendix 1 of the Operational Risk Management Framework that summarizes relevant regulatory requirements and industry guidance for ICC. Specifically, ICC proposes to reference its status as a covered clearing agency and to reference relevant regulations applicable to ICC as a covered clearing agency relating to operational risk requirements, namely Rules 17Ad-22(e)(17) and (21).[3]

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad–22.[5] In particular, Section 17A(b)(3)(F) of the Act[6] requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F),[7] because the proposed rule change enhances ICC's ability to control its operational risk by ensuring that the Operational Risk Management Framework accurately reflects ICC's operational risk program, including the role of ERM and the regulatory operational risk requirements applicable to ICC. The proposed changes cross reference the ERM Policy and provide additional detail regarding ERM's role in the risk assessment process. The cross-references are intended to ensure clarity and consistency between relevant terms and processes across the Operational Risk Management Framework and the ERM Policy and are not intended to change the substance of either document. Additionally, the proposed changes reference regulations applicable to ICC as a covered clearing agency relating to operational risk requirements to ensure that relevant regulatory requirements are addressed as part of ICC's operational risk program. ICC believes that such changes further ensure that ICC, through its operational risk program, is able to manage its operational risks by identifying plausible sources of operational risk and mitigating their impact through the use of appropriate systems, policies, procedures, and controls to avoid disruptions to operations, thereby promoting the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible; and the protection of investors and the public interest. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible; and, in general, to protect investors and the public interest within the meaning of Section 17A(b)(3)(F) of the Act.[8]

The amendments would also satisfy relevant requirements of Rule 17Ad–22.[9] Rule 17Ad–22(e)(2)(i) and (v)[10] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. The Operational Risk Management Framework clearly assigns and documents responsibility and accountability for operational risk actions and decisions. The proposed changes more clearly specify the role of ERM in the risk assessment process. Moreover, the proposed revisions continue to allow for feedback from, and notification to, relevant stakeholders, such as ICC committees, management, and the Board. These governance arrangements are clear and transparent, such that information relating to the assignment of responsibilities and the requisite involvement of relevant committees and ICE, Inc. and ICC personnel is clearly documented. In ICC's view, the proposed rule change continues to ensure that ICC maintains policies and procedures that are reasonably designed to provide for clear and transparent governance arrangements and specify clear and direct lines of responsibility, consistent with Rule 17Ad–22(e)(2)(i) and (v).[11]

Rule 17Ad–22(e)(17)[12] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage its operational risks by (i) identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls; (ii) ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity; and (iii) establishing and maintaining a business continuity plan that addresses events posing a significant risk of disrupting operations. The proposed clarifications regarding the risk assessment process would enhance ICC's ability to identify relevant sources of operational risk and mitigate their impact through the use of appropriate systems, policies, procedures, and controls, including by more specifically setting out the risk assessment process itself and the role and responsibilities of ERM regarding the identification, assessment, mitigation, and reporting of plausible sources of operational risk. Such amendments further strengthen the risk assessment process and enhance ICC's ability to ensure that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. The proposed changes also update the regulatory operational risk requirements applicable to ICC as a covered clearing agency to ensure that ICC will continue to fulfill regulatory obligations, consistent with the requirements of Rule 17Ad–22(e)(17).[13]

[3] 17 CFR 240.17Ad–22(e)(17) and (21).

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 240.17Ad–22.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] *Id.*

[8] *Id.*

[9] 17 CFR 240.17Ad–22.

[10] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[11] *Id.*

[12] 17 CFR 240.17Ad–22(e)(17).

[13] *Id.*

Rule 17Ad–22(e)(21) [14] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves, and have its management regularly review the efficiency and effectiveness of its (i) clearing and settlement arrangements; (ii) operating structure, including risk management policies, procedures, and systems; (iii) scope of products cleared or settled; and (iv) use of technology and communication procedures. As noted above, ERM provides the oversight and framework for identifying, assessing, managing, monitoring and reporting on risk across the ICE, Inc. organization and has dedicated resources focused on ICC, allowing ICC to be efficient and effective in meeting the requirements of its participants and the markets it serves. Moreover, the amended framework more clearly sets out the ERM function with respect to ICC to ensure the fulfillment of relevant responsibilities, thereby promoting ICC's ability to be efficient and effective in meeting the requirements of its participants and the markets it serves. Further, the proposed revisions clarify responsibilities regarding review of risk assessments and operational risk reporting to appropriate parties, which would promote management's regular review of the efficiency and effectiveness of ICC's clearing and settlement arrangements, operating structure, product scope, and use of technology and communication procedures. The proposed rule change is thus reasonably designed to meet the requirements of Rule 17Ad–22(e)(21).[15]

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes to the Operational Risk Management Framework will apply uniformly across all market participants. Therefore, ICC does not believe the amendments would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2021–003 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2021–003. 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 filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

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–ICC–2021–003 and should be submitted on or before February 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02399 Filed 2–4–21; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 240.17Ad–22(e)(21).

[15] *Id.*

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91035; File No. SR–NYSEAMER–2021–04]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change To Amend the NYSE American Equities Price List and Fee Schedule and the NYSE American Options Fee Schedule Related to Co-Location Services

February 1, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 19, 2021, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Equities Price List and Fee Schedule and the NYSE American Options Fee Schedule (together, the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

''Price List and Fee Schedule'') related to co-location services to add two Partial Cabinet Solution bundles. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List and Fee Schedule related to co-location [4] services to add two Partial Cabinet Solution (''PCS'') bundles that would be offered to Users.[5]

Proposed Addition of Option E and Option F PCS Bundles

The Price List and Fee Schedule currently lists four PCS bundles, Options A through D. As originally formulated, each PCS bundle option included a partial cabinet powered to a maximum of 2 kilowatts (''kW''); access to the liquidity center network (''LCN'') and internet protocol (''IP'') networks, the local area networks available in the data center; two fiber cross connections; and connectivity to one of two time feeds.[6] The PCS bundles are designed to attract smaller Users, including those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet are too burdensome.[7] Users are only eligible to purchase PCS bundles if they meet specified requirements, set forth in General Note 2 of the Price List and Fee Schedule.[8]

In May 2020, the Exchange amended PCS bundle Options C and D to each include two 10 Gb connections to the NMS Network, an alternate dedicated network connection that Users could use to access the NMS feeds for which the Securities Industry Automation Corporation (''SIAC'') is engaged as the securities information processor (''SIP'').[9] These two 10 Gb NMS Network connections were added to the Option C and D bundles at no additional cost.

In response to customer interest, the Exchange now proposes to add two new PCS bundles to the Price List and Fee Schedule. Proposed Options E and F would be substantially similar to Options C and D, respectively, with the difference that each connection included in the proposed bundles would be upgraded to 40 Gb from 10 Gb: That is, proposed Options E and F would include a 1 kw (Option E) or 2 kw (Option F) partial cabinet, one 40 Gb LCN connection, one 40 Gb IP network connection, two 40 Gb NMS Network connections, and either the Network Time Protocol Feed or the Precision Timing Protocol. Users selecting an Option E or F bundle would be charged the same initial charge of $10,000 that currently applies to Options C and D. In addition, Users would be charged monthly recurring charges (''MRC'') of $18,000 for an Option E bundle and $19,000 for an Option F bundle. The Exchange proposes that Users that purchase Option E or F bundles on or before December 31, 2021 would receive a 50% reduction in the MRC for the first 12 months.

The amended portion of the Price List and Fee Schedule would read as follows (proposed additions *italicized*):

Type of service	Description	Amount of charge
Partial Cabinet Solution bundles Note: A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 2 under "General Notes.".	*Option E: 1 kW partial cabinet, 1 LCN connection (40 Gb), 1 IP network connection (40 Gb), 2 NMS Network connections (40 Gb each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.*	*$10,000 initial charge per bundle plus monthly charge per bundle as follows:* • *For Users that order on or before December 31, 2021: $9,000 monthly for first 12 months of service, and $18,000 monthly thereafter.* • *For Users that order after December 31, 2021: $18,000 monthly.*
	Option F: 2 kW partial cabinet, 1 LCN connection (40 Gb), 1 IP network connection (40 Gb), 2 NMS Network connections (40 Gb each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	*$10,000 initial charge per bundle plus monthly charge per bundle as follows:* • *For Users that order on or before December 31, 2021: $9,500 monthly for first 12 months of service, and $19,000 monthly thereafter.* • *For Users that order after December 31, 2021: $19,000 monthly.*

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80).

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Price List and Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2021–05, SR–NYSEArca–2021–07, SR–NYSECHX–2021–01, and SR–NYSENAT–2021–01.

[6] *See* Securities Exchange Act Release No. 77072 (February 5, 2016), 81 FR 7382 (February 11, 2016) (SR–NYSEMKT–2015–89).

[7] *See id.* at 7384.

[8] *See id.* The definitions of ''Affiliate'' and ''Aggregate Cabinet Footprint'' were added to the Price List and Fee Schedule at the same time.

[9] *See* Securities Exchange Act Release Nos. 88837 (May 7, 2020), 85 FR 28671 (May 13, 2020) (SR–NYSE–2019–46, SR–NYSEAMER–2019–34, SR–NYSEArca–2019–61, SR–NYSENAT–2019–19) (''NMS Network Approval Order'') and 88972 (May 29, 2020), 85 FR 34472 (June 4, 2020) (''NYSE Chicago NMS Network Approval Order'').

The Exchange proposes that General Note 2 of the Price List and Fee Schedule—which currently applies to PCS bundle Options A through D—would also apply to proposed Option E and F bundles, without alteration. Specifically, a User and its Affiliates would be limited to one PCS bundle at a time, and a User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a PCS bundle.

The Exchange is not proposing any changes to PCS bundle Options A through D.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally.

Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, is completely voluntary and the Price List and Fee Schedule is applied uniformly to all Users.

Competitive Environment

A User may host another entity in its space within the data center. Such Users are called ''Hosting Users,'' and their customers are ''Hosted Customers.'' [10]

Based on conversations with Users and potential customers, the Exchange believes that Hosting Users offer bundles (''Hosting User Bundles'') that include cabinet space and space on shared LCN, IP, and NMS network connections, and that the Hosting User Bundles provide their end users with a service similar to that of the PCS bundles.[11]

The Exchange operates in a highly competitive market in which exchanges and other vendors (*e.g.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [12]

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[15] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, for the following reasons.

The Exchange believes that it is reasonable to expand its PCS bundle options by offering the proposed Option E and F bundles. Currently, the Exchange offers Users the ability to purchase connectivity to the LCN/NMS and IP/NMS networks in 10 Gb and 40 Gb bandwidths, but within the Exchange's existing PCS bundle options, 40 Gb connections are not available. This means that at present, Users interested in the PCS bundled services—either because they have minimal power and cabinet space demands or because the costs attendant with having a dedicated cabinet are too burdensome—cannot access 40 Gb connections and are limited to the 10 Gb connections offered as part of the Option C and D bundles. Users and potential customers have requested that the Exchange provide them the opportunity to purchase PCS bundles that include 40 Gb connections, which would enable them to connect to more of the Included Data Products and Third Party Data Feeds or have the same size connection in co-location that they have everywhere. The Exchange believes that it is reasonable to offer the proposed Option E and F bundles to satisfy this customer demand, while continuing to offer the existing bundle offerings, in order to provide potential Users of the PCS bundled services an additional 40 Gb option for their network connection requirements.

Additionally, the Exchange believes that the proposed change may make PCS bundles more competitive with the services that Hosting Users offer. Without this proposed rule change, potential Users choosing between a PCS bundle and a Hosting User Bundle would have fewer options.

The Exchange believes that the proposed charges for the Option E and F bundles are reasonable. The Exchange proposes that Users choosing the Option E or F bundles would pay the same $10,000 initial charge that Users currently pay when choosing the Option C or D bundles, which reflects the fact that setting up each of these four cabinet options involves a similar amount of work for the Exchange. It is also reasonable for the Exchange to set MRC charges of $18,000 for an Option E bundle (a $4,000 increase over Option C) and $19,000 for an Option F bundle (a $4,000 increase over Option D) which reflects the fact that the Exchange will have to supply multiple 40 Gb connections in the Option E and F bundles, as opposed to the 10 Gb connections included in the Option C and D bundles.

The Exchange believes that it is reasonable to provide a period of eligibility for a 50% MRC reduction as an incentive to Users to utilize the

[10] A Hosting User is required to be a User, but because only Users can be Hosting Users, a Hosted Customer is not able to provide hosting services to any other entities in the space in which it is hosted. The Exchange allows Users to act as Hosting Users for a monthly fee. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67)

[11] Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public or disclose it to the Exchange. The Exchange therefore does not have direct visibility into the specific range of options, or cost thereof, offered by Hosting Users, and relies on third parties for information.

[12] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

Option E and F bundles. Similar 50% MRC reductions were proposed and approved for Options A through D when those product offerings were added to the Price List and Fee Schedule.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. The Exchange would continue to offer the four existing PCS bundles (Options A through D) with different cabinet footprints and network connection options, in addition to the proposed Option E and F bundles. Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, would be completely voluntary.

The Exchange believes that the proposed charges for Option E and F bundles are not unfairly discriminatory. The proposed initial charges and MRCs for Options E and F would apply equally to all Users that purchase an Option E or F bundle, and the proposed 50% reduction of MRC for the first 12 months would apply to any User that orders an Option E or F bundle on or before December 31, 2021.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among its market participants.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. Specifically, the proposed initial charges and MRCs for Options E and F would apply equally to all Users that purchase an Option E or F bundle, and the proposed 50% reduction of MRC for the first 12 months would apply to any User that orders an Option E or F bundle on or before December 31, 2021. The Exchange would continue to offer the four existing PCS bundles (Options A through D) with different cabinet footprints and network connection options, in addition to the proposed Option E and F bundles. Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, would be completely voluntary.

Without this proposed rule change, potential Users choosing between a PCS bundle and a Hosting User Bundle would have fewer options. Potential Users could benefit from having an additional 40 Gb option for their network connection requirements, which would allow them to connect to more of the Included Data Products and Third Party Data Feeds or have the same size connection in co-location that they have elsewhere.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[16]

Intramarket Competition

The Exchange believes that the proposed changes would not place any burden on intramarket competition that is not necessary or appropriate.

The Exchange's offering of the proposed Option E and F bundles would provide potential Users of PCS bundles a wider range of choices, which would be especially beneficial for potential Users with minimal power and cabinet space demands, but which could nevertheless benefit from an additional 40 Gb option for their network connection requirements. The Exchange believes that the proposed change may make PCS bundles more attractive to potential Users who might otherwise opt to become Hosted Customers, and thus would enhance the competitive environment for potential Users, who would then have more options from which to select. At the same time, however, no potential User would be obligated to purchase a PCS bundle, and it would still have the options offered by Hosting Users.

[16] 15 U.S.C. 78f(b)(8).

Intermarket Competition

The Exchange believes that the proposed changes will not impose any burden on intermarket competition that is not necessary or appropriate. The proposed change is not meant to affect competition among national securities exchanges. Rather, the Exchange believes that the proposed change is a reasonable attempt to maintain a more level playing field between the Exchange and the Hosting Users, who compete for Hosted Customer business. Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public. The Exchange believes that the proposed change may make PCS bundles more attractive to potential users who might otherwise opt to become Hosted Customers.

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, an exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining price, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognizing that current regulation of

the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17]

For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2021–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2021–04. 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–NYSEAMER–2021–04 and should be submitted on or before February 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02407 Filed 2–4–21; 8:45 am]

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[17] *See* Regulation NMS Adopting Release, *supra* note 12, at 37499.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91027; File No. SR–MEMX–2021–01]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add Interpretation and Policy .03 to Exchange Rule 4.2 Regarding the Provision of Members' Broker-Dealer Annual Reports

February 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 21, 2021, MEMX LLC (''MEMX'' 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 Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to add proposed Interpretation and Policy .03 to Exchange Rule 4.2 that would provide a waiver of the requirement that members of the Exchange (''Members'') for which the Exchange is not the designated examining authority (''DEA'') provide the Exchange with copies of their broker-dealer annual reports. The text of the proposed rule change is provided in Exhibit 5.

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

SEC Rule 17a–5(d) [5] generally requires each broker-dealer registered under Section 15 of the Act to file with the Commission and the broker-dealer's DEA certain financial-related reports described in that rule on an annual basis (such reports, ''Annual Reports''). SEC Rule 17a–5(d)(6) [6] further requires each broker-dealer to provide all self-regulatory organizations (''SROs'') of which the broker-dealer is a member with copies of its Annual Reports. The Exchange proposes to add proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.17a–5(d).

[6] 17 CFR 240.17a–5(d)(6).

Interpretation and Policy .03 to Exchange Rule 4.2 to relieve Members for which the Exchange is not the DEA of the requirement of SEC Rule 17a–5(d)(6) that a broker-dealer must provide copies of its Annual Reports to the Exchange.

In 2013 the Commission amended certain broker-dealer annual reporting, audit, and notification requirements.[7] Among these amendments was an amendment to paragraph (d)(6) of Rule 17a-5 to allow an SRO that is not a broker-dealer's DEA to waive by rule the requirement that such broker-dealer provide its Annual Reports to that SRO.[8] This amendment was proposed because in some cases SROs do not believe it is necessary to receive copies of a broker-dealer's Annual Reports, particularly when an SRO is not the broker-dealer's DEA.[9]

The Exchange is not currently the DEA for any of its Members and does not expect to be the DEA for any of its Members.[10] The Exchange does not believe it is necessary for it to receive copies of Annual Reports from its Members for which it is not the DEA, as the Exchange does not anticipate using any information contained therein in order to carry out its regulatory responsibilities. The Exchange believes that receiving such information is important for an SRO that is a broker-dealer's DEA but not for an SRO that is not the broker-dealer's DEA, particularly as one of the key responsibilities of a broker-dealer's DEA is to oversee such broker-dealer's compliance with applicable financial responsibility rules. Furthermore, the Exchange notes that even with the proposed waiver in effect the Exchange would still be able to request the Annual Reports or any information contained therein from any Member pursuant to Exchange Rule 4.2, which requires a Member to furnish to the Exchange, upon request, current copies of any financial information filed with the Commission, which includes the Annual Reports and any information contained therein.[11] As such, the Exchange believes that the proposed waiver would benefit Members for which it is not the DEA by eliminating an unnecessary requirement and facilitating a more efficient exchange of information between the Exchange and such Members in that they would only be required to furnish their Annual Reports or any information contained therein if and when the Exchange deems it necessary and requests such information. Therefore, the Exchange proposes the addition of proposed Interpretation and Policy .03 to Exchange Rule 4.2 in order to explicitly waive the requirement of SEC Rule 17a–5(d)(6) for such Members to file copies of their Annual Reports with the Exchange. The Exchange notes, however, that if and to the extent the Exchange is the DEA for any of its Members the Exchange's Rules would still require each such Member to provide it with copies of such Member's Annual Reports in accordance with the requirements of SEC Rule 17a–5(d)(6).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that it will be able to properly regulate Members for which it is not the DEA even without the information contained in the Annual Reports currently required to be provided to the Exchange by such Members under SEC Rule 17a–5(d)(6). Firstly, the Exchange is not currently the DEA for any of its Members and does not currently use the information contained in its Members' Annual Reports for any purpose. Additionally, if the Exchange was to determine that the information contained in the Annual Reports of a Member for which it is not the DEA was necessary for any reason, the Exchange can directly request those records from the Member pursuant to Exchange Rule 4.2, which requires a Member to furnish to the Exchange current copies of any financial information filed with the Commission, which includes the Annual Reports and any information contained therein.[14] In this way, the Exchange could still obtain the information contained in the Annual Reports currently required to be provided by such Members under SEC Rule 17a–5(d)(6) even with the proposed waiver of such requirement.

Given that Members must furnish the Exchange with Annual Reports or the information contained therein if and when the Exchange so requests, the Exchange does not believe that it is necessary for it to separately receive copies of Annual Reports from its Members for which it is not the DEA pursuant to SEC Rule 17a–5(d)(6). Finally, the proposed Interpretation and Policy .03 of Rule 4.2 is consistent with the Act in that it is adopting a waiver explicitly provided for by the Commission in SEC Rule 17a–5(d)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed Interpretation and Policy .03 is not a competitive proposal as it is concerned solely with the administration of the Exchange and simply creates a more efficient exchange of information between the Exchange and its Members. The Exchange notes that the proposed Interpretation and Policy .03 would apply equally to all Members for which the Exchange is not the DEA, which currently includes all of the Exchange's Members. The Exchange notes that it still believes it is appropriate to require provision of the Annual Reports by any Member for which it is the DEA pursuant to SEC Rule 17a–5(d)(6) as the Exchange believes the information contained in the Annual Reports is important for an SRO that is a broker-dealer's DEA. Furthermore, the Exchange notes that the proposed Interpretation and Policy .03 would be directly implementing a permitted waiver adopted by the Commission in SEC Rule 17a–5(d)(6), and as such, any SRO can adopt such a waiver to the extent permitted by that rule. Consequently, the Exchange does not believe that the proposed rule change would impose any burden on intermarket or intramarket competition.

[7] *See* Exchange Act Release No. 70073 (August 21, 2013), 78 FR 51909 (August 21, 2013).

[8] *See id.* at 51923–24.

[9] *See id. See also* Exchange Act Release No. 64676 (June 15, 2011), 76 FR 37572, 37592 (June 27, 2011).

[10] *See* Exchange Rule 2.3, which sets forth certain Member eligibility criteria and generally requires that a prospective Member be and remain a member of a national securities association registered under Section 15A(a) of the Act or a member of another national securities exchange registered under Section 6(a) of the Act in order to be eligible to be, and to remain, a Member. As such, the Exchange believes that each Member will already have an assigned DEA prior to joining the Exchange as a Member.

[11] *See* Exchange Rule 4.2.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Exchange Rule 4.2.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–MEMX–2021–01 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–MEMX–2021–01. 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. 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–MEMX–2021–01, and should be submitted on or before February 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02395 Filed 2–4–21; 8:45 am]

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[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91033; File No. SR–EMERALD–2021–03]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Monthly Trading Permit Fees

February 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 22, 2021, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'') to establish monthly Trading Permit [3] fees for Exchange Members.[4]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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 Fee Schedule to adopt monthly Trading Permit fees (the ''Proposed Access Fees'') depending on the Member's status as either an Electronic Exchange Member (''EEM'') [5] or as a Market Maker.[6] MIAX Emerald commenced

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Trading Permit'' means a permit issued by the Exchange that confers the ability to transact on the Exchange. *See* Exchange Rule 100.

[4] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

[5] ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

[6] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

operations as a national securities exchange registered under Section 6 of the Act [7] on March 1, 2019.[8] The Exchange adopted its transaction fees and certain of its non-transaction fees in its filing SR–EMERALD–2019–15.[9] In that filing, the Exchange expressly waived, among other fees, the Proposed Access Fees for the Waiver Period,[10] to provide an incentive to prospective EEMs and Market Makers to become Members of the Exchange. When the Exchange adopted the framework for its fees, it stated that it would provide notice to market participants when the Exchange intended to terminate the Waiver Period for the Proposed Access Fees. Accordingly, on September 15, 2020, the Exchange issued a Regulatory Circular which announced that the Exchange would be ending the Waiver Period for the Proposed Access Fees, among other non-transaction fees, beginning October 1, 2020.[11]

The Exchange initially filed its proposal to establish the Proposed Access Fees on October 1, 2020.[12] The First Proposed Rule Change was published for comment in the **Federal Register** on October 21, 2020.[13] On November 25, 2020, the Exchange withdrew the First Proposed Rule Change [14] and refiled its proposal to establish monthly Trading Permit fees.[15] The Second Proposed Rule Change was published for comment in the **Federal Register** on December 14, 2020.[16] The Exchange notes that the Second Proposed Rule Change did not receive any comment letters. Nonetheless, on January 22, 2021, the Exchange withdrew the Second Proposed Rule Change and resubmitted this proposal.[17]

Trading Permits are issued to Members who are either EEMs or Market Makers. Trading Permits grant access to the Exchange, thus providing the ability to quote and trade on the Exchange, in the manner defined in the relevant Trading Permit. Without a Trading Permit, a Member cannot directly trade on the Exchange. Therefore, a Trading Permit is a means to directly access the Exchange (which offers meaningful value), and the Exchange now proposes to adopt a monthly fee designed to recover a portion of the costs associated with directly accessing the Exchange. The Exchange proposes to assess the Proposed Access Fees depending upon the category of Member that is issued a Trading Permit. Members issued Trading Permits during a calendar month will be assessed monthly Trading Permit Fees. The Exchange notes that the Exchange's affiliate, Miami International Securities Exchange, LLC (''MIAX''), charges a similar, fixed trading permit fee to its EEMs, and a similar, varying trading permit fee to its Market Makers, based upon the number of assignments of option classes or the percentage of volume in option classes.[18]

The Exchange proposes that monthly Trading Permit fees will be assessed, with respect to the calculation of such fee to EEMs (other than clearing firms), in any month the EEM is certified in the membership system and is credentialed to use one or more Financial Information Exchange (''FIX'') [19] ports in the production environment. Further, the Exchange proposes that monthly Trading Permit fees will be assessed with respect to EEM clearing firms in any month the clearing firm is certified in the membership system to clear transactions on the Exchange.

The Exchange proposes to assess EEMs a monthly fee of $1,000 for each Trading Permit. Below is the proposed table showing the Trading Permit fees for EEMs:

Type of trading permit	Monthly MIAX Emerald trading permit fee
Electronic Exchange Member ..	$1,000.00

The Exchange proposes to assess monthly Trading Permit fees for Market Makers in any month the Market Maker (including a Registered Market Maker, Lead Market Maker, and Primary Lead Market Maker) is certified in the membership system, is credentialed to use one or more MIAX Emerald Express Interface (''MEI'') [20] ports in the production environment and is assigned to quote in one or more classes. Specifically, the Exchange proposes to adopt the following Trading Permit fees for Market Makers: (i) $7,000 for Market Maker Assignments in up to 10 option classes or up to 20% of option classes by national average daily volume (''ADV''); (ii) $12,000 for Market Maker Assignments in up to 40 option classes or up to 35% of option classes by ADV; (iii) $17,000 for Market Maker Assignments in up to 100 option classes or up to 50% of option classes by ADV; and (iv) $22,000 for Market Maker Assignments in over 100 option classes or over 50% of option classes by ADV up to all option classes listed on MIAX Emerald.

The Exchange also proposes to adopt an alternative lower Trading Permit fee for Market Makers who fall within the following Trading Permit fee levels, which represent the 3rd and 4th levels of the Market Maker Trading Permit fee

[7] 15 U.S.C. 78f.

[8] *See* Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10–233) (order approving application of MIAX Emerald, LLC for registration as a national securities exchange).

[9] *See* Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR–EMERALD–2019–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the MIAX Emerald Fee Schedule).

[10] ''Waiver Period'' means, for each applicable fee, the period of time from the initial effective date of the MIAX Emerald Fee Schedule until such time that the Exchange has an effective fee filing establishing the applicable fee. The Exchange will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. *See* the Definitions Section of the Fee Schedule.

[11] *See* MIAX Emerald Regulatory Circular 2020–41 available at *https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2020_41.pdf.*

[12] *See* Securities Exchange Act Release Nos. 90196 (October 15, 2020), 85 FR 67064 (October 21, 2020) (SR–EMERALD–2020–11) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt One-Time Membership Application Fees and Monthly Trading Permit Fees) (the ''First Proposed Rule Change''). The Exchange notes that it refiled its proposal to establish the one-time membership application fee in a separate filing. *See* SR–EMERALD–2021–01.

[13] *See id.*

[14] *See* Comment Letter from Joseph W. Ferraro III, SVP, Deputy General Counsel, the Exchange, dated November 20, 2020, notifying the Commission that the Exchange will withdraw the First Proposed Rule Change.

[15] *See* Securities Exchange Act Release Nos. 90601 (December 8, 2020), 85 FR 80864 (December 14, 2020) (SR–EMERALD–2020–18) (the ''Second Proposed Rule Change'').

[16] *See id.*

[17] *See* Comment Letter from Joseph W. Ferraro III, SVP, Deputy General Counsel, the Exchange, dated January 15, 2021, notifying the Commission that the Exchange will withdraw the Second Proposed Rule Change.

[18] *See* the MIAX Fee Schedule, Section 3)b).

[19] ''FIX Port'' means an interface with MIAX Emerald systems that enables the Port user to submit simple and complex orders electronically to MIAX Emerald. *See* the Definitions Section of the Fee Schedule.

[20] The MEI is a connection to the MIAX Emerald System that enables Market Makers to submit simple and complex electronic quotes to MIAX Emerald. The Exchange offers Full Service MEI Ports, which provide Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX Emerald System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per Matching Engine. The Exchange also offers Limited Service MEI Ports, which provide Market Makers with the ability to send simple and complex eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX Emerald System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per Matching Engine. *See* the Definitions Section of the Fee Schedule.

table: (i) Market Maker Assignments in up to 100 option classes or up to 50% of option classes by volume; and (ii) Market Maker Assignments in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Emerald. Specifically, the Exchange proposes to adopt footnote ''▪'' following the Market Maker Trading Permit fee table for these Monthly Trading Permit tier levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.025% of the total monthly executed volume reported by OCC in the customer account type for MIAX Emerald-listed option classes for that month, then the fee will be $15,500 instead of the fee otherwise applicable to such level.

Below is the proposed table showing the Trading Permit fees for Market Makers:

Type of trading permit	Monthly MIAX Emerald trading permit fee	Market maker assignments (the lesser of the applicable measurements below)	
		Per class	% of National average daily volume
Market Maker (includes RMM, LMM, PLMM)	$7,000.00	Up to 10 Classes	Up to 20% of Classes by volume.
	12,000.00	Up to 40 Classes	Up to 35% of Classes by volume.
	▪17,000.00	Up to 100 Classes	Up to 50% of Classes by volume
	▪22,000.00	Over 100 Classes	Over 50% of Classes by volume up to all Classes listed on MIAX Emerald.

▪For these Monthly MIAX Emerald Trading Permit tier levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.025% of the total monthly executed volume reported by OCC in the customer account type for MIAX Emerald-listed option classes for that month, then the fee will be $15,500 instead of the fee otherwise applicable to such level.

For the calculation of the monthly Market Maker Trading Permit fees, the number of classes is defined as the greatest number of classes the Market Maker was assigned to quote in on any given day within the calendar month and the class volume percentage is based on the total national ADV in classes listed on MIAX Emerald in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly Market Maker Trading Permit fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume. The Exchange proposes to assess MIAX Emerald Market Makers the monthly Market Maker Trading Permit fee based on the greatest number of classes listed on MIAX Emerald that the Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national ADV measurement.

The purpose of the alternative lower fee designated in proposed footnote ''▪'' is to provide a lower fixed cost to those Market Makers who are willing to quote the entire Exchange market (or substantial amount of the Exchange market), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on the Exchange. The Exchange believes that, by offering lower fixed costs to Market Makers that execute less volume, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers utilize less Exchange capacity due to lower overall volume executed, the Exchange believes it is reasonable and equitable to offer such Market Makers a lower fixed cost. The Exchange notes that the Exchange's affiliate, MIAX, provides a similar alternative lower Trading Permit fee for Market Makers who quote the entire MIAX market (or substantial amount of the MIAX market), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on MIAX.[21] The Exchange also notes that other options exchanges assess certain of their membership fees at different rates, based upon a member's participation on that exchange,[22] and, as such, this concept is not new or novel. The proposed changes to the Trading Permit fees for Market Makers who fall within the 3rd and 4th levels of the fee table are based upon a business determination of current Market Maker assignments and trading volume.

MIAX Emerald believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. MIAX Emerald believes this high standard is especially important when an exchange imposes various access fees for market participants to access an exchange's marketplace. MIAX Emerald deems Trading Permit fees to be access fees. It records these fees as part of its ''Access Fees'' revenue in its financial statements. The Exchange believes that it is important to demonstrate that these fees are based on its costs and reasonable business needs. The Exchange believes the Proposed Access Fees will allow the Exchange to offset expense the Exchange has and will incur, and that the Exchange is providing sufficient transparency (as described below) into how the Exchange determined to charge such fees. Accordingly, the Exchange is providing

[21] *See supra* note 18.

[22] *See e.g.,* NYSE Arca Options Fees and Charges, p.1 (assessing market makers $6,000 for up to 175 option issues, an additional $5,000 for up to 350 option issues, an additional $4,000 for up to 1,000 option issues, an additional $3,000 for all option issues on the exchange, and an additional $1,000 for the fifth trading permit and for each trading permit thereafter); NYSE American Options Fee Schedule, p. 23 (assessing market makers $8,000 for up to 60 plus the bottom 45% of option issues, an additional $6,000 for up to 150 plus the bottom 45% of option issues, an additional $5,000 for up to 500 plus the bottom 45% of option issues, and additional $4,000 for up to 1,100 plus the bottom 45% of option issues, an additional $3,000 for all issues traded on the exchange, and an additional $2,000 for 6th to 9th ATPs; plus an addition fee for premium products). *See also* Cboe BZX Options Exchange (''BZX Options'') assesses the Participant Fee, which is a membership fee, according to a member's ADV. *See* Cboe BZX Options Exchange Fee Schedule under ''Membership Fees''. The Participant Fee is $500 if the member ADV is less than 5000 contracts and $1,000 if the member ADV is equal to or greater than 5000 contracts. *Id.*

an analysis of its revenues, costs, and profitability associated with the Proposed Access Fees. This analysis includes information regarding its methodology for determining the costs and revenues associated with the Proposed Access Fees.

In order to determine the Exchange's costs to provide the access services associated with the Proposed Access Fees, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the access services. The sum of all such portions of expenses represents the total cost of the Exchange to provide the access services associated with the Proposed Access Fees. For the avoidance of doubt, no expense amount was allocated twice. The Exchange is also providing detailed information regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the cost to the Exchange to provide the access services associated with the Proposed Access Fees.

In order to determine the Exchange's projected revenues associated with the Proposed Access Fees, the Exchange analyzed the number of Members currently utilizing the Trading Permits, and, utilizing a recent monthly billing cycle representative of 2020 monthly revenue, extrapolated annualized revenue on a going-forward basis. The Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its projections for purposes of these calculations, given the uncertainty of such projections due to the continually changing access needs of market participants, discounts that can be achieved due to lower trading volume and vice versa, market participant consolidation, etc. Additionally, the Exchange similarly does not factor into its analysis future cost growth or decline. The Exchange is presenting its revenue and expense associated with the Proposed Access Fees in this filing in a manner that is consistent with how the Exchange presents its revenue and expense in its Audited Unconsolidated Financial Statements. The Exchange's most recent Audited Unconsolidated Financial Statement is for 2019. However, since the revenue and expense associated with the Proposed Access Fees were not in place in 2019 or for the first three quarters of 2020, the Exchange believes its 2019 Audited Unconsolidated Financial Statement is not useful for analyzing the reasonableness of the total annual revenue and costs associated with the Proposed Access Fees. Accordingly, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2020 revenue and costs, as described herein, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements. Based on this analysis, the Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit when comparing the Exchange's total annual expense associated with providing the services associated with the Proposed Access Fees versus the total projected annual revenue the Exchange will collect for providing those services.

* * * * *

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[23] On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees.[24] Accordingly, the Exchange believes that the Proposed Access Fees are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable because they not result in excessive pricing or supra-competitive profit; and (iv) utilize a cost-based justification framework that is substantially similar to a framework previously used by the Exchange to establish other non-transaction fees. Accordingly, the Exchange believes that the Commission should find that the Proposed Access Fees are consistent with the Act.

The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[25] in general, and furthers the objectives of Section 6(b)(4) of the Act[26] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange launched trading on March 1, 2019. For the month of December 2020, the Exchange had only a 3.58% market share of the U.S. options industry.[27] The Exchange is not aware of any evidence that a market share of approximately 3.6% provides the Exchange with anti-competitive pricing power. If the Exchange were to attempt to establish unreasonable pricing, then no market participant would join or connect, and existing market participants would disconnect.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such market participant, did not make business or economic sense for such market participant to access such exchange. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact that market participants can and do drop their access to exchanges based on non-transaction fee pricing, R2G Services LLC (''R2G'') filed a comment letter after BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04). The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity;

[23] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[24] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(4) and (5).

[27] *See* The Options Clearing Corporation (''OCC'') publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/market-data/volume/default.jsp.*

we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' Since the Exchange issued its notice instituting the Proposed Access Fees, one Member dropped its access to the Exchange as a result of the Proposed Access Fees. Accordingly, these examples show that if an exchange sets too high of a fee for connectivity and/or other non-transaction fees for its relevant marketplace, market participants can choose to drop their access to such exchange.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Access Fees will not result in excessive or supra-competitive profit. The costs associated with providing access to Exchange Members and non-Members, as well as the general expansion of a state-of-the-art infrastructure, are extensive, have increased year-over-year, and are projected to increase year-over-year in the future. In particular, the Exchange has experienced a material increase in its costs in 2020, in connection with a project to make its network environment more transparent and deterministic, based on customer demand. This project will allow the Exchange to enhance its network architecture with the intent of ensuring a best-in-class, transparent and deterministic trading system while maintaining its industry leading latency and throughput capabilities. In order to provide this greater amount of transparency and higher determinism, MIAX Emerald has made significant capital expenditures (''CapEx''), incurred increased ongoing operational expenditures (''OpEx''), and undertaken additional engineering research and development (''R&D'') in the following areas: (i) Implementing an improved network design to ensure the minimum latency between multicast market data signals disseminated by the Exchange across the extranet switches, improving the unicast jitter profile to reduce the occurrence of message sequence inversions from Members to the Exchange quoting gateway processors, and introducing a new optical fiber network infrastructure that ensures the optical fiber path for participants within extremely tight tolerances; (ii) introducing a re-architected and engineered participant quoting gateway that ensures the delivery of messages to the match engine with absolute determinism, eliminating the message processing inversions that can occur with messages received nanoseconds apart; and (iii) designing an improved monitoring platform to better measure the performance of the network and systems at extremely tight tolerances and to provide Members with reporting on the performance of their systems. The CapEx associated with only phase 1 of this project in 2020 was approximately $1.85 million. This expense does not include the significant increase in employee time and other resources necessary to maintain and service this network, which expense is captured in the operating expense discussed below. This project, which results in a material increase in expense of the Exchange, is, among other things, intended to enhance the overall trading experience at the Exchange, making it a venue that market participants want to access.

The Exchange believes the proposed Trading Permit fees are equitably allocated between EEMs and Market Makers, when these fees are viewed in the context of the overall trading volume on the Exchange, as Market Makers: (1) Consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high touch network support services provided by the Exchange and its staff, including more costly network monitoring, reporting and support services, resulting in a much higher cost to the Exchange. Further, the Exchange believes the Proposed Access Fees are equitably allocated because of customer demand for an even more transparent and deterministic network, as described above, which has resulted in higher CapEx, increasingly higher OpEx, and increased costs to engineering R&D. The Proposed Access Fees are equitably allocated in this regard because the majority of customer demand is coming from Market Makers, who transact the vast majority of volume on the Exchange. Accordingly, the Exchange believes it is reasonable, equitably allocated and not unfairly discriminatory to recoup the majority of its costs associated with providing Trading Permits from Market Makers quoting the most classes on the Exchange.

The Exchange believes that the proposed Trading Permit fees are equitably allocated between EEMs and Market Makers, as Market Makers consume the most bandwidth and resources of the network. Specifically, the Exchange notes that these users account for approximately greater than 99% of message traffic over the network, while EEMs account for approximately less than 1% of message traffic over the network. In the Exchange's experience, most EEMs do not have a business need for the high performance network solutions required by Market Makers. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 18 million quote messages per second. On an average day, the Exchange handles over approximately 3 billion total messages. Of those, Market Makers generate approximately 3 billion messages, and EEMs generate 500,000 messages. However, in order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall expense for storage and network transport capabilities. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that Market Makers pay for the vast majority of the access costs designed to be recovered via Trading Permit fees.

In order to provide more detail and to quantify the Exchange's costs associated with providing access to the Exchange in general, the Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the services associated with the Proposed Access Fees increase. For example, new Market Makers to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that MIAX Emerald and its affiliates provide. Further, as the total number Market Makers increase, MIAX Emerald and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to MIAX Emerald and its affiliates to provide access to its Members is not fixed. The Exchange believes the Proposed Access

Fees are reasonable in order to offset a portion of the costs to the Exchange associated with providing access to its network infrastructure.

Market Makers account for the vast majority of network capacity utilization and volume executed on the Exchange, as discussed throughout. Accordingly, the Exchange believes that it is reasonable and appropriate to charge Market Makers more than EEMs for Trading Permits to access the Exchange.

The Exchange only has four primary sources of revenue: transaction fees, access fees (which includes the Proposed Access Fees), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense that the Exchange projects to incur in connection with providing these access services versus the total annual revenue that the Exchange projects to collect in connection with the associated Trading Permit fees. For 2020,[28] the total annual expense for providing the access services associated with the Proposed Access Fees for MIAX Emerald is projected to be approximately $2.5 million. The $2.5 million in projected total annual expense is comprised of the following, all of which are directly related to the access services associated with the Proposed Access Fees: (1) Third-party expense, relating to fees paid by MIAX Emerald to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of MIAX Emerald to provide the services associated with the Proposed Access Fees. As noted above, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2020 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[29] The $2.5 million in projected total annual expense is directly related to the access services associated with the Proposed Access Fees, and not any other product or service offered by the Exchange. It does not include general costs of operating matching systems and other trading technology, and no expense amount was allocated twice.

As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the access services associated with the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to those services. The sum of all such portions of expenses represents the total cost of the Exchange to provide access services associated with the Proposed Access Fees.

For 2020, total third-party expense, relating to fees paid by MIAX Emerald to third-parties for certain products and services for the Exchange to be able to provide the access services associated with the Proposed Access Fees, is projected to be $190,621. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the MIAX Emerald trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for network services (fiber and bandwidth products and services) linking MIAX Emerald's office locations in Princeton, NJ and Miami, FL to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''),[30], which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members connect to the network to trade, receive market data, etc.).

For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, MIAX Emerald does not allocate its entire information technology and communication costs to the access services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the access services associated with the Proposed Access Fees, only that portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 10% of the total Equinix expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking MIAX Emerald with its affiliates, MIAX and MIAX PEARL, LLC (''MIAX PEARL''), as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's

[28] The Exchange has not yet finalized its 2020 year end results.

[29] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87877 (December 31, 2019), 85 FR 738 (January 7, 2020) (SR–EMERALD–2019–39). Accordingly, the third-part expense described in this filing is attributed to the same line item for the Exchange's 2020 Form 1 Amendment, which will be filed in 2021.

[30] In fact, on October 22, 2019, the Exchange was notified by SFTI that it is again raising its fees charged to the Exchange by approximately 11%, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the Zayo expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the Proposed Access Fees, approximately 1% of the total Zayo expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portions of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry, as well as the content, connectivity services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the SFTI and other service providers' expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 1% of the total SFTI and other service providers' expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 10% of the total hardware and software provider expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees.

For 2020, total projected internal expense, relating to the internal costs of MIAX Emerald to provide the access services associated with the Proposed Access Fees, is projected to be $2,046,137. This includes, but is not limited to, costs associated with: (1) employee compensation and benefits for full-time employees that support the access services associated with the Proposed Access Fees, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions (including an increase as a result of the higher determinism project); (2) depreciation and amortization of hardware and software used to provide the access services associated with the Proposed Access Fees, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide the access services associated with the Proposed Access Fees. The breakdown of these costs is more fully-described below. For clarity, only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, MIAX Emerald does not allocate its entire costs contained in those items to the access services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to provide the access services associated with the Proposed Access Fees. In particular, MIAX Emerald's employee compensation and benefits expense relating to providing the access services associated with the Proposed Access Fees is projected to be $1,403,101, which is only a portion of the $9,354,009 total projected expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), Trade Operations, Finance (who provide billing and accounting services relating to the network), and Legal (who provide legal services relating to the network, such as rule filings and various license agreements and other contracts). As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the provision of access services associated with the Proposed Access Fees. Without these employees, the Exchange would not be able to provide the access services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of the access services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 15% of the total employee compensation and benefits expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

MIAX Emerald's depreciation and amortization expense relating to providing the access services associated with the Proposed Access Fees is projected to be $571,888, which is only a portion of the $3,812,590 total projected expense for depreciation and amortization. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network and provide the access services associated with the Proposed Access Fees. Without this equipment, the Exchange would not be able to operate the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. The

Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the access services associated with the Proposed Access Fees, approximately 15% of the total depreciation and amortization expense, as these access services would not be possible without relying on such. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

MIAX Emerald's occupancy expense relating to providing the access services associated with the Proposed Access Fees is projected to be $71,148, which is only a portion of the $474,323 total projected expense for occupancy. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the access services associated with the Proposed Access Fees. This amount consists primarily of rent for the Exchange's Princeton, NJ office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (''NOC'') and Security Operations Center (''SOC'') from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has approximately 150 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the access services associated with the proposed Trading Permit fees. Without this office space, the Exchange would not be able to operate and support the network and provide the access services associated with the Proposed Access Fees to its Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and the access services associated with the Proposed Access Fees. The Exchange did not allocate all of the occupancy expense toward the cost of providing the access services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 15% of the total occupancy expense. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide the access services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange notes that a material portion of its total overall expense is allocated to the provision of access services (including connectivity, ports, and trading permits). The Exchange believes this is reasonable and in line, as the Exchange operates a technology-based business that differentiates itself from its competitors based on its trading systems that rely on access to a high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. As described above, the Exchange has only four primary sources of fees in to recover its costs, thus the Exchange believes it is reasonable to allocate a material portion of its total overall expense towards access fees.

Accordingly, based on the facts and circumstances presented, the Exchange believes that its provision of the access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit. To illustrate, on a going-forward, fully-annualized basis, the Exchange projects that its annualized revenue for providing the access services associated with the Proposed Access Fees would be approximately $2.5 million per annum, based on a recent billing cycle. The Exchange projects that its annualized expense for providing the access services associated with the Proposed Access Fees would be approximately $2,236,758 per annum. Accordingly, on a fully-annualized basis, the Exchange believes its total projected revenue for the providing the access services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit, as the Exchange will make only a 10% profit margin on the Proposed Access Fees ($2.5 million − $2,236,758 = $263,242 per annum). The Exchange notes that the fee charged to each Market Maker for Trading Permits can vary from month to month depending on the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, and upon certain class volume percentages. The Exchange also provides a further discount for a Market Maker's Trading Permit fees if the Market Maker's total monthly executed volume during the relevant month is less than 0.025% of the total monthly executed volume reported by OCC in the customer account type for MIAX Emerald-listed option classes for that month. As such, the revenue projection is not a static number, with monthly Trading Permit fees likely to fluctuate month to month.

For the avoidance of doubt, none of the expenses included herein relating to the access services associated with the Proposed Access Fees relate to the provision of any other services offered by MIAX Emerald. Stated differently, no expense amount of the Exchange is allocated twice. The Exchange notes that, with respect to the MIAX Emerald expenses included herein, those expenses only cover the MIAX Emerald market; expenses associated with the Exchange's affiliate exchanges, MIAX and MIAX PEARL, are accounted for separately and are not included within the scope of this filing. Stated differently, no expense amount of the Exchange is also allocated to MIAX or MIAX PEARL.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the access services associated with the Proposed Access Fees because the Exchange performed a line-by-line item analysis of all the expenses of the Exchange, and has determined the expenses that directly relate to providing access to the Exchange. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to provide the access services associated with the Proposed Access Fees to its Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to providing access services. The Proposed Access Fees are intended to recover the Exchange's costs of providing access to Exchange Systems. Accordingly, the Exchange believes that the Proposed Access Fees are fair and reasonable

because they do not result in excessive pricing or supra-competitive profit, when comparing the actual costs to the Exchange versus the projected annual revenue from the Proposed Access Fees.

Further, the Exchange no longer believes it is necessary to waive these fees to attract market participants to MIAX Emerald since this market is now established and MIAX Emerald no longer needs to rely on such waivers to attract market participants. The Exchange believes that the proposal is equitable and not unfairly discriminatory because the elimination of the fee waiver for the Proposed Access Fees will uniformly apply to all EEMs and Market Makers of the Exchange. The Exchange also notes that the Exchange's affiliate, MIAX, charges a similar, fixed trading permit fee to its EEMs, and a similar, varying trading permit fee to its Market Makers, based upon the number of assignments of option classes or the percentage of volume in option classes.[31]

The Exchange believes that the Proposed Access Fees are reasonable, equitable and not unfairly discriminatory because they are within the range of comparable fees at other competing options exchanges.[32] The Proposed Access Fees are fair and equitable and not unreasonably discriminatory because they apply equally to all Market Makers regardless of type and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange designed the fee rates in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on the Exchange. The Exchange notes that trading volume and quoting activity in the options market tends to be concentrated in the top ranked options classes; with the vast majority of options classes being thinly quoted and traded. The Exchange believes that the proposed fee rates and criteria provide an objective and flexible framework that will encourage Market Makers to be assigned and quote in option classes with lower total national average daily volume while also equitably allocating the fees in a reasonable manner amongst Market Maker assignments to account for quoting and trading activity.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

The Exchange also points out that it is not seeking to recoup any of its past costs associated with the provision of any Trading Permits during the Waiver Period. The Exchange currently has 35 Members,[33] all of whom did not pay Trading Permit fees during the Waiver Period from the time these firms all became Members of the Exchange. Further, the majority of firms that are Members of the Exchange's affiliate options exchanges, MIAX and MIAX PEARL, also became Members of those exchanges during similar Waiver Periods for the MIAX and MIAX PEARL Trading Permit fees. Accordingly, the Exchange (and MIAX and MIAX PEARL) have assumed approximately 100% of the costs associated with providing Trading Permits for the majority of Member firms of the Exchange, MIAX, and MIAX PEARL during their respective Waiver Periods. Accordingly, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to now adopt Trading Permit fees that are reasonably related to (and designed to recover) the Exchange's cost associated with the provision of such Trading Permits.

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.

Intra-Market Competition

The Exchange believes that the Proposed Access Fees do not place certain market participants at a relative disadvantage to other market participants because the Proposed Access Fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the fee rates are designed in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on the Exchange. The Exchange notes that trading volume and quoting activity in the options market tends to be concentrated in the top ranked options classes; with the vast majority of options classes being thinly quoted and traded. The Exchange believes that the proposed fee rates and criteria provide an objective and flexible framework that will encourage Market Makers to be assigned and quote in option classes with lower total national average daily volume while also equitably allocating the fees in a reasonable manner amongst Market Maker assignments to account for quoting and trading activity.

Inter-Market Competition

The Exchange believes the Proposed Access Fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, options market participants are not forced to become members of all options exchanges. The Exchange notes that it has far less Members as compared to the much greater number of members at other options exchanges. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX Emerald. The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Access Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply discontinue their membership with the Exchange.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. For the month of December 2020, the Exchange had a market share of approximately 3.6% of executed multiply-listed equity options[34] and the Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the Exchange.

[31] *See supra* note 18.

[32] *See supra* note 22.

[33] *See https://www.miaxoptions.com/exchange-members/emerald.*

[34] *See supra* note 27.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[35] and Rule 19b–4(f)(2)[36] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2021–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2021–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2021–03 and should be submitted on or before February 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

J. Matthew DeLesDernier,

Assistant Secretary.

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[35] 15 U.S.C. 78s(b)(3)(A)(ii).

[36] 17 CFR 240.19b–4(f)(2).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91031; File No. SR–NYSEArca–2020–98]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, Regarding the Availability of Information for the iShares Gold Trust, the iShares Silver Trust, and the iShares S&P GSCI Commodity-Indexed Trust

February 1, 2021.

I. Introduction

On November 12, 2020, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change regarding the availability of information for the iShares Gold Trust, the iShares Silver Trust, and the iShares S&P GSCI Commodity-Indexed Trust (each, ''Trust'' and collectively, ''Trusts''). The proposed rule change was published for comment in the **Federal Register** on November 23, 2020.[3] On January 8, 2021, NYSE Arca filed Amendment No. 1 to the proposed rule change, which replaced the proposed rule change in its entirety.[4] On December 29, 2020, pursuant to Section 19(b)(2) of the Exchange Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] The Commission has received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. The Exchange's Description of the Proposal, as Modified by Amendment No. 1

The Exchange lists shares (collectively, ''Shares'') of the iShares Gold Trust (formerly the iShares COMEX Gold Trust), the iShares Silver Trust, and the iShares S&P GSCI Commodity-Indexed Trust. The listing and trading of shares of the iShares Gold Trust and the iShares Silver Trust are subject to NYSE Arca Rule 8.201–E, which governs the listing and trading of Commodity-Based Trust Shares on the Exchange; the listing and trading of shares of the iShares S&P GSCI Commodity-Indexed Trust are subject to NYSE Arca Rule 8.203–E, which governs the listing and trading of Commodity Index Trust Shares on the Exchange. The listing and trading of the Shares by the Exchange also are subject to Exchange representations referenced in various Commission releases.[7] As

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 90443 (November 17, 2020), 85 FR 74778.

[4] In Amendment No. 1, the Exchange clarified certain of the website disclosure requirements and their origins, provided additional support for certain arguments supporting its proposal, and made technical changes. Because Amendment No. 1 clarified and neither materially altered the substance of the proposed rule change nor raised any unique or novel regulatory issue, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 to the proposed rule change is available at: *https://www.sec.gov/comments/sr-nysearca-2020-98/srnysearca202098-8218328-227679.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 90816, 86 FR 0353 (January 5, 2021) (designating February 21, 2021 as the date by which the Commission shall approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change).

[7] *See, e.g.,* Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (approving the listing and trading of shares of the iShares COMEX Gold Trust) (''NYSE Arca Gold Order''); Securities Exchange Act Release No. 90547 (December 2, 2020), 85 FR 79060 (December 8, 2020) (SR–NYSEArca–2020–99) (notice of certain changes regarding the availability

discussed further below, the Exchange proposes to amend the requirements to disclose certain information on the Trusts' websites as required by the Prior Releases.

Under the Prior Releases, each of the Trusts is required to disseminate on its respective website a calculation of the premium or discount of the midpoint of the respective bid-ask price against NAV and data in chart form displaying the frequency distribution of discounts and premiums of such price against the NAV, within appropriate ranges for each of the four previous calendar quarters. The Exchange proposes to instead require each Trust to disseminate via its website the premium or discount of the Official Closing Price (rather than the midpoint of the respective bid-ask price) against the NAV as of the prior business day, expressed as a percentage of such NAV.[8] Additionally, each Trust would be required to disseminate a table showing the number of days its shares traded at a premium or discount during the most recently completed calendar year and the most recently completed calendar quarters since that year, as well as a line graph showing the shares' premiums or discounts for the most recently completed calendar year and the most recently completed calendar quarters since that year. Other than these changes to the information disclosed on the Trusts' websites, each of the Trusts would continue to comply with all other representations referenced in the Prior Releases (including the website dissemination of other information) and in NYSE Arca Rules 8.201–E or 8.203–E (as applicable).

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange states that the proposed alternative disclosures would be both more specific and more comprehensive than the manner by which premium or discount information is currently disseminated by the Trusts. By providing the premium and discount information in a table and line graph as opposed to only in chart form, and for the previous calendar year and the most recently completed quarters following such calendar year as opposed to only for the four previous quarters, the Trusts would provide market participants with additional information to assess market pricing of the Shares against their respective NAVs. Additionally, the Exchange states that, by disseminating the premium or discount of the Official Closing Price (rather than the midpoint of the respective bid-ask price) against the NAV as of the prior business day, the Trusts would utilize more up-to-date and reliable pricing information available for the Shares compared to midpoints of the bid-ask prices.

The Commission believes that the proposed alternative disclosures will be at least as useful to market participants as the currently disclosed data with respect to the Shares. Correspondingly, the Commission believes that the proposed alternative disclosures will not negatively impact arbitrage opportunities in the Shares that align the market prices of the Shares with their NAVs. For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act[11] and the rules and regulations thereunder applicable to a national securities exchange.[12]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSEArca–2020–98), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02403 Filed 2–4–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91030; File No. SR–EMERALD–2021–01]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt a One-Time Membership Application Fee, Application Programming Interface ("API") Testing and Certification Fees, and Network Connectivity Testing and Certification Fees

February 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 21, 2021, MIAX Emerald, LLC ("MIAX Emerald" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the "Fee Schedule") to establish: (1) One-time membership application fees for new MIAX Emerald Members;[3] and (2) per-instance Application Programming Interface ("API") Testing and Certification fees and Network

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of certain information on the websites of the Trusts) ("NYSE Arca Notice"); Securities Exchange Act Release No. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR–NYSEArca–2008–124) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to List Shares of iShares Silver Trust) ("NYSE Arca Silver Order"); and Securities Exchange Act Release No. 56932 (December 7, 2007), 72 FR 71178 (December 14, 2007) (SR–NYSEArca–2007–112) (approving the listing and trading of shares of the iShares S&P GSCI Commodity-Indexed Trust) ("GSCI Order"). The NYSE Arca Gold Order, the Amex Silver Order, the GSCI Order, and the NYSE Arca Notice are referred to collectively as the "Prior Releases."

[8] The term "Official Closing Price" is defined in NYSE Arca Rule 1.1(ll) as the reference price to determine the closing price in a security for purposes of Rule 7–E Equities Trading, and the procedures for determining the Official Closing Price are set forth in that rule.

[9] 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).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(5).

[12] This approval order is based on all of the Exchange's statements and representations set forth above and in Amendment No. 1 to the proposed rule change.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. *See* Exchange Rule 100 and the Definitions section of the Fee Schedule.

Connectivity Testing and Certification fees for Members and non-Members.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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 Fee Schedule to establish: (1) One-time membership application fees for new MIAX Emerald Members based upon the applicant's status as either an Electronic Exchange Member (''EEM'') [4] or as a Market Maker; [5] and (2) per-instance API Testing and Certification fees and Network Connectivity Testing and Certification fees for Members and non-Members.

MIAX Emerald commenced operations as a national securities exchange registered under Section 6 of the Act [6] on March 1, 2019.[7] The Exchange adopted its transaction fees and certain of its non-transaction fees in its filing SR–EMERALD–2019–15.[8] In that filing, the Exchange expressly waived, among other fees, the one-time membership application fee and per-instance API Testing and Certification fees and Network Connectivity Testing and Certification fees, both for Members and non-Members, in order to provide an incentive to prospective market participants to become Exchange Members and for prospective Members and non-Members to connect to MIAX Emerald as soon as possible. At that time, the Exchange waived the one-time membership application fee and per-instance API Testing and Certification fees and Network Connectivity Testing and Certification fees for the Waiver Period,[9] and stated that it would provide notice to market participants when the Exchange intended to terminate the Waiver Period.

On September 15, 2020, the Exchange issued a Regulatory Circular which announced that the Exchange would terminate the Waiver Period for, among other fees, the one-time membership application fee and per-instance API Testing and Certification fees and Network Connectivity Testing and Certification fees for Members and non-Members, beginning October 1, 2020.[10]

The Exchange initially filed its proposals to establish the one-time membership application fee and per-instance API Testing and Certification fees and Network Connectivity Testing and Certification fees on October 1, 2020.[11] The First Proposed Rule Changes were published for comment in the **Federal Register** between October 20–21, 2020.[12] On November 25, 2020, the Exchange withdrew the First Proposed Rule Changes [13] and refiled its proposal to establish the one-time membership application fee and per-instance API Testing and Certification fees and Network Connectivity Testing and Certification fees.[14] The Second Proposed Rule Change was published for comment in the **Federal Register** on December 14, 2020.[15] On January 21, 2021, the Exchange withdrew the Second Proposed Rule Change and refiled its proposal.[16]

One-Time Membership Application Fee

The Exchange proposes to assess a one-time membership application fee based upon the applicant's status as either an EEM or as a Market Maker. The Exchange proposes that applicants for MIAX Emerald membership as an EEM will be assessed a one-time application fee of $2,500. The Exchange proposes that applicants for MIAX Emerald membership as a Market Maker will be assessed a one-time application fee of $3,000. The difference in the proposed membership application fee to be charged to EEMs and Market Makers is because of the additional review and resources involved in processing a Market Maker's application, as Market Makers have greater and more complex obligations with respect to doing business on the Exchange.[17] MIAX Emerald's proposed one-time membership application fees are the same as the one-time application fees in place at the Exchange's affiliate, Miami International Securities Exchange, LLC (''MIAX'') ($2,500 for an EEM and $3,000 for a MIAX Market Maker) [18], and similar to or less than application fees for the Cboe Exchange, Inc. (''Cboe'') ($3,000 for an individual applicant and $5,000 for an applicant organization) [19] and Nasdaq ISE, LLC (''Nasdaq ISE'') ($7,500 per firm for a

[4] ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100 and the Definitions section of the Fee Schedule.

[5] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100 and the Definitions section of the Fee Schedule.

[6] 15 U.S.C. 78f.

[7] *See* Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10–233) (order approving application of MIAX Emerald, LLC for registration as a national securities exchange).

[8] *See* Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR–EMERALD–2019–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the MIAX Emerald Fee Schedule).

[9] ''Waiver Period'' means, for each applicable fee, the period of time from the initial effective date of the MIAX Emerald Fee Schedule until such time that the Exchange has an effective fee filing establishing the applicable fee. The Exchange will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. *See* the Definitions Section of the Fee Schedule.

[10] *See* MIAX Emerald Regulatory Circular 2020–41 available at *https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2020_41.pdf.*

[11] *See* Securities Exchange Act Release Nos. 90183 (October 14, 2020), 85 FR 66607 (October 20, 2020) (SR–EMERALD–2020–09) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Application Programming Interface (''API'') Testing and Certification Fees and Network Connectivity Testing and Certification Fees); 90196 (October 15, 2020), 85 FR 67064 (October 21, 2020) (SR–EMERALD–2020–11) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt One-Time Membership Application Fees and Monthly Trading Permit Fees). The Exchange's prior proposals to establish the one-time membership application fee and per-instance API Testing and Certification fees and Network Connectivity Testing and Certification fees are collectively referred to herein as the ''First Proposed Rule Changes.'' The Exchange notes that it will refile its proposal to establish monthly Trading Permit fees in a separate filing.

[12] *See id.*

[13] *See* Comment Letter from Joseph W. Ferraro III, SVP, Deputy General Counsel, the Exchange, dated November 20, 2020, notifying the Commission that the Exchange will withdraw the First Proposed Rule Changes.

[14] *See* Securities Exchange Act Release Nos. 90597 (December 8, 2020), 85 FR 80878 (December 14, 2020) (SR–EMERALD–2020–15) (the ''Second Proposed Rule Change'').

[15] *See id.*

[16] *See* Comment Letter from Joseph W. Ferraro III, SVP, Deputy General Counsel, the Exchange, dated January 15, 2021, notifying the Commission that the Exchange will withdraw the Second Proposed Rule Change.

[17] *See* Chapter VI of the Exchange's rules, generally.

[18] *See* MIAX Fee Schedule, Section 3(a).

[19] *See* Cboe Fees Schedule, p. 9, Cboe Trading Permit Holder Application Fees.

primary market maker, $5,500 per firm for a competitive market maker, and $3,500 per firm for an electronic access member).[20] Below is the table showing the proposed one-time membership application fees for EEMs and Market Makers:

Type of membership	Application fee
Electronic Exchange Member	$2,500.00
Market Maker	3,000.00

API Testing and Certification Fees for Members

The Exchange also proposes to adopt an API Testing and Certification fee for Members. An API makes it possible for Member software to communicate with MIAX Emerald software applications, and is subject to Member testing with, and certification by, MIAX Emerald. API testing and certification includes, for EEMs, testing all available order types, new order entry, order management, order throughput and mass order cancellation. For Market Makers, API testing and certification also includes testing of all available quote types, quote throughput, quote management and cancellation, Aggregate Risk Manager settings and triggers, and confirmation of quotes within the trading engines.

The API Testing and Certification fees for Members are based upon the type of interface that the Member has been credentialed to use. The Exchange proposes to adopt an API testing and certification fee for EEMs (other than Clearing Firms): (i) Initially per API for Financial Information Exchange (''FIX'')[21] ports, FIX Drop Copy (''FXD'')[22] ports and Clearing Trade Drop (''CTD'')[23] ports in the month the EEM has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time an EEM initiates a change to its system that requires testing and certification. The Exchange proposes to adopt an API testing and certification fee for EEM Clearing Firms (i) initially per API in the month the EEM Clearing Firm has been credentialed to use one or more CTD Ports in the production environment, and (ii) each time an EEM Clearing Firm initiates a change to its system that requires testing and certification.

The Exchange proposes to adopt an API testing and certification fee for Market Makers: (i) Initially per API for CTD and MIAX Emerald Express Interface (''MEI'')[24] ports in the month the Market Maker has been credentialed to use one or more ports in the production environment for the tested API and the Market Maker has been assigned to quote in one or more classes, and (ii) each time a Market Maker initiates a change to its system that requires testing and certification. The Exchange also proposes that API Testing and Certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's System[25] that requires testing and certification. The Exchange proposes to assess Member API Testing and Certification fees of $1,000 for EEMs and $2,500 for Market Makers. Below is the proposed table for API Testing and Certification fees for Members:

Type of member	API Testing and Certification fee
Electronic Exchange Member	$1,000.00
Market Maker	2,500.00

API Testing and Certification Fee for Non-Members

The Exchange proposes to adopt an API Testing and Certification fee for Third Party Vendors,[26] Service Bureaus[27] and other non-Members (such as clearing firms): (i) Initially per API for FIX, FXD, CTD and MEI ports in the month the Third Party Vendor, Service Bureau or non-Member has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time a Third Party Vendor, Service Bureau, or other non-Member initiates a change to its system that requires testing and certification. The Exchange also proposes that API Testing and Certification fees will not be assessed to non-Members in situations where the Exchange initiates a mandatory change to the Exchange's System that requires testing and certification.

The Exchange proposes to assess non-Member API Testing and Certification fees of $1,200 for Third Party Vendors, Service Bureaus and other non-Members. Below is the proposed table for API Testing and Certification fees for non-Members:

Non-Member	API Testing and Certification fee
Third Party Vendors and Service Bureaus and other non-Members	$1,200.00

The proposed higher fee charged to Third Party Vendors, Service Bureaus and non-Members reflects the greater amount of time spent by MIAX Emerald employees testing and certifying non-Members. It has been MIAX Emerald's experience that Member testing takes less time than non-Member testing because Members have more experience testing these systems with exchanges, resulting in generally fewer questions and issues arising during the testing and certification process. Also, because Third Party Vendors and Service Bureaus are redistributing data and reselling services to other Members and

[20] *See* Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 9. Legal and Regulatory A. Application.

[21] ''FIX Port'' means an interface with MIAX Emerald systems that enables the Port user to submit simple and complex orders electronically to MIAX Emerald. *See* the Definitions section of the Fee Schedule.

[22] The FIX Drop Copy (''FXD'') Port is a messaging interface that will provide a copy of real-time trade execution, trade correction and trade cancellation information to FXD Port users who subscribe to the service. FXD Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM. FXD Port Fees will be assessed in any month the Member is credentialed to use the FXD Port in the production environment. *See* the Definitions section of the Fee Schedule.

[23] ''CTD Port'' or ''Clearing Trade Drop Port'' provides an Exchange Member with a real-time clearing trade updates. The updates include the Member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) Trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); and (v) Exchange MPID for each side of the transaction, including Clearing Member MPID. *See* the Definitions section of the Fee Schedule.

[24] The MEI is a connection to the MIAX Emerald System that enables Market Makers to submit simple and complex electronic quotes to MIAX Emerald. The Exchange offers Full Service MEI Ports, which provide Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX Emerald System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per Matching Engine. The Exchange also offers Limited Service MEI Ports, which provide Market Makers with the ability to send simple and complex eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX Emerald System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per Matching Engine. *See* the Definitions section of the Fee Schedule.

[25] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[26] Third Party Vendors are subscribers of MIAX Emerald's market and other data feeds, which they in turn use for redistribution purposes. *See* the Definitions section of the Fee Schedule.

[27] ''Service Bureau'' means a technology provider that offers and supplies technology and technology services to a trading firm that does not have its own proprietary system. *See* the Definitions section of the Fee Schedule.

market participants, the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for a single Member.

The Exchange believes it is necessary to charge an API Testing and Certification fee to Members and non-Members because of the time and resources spent to ensure that Member and non-Member APIs function correctly to prevent any System malfunction. Further, the Exchange believes the price differential in API Testing and Certification fees for Members and non-Members is not unfairly discriminatory because, in the Exchange's experience, Member testing takes less time than non-Member testing as Members have more experience testing these systems with exchanges, resulting generally in fewer questions and issues arising during the testing and certification process.

Network Connectivity Testing and Certification Fee for Members

The Exchange established electronic communication connections with Members and now proposes to assess Members a Network Connectivity Testing and Certification fee for each 1 Gigabit (''Gb'') connection and 10 Gb ultra-low-latency (''ULL'') connection. The Exchange proposes to assess a Member Network Connectivity Testing and Certification fee: (i) Initially per connection in the month the Individual Firm has been credentialed to use any API or market data feeds in the production environment utilizing the tested network connection, and (ii) each time an individual firm initiates a change to its system that requires network connectivity testing and certification. Network Connectivity Testing and Certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. Member Network Connectivity Testing and Certification fees will not be assessed for testing and certification of connectivity to the Exchange's Disaster Recovery Facility.

The Exchange proposes to assess Members a Network Connectivity Testing and Certification Fee of $1,000 per 1Gb connection and $4,000 per 10Gb ULL connection. Below is the proposed table for Member Network Connectivity Testing and Certification fees:

Type of member	1 Gigabit fee per connection	10 Gigabit ULL fee per connection
Individual Firm	$1,000.00	$4,000.00

The proposed fee amounts are identical to the fees currently assessed for the same services at the Exchange's affiliate options exchanges, MIAX and MIAX PEARL, LLC (''MIAX PEARL''). The Exchange notes that the Emerald Express Network Interconnect (''EENI'')[28] is a network infrastructure which provides Members and non-Members network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facility of the Exchange. When utilizing a Shared[29] cross-connect, the EENI can also be configured to offer network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange's affiliate options exchanges, MIAX and MIAX PEARL. Members utilizing a single, Shared cross-connect to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange, MIAX and MIAX PEARL will only be assessed one Network Connectivity Testing and Certification fee per connection tested, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

Network Connectivity Testing and Certification Fee for Non-Members

MIAX Emerald established electronic communication connections with Service Bureaus, Extranet Providers and other non-Members, and now proposes to assess a Network Connectivity Testing and Certification fee for each 1Gb connection and 10Gb ULL connection. The Exchange proposes to assess a non-Member Network Connectivity Testing and Certification fee: (i) Initially per connection in the month the Service Bureau, Extranet Provider or other non-Member has been credentialed to use any API or market data feeds in the production environment using the tested network connection, and (ii) each time the Service Bureau, Extranet Provider or other non-Member initiates a change to its system that requires network connectivity testing and certification. Network Connectivity Testing and Certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. Non-Member Network Connectivity Testing and Certification fees will not be assessed for testing and certification of connectivity to the Exchange's Disaster Recovery Facility.

The Exchange proposes to assess non-Members a Network Connectivity Testing and Certification Fee of $1,200 per 1Gb connection and $4,200 per 10Gb ULL connection. Below is the proposed table for non-Member Network Connectivity Testing and Certification fees:

Non-Member	1 Gigabit fee per connection	10 Gigabit ULL fee per connection
Service Bureau/Extranet Provider and other non-Members	$1,200.00	$4,200.00

[28] ''EENI'' means the Emerald Express Network Interconnect, which is a network infrastructure which provides Members and non-Members network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of MIAX Emerald. When utilizing a Shared cross-connect, the EENI can also be configured to offer network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of MIAX and MIAX PEARL. When utilizing a Dedicated cross-connect, the EENI can only be configured to offer network connectivity to the trading platforms, market data systems, and test systems of MIAX Emerald. The EENI consists of the low latency and ultra-low latency connectivity options set forth in the Exchange's Fee Schedule. *See* the Definitions section of the Fee Schedule.

[29] ''Shared'' (cross-connect) means cross-connect that provides network connectivity to the trading platforms, market data systems, test systems, and/or disaster recovery facilities of MIAX Emerald, MIAX and MIAX PEARL via a single, shared connection. The following connections can be Shared across MIAX Emerald, MIAX and MIAX PEARL: 1 Gigabit, 1 Gigabit Disaster Recovery, and 10 Gigabit Disaster Recovery. *See* the Definitions section of the Fee Schedule.

The EENI is also available to non-Member subscribers. For non-Member subscribers, when utilizing a Shared cross-connect, the EENI can also be configured to offer network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange's affiliate options exchanges, MIAX and MIAX PEARL. Accordingly, non-Members utilizing Shared cross-connects to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and its affiliates, MIAX and MIAX PEARL, will only be assessed one Network Connectivity Testing and Certification fee per connection tested, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection. The Member and non-Member Network Testing and Certification fees represent installation and support costs incurred by the Exchange as it works with each Member and non-Member to make sure there are appropriate electronic communication connections with MIAX Emerald. The Exchange's affiliate options exchanges, MIAX and MIAX PEARL, charge the same fees for the same services for their Members and non-Members.[30] The Exchange proposes to assess a higher Network Connectivity Testing and Certification fee to non-Members than to Members, similar to how MIAX and MIAX PEARL assesses such fees to their Members and non-Members. The proposed higher fee charged to non-Members reflects the greater amount of time spent by MIAX Emerald employees testing and certifying non-Members. It has been MIAX Emerald's experience that Member network connectivity testing takes less time than non-Member network connectivity testing because Members have more experience testing these systems with exchanges as generally fewer questions and issues arise during the testing and certification process.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[31] in general, and furthers the objectives of Section 6(b)(4) of the Act[32] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange launched trading on March 1, 2019. For the month of December 2020, the Exchange had only a 3.58% market share of the U.S. options industry.[33] The Exchange is not aware of any evidence that a market share of approximately 3% provides the Exchange with anti-competitive pricing power. If the Exchange were to attempt to establish unreasonable pricing, then no market participant would apply to become a Member of the Exchange, or test and certify with the Exchange's trading System.

The Exchange believes the proposed one-time membership application fee is reasonable, equitable and not unfairly discriminatory because it is a one-time fee that is reasonably related to (and designed to recover) the Exchange's cost associated with reviewing and approving membership applications, which consists primarily of the time and resources of Exchange personnel to process the membership application and conduct the new member on-boarding process. The Exchange's process for reviewing and approving potential new Members involves several steps and participation from personnel in multiple Exchange departments, as follows: (i) Reviewing prospective Member information provided in various membership forms, including, where necessary, possibly consulting with FINRA, pursuant to the Exchange's Regulatory Services Agreement; (ii) the on-boarding process, where Exchange personnel contacts the firm for an introductory meeting with the Exchange's Business Team to discuss goals, answer questions and schedule the technical on-boarding meeting; (iii) the technical on-boarding meeting, where the Exchange's on-boarding team and Trading Operations Team guides the firm through the on-boarding process with Exchange personnel available to discuss network connectivity, APIs, Exchange functionality and operational issues; and (iv) follow-ups with the Trading Operations Team to coordinate testing, as necessary, until the firm is active in the Exchange's live trading environment.[34]

The Exchange tracks the number of hours spent by Exchange personnel providing the aforementioned services per membership application. Based on the average number of person hours spent by the Exchange on processing a typical membership application, and based on the Exchange's average cost per full-time employee (''FTE'') of approximately $250,000 (inclusive of all compensation and employee benefits) per year, the Exchange represents that its cost to provide this service is reasonably related to (and often exceeds) the amount of the membership application fee the Exchange proposes to charge for such service. In particular, it takes approximately 40 person hours to review, on-board and approve a membership application. Therefore, the cost to the Exchange for the review, on-boarding, and approval of each application is, on average, approximately $4,000–$5,000 (with EEM application costs closer to $4,000, versus Market Maker application costs closer to $5,000). Accordingly, the proposed one-time membership application fee would enable the Exchange to recover a material portion of such cost. The Exchange believes this is a conservative cost allocation because the Exchange is not allocating any additional costs beyond the employee compensation costs for employees directly involved in this process, such as costs associated with management review and sign off, compliance team reviews, technology costs of employees, office space costs of employees, costs associated with supporting departments' time for things such as internal meetings, project management coordination among the individuals who indirectly support the membership approval and on-boarding processes, and various other indirectly-related costs.

The Exchange also points out that it is not seeking to recoup any of its past costs associated with reviewing membership applications that took place during the Waiver Period. The Exchange currently has 35 Members,[35] all of whom did not pay the one-time membership application fee, as it was waived for the Waiver Period when these firms all became Members of the Exchange. Further, the majority of firms

[30] *See* MIAX Fee Schedule, Sections 4(c) and 4(d); *see also* MIAX PEARL Fee Schedule, Sections 4(c) and 4(d).

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(4) and (5).

[33] *See* The Options Clearing Corporation (''OCC'') publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/market-data/volume/default.jsp.*

[34] *See* the Exchange's Membership and Technical Onboarding process, available at *https://www.miaxoptions.com/membership/emerald.*

[35] *See https://www.miaxoptions.com/exchange-members/emerald.*

that are Members of the Exchange's affiliate options exchanges, MIAX and MIAX PEARL, also became Members of those exchanges during similar Waiver Periods for the MIAX and MIAX PEARL one-time membership application fees. Accordingly, the Exchange (and MIAX and MIAX PEARL) have assumed approximately 100% of the costs associated with processing membership applications for the majority of Member firms approved by the Exchange, MIAX, and MIAX PEARL. Accordingly, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to now adopt a one-time membership application fee that is reasonably related to (and designed to recover) the Exchange's cost associated with reviewing and approving membership applications.

The Exchange believes the proposed API Testing and Certification fees and Network Connectivity Testing and Certification fees are reasonable, equitable and not unfairly discriminatory. The Exchange tracks the number of hours spent by Exchange personnel providing API testing and certification services per billable instance. Based on the average number of person hours spent by the Exchange on API testing and certification services, and based on the Exchange's average cost per FTE of approximately $250,000 (inclusive of all compensation and employee benefits) per year, the Exchange represents that its costs to provide these services are reasonably related to (and often exceed) the amount of the respective testing and certification fees the Exchange proposes to charge for such services. In particular, it takes approximately 20 person hours to complete the API testing and certification process. Therefore, the cost to the Exchange to provide API testing and certification services is, on average, approximately $2,500 per instance (with EEM and non-Member testing and certification costs closer to $2,000, versus Market Maker testing and certification costs closer to $3,000). Accordingly, the proposed API Testing and Certification fees would enable the Exchange to recover a material portion of such costs. The Exchange believes this is a conservative cost allocation because the Exchange is not allocating any additional costs beyond the employee compensation costs for employees directly involved in this process, such as management review and sign off, technology costs of employees, office space costs of employees, costs associated with supporting departments' time for things such as internal meetings, project management coordination among the individuals who indirectly support the testing and certification process, and various other indirectly-related costs.

The Exchange also points out that it is not seeking to recoup any of its past costs associated with conducting API testing and certification that took place during the Waiver Period. The Exchange currently has 35 Members,[36] all of whom did not pay the API testing and certification fee, as it was waived for the Waiver Period when these firms all became Members of the Exchange. Further, the majority of firms that are Members of the Exchange's affiliate options exchanges, MIAX and MIAX PEARL, also became Members of those exchanges during similar Waiver Periods for the MIAX and MIAX PEARL API Testing and Certification fees. Accordingly, the Exchange (and MIAX and MIAX PEARL) have assumed approximately 100% of the costs associated with conducting API testing and certification for the majority of Member firms approved by the Exchange, MIAX, and MIAX PEARL. Accordingly, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to now adopt a per-instance fee that is reasonably related to (and designed to recover) the Exchange's cost associated with conducting API testing and certification.

The Exchange also tracks the number of hours spent by Exchange personnel providing network connectivity testing and certification services per billable instance. Based on the average number of person hours spent by the Exchange on network connectivity testing and certification services, and based on the Exchange's average cost per FTE of approximately $250,000 (inclusive of all compensation and employee benefits) per year, the Exchange represents that its costs to provide these services are reasonably related to (and often exceed) the amount of the respective testing and certification fees the Exchange proposes to charge for such services. In particular, it takes approximately 20 person hours to complete the network testing and certification process for 1 Gigabit connections, and approximately 40 person hours to complete the network testing and certification process for 10 Gigabit ULL connections. Therefore, the cost to the Exchange to provide network connectivity testing and certification services is, on average, approximately $2,500 per instance for 1 Gigabit connections, and approximately $5,000 per instance for 10 Gigabit ULL connections. Accordingly, the proposed Network Connectivity Testing and Certification fees would enable the Exchange to recover a material portion of such costs. The Exchange believes this is a conservative cost allocation because the Exchange is not allocating any additional costs beyond the employee compensation costs for employees directly involved in this process, such as management review and sign off, technology costs of employees, office space costs of employees, costs associated with supporting departments' time for things such as internal meetings, project management coordination among the individuals who indirectly support the testing and certification process, and various other indirectly-related costs.

The Exchange believes the difference in the proposed membership application fee to be charged to EEMs and Market Makers is an equitable allocation of reasonable dues and fees pursuant to Section 6(b)(4) of the Act[37] because of the additional review and resources involved in processing a Market Maker's application as opposed to an EEM's application, as Market Makers have greater and more complex obligations with respect to doing business on the Exchange.[38]

The Exchange believes its proposal to adopt API Testing and Certification fees and Network Connectivity Testing and Certification fees for Members and non-Members is an equitable allocation of reasonable dues and fees pursuant to Section 6(b)(4) of the Act[39] because it is a per-instance fee that is reasonably related to (and designed to recover) the Exchange's cost associated with providing such API Testing and Certification services and Network Connectivity Testing and Certification services, which consists primarily of the time and resources spent to ensure that Member and non-Member APIs and connectivity function correctly to prevent any System malfunction.

Further, the Exchange believes the price differential in API Testing and Certification fees and Network Connectivity Testing and Certification fees for Members and non-Members is not unfairly discriminatory because, in the Exchange's experience, Member testing utilizes less Exchange resources and employee time than non-Member testing as Members have more experience testing these systems with exchanges, resulting generally in fewer questions and issues arising during the testing and certification process. Also, with respect to API testing and certification, because Third Party

[36] *See id.*

[37] 15 U.S.C. 78f(b)(4).

[38] *See supra* note 17.

[39] 15 U.S.C. 78f(b)(4).

Vendors and Service Bureaus are redistributing data and reselling services to other Members and market participants the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for Members.

The Exchange believes the difference in the proposed 1 Gigabit and 10 Gigabit ULL network connectivity testing and certification fees is an equitable allocation of reasonable dues and fees pursuant to Section 6(b)(4) of the Act[40] because of the additional review and resources involved in testing and certifying a 10 Gigabit ULL connection as opposed to a 1 Gigabit connection, as 10 Gigabit ULL connections offer vastly greater products and services which require significantly more time to test, including Market Maker quoting systems. The Exchange believes its proposed API Testing and Certification fees and Network Connectivity Testing and Certification fees are reasonable and well within the range of non-transaction fees assessed among other exchanges, including the Exchange's affiliate options exchanges, MIAX and MIAX PEARL.[41]

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.

Intra-Market Competition

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. The proposed fees would apply to all new Exchange Members and those firms looking to establish APIs and network connectivity in the same manner. Market participants may not only choose whether to become Exchange Members at all, but may choose to become members at competing options exchanges instead.

The Exchange further believes the proposed fees do not place any market participant at a disadvantage compared to other market participants because the proposed API Testing and Certification and Network Connectivity Testing and Certification fees are intended to cover the situations where a Member or non-Member firm makes changes to its own system for its own business purpose (*i.e.,* instances where a firm is trying to improve its quoting engine), which requires the Exchange to test those re-architected systems. This testing requires the time of Exchange personnel in several departments (Trading Operations, Business, On-Boarding, Membership), and occurs primarily outside of normal business hours, often over the course of the weekend. The proposed fees are a way for the Exchange to recoup its costs associated with this testing. When the Exchange determines to make upgrades to its own system which requires mandatory testing and certification by Members, the Exchange does not charge any fees.

The Exchange believes that the proposed fees do not dampen innovation because the majority of Exchange Members are members of most, if not all, of the other 15 options exchanges. Those exchanges also require testing and certification any time the Member makes changes to its system at those exchanges, and also charge a fee to recoup the costs associated with testing and certifying members. The Exchange also notes that it has never received a complaint from a Member or non-Member any time a Member or non-Member has made a change to its own system that resulted in the Exchange assessing a testing and certification fee. Without some sort of testing and certification fee, the Exchange believes that Members and non-Members might be less efficient in testing their systems, potentially resulting in excessive time being consumed by the Exchange re-testing and re-certifying Members and non-Members, to the detriment of all market participants as Exchange resources are diverted away from other trading operations.

The Exchange also believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition. To the extent that various market participants are charged different fees for the one-time membership application and per-instance API and network connectivity testing, those distinctions are not unfairly discriminatory and do not unfairly burden one set of market participants over another. The difference in the proposed membership application fee to be charged to EEMs and Market Makers is because of the additional review and resources involved in processing a Market Maker's application, as Market Makers have greater and more complex obligations with respect to doing business on the Exchange.[42] The proposed higher fee charged to Third Party Vendors, Service Bureaus and non-Members reflects the greater amount of time spent by MIAX Emerald employees testing and certifying non-Members. It has been MIAX Emerald's experience that Member testing takes less time than non-Member testing because Members have more experience testing these systems with exchanges, resulting in generally fewer questions and issues arising during the testing and certification process. Also, because Third Party Vendors and Service Bureaus are redistributing data and reselling services to other Members and market participants, the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for a single Member. The higher fee charged to non-Members reflects the greater amount of time spent by MIAX Emerald employees testing and certifying non-Members. It has been MIAX Emerald's experience that Member network connectivity testing takes less time than non-Member network connectivity testing because Members have more experience testing these systems with exchanges as generally fewer questions and issues arise during the testing and certification process. The proposed higher fee charged for 10 Gigabit ULL connections versus 1 Gigabit ULL connections reflects the greater amount of time spent by MIAX Emerald employees testing and certifying 10 Gigabit ULL connections. MIAX Emerald's proposed one-time membership application fee and per-instance API Testing and Certification fee levels and Network Connectivity Testing and Certification fee levels, as described herein, are comparable to fee levels charged by other options exchanges for the same or similar services, including those fees assessed by the Exchange's affiliates, MIAX and MIAX PEARL.[43]

The Exchange believes that the proposed API Testing and Certification fees and Network Connectivity Testing and Certification fees do not place certain market participants at a relative disadvantage to other market participants because the fees do not apply unequally to different size market participants, but instead would allow the Exchange to charge for the time and resource necessary for API testing and certification and network connectivity testing and certification for Members and non-Members to ensure proper functioning of all available order types, new order entry, order management, order throughput and mass order cancellation (as well as, for Market Makers, all available quote types, quote

[40] 15 U.S.C. 78f(b)(4).

[41] *See supra* note 30.

[42] *See supra* note 17.

[43] *See supra* notes 18, 19, 20 and 30.

throughput, quote management and cancellation, Aggregate Risk Manager settings and triggers, and confirmation of quotes within the trading engines). Accordingly, the proposed API Testing and Certification fees and network connectivity testing and certification fees do not favor certain categories of market participants in a manner that would impose a burden on competition.

Inter-Market Competition

The Exchange believes the proposed API Testing and Certification fees and Network Connectivity Testing and Certification fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. The Exchange believes that the proposed fees do not impose a burden on competition or on other exchanges that is not necessary or appropriate because of the availability of numerous substitute options exchanges. There are 15 other options exchanges where market participants can become members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[44] and Rule 19b–4(f)(2)[45] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2021–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2021–01. 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–EMERALD–2021–01 and should be submitted on or before February 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02398 Filed 2–4–21; 8:45 am]

BILLING CODE 8011–01–P

[44] 15 U.S.C. 78s(b)(3)(A)(ii).

[45] 17 CFR 240.19b–4(f)(2).

[46] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 11343]

Notice of Department of State Sanctions Actions on Hong Kong Normalization

SUMMARY: The Secretary of State has imposed sanctions on six individuals pursuant to the President's Executive Order on Hong Kong Normalization.

DATES: The Secretary of State's determination regarding the six individuals identified in the **SUPPLEMENTARY INFORMATION** section was effective on January 15, 2021.

FOR FURTHER INFORMATION CONTACT: Taylor Ruggles, Director, Office of Economic Sanctions Policy and Implementation, Bureau of Economic and Business Affairs, Department of State, Washington, DC 20520, tel.: (202) 647 7677, email: *RugglesTV@state.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 4(a)(iii)(A) of Executive Order (E.O.) 13936, the Secretary of State, in consultation with the Secretary of the Treasury, or the Secretary of the Treasury, in consultation with the Secretary of State, may authorize the imposition of sanctions blocking all property or interests in property that are in the United States, that hereafter come within the United States, or that are in or hereafter come within the possession or control of any United States person, of any foreign person upon determining that the person met any criteria set forth in section 4 of E.O. 13936.

The Secretary of State has determined, pursuant to section 4(a)(iii)(A) of E.O. 13936, that You Quan, Sun Wenqing AKA Sun Qingye, and Tam Yiu-Chung, are or have been leaders or officials of entities, including any government entity, that have engaged in, or whose members have engaged in, developing, adopting, or implementing the National Security Law.

The Secretary of State has determined, pursuant to section 4(a)(iii)(A) of E.O. 13936, that Frederic Choi Chin-Pang, Kelvin Kong Hok Lai, and Andrew Kan Kai Yan are foreign persons who are or have been leaders or officials of an entity, including any government entity, that has engaged in, or whose members have engaged in, coercing, arresting, detaining or imprisoning individuals under the authority of, or in developing, adopting, or implementing, the National Security Law.

These persons have been added to the list of Specially Designated Nationals and Blocked Persons List and all property and interests in property

subject to U.S. jurisdiction of these individuals are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

Peter D. Haas,

Acting Assistant Secretary, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 2021–02367 Filed 2–4–21; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF STATE

[Public Notice: 11344]

Report to Congress Pursuant to the National Defense Authorization Act for Fiscal Year 2013 (FY13 NDAA)

ACTION: Notice of report.

SUMMARY: The National Defense Authorization Act for Fiscal Year 2013, (also known as the Iran Freedom and Counter-Proliferation Act of 2012 (IFCA)), as delegated by Presidential Memorandum of June 3, 2013 (''IFCA Delegation Memorandum''), requires the Secretary of State, in consultation with the Secretary of the Treasury, to submit a report to the appropriate congressional committees every 180 days that contains a determination with respect to: (1) Whether Iran is (A) using any of the materials described in IFCA as a medium for barter, swap, or any other exchange or transaction, or (B) listing any of such materials as assets of the Government of Iran for purposes of the national balance sheet of Iran; (2) which sectors of the economy of Iran are controlled directly or indirectly by Iran's Islamic Revolutionary Guard Corps (IRGC); and (3) which of the materials described in subsection (d) are used in connection with the nuclear, military, or ballistic missile programs of Iran. Materials described are graphite, raw or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes.

DATES: The Secretary of State approved this action January 15, 2021.

Contact: Office of Counterproliferation Initiatives, Department of State, Telephone: (202) 647–7594 or *CPI-Sanctions@state.gov.*

SUPPLEMENTARY INFORMATION: On January 9, 2020, the Secretary of State approved the following as noted in 85 FR 3467: For the purpose of implementing the provisions of IFCA delegated to the Secretary of State, including Sections 1245(a)(1)(B), 1245(a)(1)(C), and 1245(e), ''raw or semi-finished metals'' under IFCA 1245(d) includes, but is not limited to, the following materials (including all types of such materials and all alloys or compounds containing such materials): Aluminum, Americium, Antimony, Barium, Beryllium, Bismuth, Boron, Cadmium, Calcium, Cerium, Cesium, Chromium, Cobalt, Copper, Dysprosium, Erbium, Europium, Gallium, Gadolinium, Germanium, Gold, Hafnium, Hastelloy, Inconel, Indium, Iridium, Iron, Lanthanum, Lithium, Lead, Lutetium, Manganese, Magnesium, Mercury, Molybdenum, Monel, Neodymium, Neptunium, Nickel, Niobium, Osmium, Palladium, Platinum, Plutonium, Polonium, Potassium, Praseodymium, Promethium, Radium, Rhenium, Rhodium, Ruthenium, Samarium, Scandium, Silicon, Silver, Sodium, Steels, Strontium, Tantalum, Technetium, Tellurium, Terbium, Thallium, Thorium, Tin, Titanium, Tungsten, Uranium, Vanadium, Ytterbium, Yttrium, Zinc, and Zirconium.

This report pursuant to Section 1245(e) of IFCA covers the period July 1, 2020 to December 31, 2020.

Following a review of the available information, and in consultation with the Department of the Treasury, the Secretary of State has determined that Iran is not using the materials described in Section 1245(d) as a medium for barter, swap, or any other exchange or transaction.

Following a review of the available information, and in consultation with the Department of the Treasury, the Secretary of State has determined Iran is listing gold as an asset of the Government of Iran for the purposes of the National Balance Sheet of Iran.

Following a review of the available information, and in consultation with the Department of the Treasury, the Secretary of State has determined that the construction sector of Iran is controlled directly or indirectly by the IRGC.

Following a review of the available information, and in consultation with the Department of the Treasury, the Secretary of State has determined that the following certain types of materials are used in connection with the nuclear, military, or ballistic missile programs of Iran:

- ALUMINIUM 6061–T6
- ALUMINIUM 6061–O
- ALUMINIUM 6063–T5
- ALUMINIUM 7075–O
- AISI 316L
- 100Cr6
- 115CrV3
- ALUMINIUM 6061–F
- AISI 309
- AISI 304
- ALUMINIUM 6063–T1
- ALUMINIUM 7075–T6
- ZIRCONIUM CARBIDE (ZrC)
- ZrSiO2 (ZIRCON SAND, ZIRCONIUM SILICATE)
- 4340 STEEL

Gonzalo O. Suarez,

Acting Deputy Assistant Secretary, International Security and Non-Proliferation, Department of State.

[FR Doc. 2021–02377 Filed 2–4–21; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice: 11348]

Advisory Committee on Historical Diplomatic Documentation—Notice of Virtual Open Meeting for March 1, 2021

The Advisory Committee on Historical Diplomatic Documentation will meet on March 1 in a virtual open session to discuss the status of the production of the *Foreign Relations* series and any other matters of concern to the Committee.

The Committee will meet in open session from 10:00 a.m. until noon through a virtual platform TBD. Members of the public planning to attend the virtual meeting should RSVP to Julie Fort at *FortJL@state.gov.* RSVP and requests for reasonable accommodation should be sent not later than February 19, 2021. The platform type and instructions on how to join the virtual meeting will be provided upon receipt of RSVP. Note that requests for reasonable accommodation received after February 19 will be considered but might not be possible to fulfill.

Questions concerning the meeting should be directed to Adam M. Howard, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20372, *history@state.gov.*

Zachary A. Parker,

Director, Office of Directives Management, Department of State.

[FR Doc. 2021–02370 Filed 2–4–21; 8:45 am]

BILLING CODE 4710–34–P

DEPARTMENT OF STATE

[Public Notice: 11352]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces meetings of the U.S. State Department's Overseas Security Advisory Council on February 23, June 8, and November 16,

2021. Pursuant to Section 10(d) of the Federal Advisory Committee Act (5 U.S.C. Appendix), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(7)(E), it has been determined that the meetings will be closed to the public. The meetings will focus on an examination of corporate security policies and procedures and will involve extensive discussion of trade secrets and proprietary commercial information that is privileged and confidential, and will discuss law enforcement investigative techniques and procedures. The agendas will include updated committee reports, global threat overviews, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

FOR FURTHER INFORMATION CONTACT: Marsha Thurman, Overseas Security Advisory Council, U.S. Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Jason R. Kight,

Executive Director, Overseas Security Advisory Council, Department of State.

[FR Doc. 2021–02445 Filed 2–4–21; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 11345]

Cultural Property Advisory Committee; Notice of Meeting

AGENCY: Department of State.

ACTION: Notice of meeting.

SUMMARY: We are issuing this notice to announce the location, date, time, and agenda for the next meeting of the Cultural Property Advisory Committee.

DATES: The Cultural Property Advisory Committee (''the Committee'') will meet March 17 and 19, 2021, from 10:00 a.m. to 5:00 p.m. (EDT) via videoconference. The Committee will hold an open session on March 17, 2021, at 2:00 p.m. (EDT). It will last approximately one hour.

Participation: You may participate in the open session by videoconference. To participate, visit *http://culturalheritage.state.gov* for information on how to access the meeting. Please submit any request for reasonable accommodation not later than March 10, 2021, by contacting the Bureau of Educational and Cultural Affairs at *culprop@state.gov.* It may not be possible to accommodate requests made after that date.

Comments: The Committee will review your written comment if it is received by March 3, 2021, at 11:59 p.m. (EDT). You are not required to submit a written comment in order to make an oral comment in the open session.

ADDRESSES: The meeting will be held by videoconference.

Written Comments: You may submit written comments in two ways, depending on whether they contain privileged or confidential information:

- *Electronic Comments:* For ordinary comments, please use *http://www.regulations.gov,* enter the docket [DOS–2021–0003], and follow the prompts to submit your comments.
- *Email Comments:* For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please email submissions to *culprop@state.gov.* Include ''Albania'' and/or ''Egypt'' in the subject line, as appropriate.

FOR FURTHER INFORMATION CONTACT: For general questions concerning the meeting, contact Allison Davis or Andrew Cohen, Bureau of Educational and Cultural Affairs—Cultural Heritage Center, by phone (202–632–6305) or email (*culprop@state.gov*).

SUPPLEMENTARY INFORMATION: In accordance with the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) (''the Act''), the Assistant Secretary of State for Educational and Cultural Affairs calls a meeting of the Cultural Property Advisory Committee (''the Committee'') (19 U.S.C. 2605(e)(2)). The Act describes the Committee's responsibilities. A portion of this meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Meeting Agenda: The Committee will review the request by the Government of the Republic of Albania seeking import restrictions on archaeological and ethnological material. The Committee will also review the proposed extension and amendment of the cultural property agreement with the Government of the Arab Republic of Egypt. In addition, the Committee will undertake a continuing review of the effectiveness of other cultural property agreements and emergency actions currently in force.

Open Session Participation: The Committee will hold an open session of the meeting to receive oral public comments on Albania's request for an agreement and the proposed extension and amendment of the agreement with Egypt on Wednesday, March 17, 2021, from 2:00 p.m. to approximately 3:00 p.m. (EDT). We have provided specific instructions on how to participate or observe the open session at *http://culturalheritage.state.gov.*

You do not need to register to observe the open session. You do not have to submit written comments to make an oral comment in the open session. If you do wish to speak, however, you must request to be scheduled by March 10, 2021, via email (*culprop@state.gov*). Please include your name and any organizational affiliation in this request. The open session will start with a brief presentation by the Committee, after which you should be prepared to answer questions on any written statements you may have submitted. Finally, you may be invited to provide additional oral comments for a maximum of five (5) minutes per participant, time permitting. Due to time constraints, it may not be possible to accommodate all who wish to speak.

Written Comments: If you do not wish to participate in the open session but still wish to make your views known, you may submit written comments for the Committee's consideration. Submit non-privileged and non-confidential information (within the meaning of 19 U.S.C. 2605(i)(1)) regarding the new request from Albania and/or the proposed extension of the agreement with Egypt using the regulations.gov website (listed in the ''COMMENTS'' section above) not later than March 3, 2021, at 11:59 p.m. (EDT). For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please send comments to *culprop@state.gov.* Include ''Albania'' and/or ''Egypt'' in the subject line. In all cases, your written comments should relate specifically to the determinations specified in the Act at 19 U.S.C. 2602(a)(1). Written comments submitted via regulations.gov are not private and are posted at *http://www.regulations.gov.* Because written comments cannot be edited to remove any personally identifying or contact information, we caution against including any such information in an electronic submission without appropriate permission to disclose that information (including trade secrets and commercial or financial information that are privileged or confidential within the meaning of 19 U.S.C. 2605(i)(1)). We request that any party soliciting or aggregating written comments from other persons inform those persons that the Department will not edit their comments to remove any identifying or contact information and that they therefore should not include any such information in their comments

that they do not want publicly disclosed.

Allison R. Davis,

Executive Director CPAC, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–02371 Filed 2–4–21; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11335]

30 Day Notice of Proposed Information Collection: Supplemental Questions for Visa Applicants

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 and implementing OMB guidance, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to March 8, 2021.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at OMB. You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Megan Herndon, Senior Regulatory Coordinator, Visa Services, Bureau of Consular Affairs at *PRA_BurdenComments@state.gov* or over telephone at (202) 485–7586.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Supplemental Questions for Visa Applicants.
- *OMB Control Number:* 1405–0226.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* CA/VO.
- *Form Number:* DS–5535.
- *Respondents:* Certain immigrant and nonimmigrant visa applicants worldwide who have been determined to warrant additional scrutiny in connection with terrorism, national security-related, or other visa ineligibilities.
- *Estimated Number of Respondents:* 75,000.
- *Estimated Number of Responses:* 75,000.
- *Average Time per Response:* 55 minutes.
- *Total Estimated Burden Time:* 68,750 hours.
- *Frequency:* Once per respondent's application.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

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 of 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 records. 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 Department requests an extension on the collection of following information, from a subset of visa applicants worldwide, in order to more rigorously evaluate applicants for terrorism, national security-related, or other visa ineligibilities:

- Travel history during the last fifteen years, including source of funding for travel;
- Address history during the last fifteen years;
- Employment history during the last fifteen years;
- All passport numbers and country of issuance held by the applicant;
- Names and dates of birth for all siblings;
- Name and dates of birth for all children; and
- Names and dates of birth for all current and former spouses, or civil or domestic partners.

Regarding travel history, applicants may be requested to provide details of their international or domestic (within their country of nationality) travel, if it appears to the consular officer that the applicant has been in an area while the area was under the operational control of a terrorist organization as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(3)(B)(vi). Applicants may be asked to recount or explain the details of their travel, and when possible, provide supporting documentation. While the Department previously required applicants completing the DS–5535 to provide their social media platforms and identifiers, also known as handles, used during the last five years, and phone numbers and email addresses used during the last five years, the form no longer includes those fields, which are now incorporated into the DS–156 *Nonimmigrant Visa Application,* DS–160 *Online Nonimmigrant Visa Application.*

This information collection continues implementation of the directive of the President, in the *Memorandum for the Secretary of State, the Attorney General, the Secretary of Homeland Security* of March 6, 2017, to implement additional protocols and procedures focused on ''ensuring the proper collection of all information necessary to rigorously evaluate all grounds of inadmissibility or deportability, or grounds for the denial of other immigration benefits.'' Consular posts worldwide regularly engage with U.S. law enforcement and partners in the U.S. intelligence community to identify characteristics of applicant populations warranting increased scrutiny. The additional information collected facilitates consular officer efforts to apply more rigorous evaluation of these applicants for visa ineligibilities. In accordance with existing authorities, visas may not be denied on the basis of race, religion, ethnicity, national origin, political views, gender, or sexual orientation.

Failure to provide requested information will not necessarily result in visa denial, if the consular officer determines the applicant has provided a credible explanation why he or she cannot answer a question or provide requested supporting documentation, such that the consular officer is able to conclude that the applicant has provided adequate information to determine the applicant's eligibility to receive the visa. The information requested on this form will not be used to deny visas based on applicants' race, religion, ethnicity, national origin, political views, gender, or sexual orientation.

Section 3 of the President's January 20, 2021 *Proclamation on Ending Discriminatory Bans on Entry to The United States,* requires the Department

to assemble a report on current screening and vetting procedures, information sharing practices, and recommendations to improve these activities, to include an evaluation of the usefulness of the DS–5535. The Department is aware of these requirements, and is committed to evaluating and improving the utility of the DS–5535 accordingly.

Methodology

Department of State consular officers at visa-adjudicating posts worldwide will ask the additional questions to resolve an applicant's identity or to vet for terrorism, national security-related, or other visa ineligibilities when the consular officer determines that the circumstances of a visa applicant, a review of a visa application, or responses in a visa interview indicate a need for greater scrutiny. The additional questions may be sent electronically to the applicant or be presented orally or in writing at the time of the interview.

Julie M. Stufft,

Acting Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2021–02413 Filed 2–4–21; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 11347]

Proposal To Extend and Amend Cultural Property Agreement Between the United States and Egypt

AGENCY: Department of State.

ACTION: Public notice.

SUMMARY: Proposal to extend and amend the *Memorandum of Understanding Concerning the Imposition of Import Restrictions on Categories of Archaeological Material of the Arab Republic of Egypt.*

FOR FURTHER INFORMATION CONTACT: Catherine Foster, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: 202–632–6301; *culprop@state.gov;* include ''Egypt'' in the subject line.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), an extension and amendment of the *Memorandum of Understanding Concerning the Imposition of Import Restrictions on Categories of Archaeological Material of the Arab Republic of Egypt* is hereby proposed.

A copy of the Memorandum of Understanding, the Designated List of categories of material restricted from import into the United States, and related information can be found at the Cultural Heritage Center website: *http://culturalheritage.state.gov.*

Allison R. Davis,

Executive Director CPAC, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–02369 Filed 2–4–21; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11346]

Notice of Receipt of Request From the Government of the Republic of Albania Under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice of receipt of request from Albania for cultural property protection.

FOR FURTHER INFORMATION CONTACT: Chelsea Freeland, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: 202–632–6301; *culprop@state.gov;* include ''Albania'' in the subject line.

SUPPLEMENTARY INFORMATION: The Government of the Republic of Albania made a request to the Government of the United States on November 9, 2020, under Article 9 of the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.* Albania's request seeks U.S. import restrictions on archaeological and ethnological material representing Albania's cultural patrimony. Pursuant to the authority vested in the Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), notification of the request is hereby published. A public summary of Albania's request and information about U.S. implementation of the 1970 UNESCO Convention will be available at the Cultural Heritage Center website: *http://culturalheritage.state.gov.*

Allison R. Davis,

Executive Director CPAC, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–02368 Filed 2–4–21; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Programmatic Environmental Impact Statement—Clinch River Nuclear Site Advanced Nuclear Reactor Technology Park

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) intends to prepare a Programmatic Environmental Impact Statement (PEIS) to address the potential environmental effects associated with the construction, operation, and decommissioning of an advanced nuclear reactor technology park at the Clinch River Nuclear (CRN) Site in Oak Ridge, Roane County, Tennessee. The park would contain one or more advanced nuclear reactors with a cumulative electrical output not to exceed 800 megawatts electric (MWe). TVA plans to evaluate a variety of alternatives including a no-action alternative. Public comments are invited to identify other potential alternatives, information, and analysis relevant to the proposed action.

DATES: The public scoping period begins with the publication of this Notice in the **Federal Register** and comments on the scope of the PEIS must be received or postmarked by March 19, 2021. To accommodate social distancing guidelines and public health recommendations related to the COVID–19 pandemic, TVA will host a virtual open house on March 1, 2021 from 6:00–8:00 p.m. EST. Visit *https://www.tva.com/nepa* to obtain more information.

ADDRESSES: Comments may be submitted in writing to J. Taylor Cates, NEPA Specialist, 1101 Market Street, BR 2C–C, Chattanooga, TN 37402. Comments may also be submitted online at: *https://www.tva.com/nepa* or by email to *nepa@tva.gov.* Due to COVID–19 teleworking restrictions, electronic submission of comments is encouraged to ensure timely review and consideration.

FOR FURTHER INFORMATION CONTACT: Other related questions should be sent to Tennessee Valley Authority, J. Taylor Cates, NEPA Specialist, 1101 Market Street, BR 2C–C, Chattanooga, TN, 37402, 423–751–2732, or *jtcates@tva.gov.*

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Council on Environmental Quality's (CEQ) regulations for implementing the National Environmental Policy Act (NEPA) at 40 CFR parts 1500–1508 and Section 106 of the National Historic

Preservation Act (NHPA), and its implementing regulations (36 CFR part 800). The PEIS will be prepared consistent with the 2020 CEQ regulations for implementing NEPA at 40 CFR parts 1500–1508 (85 FR 43304–43376, Jul. 16, 2020).

TVA Power System

TVA is a corporate agency and instrumentality of the United States created by and existing pursuant to the TVA Act of 1933 (16 U.S.C. part 831), to, among other things, foster the social and economic welfare of the people of the Tennessee Valley region and promote the proper use and conservation of the Valley's natural resources. TVA generates and distributes electricity for business customers and local power distributors, serving more than 10 million people in parts of seven southeastern states. TVA is fully self-financed without Federal appropriations and funds operations through electricity sales and power system bond financing. In addition to operating and investing its revenues in its electric system, TVA provides flood control, navigation and land management for the Tennessee River system, and assists local power companies and state and local governments with economic development and job creation.

Dependable electrical capacity on the TVA power system is about 33,000 MWe. TVA's current generating assets include one pumped-storage facility, one diesel generator site, three nuclear plants, five coal plants, nine combustion turbine plants, eight combined cycle plants, 14 solar energy sites, 29 hydroelectric dams, and several small renewable generating facilities. A portion of delivered power is obtained through long-term power purchase agreements. About 13 percent of TVA's annual generation is from hydro; 14 percent is from coal; 27 percent is from natural gas; 41 percent is from nuclear; and the remainder is from wind, solar, and energy efficiency programs. TVA transmits electricity from these facilities over almost 16,000 miles of transmission lines. Like other utility systems, TVA has power interchange agreements with utilities surrounding the Tennessee Valley region, and buys and sells power on an economic basis almost daily.

Background

The CRN Site is in Oak Ridge, Roane County, Tennessee, on 935 acres of TVA-managed land on the Clinch River arm of the Watts Bar Reservoir. The site is located adjacent to the U.S. Department of Energy's (DOE) Oak Ridge Reservation, a roughly 33,500 acre reservation with defense, research, and environmental cleanup missions.

In May 2016, TVA submitted an application to the Nuclear Regulatory Commission (NRC) for an Early Site Permit (ESP) at the CRN Site for two or more new nuclear power units demonstrating Small Modular Reactors (SMR) technology with a total combined nuclear generating capacity not to exceed 800 MWe. SMRs provide the benefits of nuclear power in situations where large units, generally considered units with approximate electrical output exceeding 1000 MWe, are not appropriate or practical because of various constraints (*i.e.* local transmission system, limited physical space or water availability, constraints on the availability of capital for construction and operation, proximity to population centers, etc.). A NRC ESP provides early resolution of site safety and environmental issues, which in turn provides predictability and stability in any subsequent NRC licensing process.

The NRC prepared and released a Final EIS in April 2019 to assess the environmental aspects of their action, to decide whether or not to issue an ESP to TVA for the CRN Site. Following the NRC ESP Final EIS determination, the NRC issued the ESP to TVA in December 2019. The ESP provides NRC approval of the CRN site for considering new nuclear power units demonstrating SMR technology; the ESP does not authorize TVA to construct or operate a nuclear facility. TVA must apply for and receive additional licenses from the NRC prior to initiating construction or operation of advanced nuclear reactors at the CRN Site.

Project Purpose and Need

In June 2019, TVA released the Final 2019 Integrated Resource Plan (IRP) and the associated IRP Final EIS. The IRP identified the various resources that TVA intends to pursue to meet the energy needs of the Valley over the 20-year planning period in accordance with TVA's mission. The 2019 IRP recommends that TVA continue to evaluate emerging nuclear technologies, including SMRs, as part of technology innovation efforts aimed at developing future electricity generation capabilities.

TVA's purpose and need for the CRN Advanced Nuclear Reactor Technology Park is two-fold. First is to evaluate and demonstrate the feasibility of deploying advanced nuclear reactors to support TVA's mission of providing safe, clean, reliable, and low-cost energy to the Tennessee Valley. Second is to evaluate emerging nuclear technologies as part of technology innovation efforts aimed at developing future generation capacities.

TVA will consider the potential environmental effects associated with the proposed construction, operation, and decommissioning of one or more advanced nuclear reactors, with a cumulative electrical output not to exceed 800 MWe at the CRN Site. In addition to producing energy, advanced reactors could support a low carbon future, including demonstration of technologies such as microgrids, grid resiliency, waste heat energy storage for grid support, and the production of isotopes of hydrogen and other elements.

Preliminary Proposed Action and Alternatives

The PEIS will address a range of alternatives for construction, operation, and decommissioning of an advanced nuclear reactor technology park at the CRN Site. Action alternatives include construction of light water reactor (LWR) alternatives and/or non-LWR alternatives at the CRN Site. There are two areas within the 935-acre CRN Site that are best suitable for development; these are designated as Area 1 and Area 2. Therefore, TVA plans to evaluate four discrete alternatives (A–D) for these proposed actions including the No-Action Alternative (A) and an advanced nuclear reactor technology park at Area 1 (B); at Area 2 (C); at Area 1 and Area 2 (D). Two additional alternatives E and F were considered but eliminated.

Anticipated Environmental Impacts

The PEIS will include a detailed evaluation of all environmental, social, and economic impacts associated with implementation of the proposed action. Resource areas to be addressed in the PEIS include, but are not limited to: Air quality; aquatics; botany; climate change; cultural resources; emergency planning; floodplains; geology and groundwater; hydrothermal; land use; navigation; noise and vibration; radiological safety; soil erosion and surface water; socioeconomics and environmental justice; threatened and endangered species; transportation; visual; waste; water use; wetlands; and wildlife. Measures to avoid, minimize, and mitigate adverse effects will be identified and evaluated in the PEIS.

Anticipated Permits and Other Authorizations

TVA anticipates consulting on the required authorities including, but not limited to: The Endangered Species Act; Bald and Golden Eagle Protection Act; Rare Species Protection and Conservation Act; National Historic

Preservation Act; Clean Air Act; and Federal Clean Water Act.

TVA anticipates seeking required permits or authorizations, from the following governmental entities: The Nuclear Regulatory Commission; Federal Aviation Administration; U.S. Department of Transportation; Tennessee Department of Transportation; U.S. Army Corps of Engineers; U.S. Coast Guard; U.S. Environmental Protection Agency; Tennessee Department of Environment and Conservation; U.S. Fish and Wildlife Service; the City of Oak Ridge; Tennessee State Historic Preservation Officer; Tribal Historic Preservation Officers; and Texas Department of State Health Services, Radiation Control Program, Radiation Safety Licensing Branch. This is not an exhaustive list, other permits or authorizations may be sought as required or appropriate.

Public Participation and Scoping Process

TVA seeks comment and participation from all interested parties for the proposed action, including, but not limited, to assisting TVA in determining the scope of issues for analysis in the PEIS. Information about this project is available at *https://www.tva.com/nepa,* which includes a link to an online public comment page. TVA invites the public to identify other potential alternatives, information, and analysis relevant to the proposed action. Comments must be received or postmarked no later than March 19, 2021. Federal, state, local agencies, and Native American Tribes are also invited to provide comments. Please note that any comments received, including names and addresses, will become part of the project administrative record and will be available for public inspection.

To accommodate social distancing guidelines and public health recommendations related to the COVID–19 pandemic, TVA will host a virtual open house during the scoping period. The virtual open house will be held on March 1, 2021, from 6:00–8:00 p.m. EST. Visit *https://www.tva.com/nepa* to obtain more information about the virtual open house. Additional open house details will be available on the project site by February 17, 2021.

PEIS Preparation and Schedule

TVA will consider comments received during the scoping period and develop a scoping report, which will be published at *https://www.tva.com/nepa.* The scoping report will summarize public and agency comments that were received and identify the projected schedule for completing the PEIS process. Following completion of the CRN Site environmental analysis, TVA will post a Draft PEIS for public review and comment on the project web page. TVA anticipates holding a public open house, which may be virtual, after releasing the Draft PEIS. Open house details will be posted on TVA's website in conjunction with the Draft PEIS. TVA expects to release the Draft PEIS in the Fall of 2021.

TVA will consider the substantive comments received on the Draft PEIS, financial assessments, engineering evaluations, risk evaluations, and other applicable evaluations in the Final PEIS before selecting one or more alternatives. TVA projects completing a Final PEIS in Spring 2022. Subsequently, a final determination on proceeding with the CRN Site will be documented in a Record of Decision.

Authority: 40 CFR 1501.9.

Rebecca Tolene,

Vice President, Environment.

[FR Doc. 2021–02144 Filed 2–4–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project, I–10 Blythe Pavement Rehabilitation Project in the County of Riverside, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 6, 2021. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Antonia Toledo, Senior Environmental Planner, California Department of Transportation-District 8, 464 W 4th Street, MS–820, San Bernardino, CA 92401. Office Hours: 8:00 a.m.—5:00 p.m., Pacific Standard Time, telephone, (909) 501–5741 or email *Antonia.Toledo@dot.ca.gov.* For FHWA, contact David Tedrick at (916) 498–5024 or email *david.tedrick@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: rehabilitation of the existing asphalt concrete (AC) pavement on Interstate 10 from Post Mile (PM) R134.0 to PM R156.5 in the County of Riverside. Rehabilitation Activities include removal and replacement of existing inside and outside shoulders, guardrails, rumble strips, drainage inlets, and dikes, and installation of oversized drains. The project will also involve upgrades to ramp facilities for ADA compliance, installation of two temporary detour lanes in the existing median, extension of existing rock slope protection at bridge locations, and hydroseeding the median for erosion control and vegetation restoration. The primary purpose of this project is to restore and extend the life of existing pavement for a minimum of forty years, enhance trip reliability, and consequently minimize expenditures associated with future maintenance. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA)/Finding of No Significant Impact (FONSI) for the project, approved on July 27, 2020, and in other documents in Caltrans' project records. The FEA, FONSI and other project records are available by contacting Caltrans at the addresses provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality (CEQ) regulations
2. National Environmental Policy Act of 1969, as amended, 42 U.S.C 4331(b)(2)
3. Federal Highway Act of 1970, U.S.C 772
4. Federal Clean Air Act of 1977 and 1987
5. Clean Water Act of 1977 and 1987
6. Federal Water Pollution Control Act of 1972
7. Safe Drinking Water Act of 1944, as amended
8. Executive Order 11988, Floodplain

Management
9. Historic Sites Act of 1935
10. Endangered Species Act of 1973
11. Executive Order 11990, Protection of Wetlands
12. Executive Order 13112, Invasive Species
13. Fish and Wildlife Coordination Act of 1934, as amended
14. Migratory Bird Treaty Act of 1918, as amended
15. Title VI of the Civil Rights Act of 1964, as amended
16. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
17. National Historic Preservation Act of 1966, as amended
18. Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act)
19. Farmland Protection Policy Act of 1994
20. Americans with Disabilities Act (ADA), 1990
21. Rehabilitation Act, Section 504
22. Comprehensive Environmental Response, Compensation and Liability Act of 1980
23. Resource Conservation and Recovery Act of 1976
24. Occupational Safety and Health Act of 1970
25. Toxic Substances Control Act of 1976
26. Executive Order 12088, Federal Compliance with Pollution Control Standards

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: February 2, 2021.

Rodney Whitfield,

Director, Financial Services, Federal Highway Administration, California Division.

[FR Doc. 2021–02448 Filed 2–4–21; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2020–0096]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a letter dated December 14, 2020, Brightline West (Brightline) petitioned the Federal Railroad Administration (FRA) for a waiver from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 221, 229, 231, and 238, and an exemption from certain requirements of chapter 203, title 49 of the United States Code (U.S.C). FRA assigned the petition Docket Number FRA–2020–0096.

Brightline's requests for relief relate to its planned operation of new high-speed trainsets on a new high-speed rail line between Victorville, California, and Las Vegas, Nevada. Brightline indicates that the fully electric trainsets will be capable of operating up to 186 miles per hour. Further, Brightline indicates that Siemens Mobility will manufacture eight trainsets (referred to as ''Valero Trainsets''), and Brightline will have the option of ordering an additional twelve. Manufacturing of the Valero Trainsets is scheduled to start in January 2022 in the Siemens plant in Krefeld, Germany, with a planned delivery of the trains to the United States for testing in April 2023. The projected start of passenger service is March 2024.

According to Brightline, the subject rail corridor will be built within the right-of-way of Interstate Highway 15 and will be electrified, thus ensuring the rail line can operate in an energy efficient and sustainable manner. Because the infrastructure will be built and operated as a dedicated right-of way, Brightline further indicates that no mixed traffic with Tier I or II passenger trains will occur and the rail corridor will have no public highway-rail nor rail-rail at-grade crossings. FRA also understands that no freight traffic will be moved on the track.

Brightline indicates that the Valero Trainsets will be built to FRA's existing Tier III passenger equipment safety standards, codified under 49 CFR part 238, subpart H, and will meet certain consensus recommendations from the Railroad Safety Advisory Committee (RSAC) to FRA related to high-speed passenger equipment (those consensus recommendations to FRA are attached as Annex A to Brightline's waiver petition). Accordingly, Brightline's waiver request asks FRA to waive the existing applicable regulatory requirements of 49 CFR parts 221, 229, 231, and 238, and instead apply to the Valero Trainsets, the alternative standards outlined in the referenced RSAC recommendations.

Brightline also specifically requests that FRA waive the requirements of 49 CFR 238.112 related to door emergency egress and rescue access systems and approve an alternative solution proposed in its waiver request.

Finally, Brightline requests that FRA exercise its authority under 49 U.S.C. 20306 (Section 20306) to exempt the Valero Trainsets from the requirement of 49 U.S.C. 20302 (Section 20302), which mandates that railroad vehicles be equipped with (1) secure sill steps and an efficient hand brake; (2) secure grab irons or handholds on the vehicle's ends and sides for greater security to individuals coupling and uncoupling the vehicle; and (3) the standard height of drawbars. *See* 49 U.S.C. 20302(a)(1)(B), (a)(2), and (a)(3).

In support of its request for relief, Brightline asserts that the Valero Trainsets have specific technologically advanced features that justify an exemption from Section 20302. First, Brightline notes that individual units in the trainset cannot be uncoupled except within a maintenance facility, protected by blue signal rules, and under the direction of trained maintenance personnel. This eliminates the need for train crews to perform traditional ''switching'' operations. Second, for the trainset's ends, which may be coupled to another trainset during regular service in double traction mode or during an emergency rescue operation, Brightline indicates there is a fully automatic coupler with a remote-controlled uncoupling mechanism in the operating cab, providing electric and pneumatic connections, making uncoupling levers unnecessary. Third, as it is not required for a person to step between the vehicle's end to connect jumper cables or air hoses, end handholds are not needed. Finally, because there are operating cabs on both ends of the trainset, ''reverse moves'' are performed with a conductor or brakeman riding inside the opposite, or non-controlling, cab and not riding the exterior of the trainset.

Section 20306 authorizes FRA to exempt rail equipment from the requirements of 49 U.S.C. chapter 203, including Section 20302, when those requirements ''preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations under existing law.'' Section 20306 requires FRA to base any such exemption on either (1) findings developed at a hearing; or (2) an agreement between labor and the developer of the equipment.

As Brightline indicates in its Petition, FRA has previously held Section 20306 hearings for equipment substantially similar to the Valero Trainsets.[1] The equipment was also proposed to be operated in substantially similar operating environments to that which Brightline proposes in this docket.[2] Accordingly, Brightline asserts that no new information on the Valero

[1] *See* FRA Docket Nos. FRA–2019–0066 (Amtrak) and FRA–2019–0068 (Texas Central Railroad (*see also* 85 FR 69700 (Nov. 3, 2020). Both FRA dockets are available for review on *www.regulations.gov.*

[2] *Id.*

Trainset's safety appliances could be gathered from another public hearing. As a result, FRA finds that holding a public hearing under Section 20306 in response to Brightline's current exemption request is not necessary and FRA intends to rely on the findings from these previous hearings when considering Brightline's current exemption request.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. Although, for the reasons discussed above, FRA does not anticipate scheduling a public hearing, if any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.

Communications received by March 22, 2021 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2021–02365 Filed 2–4–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2005–21179]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on December 3, 2020, Union Pacific Railroad Company (UPRR) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 229, Railroad Locomotive Safety Standards, and part 232, Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-Of-Train Devices. FRA assigned the petition Docket Number FRA–2005–21179.

Specifically, UPRR requests to extend its relief from 49 CFR 229.49, *Main reservoir systems,* and 49 CFR 232.103, *General Requirements for All Train Brake Systems,* for locomotives having a safety valve on the main reservoir, which prevents accumulation of more than 25 psi above maximum working pressure. UPRR states it has been operating under the requirements set forth in this waiver for 15 years and has found no adverse effect on the safety of operations.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 22, 2021 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2021–02364 Filed 2–4–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the OCC, the Board, and the FDIC (the agencies)

may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to revise and extend the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051), which are currently approved collections of information. The FFIEC has also approved the Board's publication for public comment, on behalf of the agencies, of a proposal to revise and extend the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S), which also are currently approved collections of information. The agencies are requesting comment on revisions to the reporting forms and instructions for the Call Reports and the FFIEC 002 related to the exclusion of sweep deposits and certain other deposits from reporting as brokered deposits, as indicated by the agencies in the Net Stable Funding Ratio (NSFR) final rule and by the FDIC in its Final Rule on Brokered Deposits and Interest Rate Restrictions (brokered deposits final rule), respectively. In addition, the agencies are proposing revisions to the Call Report and FFIEC 002 instructions addressing brokered deposits to align them with the brokered deposits final rule. The changes to the Call Reports and the FFIEC 002 are proposed to take effect as of the June 30, 2021, report date.

DATES: Comments must be submitted on or before April 6, 2021.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the ''Call Report and FFIEC 002 Deposit-Related Revisions,'' will be shared among the agencies.

OCC: You may submit comments, by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Office of the Comptroller of the Currency, Attention: 1557–0081, 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 ''1557–0081'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* 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 information collection beginning on the date of publication of the second notice for this collection by the following method:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0081.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

Board: You may submit comments, which should refer to ''Call Report and FFIEC 002 Deposit-Related Revisions,'' 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 ''Call Report and FFIEC 002 Deposit-Related Revisions'' in the subject line of the message.
- *Fax:* (202) 395–6974.
- *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 on the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

FDIC: You may submit comments, which should refer to ''Call Report and FFIEC 002 Deposit-Related Revisions,'' by any of the following methods:

- *Agency Website: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the FDIC's website.
- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: comments@FDIC.gov.* Include ''Call Report [and FFIEC 002] Deposit-Related Revisions'' in the subject line of the message.
- Mail: Manuel E. Cabeza, Counsel, Attn: Comments, Room MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Public Inspection:* All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/* including any personal information provided. Paper copies of public comments may be requested from the FDIC Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the proposed revisions to the information collections discussed in this notice, please contact any of the agency staff whose names appear below. In addition, copies of the report forms for the Call Reports can be obtained at the FFIEC's website (*https://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Kevin Korzeniewski, Counsel, Chief Counsel's Office, (202) 649–5490.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Manuel E. Cabeza, Counsel, (202) 898–3767, Legal Division, Federal

Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Affected Reports

The proposed changes discussed below affect the Call Reports and the FFIEC 002.

A. Call Reports

The agencies propose to extend for three years, with revision, their information collections associated with the FFIEC 031, FFIEC 041, and FFIEC 051 Call Reports.

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Number: FFIEC 031 (Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices), FFIEC 041 (Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only), and FFIEC 051 (Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less Than $5 Billion).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

Type of Review: Revision and extension of currently approved collections.

OCC

OMB Control No.: 1557–0081.

Estimated Number of Respondents: 1,111 national banks and federal savings associations.

Estimated Average Burden per Response: 42.09 burden hours per quarter to file.

Estimated Total Annual Burden: 187,048 burden hours to file.

Board

OMB Control No.: 7100–0036.

Estimated Number of Respondents: 739 state member banks.

Estimated Average Burden per Response: 45.61 burden hours per quarter to file.

Estimated Total Annual Burden: 134,823 burden hours to file.

FDIC

OMB Control No.: 3064–0052.

Estimated Number of Respondents: 3,263 insured state nonmember banks and state savings associations.

Estimated Average Burden per Response: 40.13 burden hours per quarter to file.

Estimated Total Annual Burden: 523,777 burden hours to file.

The estimated average burden hours collectively reflect the estimates for the FFIEC 031, the FFIEC 041, and the FFIEC 051 reports for each agency. When the estimates are calculated by type of report across the agencies, the estimated average burden hours per quarter are 86.45 (FFIEC 031), 55.52 (FFIEC 041), and 35.38 (FFIEC 051). The changes to the Call Report forms and instructions proposed in this notice result in an increase in estimated average burden hours per quarter by type of report of 0.64 (FFIEC 031), 0.32 (FFIEC 041) and 0.11 (FFIEC 051). The estimated burden per response for the quarterly filings of the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (*e.g.,* size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices).

Type of Review: Extension and revision of currently approved collections.

Legal Basis and Need for Collections

The Call Report information collections are mandatory: 12 U.S.C. 161 (national banks), 12 U.S.C. 324 (state member banks), 12 U.S.C. 1817 (insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (federal and state savings associations). At present, except for selected data items and text, these information collections are not given confidential treatment.

Banks and savings associations submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data serve a regulatory or public policy purpose by assisting the agencies in fulfilling their shared missions of ensuring the safety and soundness of financial institutions and the financial system and protecting consumer financial rights, as well as agency-specific missions affecting federal and state-chartered institutions, such as conducting monetary policy, ensuring financial stability, and administering federal deposit insurance. Call Reports are the source of the most current statistical data available for identifying areas of focus for on-site and off-site examinations. Among other purposes, the agencies use Call Report data in evaluating institutions' corporate applications, including interstate merger and acquisition applications for which the agencies are required by law to determine whether the resulting institution would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Call Report data also are used to calculate the risk-based assessments for insured depository institutions.

B. FFIEC 002 and 002S

The Board proposes to extend for three years, with revision, the FFIEC 002 and FFIEC 002S reports.

Report Titles: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank.

Form Numbers: FFIEC 002; FFIEC 002S.

OMB control number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

Respondents: All state-chartered or federally-licensed U.S. branches and agencies of foreign banking organizations, and all non-U.S. branches managed or controlled by a U.S. branch or agency of a foreign banking organization.

Estimated Number of Respondents: FFIEC 002—209; FFIEC 002S—38.

Estimated Average Burden per Response: FFIEC 002—24.87 hours; FFIEC 002S—6.0 hours.

Estimated Total Annual Burden: FFIEC 002—20,791 hours; FFIEC 002S—912 hours.

Type of Review: Revision of currently approved collections.

Legal Basis and Need for Collection

On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data also are used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. In addition, FFIEC 002 data are used to calculate the risk-based assessments for FDIC-insured U.S. branches of foreign banks.

The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. A non-U.S. branch is managed or controlled by a U.S. branch or agency if a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in

respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's FFIEC 002.

These information collections are mandatory (12 U.S.C. 3105(c)(2), 1817(a)(1) and (3), and 3102(b)). Except for select sensitive items, the FFIEC 002 is not given confidential treatment; the FFIEC 002S is given confidential treatment (5 U.S.C. 552(b)(4) and (8)). The data from both reports are used for (1) monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund and the Bank for International Settlements that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of all three agencies.

II. Current Actions

A. Background

1. Net Stable Funding Ratio Rulemaking

On October 20, 2020, the agencies announced the adoption of a final rule implementing the NSFR relevant for certain large U.S. banking institutions with $100 billion or more in total consolidated assets.[1] The final rule assigned a 90 percent Available Stable Funding (ASF) factor to affiliate sweep deposits provided by a retail customer or counterparty. Also, a 95 percent ASF factor was assigned to affiliate sweep deposits provided by a retail customer or counterparty where the entire amount of the sweep deposit is covered by deposit insurance and where an institution subject to the NSFR final rule has demonstrated to the satisfaction of its appropriate Federal banking agency that withdrawal of the deposit is highly unlikely to occur during a liquidity stress event. Other sweep deposits (*i.e.,* non-affiliate sweep deposits provided by a retail customer or counterparty and certain sweep deposits provided by wholesale, non-financial customers) were assigned a 50 percent ASF factor, irrespective of the level of deposit insurance. Additionally, in the Supplementary Information section to the NSFR final rule, the agencies indicated they will continue to review the treatment of sweep deposits under the Liquidity Coverage Ratio (LCR) and NSFR rules.[2] As part of this effort, the agencies are proposing to collect new data items in the Call Reports that would help evaluate funding stability of sweep deposits over time to determine their appropriate treatment under applicable liquidity regulations.

This proposal to capture new Call Report data items for sweep deposits would provide the agencies with several benefits for its understanding of liquidity risks relevant to institutions of all sizes. First, the agencies would be able to better observe funding dynamics, between insured and partially insured sweep deposits, thereby providing data on the funding stability of partially insured sweep deposits. Second, by having institutions with $100 billion or more in total assets report sweep deposits for different types of counterparties, any material differences in the stability of different types of counterparties that transact in sweep deposits would be more transparent for monitoring over time to determine their appropriate treatment under liquidity regulations.

Further, as noted in the NSFR final rule, sweep deposits received from affiliates have different stability characteristics than sweep deposits received from non-affiliates based on the varying priority and reliability of each affiliate and non-affiliate sweep deposits. The proposed new data items would provide the agencies with observations about the varying liquidity and other risk characteristics of these different types of sweep deposits.

2. Brokered Deposits Rulemaking

On December 15, 2020, the FDIC issued the brokered deposits final rule.[3] This rule accomplished several objectives, including establishing a new framework for analyzing certain provisions of the ''deposit broker'' definition,[4] including ''facilitating'' and ''primary purpose.''[5] The brokered deposits final rule also reaffirmed the intent stated in the interagency NSFR final rule to update the Call Report to collect information related to sweep deposits.[6] The FDIC plans to monitor this data and could consider in the future whether modifications to deposit insurance assessment pricing are warranted, consistent with the statutory requirement that the assessments be risk-based.

Relevant for brokered deposits, Section 29 of the FDI Act provides that an agent or nominee meets the primary purpose exception to the ''deposit broker'' definition when the primary purpose of the agent or nominee is not the placement of funds with depository institutions. In the brokered deposits final rule, the FDIC adopted revised criteria for the primary purpose exception based on the relationship between the agent or nominee and its customers. Specifically, the primary purpose exception applies when the primary purpose of the agent's or nominee's business relationship with its customers is not the placement of funds with depository institutions. The following business relationships were identified in the brokered deposits final rule as ''designated exceptions'' from the deposit broker definition and are business relationships in which, with respect to a particular business line:

(1) Less than 25 percent of the total assets that the agent or nominee has under administration for its customers is placed at depository institutions (25 percent test);

(2) 100 percent of depositors' funds that the agent or nominee places, or assists in placing, at depository institutions are placed into transactional accounts that do not pay any fees, interest, or other remuneration to the depositor;

(3) a property management firm places, or assists in placing, customer funds into deposit accounts for the primary purpose of providing property management services;

(4) the agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of providing cross-border clearing services to its customers;

(5) the agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of providing mortgage servicing;

(6) a title company places, or assists in placing, customer funds into deposit accounts for the primary purpose of facilitating real estate transactions;

(7) a qualified intermediary places, or assists in placing, customer funds into deposit accounts for the primary purpose of facilitating exchanges of

[1] See the NSFR final rule attached to OCC News Release 2020–138, Board Press Release, and FDIC Press Release 116–2020, all of which are dated October 20, 2020.

[2] 12 CFR part 50 (OCC); 12 CFR part 249 (Board); 12 CFR part 329 (FDIC) (referred to as the ''liquidity regulations'').

[3] 86 FR 6742 (Jan. 22, 2021).

[4] See Section 29(g) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831f(g)).

[5] The final rule also amended the FDIC's methodology for calculating the national rate, the national rate cap, and the local market rate cap for the interest rate restrictions under Section 29 that apply to less than well-capitalized institutions.

[6] 86 FR 6742 (Jan. 22, 2021).

properties under section 1031 of the Internal Revenue Code;

(8) a broker-dealer or futures commission merchant places, or assists in placing, customer funds into deposit accounts in compliance with 17 CFR 240.15c3–3(e) or 17 CFR 1.20(a);

(9) the agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of posting collateral for customers to secure credit-card loans;

(10) the agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of paying for or reimbursing qualified medical expenses under section 223 of the Internal Revenue Code;

(11) the agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of investing in qualified tuition programs under section 529 of the Internal Revenue Code;

(12) the agent or nominee places, or assists in placing, customer funds into deposit accounts to enable participation in the following tax-advantaged programs: individual retirement accounts under section 408(a) of the Internal Revenue Code, Simple individual retirement accounts under section 408(p) of the Internal Revenue Code, and Roth individual retirement accounts under section 408A of the Internal Revenue Code;

(13) a Federal, State, or local agency places, or assists in placing, customer funds into deposit accounts to deliver funds to the beneficiaries of government programs; and

(14) the agent or nominee places, or assists in placing, customer funds into deposit accounts pursuant to such other relationships as the FDIC specifically identifies as a designated business relationship that meets the primary purpose exception.

The brokered deposits final rule discussed the FDIC's consideration, as part of the rulemaking process, for requiring reporting of deposits that are excluded from being reported as brokered deposits because of the application of the primary purpose exception, which may include sweep deposits placed at insured depository institutions. Supervision and deposit insurance assessments evaluate risk, in part, based on data institutions report on the Call Report. Institutions report total brokered deposits but generally do not distinguish between different types of deposits that are currently classified as brokered. As a result of the final rule, the FDIC expects that some sweep deposits that are currently brokered deposits placed by third parties will meet the revised primary purpose exception and therefore no longer be reported on the Call Report as brokered. Sweep deposits placed by a third party that meet the primary purpose exception may, in some cases, still pose varying levels of funding risk as well as elevated risk of loss to the deposit insurance fund in the event of an insured depository institution's failure.[7] As such, FDIC plans to monitor sweep deposits that are not brokered due to the primary purpose exception over time to determine the supervisory and deposit insurance assessment implications of these deposits, if any. As such, the agencies are proposing including an additional Call Report item related to sweep deposits placed by third parties that meet the primary purpose exception.

Question 1: The agencies recognize that some deposits may no longer be considered brokered deposits because they are placed through third parties that meet one of the designated exceptions. Other than sweep deposits placed through third parties that meet one of the designated exceptions (*e.g.,* the ''25 percent test''), should the agencies collect information on the amount of deposits placed under any of the other designated exceptions? Similar to sweep deposits, the agencies would monitor this information to determine the supervisory and/or deposit insurance assessment implications of these deposits, if any.

Question 2: If the agencies collect data on designated exceptions other than deposit sweeps placed through a third party that meets a designated exception, are there alternative approaches that the agencies should consider for collecting data? For example, should the agencies consider reporting based upon certain material thresholds or concentrations in deposits gathered through any one or more of the designated exceptions?

Question 3: Do insured depository institutions intend, in the ordinary course of business, to internally maintain information on the amount of deposits placed under each designated exception?

[7] As described in the preamble to the brokered deposits final rule, ''Nothing in the final rule is intended to limit the FDIC's ability to review or take supervisory action with respect to funding-related matters, including funding concentrations, that may affect the safety and soundness of individual banks or the industry generally. FDIC examiners will continue to review funding as part of safety and soundness examinations, regardless of whether or not the deposits used by the [insured depository institution] IDI are brokered.''

B. Proposed Data Items To Capture Sweep Deposits and Deposits Categorized as Meeting the Primary Purpose Exception and Related Instructions

As noted above, under the NSFR Final Rule and the brokered deposits final rule, the agencies stated their intent to update the Call Report to obtain data that will assist in better evaluations of funding stability for sweep deposits over time to determine their appropriate treatment under applicable liquidity regulations and to assess the risk factors associated with sweep deposits for determining their deposit insurance assessment implications, if any. Accordingly, the agencies propose to add the following data items applicable to all institutions that file the Call Report and all insured institutions that file the FFIEC 002. Specifically, the following five data items would be added to Schedule RC–E, Deposit Liabilities, on all three versions of the Call Report (FFIEC 031, FFIEC 041, and FFIEC 051) and would be applicable to insured depository institutions of all sizes. These five data items would be collected quarterly on the FFIEC 031 and 041 Call Reports and semiannually on the FFIEC 051 Call Report.

- Memorandum item 1.h.(1) for fully insured, affiliate sweep deposits to capture sweep deposits that are deposited in accordance with a contract between a customer or counterparty and the reporting institution, a controlled subsidiary of the reporting institution, or a company that is a controlled subsidiary of the same top-tier company of which the reporting institution is a controlled subsidiary, where the entire amount of the deposit is covered by deposit insurance;
- Memorandum item 1.h.(2) for not fully insured, affiliate sweep deposits to capture sweep deposits that are deposited in accordance with a contract between a customer or counterparty and the reporting institution, a controlled subsidiary of the reporting institution, or a company that is a controlled subsidiary of the same top-tier company of which the reporting institution is a controlled subsidiary, where less than the entire amount of the deposit is covered by deposit insurance;
- Memorandum item 1.h.(3) for fully insured, non-affiliate sweep deposits to capture sweep deposits that are not deposited in accordance with a contract between a customer or counterparty and the reporting institution, a controlled subsidiary of the reporting institution, or a company that is a controlled subsidiary of the same top-tier company of which the reporting institution is a

controlled subsidiary, where the entire amount of the deposit is covered by deposit insurance;

• Memorandum item 1.h.(4) for not fully insured, non-affiliate sweep deposits to capture sweep deposits that are not deposited in accordance with a contract between a customer or counterparty and the reporting institution, a controlled subsidiary of the reporting institution, or a company that is a controlled subsidiary of the same top-tier company of which the reporting institution is a controlled subsidiary, where less than the entire amount of the deposit is covered by deposit insurance;

• Memorandum item 1.i for total sweep deposits that are not brokered due to a primary purpose exception, which corresponds to the 25 percent test exception above.

In addition, the following four data items would be added to Schedule RC–E, Deposit Liabilities, on the FFIEC 031 Call Report only and would be completed quarterly only by institutions with $100 billion or more in total assets.[8]

• Memorandum item 1.h.(1)(a) to capture the portion of fully insured, affiliate sweep deposits reported in Memorandum item 1.h.(1) that are deposited in accordance with a contract between a retail customer or counterparty and the reporting institution, a controlled subsidiary of the reporting institution, or a company that is a controlled subsidiary of the same top-tier company of which the reporting institution is a controlled subsidiary, where the entire amount of the deposit is covered by deposit insurance;

• Memorandum item 1.h.(2)(a) to capture the portion of not fully insured, affiliate sweep deposits reported in Memorandum item 1.h.(2) that are deposited in accordance with a contract between a retail customer or counterparty and the reporting institution, a controlled subsidiary of the reporting institution, or a company that is a controlled subsidiary of the same top-tier company of which the reporting institution is a controlled subsidiary, where less than the entire amount of the deposit is covered by deposit insurance;

• Memorandum item 1.h.(3)(a) to capture the portion of fully insured, non-affiliate sweep deposits reported in Memorandum item 1.h.(3) that are deposited by a retail customer or counterparty and not in accordance with a contract between the retail customer or counterparty and the reporting institution, a controlled subsidiary of the reporting institution, or a company that is a controlled subsidiary of the same top-tier company of which the reporting institution is a controlled subsidiary, where the entire amount of the deposit is covered by deposit insurance; and

• Memorandum item 1.h.(4)(a) to capture the portion of not fully insured, non-affiliate sweep deposits reported in Memorandum item 1.h.(4) that are deposited by a retail customer or counterparty and not in accordance with a contract between the retail customer or counterparty and the reporting institution, a controlled subsidiary of the reporting institution, or a company that is a controlled subsidiary of the same top-tier company of which the reporting institution is a controlled subsidiary, where less than the entire amount of the deposit is covered by deposit insurance.

On the FFIEC 002, the first five data items identified above would be added to Schedule O, Other Data for Deposit Insurance Assessments, as Memorandum items 8.a through 8.d and 9 and would be reported quarterly by insured U.S. branches of foreign banks of all sizes.

C. Definitions

The agencies propose to revise the Call Report and FFIEC 002 instructions to add the following definition for ''sweep deposit'': A sweep deposit means a deposit held at the reporting institution by a customer or counterparty through a contractual feature that automatically transfers to the reporting institution from another regulated financial company at the close of each business day amounts identified under the agreement governing the account from which the amount is being transferred.[9] Note: This definition would be distinctly separate from the existing ''retail sweep arrangements'' and ''retail sweep programs'' definitions in the Glossary entry for ''Deposits'' in the Call Report and FFIEC 002 instructions.

Furthermore, consistent with the discussion of the data items proposed to be collected in the Call Report and the FFIEC 002 in section II.B. above, ''affiliate sweep deposits'' would be defined as sweep deposits that are deposited in accordance with a contract between a customer or counterparty and a reporting institution, a reporting institution's consolidated subsidiary, or a company that is a consolidated subsidiary of the same top-tier company of which the reporting institution is a consolidated subsidiary. ''Non-affiliate sweep deposits'' would be defined as sweep deposits that are *not deposited* in accordance with a contract between a customer or counterparty and a reporting institution, a reporting institution's consolidated subsidiary, or a company that is a consolidated subsidiary of the same top-tier company of which the reporting institution is a consolidated subsidiary.

The agencies also propose to revise the Call Report instructions to add the LCR rule's definition[10] of ''retail customer or counterparty,'' which reads, ''A retail customer or counterparty means a customer or counterparty that is:

(1) An individual; or

(2) A business customer, but solely if and to the extent that: (i) The reporting institution manages its transactions with the business customer, including deposits, unsecured funding, and credit facility and liquidity facility transactions, in the same way it manages its transactions with individuals; (ii) Transactions with the business customer have liquidity risk characteristics that are similar to comparable transactions with individuals; and (iii) The total aggregate funding raised from the business customer is less than $1.5 million.''

In addition, the Call Report instructions would add the LCR rule's definition of ''wholesale customer or counterparty,'' which reads, ''A wholesale customer or counterparty means a customer or counterparty that is not a retail customer or counterparty.''[11]

Question 4: For institutions subject to the liquidity regulations, such rules delineate between retail and wholesale customers or counterparties. Is the proposal appropriate to require institutions with $100 billion or more in total assets that are not subject to the LCR or NSFR rule to report sweep deposits in the Call Report based on whether they are received from a retail or wholesale customer? Would it also be beneficial for institutions with less than $100 billion in total assets to report sweep deposits based on whether they are received from a retail or wholesale counterparty? Are these collections also appropriate for depository institutions

[8] The $100 billion asset-size test is based on the total assets reported as of June 30 each year to determine whether an institution not otherwise required to file the FFIEC 031 Call Report must file the FFIEC 031 report form beginning in March of the following year.

[9] See 79 FR 61524 for the LCR Rule's definition of *brokered sweep deposit* which was renamed to ''*sweep deposit*'' when the NSFR rule was finalized in October 2020. *https://www.fdic.gov/news/board/2020/2020-10-20-notice-dis-b-fr.pdf.*

[10] 79 FR 61439, 61527 (Oct. 10, 2014).

[11] 79 FR 61439, 61528 (Oct. 10, 2014).

already subject to the LCR and NSFR rules with total consolidated assets between $10 and $100 billion?

As such, would the LCR rule's definition of retail customer or counterparty be appropriate to apply to reporting by institutions with less than $100 billion in total assets, including that (i) the reporting institution manages its transactions with a business customer, including deposits, unsecured funding, and credit facility and liquidity facility transactions, in the same way it manages its transactions with individuals; and (ii) transactions with the business customer have liquidity risk characteristics that are similar to comparable transactions with individuals?

D. Timing

Beginning with the June 30, 2021, report date, the agencies propose all institutions filing the FFIEC 031, FFIEC 041, and FFIEC 051 Call Reports would complete Schedule RC–E, Memorandum items 1.h.(1) through 1.h.(4) and 1.i, to report the deposit data discussed in section II.B. of this Supplementary Information section. Thereafter, as noted above, these data items would be collected quarterly on the FFIEC 031 and 041 Call Reports and semiannually on the FFIEC 051 Call Report. Beginning as of the same report date, all institutions filing the FFIEC 031 Call Report with $100 billion or more in total assets would complete Schedule RC–E, Memorandum items 1.h.(1)(a), 1.h.(2)(a), 1.h.(3)(a), and 1.h.(4)(a) to report the additional deposit data discussed in section II.B.

Beginning with the June 30, 2021, report date, insured U.S. branches of foreign banks would complete the five Memorandum items applicable to all institutions filing Call Reports in FFIEC 002 Schedule O quarterly as discussed in section II.B. above.

The brokered deposits final rule takes effect April 1, 2021. Full compliance with this final rule is extended to January 1, 2022. The extended compliance date is intended to provide sufficient time for institutions to put in place systems to implement the new regulatory regime. The Call Report will provide two sets of instructions that will allow institutions to either (1) comply with the new regulation starting on the June 30, 2021, report date, or (2) continue to rely upon existing FDIC staff advisory opinions or other interpretations that predated the brokered deposits final rule in determining whether deposits placed by or through an agent or nominee are brokered deposits for purposes of reporting brokered deposit data in the Call Report through the December 31, 2021, report date.

The specific wording of the captions for the proposed new Call Report Schedule RC–E Memorandum items and FFIEC 002 Schedule O Memorandum items discussed in this proposal and the numbering of these Memorandum items should be regarded as preliminary.

III. Request for Comment

Public comment is requested on all aspects of this joint notice including the questions that were provided in the earlier sections. In addition to the questions included above comment is specifically invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies.

Bao Nguyen,

Principal Deputy Chief Counsel, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

Dated at Washington, DC, on or about January 29, 2021.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–02375 Filed 2–4–21; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF VETERANS AFFAIRS

VA Market Assessment Listening Sessions

AGENCY: Department of Veterans Affairs.

ACTION: Announcement for Public Meetings Regarding VA Health Care.

SUMMARY: Pursuant to the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks (MISSION) Act of 2018 (the VA MISSION Act), the Veterans Health Administration (VHA) Chief Strategy Office (CSO) will be holding public virtual listening sessions with Veterans, Veterans Service Organizations, Community Veterans Engagement Boards (CVEBs) and other interested stakeholders. The primary objectives of the sessions are to learn about Veterans' experiences with VA health care and how Veterans want care to be delivered in the future. Feedback will be used to develop recommendations regarding the modernization or realignment of VHA facilities. The recommendations will be submitted to the Asset and Infrastructure Review (AIR) Commission after approval by the Secretary.

FOR FURTHER INFORMATION CONTACT: Valerie Mattison Brown, Chief Strategy Officer, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–461–7115. This is not a toll-free number.

DATES: The listening sessions will start in early calendar year 2021 and continue for several months. The dates, times, and links to the listening sessions will be publicly posted. A link to the posting can be obtained by contacting *VHAMAQs@va.gov.*

The sessions will be held virtually as a WebEx Event, and it will be open to the public to participate. Information about the meeting and registration to attend can be obtained by emailing *VHAMAQs@va.gov.*

SUPPLEMENTARY INFORMATION: The sessions are being held to meet requirements in the VA MISSION Act of 2018, related to developing recommendations for the modernization or realignment of VHA facilities and conducting market assessments. VA is required to conduct market assessments under 7330C of title 38, United States Code, as added by Section 106(a) of the VA MISSION Act and Section 203 of the VA MISSION Act. The market assessments will inform recommendations for the modernization or realignment of VHA facilities to be approved by the Secretary and submitted to the AIR Commission, established by the VA MISSION Act. The law requires the President to submit nominations for the AIR Commission to the Senate not later May 31, 2021, prior

to the first meeting of the AIR Commission in 2022. In 2023, the AIR Commission will submit its recommendations to the President for review and approval, prior to sending to Congress for review and approval.

As part of the market assessment process and the development of recommendations, VA is required to consider input from local stakeholders and to consult with Veterans and VSOs served by each Veterans Integrated Service Network and medical facility. Feedback collected during the public listening sessions will be used to develop recommendations regarding the modernization or realignment of VHA facilities. Notice is being placed in the **Federal Register** to inform the public about the opportunity to participate.

All members of the public are invited to attend the local listening sessions. Each session will correspond to a group of VA medical centers or a specific region. VA is seeking to gather the thoughts and feedback from local Veterans, VSOs, and public stakeholders.

Signing Authority

Dat P. Tran, Acting Secretary of Veterans Affairs approved this document on January 26, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2021–02446 Filed 2–4–21; 8:45 am]

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction of the South Fork Offshore Wind Project; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA661]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction of the South Fork Offshore Wind Project

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from South Fork Wind, LLC (South Fork Wind) to take marine mammals incidental to construction of a commercial wind energy project southeast of Rhode Island, within the Rhode Island-Massachusetts Wind Energy Area (RI/MA WEA). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than March 10, 2021.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be sent to *ITP.Esch@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Carter Esch, Office of Protected Resources, NMFS, (301) 427–8421. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. In compliance with NEPA, as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508 (1978)), the Bureau of Ocean Energy Management (BOEM) prepared an Environmental Impact Statement (EIS) to consider the direct, indirect and cumulative effects to the human environment resulting from the South Fork Wind project. NMFS is a cooperating agency on BOEM's EIS. Accordingly, NMFS plans to adopt the Bureau of Ocean Energy Management's (BOEM) Environmental Impact Statement (EIS), provided our independent evaluation of the document finds that it includes adequate information analyzing the effects of the proposed IHA issuance on the human environment. BOEM's draft EIS was made available for public comment from January 8, 2021 to February 22, 2021 and is available at: *www.boem.gov/South Fork-Wind.*

NMFS will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

This project is covered under Title 41 of the Fixing America's Surface Transportation Act, or ''FAST–41.'' FAST–41 includes a suite of provisions designed to expedite the environmental review for covered infrastructure projects, including enhanced interagency coordination as well as milestone tracking on the public-facing Permitting Dashboard. The dashboard for this project is available at *https://www.permits.performance.gov/permitting-projects/south-fork-wind-farm-and-south-fork-export-cable.*

Summary of Request

On March 15, 2019, NMFS received a request from South Fork Wind for an IHA to take marine mammals incidental to construction of an offshore wind energy project southeast of Rhode Island. Following a delay of the project, South Fork Wind submitted an updated version of the application on June 3, 2020, and then a revised version September 14, 2020. The application was deemed adequate and complete on September 15, 2020. However, on December 15, 2020, South Fork Wind

submitted a subsequent application due to changes to the project scope. NMFS deemed the application adequate and complete on December 16, 2020. South Fork Wind's request is for take of 16 species of marine mammals by harassment. Neither South Fork Wind nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

South Fork Wind proposes to construct a 90–180 megawatt (MW) offshore wind energy project in Lease Area OCS–A 0517, southeast of Rhode Island. The project would consist of installation of up 16 monopiles to support 15 offshore wind turbine generators (WTGs) and one offshore substation (OSS) (Figure 1). The project also includes offshore and onshore cabling, and onshore operations and maintenance facilities. Take of marine mammals may occur incidental to the construction of the project due to in-water noise exposure resulting from impact pile driving activities associated with installation of WTG and OSS foundations, vibratory pile driving associated with the installation and removal of a temporary cofferdam nearshore, and high-resolution geophysical (HRG) surveys of the inter-array cable and export cable construction area.

Dates and Duration

Construction of the project is planned to commence between April 2022 and May 2022; however, as with many construction projects, permitting and construction delays may occur and the activity may take place at any point during the period of effectiveness for the IHA, subject to the following timing constraints. Up to 30 days of impact pile driving to install the WTGs and OSS may occur between May 1, 2022 and December 31, 2022; no impact pile driving activities would occur from January 1, 2023 through April 30, 2023. A cofferdam may potentially be installed for the sea-to-shore cable connection and, if required, would be installed between October 1, 2022 and May 31, 2023. Installation and extraction of the cofferdam are each expected to take 1 to 3 days of vibratory pile driving. Up to 60 days of HRG surveys would be conducted throughout the 12-month construction timeframe.

Specific Geographic Region

South Fork Wind's proposed activity would occur in the 55.4 square kilometer (km^2) (13,700 acre) South Fork Wind Lease Area OCS–A 0517 (SFWF; Figure 1 here, and see Figure 1 in the IHA application for more detail), within the Rhode Island-Massachusetts WEA. At its nearest point, the SFWF would be just over 30 kilometers (km) (19 miles (mi)) southeast of Block Island, Rhode Island, and 56 km (35 mi) east of Montauk Point, New York. Water depths in the SFWF range from approximately 33–41 meters (m) (108–134 feet (ft)). The South Fork export cable route (SFEC) would connect SFWF to one of two landing locations on Long Island, New York, where a temporary cofferdam may be constructed where the SFEC exits the seabed.

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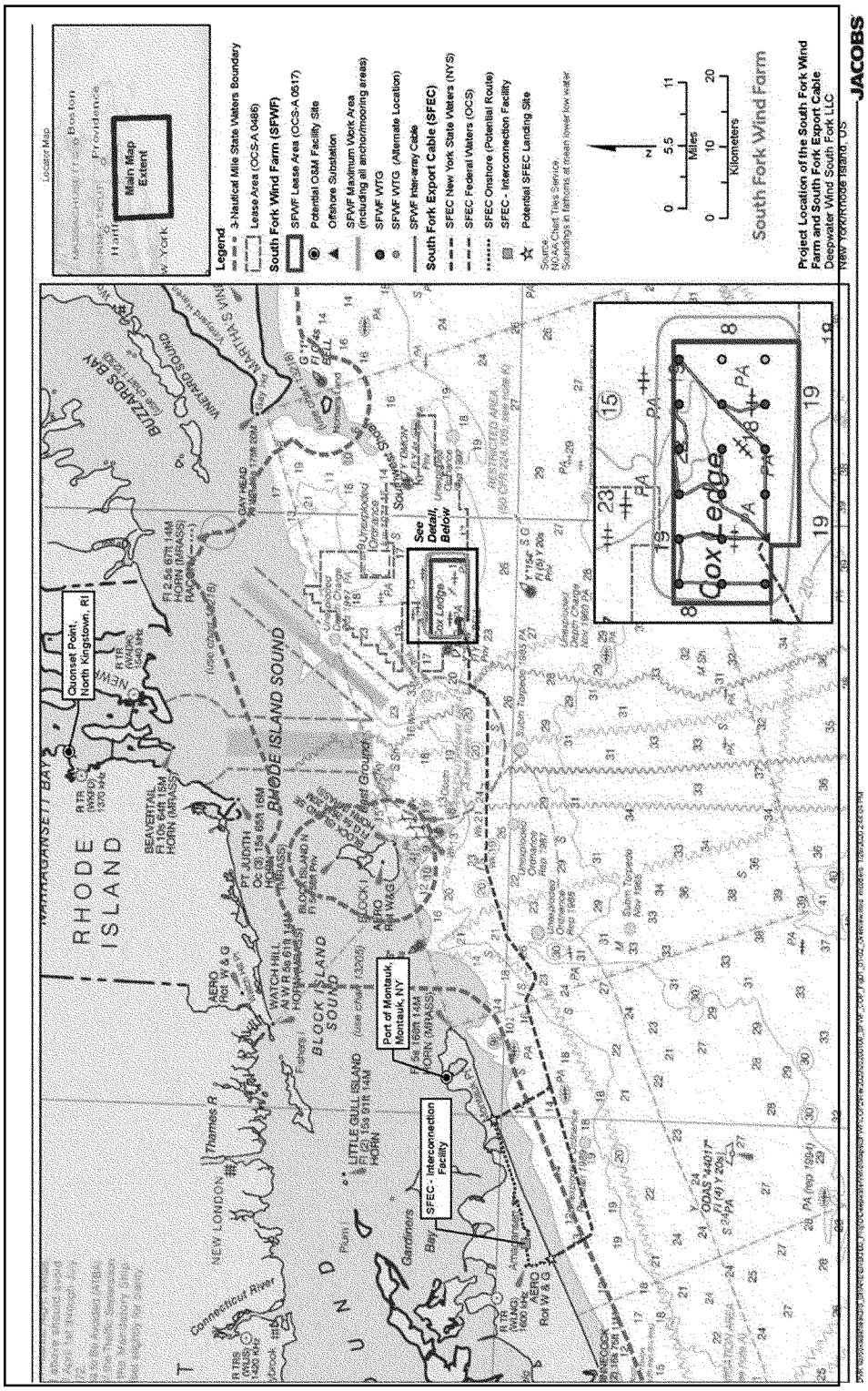

Figure 1. Location of Lease Area OSC-A 0517, South Fork Wind Farm (SFWF), and potential export cable routes (SFEC)

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Detailed Description of Specific Activity

South Fork Wind is proposing to construct a 90–180 MW commercial wind energy project in Lease Area OCS–A 0517, southeast of Rhode Island. The Project would consist of the installation of up to 16 monopiles to support 15

offshore WTGs and one OSS, an onshore substation, offshore and onshore cabling, and onshore operations and maintenance facilities. WTGs would be arranged in a grid-like pattern with spacing of 1.9 km (1.15 mi; 1 nautical miles (nm)) between turbines. Each WTG would interconnect with the OSS via an inter-array submarine cable system. The offshore export cable transmission system would connect the OSS to an existing mainland electric grid in East Hampton, New York. A temporary cofferdam may be installed where the offshore export cable conduit exits from the seabed to contain drilling returns and prevent the excavated sediments from silting back into the Horizontal Directional Drill (HDD) exit pit. The final location of the cofferdam will be dependent upon the selected cable landing site. Construction of the WTGs and OSS, including pile driving, could occur on any day from May 1, 2022 through December 31, 2022. Cofferdam installation and extraction requiring vibratory pile driving could occur for up to 3 days from October 2022 through May, 2023. HRG surveys would be conducted throughout the 12-month project timeframe. Activities associated with the construction of the project are described in more detail below.

Cable Laying

Cable burial operations will occur both in the SFWF for the inter-array cables connecting the WTGs to the OSS and in the SFEC for the cables carrying power from the OSS to land. Inter-array cables will connect the 15 WTGs to the OSS. A single offshore export cable will connect the OSS to the shore. The offshore export and inter-array cables will be buried beneath the seafloor at a target depth of up to 1.2–2.8 m (4–6 ft). Installation of the offshore export cable is anticipated to last approximately 2 months. The estimated installation time for the inter-array cables is approximately 4 months. All cable burial operations will follow installation of the monopile foundations, as the foundations must be in place to provide connection points for the export cable and inter-array cables. Installation days are not continuous and do not include equipment preparation or down time that may result from weather or maintenance. Equipment preparation is not considered a source of marine mammal disturbance or harassment.

Some dredging may be required prior to cable laying due to the presence of sand waves. The upper portions of sand waves may be removed via mechanical or hydraulic means in order to achieve the proper burial depth below the stable sea bottom. The majority of the export and inter-link cable is expected to be installed using simultaneous lay and bury via jet plowing. Jet plowing entails the use of an adjustable blade, or plow, which rests on the sea floor and is towed by a surface vessel. The plow creates a narrow trench at the desired depth, while water jets fluidize the sediment within the trench. The cable is then fed through the plow and is laid into the trench as it moves forward. The fluidized sediments then settle back down into the trench and bury the cable. The majority of the inter-array cable is also expected to be installed via jet plowing after the cable has been placed on the seafloor. Other methods, such as mechanical plowing or trenching, may be needed in areas of coarser or more consolidated sediment, rocky bottom, or other difficult conditions in order to ensure a proper burial depth. The jet plowing tool may be based from a seabed tractor or a sled deployed from a vessel. A mechanical plow is also deployed from a vessel. More information on cable laying associated with the proposed project is provided in South Fork Wind's Construction and Operations Plan (SFWF COP; South Fork Wind, 2020). As the only potential impacts from these activities is sediment suspension, the potential for take of marine mammals to result from these activities is so low as to be discountable and South Fork Wind did not request, and NMFS does not propose to authorize, any takes associated with cable laying. Therefore, cable laying activities are not analyzed further in this document.

Construction-Related Vessel Activity

During construction of the project, South Fork Wind anticipates that an average of approximately 5–10 vessels will operate during a typical work day in the SFWF and along the SFEC. Many of these vessels will remain in the SFWF or SFEC for days or weeks at a time, potentially making only infrequent trips to port for bunkering and provisioning, as needed. The actual number of vessels involved in the project at one time is highly dependent on the project's final schedule, the final design of the project's components, and the logistics needed to ensure compliance with the Jones Act, a Federal law that regulates maritime commerce in the United States.

Existing vessel traffic in the vicinity of the project area southeast of Rhode Island is relatively high and marine mammals in the area are expected to be habituated to vessel noise. In addition, construction vessels would be stationary on site for significant periods of time and the large vessels would travel to and from the site at relatively low speeds. Project-related vessels would be required to adhere to several mitigation measures designed to reduce the potential for marine mammals to be struck by vessels associated with the project; these measures are described further below (see Proposed Mitigation). As part of various construction related activities, including cable laying and construction material delivery, dynamic positioning thrusters may be utilized to hold vessels in position or move slowly. Sound produced through use of dynamic positioning thrusters is similar to that produced by transiting vessels, and dynamic positioning thrusters are typically operated either in a similarly predictable manner or used for short durations around stationary activities. Sound produced by dynamic positioning thrusters would be preceded by, and associated with, sound from ongoing vessel noise and would be similar in nature; thus, any marine mammals in the vicinity of the activity would be aware of the vessel's presence, further reducing the potential for startle or flight responses on the part of marine mammals. Construction-related vessel activity, including the use of dynamic positioning thrusters, is not expected to result in take of marine mammals and South Fork Wind did not request, and NMFS does not propose to authorize, any takes associated with construction related vessel activity. Accordingly, these activities are not analyzed further in this document.

Installation of WTGs and OSS

Monopiles are the only foundation type proposed for the project. A monopile is a single, hollow cylinder fabricated from steel that is secured in the seabed. The 16 monopiles installed to support the 15 WTG and single OSS would be 11.0 m (33.0 ft) in diameter, up to 95 m (311.7 ft) in length and driven to a maximum penetration depth of 50 m (164 ft). A schematic diagram showing potential heights and dimensions of the various components of a monopile foundation are shown in Figure 3.1–2 of the SFWF COP (South Fork Wind, 2020), available online at: *https://www.boem.gov/renewable-energy/state-activities/south-fork*.

The monopile foundations would be installed by one or two heavy lift or jack-up vessels. The main installation vessel(s) will likely remain at the SFWF during the installation phase (approximately 30 days) and transport vessels, tugs, and/or feeder barges would provide a continuous supply of foundations to the SFWF. If appropriate vessels are available, the foundation

components could be picked up directly in the marshalling port by the main installation vessel(s).

Within the SFWF, the main installation vessel would upend the monopile with a crane, and place it in the gripper frame, before lowering the monopile to the seabed. The gripper frame, depending upon its design, may be placed on the seabed scour protection materials to stabilize the monopile's vertical alignment before and during piling. Scour protection is included to protect the foundation from scour development, which is the removal of the sediments near structures by hydrodynamic forces, and consists of the placement of stone or rock material around the foundation. The scour protection would consist of engineered rock placed around the base of each monopole in a 68 m (222 ft) diameter circle, using either a fallpipe vessel or stone dumping vessel. Once the monopile is lowered to the seabed, the crane hook would be released, and the hydraulic hammer would be picked up and placed on top of the monopile.

All monopoles would be installed with an impact hammer. Impact pile driving entails the use of a hammer that utilizes a rising and falling piston to repeatedly strike a pile and drive it into the ground. Using a crane, the installation vessel would upend the monopile, place it in the gripper frame, and then lower the monopile to the seabed. The gripper frame would stabilize the monopile's vertical alignment before and during piling. Once the monopile is lowered to the seabed, the crane hook would be released and the hydraulic hammer would be picked up and placed on top of the monopile. A temporary steel cap called a helmet would be placed on top of the pile to minimize damage to the head during impact driving. The largest hammer South Fork Wind expects to use for driving monopiles produces up to 4,000 kilojoules (kJ) of energy (however, required energy may ultimately be far less than 4,000 kJ). As described in the Proposed Mitigation section below, South Fork Wind would utilize a sound attenuation device (*e.g.,* bubble curtain) during all impact pile driving.

The intensity (*i.e.,* hammer energy level) of impact pile driving would be gradually increased based on the resistance that is experienced from the sediments. The strike rate for the monopile foundations is estimated to be 36 strikes per minute. Two pile driving scenarios (for 16 11 m piles), were considered for SFWF (Table 1). The standard pile driving scenario would require an estimated 4,500 strikes for the pile to reach the target penetration depth, with an average installation time of 140 minutes for one pile. In the event that a pile location presents denser substrate conditions and requires more strikes to reach the target penetration depth, a difficult-to-drive pile scenario was considered, in which 8,000 strikes and approximately 250 minutes would be required to install 1 pile.

Impact pile driving activities at SFWF will take place between May 1, 2022 and December 31, 2022. There are two piling scenarios that are considered possible within the current engineering design. The standard scenario assumes that a pile is driven every other day such that 16 monopiles piles would be installed over a 30-day period. A more aggressive schedule is considered for the maximum design scenario in which six piles are driven in a week (7 days) such that the 16 piles are installed over a 20-day period. Only one pile would be driven per 24 hours (hrs), irrespective of the selected scenario. Please see Table 1 for a summary of impact pile driving activity.

Installation and Removal of Temporary Cofferdam

Before cable-laying HDD begins, a temporary cofferdam may be installed at the endpoint of the HDD starting point, where the SFEC conduit exits from the seabed. The cofferdam would be less than 600 m (1,969 ft) offshore from the mean high water line (MHWL), in 7.6 to 12.2 m (25 to 40 ft) water depth, depending on the final siting point. The cofferdam, up to 22.9 m (75 ft) by 7.7 m (25 ft), would serve as containment for the drilling returns during the HDD installation to keep the excavation free of debris and silt. The cofferdam may be installed as either a sheet pile structure into the seafloor or a gravity cell structure placed on the seafloor using ballast weight. Installation of a gravity cell cofferdam would not result in incidental take of marine mammals and is, therefore, not analyzed further in this document. Installation of the 19.5 m (64 ft) long, 0.95 centimeters (cm) (0.375 inches (in)) thick Z-type sheet pile cofferdam and drilling support would be conducted from an offshore barge anchored near the cofferdam.

If the potential cofferdam is installed using sheet pile, a vibratory hammer will be used to drive the sidewalls and endwalls into the seabed to a depth of approximately 1.8 m (6 ft); sections of the shoreside endwall will be driven to a depth of up to 9 m (30 ft) to facilitate the HDD entering underneath the endwall. Cofferdam removal would consist of pile removal using a vibratory hammer, after HDD operations are complete and the conduit is installed (see Table 1 for a summary of potential vibratory pile driving activity).

Vibratory hammering is accomplished by rapidly alternating (~250 Hertz (Hz)) forces to the pile. A system of counter-rotating eccentric weights powered by hydraulic motors are designed such that horizontal vibrations cancel out, while vertical vibrations are transmitted into the pile. The vibrations produced cause liquefaction of the substrate surrounding the pile, enabling the pile to be driven into the ground using the weight of the pile plus the impact hammer. If the gravity cell installation technique is not practicable, South Fork Wind anticipates that any vibratory pile driving of sheet piles would occur for a total of 36 hrs (18 hrs for installation, 18 hrs for removal).

The source levels and source characteristics associated with vibratory driving would be generally similar to those produced through other concurrent use of vessels and related construction equipment. Any elevated noise levels produced through vibratory driving are expected to be of relatively short duration, and with low source level values. However, it is possible that if marine mammals are exposed to sound from vibratory pile driving, they may alert to the sound and potentially exhibit a behavioral response that rises to the level of take.

Installation of the Z-type sheet piles would occur primarily in daylight; however, it is possible that vibratory pile driving may continue past sunset if required by the construction schedule.

TABLE 1—SUMMARY OF PILE DRIVING ACTIVITIES FOR SFWF AND SFEC

Pile driving method	Pile size	Number of piles	Strikes/pile	Duration/pile	Number of piling days
Impact	11 m monopile	16	Standard pile: 4,500 Difficult pile: 8,000	Standard pile: 140 min Difficult pile: 250 min	Standard scenario: 30. Maximum scenario: 20.

TABLE 1—SUMMARY OF PILE DRIVING ACTIVITIES FOR SFWF AND SFEC—Continued

Pile driving method	Pile size	Number of piles	Strikes/pile	Duration/pile	Number of piling days
Vibratory	19.5 m long/0.95 cm thick Sheet pile.	* 80	.....	18 hours ..... 18 hours	Installation: 1–3. Removal: 1–3.

* Approximation; the actual number will be based on final engineering design.

High-Resolution Geophysical Surveys

The HRG survey activities would be supported by vessels of sufficient size to accomplish the survey goals in each of the specified survey areas. Up to four vessels may work concurrently throughout the area considered in this proposal. HRG surveys would occur throughout the 12-month period of effectiveness for the proposed IHA. HRG equipment will either be deployed from remotely operated vehicles (ROVs) or mounted to or towed behind the survey vessel at a typical survey speed of approximately 4.0 knots (kn) (7.4 km) per hour. The geophysical survey activities proposed by South Fork Wind would include the following:

• Shallow Penetration Sub-bottom Profilers (SBPs; Compressed High-Intensity Radiated Pulses (CHIRPs)) to map the near-surface stratigraphy (top 0 to 5 m (0 to 16 ft) of sediment below seabed). A CHIRP system emits sonar pulses that increase in frequency over time. The pulse length frequency range can be adjusted to meet project variables. These are typically mounted on the hull of the vessel or from a side pole.

• Medium penetration SBPs (Boomers) to map deeper subsurface stratigraphy as needed. A boomer is a broad-band sound source operating in the 3.5 Hz to 10 kHz frequency range. This system is typically mounted on a sled and towed behind the vessel.

• Medium penetration SBPs (Sparkers) to map deeper subsurface stratigraphy as needed. A sparker creates acoustic pulses from 50 Hz to 4 kHz omni-directionally from the source that can penetrate several hundred meters into the seafloor. These are typically towed behind the vessel with adjacent hydrophone arrays to receive the return signals.

• Parametric SBPs, also called sediment echosounders, for providing high density data in sub-bottom profiles that are typically required for cable routes, very shallow water, and archaeological surveys. These are typically mounted on the hull of the vessel or from a side pole.

• Ultra-short Baseline (USBL) Positioning and Global Acoustic Positioning System (GAPS) to provide high accuracy ranges to track the positions of other HRG equipment by measuring the time between the acoustic pulses transmitted by the vessel transceiver and the equipment transponder necessary to produce the acoustic profile. It is a two-component system with a hull or pole mounted transceiver and one to several transponders either on the seabed or on the equipment.

• Multibeam echosounder (MBES) to determine water depths and general bottom topography. MBES sonar systems project sonar pulses in several angled beams from a transducer mounted to a ship's hull. The beams radiate out from the transducer in a fan-shaped pattern orthogonally to the ship's direction.

• Seafloor imaging (sidescan sonar) for seabed sediment classification purposes, to identify natural and man-made acoustic targets resting on the bottom as well as any anomalous features. The sonar device emits conical or fan-shaped pulses down toward the seafloor in multiple beams at a wide angle, perpendicular to the path of the sensor through the water. The acoustic return of the pulses is recorded in a series of cross-track slices, which can be joined to form an image of the sea bottom within the swath of the beam. They are typically towed beside or behind the vessel or from an autonomous vehicle.

Table 2 identifies all the representative survey equipment that operate below 180 kilohertz (kHz) (*i.e.,* at frequencies that are audible and have the potential to disturb marine mammals) that may be used in support of planned geophysical survey activities, and are likely to be detected by marine mammals given the source level, frequency, and beamwidth of the equipment. The operational frequencies for MBES and Sidescan Sonar that would be used for these surveys are greater than 180 kHz, outside the general hearing range of marine mammals likely to occur in SFWF and SFEC. Parametric sub-bottom profilers operate at high frequencies with narrow beamwidths, resulting in Level A harassment and Level B harassment threshold isopleth distances less than 4 m. No harassment exposures can be reasonably expected from the operation of these sources; therefore, the Innomar parametric SBPs were not carried forward in the application analysis. USBLs are instruments that are used to locate the position(s) of other HRG equipment; the sources characteristics and functionality of USBLs are not expected to result in Level A harassment or Level B harassment. These equipment types are, therefore, not considered further in this notice. For discussion of acoustic terminology, please see the Potential Effects of Specified Activities on Marine Mammals and their Habitat and Estimated Take sections.

The make and model of the listed geophysical equipment may vary depending on availability and the final equipment choices will vary depending upon the final survey design, vessel availability, and survey contractor selection. Selection of equipment combinations is based on specific survey objectives.

TABLE 2—SUMMARY OF REPRESENTATIVE HRG SURVEY EQUIPMENT

HRG equipment category	Specific HRG equipment	Operating frequency range (kHz)	Source level (dB rms)	Source level (dB 0-peak)	Beamwidth (degrees)	Typical pulse duration (ms)	Pulse repetition rate
Shallow Sub-bottom Profilers.	ET 216 (2000DS or 3200 top unit).	2–16 2–8	195	–	24	20	6
	ET 424	4–24	176	–	71	3.4	2
	ET 512	0.7–12	179	–	80	9	8

TABLE 2—SUMMARY OF REPRESENTATIVE HRG SURVEY EQUIPMENT—Continued

HRG equipment category	Specific HRG equipment	Operating frequency range (kHz)	Source level (dB rms)	Source level (dB 0-peak)	Beamwidth (degrees)	Typical pulse duration (ms)	Pulse repetition rate
Medium Sub-bottom Profilers.	GeoPulse 5430A	2–17	196	–	55	50	10
	TB Chirp III—TTV 170	2–7	197	–	100	60	15
	AA, Dura-spark UHD (400 tips, 500 J) [1].	0.3–1.2	203	211	Omni	1.1	4
	AA, Dura-spark UHD (400+400) [1].	0.3–1.2	203	211	Omni	1.1	4
	GeoMarine, Geo-Source or similar dual 400 tip sparker (≤800 J) [1].	0.4–5	203	211	Omni	1.1	2
	GeoMarine Geo-Source 200 tip light weight sparker (400 J) [1].	0.3–1.2	203	211	Omni	1.1	4
	GeoMarine Geo-Source 200–400 tip freshwater sparker (400 J) [1].	0.3–1.2	203	211	Omni	1.1	4
	AA, triple plate S-Boom (700–1,000 J) [2].	0.1–5	205	211	80	0.6	4

– = not applicable; NR = not reported; AA = Applied Acoustics; dB = decibel; ET = EdgeTech; J = joule; Omni = omnidirectional source.

[1] The Dura-spark measurements and specifications provided in Crocker and Fratantonio (2016) were used for all sparker systems proposed for the survey. The data provided in Crocker and Fratantonio (2016) represent the most applicable data for similar sparker systems with comparable operating methods and settings when manufacturer or other reliable measurements are not available.

[2] Crocker and Fratantonio (2016) provide S-Boom measurements using two different power sources (CSP–D700 and CSP–N). The CSP–D700 power source was used in the 700 J measurements but not in the 1,000 J measurements. The CSP–N source was measured for both 700 J and 1,000 J operations but resulted in a lower SL; therefore, the single maximum SL value was used for both operational levels of the S-Boom.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the IHA application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*www.fisheries.noaa.gov/find-species*).

There are 36 marine mammal species that could potentially occur in the proposed project area and that are included in Table 16 of the IHA application. However, the temporal and/or spatial occurrence of 20 of these species is such that take is not expected to occur, and they are therefore not discussed further beyond the explanation provided here. The following species are not expected to occur in the project area due to the location of preferred habitat outside the SFWF and SFEC, based on the best available information: The beluga whale (*Delphinapterus leucas*), northern bottlenose whale (*Hyperoodon ampullatus*), killer whale (*Orcinus orca*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), melon-headed whale (*Peponocephala electra*), the pygmy sperm whale (*Kogia breviceps*), Cuvier's beaked whale (*Ziphius cavirostris*), Mesplodont beaked whales (spp.), short-finned pilot whale (*Globicephala macrorhynchus*), pantropical spotted dolphin (*Stenella attenuata*), Fraser's dolphin (*Lagenodelphis hosei*), white-beaked dolphin (*Lagenorhynchus albirostris*), rough-toothed dolphin (*Steno bredanensis*), Clymene dolphin (*Stenella clymene*), spinner dolphin (*Stenella longirostris*), and striped dolphin (*Stenella coeruleoalba*). The following species may occur in the project area, but at such low densities that take is not anticipated: Hooded seal (*Cystophora cristata*) and harp seal (*Pagophilus groenlandica*). There are two pilot whale species (long-finned and short-finned (*Globicephala macrorhynchus*)) with distributions that overlap in the latitudinal range of the SFWF (Hayes *et al.,* 2020; Roberts *et al.,* 2016). Because it is difficult to differentiate between the two species at sea, sightings, and thus the densities calculated from them, are generally reported together as *Globicephala* spp. (Hayes *et al.,* 2020; Roberts *et al.,* 2016). However, based on the best available information, short-finned pilot whales occur in habitat that is both further offshore on the shelf break and further south than the project area (Hayes *et al.,* 2020). Therefore, NMFS assumes that any take of pilot whales would be of long-finned pilot whales.

In addition, the Florida manatee (*Trichechus manatus*) may be found in the coastal waters of the Survey Area. However, Florida manatees are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Between October 2011 and June 2015 a total of 76 aerial surveys were conducted throughout the MA and RI/MA Wind Energy Areas (WEAs) (the SFWF is contained within the RI/MA WEA along with several other offshore renewable energy lease areas). Between November 2011 and March 2015, Marine Autonomous Recording Units (MARU; a type of static passive acoustic monitoring (PAM) recorder) were deployed at nine sites in the MA and RI/MA WEAs. The goal of the study was to collect visual and acoustic baseline data on distribution, abundance, and temporal occurrence patterns of marine mammals (Kraus *et al.,* 2016). The lack of detections of any of the species listed above reinforces the fact that these species are not expected to occur in the project area. As these species are not expected to occur in the project area during the proposed activities, NMFS does not propose to authorize take of these species and they are not discussed further in this document.

NMFS expects that the 16 species listed in Table 3 will potentially occur

in the project area and may be taken as a result of the proposed project. Table 3 summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, NMFS follows the Committee on Taxonomy (2020). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR is included here as a gross indicator of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic SARs. All values presented in Table 3 are the most recent available at the time of publication and are available in the draft 2020 Atlantic SARs, available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 3—MARINE MAMMALS KNOWN TO OCCUR IN THE PROJECT AREA THAT MAY BE AFFECTED BY SOUTH FORK WIND'S PROPOSED ACTIVITY

Common name (scientific name)	Stock	MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Annual M/SI [3]	Occurrence and seasonality in project area
Toothed whales (Odontoceti)						
Sperm whale (*Physeter macrocephalus*)	North Atlantic	E; Y	4,349 (0.28; 3,451; 2016)	3.9	0	Rare.
Long-finned pilot whale (*Globicephala melas*).	W North Atlantic	--; N	39,215 (0.3; 30,627; 2016)	306	21	Rare.
Atlantic spotted dolphin (*Stenella frontalis*)	W North Atlantic	--; N	39,921 (0.27; 32,032; 2016)	320	0	Rare.
Atlantic white-sided dolphin (*Lagenorhynchus acutus*).	W North Atlantic	--; N	93,233 (0.71; 54,443; 2016)	544	26	Common year round.
Bottlenose dolphin (*Tursiops truncatus*)	W North Atlantic, Offshore.	--; N	62,851 (0.23; 51,914; 2019)	519	28	Common year round.
Common dolphin (*Delphinus delphis*)	W North Atlantic	--; N	172,974 (0.21; 145,216; 2016).	1,452	399	Common year round.
Risso's dolphin (*Grampus griseus*)	W North Atlantic	--; N	35,493 (0.19; 30,298; 2016)	303	54.3	Rare.
Harbor porpoise (*Phocoena phocoena*)	Gulf of Maine/Bay of Fundy.	--; N	95,543 (0.31; 74,034; 2019)	851	217	Common year round.
Baleen whales (Mysticeti)						
Blue whale (*Balaenotpera musculus*)	W North Atlantic	E; Y	ukn (unk; 402; 2008)	0.8	0	Rare.
North Atlantic right whale (*Eubalaena glacialis*).	W North Atlantic	E; Y	412 (0; 418; 2018)	0.8	18.6	Year round in continental shelf and slope waters, occur seasonally.
Humpback whale (*Megaptera novaeangliae*).	Gulf of Maine	--; N	1,393 (0.15; 1,375; 2016)	22	58	Common year round.
Fin whale (*Balaenoptera physalus*)	W North Atlantic	E; Y	6,802 (0.24; 5,573; 2016)	11	2.35	Year round in continental shelf and slope waters, occur seasonally.
Sei whale (*Balaenoptera borealis*)	Nova Scotia	E; Y	6,292 (1.02; 3,098 ; 2016)	6.2	1.2	Year round in continental shelf and slope waters, occur seasonally.
Minke whale (*Balaenoptera acutorostrata*)	Canadian East Coast	--; N	21,968 (0.31; 17,002; 2016)	170	10.6	Year round in continental shelf and slope waters, occur seasonally.
Earless seals (Phocidae)						
Gray seal [4] (*Halichoerus grypus*)	W North Atlantic	--; N	27,131 (0.19; 23,158; 2016)	1,389	4,729	Common year round.
Harbor seal (*Phoca vitulina*)	W North Atlantic	--; N	75,834 (0.15; 66,884; 2012)	2,006	350	Common year round.

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] Stock abundance as reported in NMFS marine mammal stock assessment reports (SAR) except where otherwise noted. SARs available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate. All values presented are from the draft 2020 Atlantic SARs.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP). Annual Mortality/Serious Injury (M/SI), found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI values often cannot be determined precisely and is, in some cases, presented as a minimum value. All M/SI values are as presented in the draft 2020 Atlantic SARs.

[4] NMFS stock abundance and PBR estimates apply to U.S. population only, actual stock abundance is approximately 505,000.

Four marine mammal species that are listed under ESA may be present in the project area and may be taken incidental to the proposed activity: The North Atlantic right whale, fin whale, sei whale, and sperm whale.

Below is a description of the species that are likely to occur in the project area and are thus expected to potentially

be taken by the proposed activities. For the majority of species potentially present in the specific geographic region, NMFS has designated only a single generic stock (*e.g.,* ''western North Atlantic'') for management purposes. This includes the ''Canadian east coast'' stock of minke whales, which includes all minke whales found in U.S. waters and is also a generic stock for management purposes. For humpback and sei whales, NMFS defines stocks on the basis of feeding locations, *i.e.,* Gulf of Maine and Nova Scotia, respectively. However, references to humpback whales and sei whales in this document refer to any individuals of the species that are found in the specific geographic region. Any biologically important areas (BIAs) that overlap spatially with the project area are addressed in the species sections below.

North Atlantic Right Whale

The North Atlantic right whale ranges from calving grounds in the southeastern United States to feeding grounds in New England waters and into Canadian waters (Hayes *et al.,* 2020). Surveys have demonstrated the existence of seven areas where North Atlantic right whales congregate seasonally, including north and east of the proposed project area in Georges Bank, off Cape Cod, and in Massachusetts Bay (Hayes *et al.,* 2020). In the late fall months (*e.g.* October), North Atlantic right whales are generally thought to depart from the feeding grounds in the North Atlantic and move south along a migratory corridor to their calving grounds off Georgia and Florida. However, ongoing research indicates our understanding of their movement patterns remains incomplete (Davis *et al.,* 2017; Oleson *et al.,* 2020). A review of passive acoustic monitoring data from 2004 to 2014 throughout the western North Atlantic demonstrated nearly continuous year-round North Atlantic right whale presence across their entire habitat range (for at least some individuals), including in locations previously thought of as migratory corridors, suggesting that not all of the population undergoes a consistent annual migration (Davis *et al.,* 2017). Acoustic monitoring data from 2004 to 2014 indicated that the number of North Atlantic right whale vocalizations detected in the proposed project area were relatively constant throughout the year, with the exception of August through October when detected vocalizations showed an apparent decline (Davis *et al.,* 2017). Shifts in habitat use have also been observed. During visual surveys conducted from 2012 to 2016, fewer North Atlantic right whales were detected in the Great South Channel (NMFS unpublished data) and the Bay of Fundy (Davies *et al.,* 2019), while the number of individuals using Cape Cod Bay in the spring increased (Mayo *et al.,* 2018). Cole *et al.* (2013) provided survey evidence that North Atlantic right whales were absent from the well-documented central Gulf of Maine winter habitat. Although present to some extent year round in the region south of Martha's Vineyard and Nantucket Islands (Oleson *et al.,* 2020), North Atlantic right whales have recently been observed feeding in large numbers in this area in the winter (Leiter *et al.,* 2017), which is outside of the 2016 Northeastern U.S. Foraging Area Critical Habitat. In addition, North Atlantic right whale distribution has shifted northward into the Gulf of St. Lawrence (Simard *et al.,* 2019), where acoustic and visual survey effort indicate North Atlantic right whale presence in late spring through the early fall (Cole *et al.,* 2016; Khan *et al.,* 2016, 2018; Oleson *et al.* 2020). Observations of these transitions in North Atlantic right whale habitat use, variability in seasonal presence in identified core habitats, and utilization of habitat outside of previously focused survey effort prompted the formation of a NMFS' Expert Working Group, which identified current data collection efforts, data gaps, and provided recommendations for future survey and research efforts (Oleson *et al.,* 2020).

The western North Atlantic population demonstrated overall growth of 2.8 percent per year between 1990 to 2010, despite a decline in 1993 and no growth between 1997 and 2000 (Pace *et al.,* 2017). However, since 2010 the population has been in decline, with a 100 percent probability of a decline from 2011 to 2018 of just over two percent per year (Pace *et al.,* 2017). Between 1990 and 2017, calving rates varied substantially, with low calving rates coinciding with all three periods of decline or no growth (Pace *et al.,* 2017). On average, North Atlantic right whale calving rates are estimated to be roughly one third that of southern right whales (*Eubalaena australis*) (Hayes *et al.,* 2020), which are increasing in abundance (NEFSC 2015). The current best estimate of population abundance for the North Atlantic right whale is 412 individuals (Hayes *et al.,* 2020).

In addition, elevated North Atlantic right whale mortalities have occurred since June 7, 2017 along the U.S. and Canadian coast. As of January 2021, a total of 32 confirmed dead stranded whales (21 in Canada; 11 in the United States) and 14 serious injury (including entanglement and vessel strike) cases have been documented. Full necropsies have been conducted on 20 of the dead North Atlantic right whales and, in the 18 cases for which a preliminary cause of death could be determined, 8 and 10 were attributed to entanglement and vessel strike, respectively. This event has been declared an Unusual Mortality Event (UME); the leading cause of death for this UME is ''human interaction'', specifically from entanglements or vessel strikes. More information is available online at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2020-north-atlantic-right-whale-unusual-mortality-event.*

During the aerial surveys conducted in the RI/MA and MA WEAs from 2011–2015, the highest number of North Atlantic right whale sightings occurred in March (n=21), with sightings also occurring in December (n=4), January (n=7), February (n=14), and April (n=14), and no sightings in any other months (Kraus *et al.,* 2016). There was not significant variability in sighting rate among years, indicating consistent annual seasonal use of the area by North Atlantic right whales. Despite the lack of visual detection, North Atlantic right whales were acoustically detected in 30 out of the 36 recorded months (Kraus *et al.,* 2016). While density data from Roberts *et al.* (2020) confirm that the highest density of North Atlantic right whales in the project area occurs in March, it is clear that North Atlantic right whales are present in or near the project area throughout the year, particularly south of Martha's Vineyard and Nantucket Islands, and that habitat use is changing (Leiter *et al.,* 2017; Stone *et al.,* 2017; Oleson *et al.,* 2020). The proposed project area is part of an important migratory area for North Atlantic right whales; this migratory area is comprised of the waters of the continental shelf offshore the East Coast of the United States and extends from Florida through Massachusetts. Aerial surveys conducted in and near the project area from 2011–2015 documented a total of six instances of feeding behavior by North Atlantic right whales (Kraus *et al.,* 2016). Finally, the project area is located within the North Atlantic right whale migratory corridor Biologically Important Area (BIA), which is applicable November 1 through December 31, 2021 and March 1, 2022 through April 31, 2022 and extends from Florida to Massachusetts (LeBreque *et al.,* 2015).

NMFS' regulations at 50 CFR 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S.

Seasonal Management Areas (SMA) for North Atlantic right whales in 2008. SMAs were developed to reduce the threat of collisions between ships and North Atlantic right whales around their migratory route and calving grounds. The Block Island SMA, which is active from November 1 through April 30 each year, overlaps with the project area.

Humpback Whale

Humpback whales are found worldwide in all oceans. Humpback whales were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpbacks continued to be listed as endangered. NMFS recently evaluated the status of the species, and on September 8, 2016, NMFS divided the species into 14 distinct population segments (DPS), removed the current species-level listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62259; September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whale that is expected to occur in the project area. The best estimate of population abundance for the West Indies DPS is 12,312 individuals, as described in the NMFS Status Review of the Humpback Whale under the Endangered Species Act (Bettridge *et al.,* 2015). In the western North Atlantic, humpback whales feed over a broad geographic range encompassing the eastern coast of the United States (including the Gulf of Maine), Scotian Shelf, Gulf of St. Lawrence, Newfoundland/Labrador, and Western Greenland (Katona and Beard 1990). Spatial and genetic mixing occurs when humpback whales from most of these feeding areas migrate to the West Indies in the winter to mate and calve. The Gulf of Maine feeding stock population abundance is estimated at 1,393 individuals, or approximately 11 percent of the West Indies DPS.

In New England waters, feeding is the principal activity of humpback whales, and their distribution in this region has been largely correlated to abundance of prey species, although behavior and bathymetry are factors influencing foraging strategy (Payne *et al.,* 1986, 1990). Humpback whales are frequently piscivorous when in New England waters, feeding on herring (*Clupea harengus*), sand lance (*Ammodytes* spp.), and other small fishes, as well as euphausiids in the northern Gulf of Maine (Paquet *et al.,* 1997). During winter, the majority of humpback whales from North Atlantic feeding areas (including the Gulf of Maine) mate and calve in the West Indies, where spatial and genetic mixing among feeding groups occurs, though significant numbers of animals are found in mid- and high-latitude regions at this time and some individuals have been sighted repeatedly within the same winter season, indicating that not all humpback whales migrate south every winter (Hayes *et al.,* 2020).

Kraus *et al.* (2016) observed humpbacks in the RI/MA & MA Wind Energy Areas (WEAs) and surrounding areas during all seasons. Humpback whales were observed most often during spring and summer months, with a peak from April to June. Calves were observed 10 times and feeding was observed 10 times during the Kraus *et al.* study (2016). That study also observed one instance of courtship behavior. Although humpback whales were rarely seen during fall and winter surveys, acoustic data indicate that this species may be present within the MA WEA year-round, with the highest rates of acoustic detections in the winter and spring (Kraus *et al.,* 2016). Other sightings of note include 46 sightings of humpback whales in the New York-New Jersey Harbor Estuary documented from 2011–2016 (Brown *et al.,* 2017). Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida, leading to the declaration of an UME. Partial or full necropsy examinations have been conducted on approximately half of the 140 known cases. Of the whales examined, about 50 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. Three previous UMEs involving humpback whales have occurred since 2000, in 2003, 2005, and 2006. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2016-2019-humpback-whale-unusual-mortality-event-along-atlantic-coast.* A BIA for humpback whales for feeding has been designated northeast of the lease area and is applicable from March through December (LeBreque *et al.,* 2015).

Fin Whale

Fin whales are common in waters of the U.S. Atlantic Exclusive Economic Zone (EEZ), principally from Cape Hatteras northward (Hayes *et al.,* 2020). Fin whales are present north of 35-degree latitude in every season and are broadly distributed throughout the western North Atlantic for most of the year, though densities vary seasonally (Hayes *et al.,* 2020). In this region, fin whales are the dominant large cetacean species during all seasons, having the largest standing stock, the largest food requirements, and therefore the largest influence on ecosystem processes of any cetacean species (Hain *et al.,* 1992; Kenney *et al.,* 1997). It is likely that fin whales occurring in the U.S. Atlantic EEZ undergo migrations into Canadian waters, open-ocean areas, and perhaps even subtropical or tropical regions (Edwards *et al.,* 2015).

New England waters represent a major feeding ground for fin whales; a feeding BIA for the species exists just west of the proposed project area, stretching from just south of the eastern tip of Long Island to south of the western tip of Martha's South Fork (LeBreque *et al.,* 2015). In aerial surveys conducted from 2011–2015 in the project area, sightings occurred in every season with the greatest numbers of sightings during the spring (n=35) and summer (n=49) months (Kraus *et al.,* 2016). Despite much lower sighting rates during the winter, confirmed acoustic detections of fin whales recorded on a hydrophone array in the project area from 2011–2015 occurred throughout the year; however, due to acoustic detection ranges in excess of 200 km, the detections do not confirm that fin whales were present in the project area during that time (Kraus *et al.,* 2016).

Sei Whale

The Nova Scotia stock of sei whales can be found in deeper waters of the continental shelf edge waters of the northeastern United States and northeastward to south of Newfoundland. The southern portion of the stock's range during spring and summer includes the Gulf of Maine and Georges Bank, a region now considered a portion of a feeding BIA for sei whales from May through November (LeBreque *et al.,* 2015). Spring is the period of greatest abundance in U.S. waters, with sightings concentrated along the eastern margin of Georges Bank and into the Northeast Channel area, and along the southwestern edge of Georges Bank in the area of Hydrographer Canyon (Hayes *et al.,* 2020). Sei whales often occur in shallower waters to feed. In aerial

surveys conducted from 2011–2015 in the project area sightings of sei whales occurred between March and June, with the greatest number of sightings in May (*n*=8) and June (*n*=13), and no sightings from July through January (Kraus *et al.,* 2016).

Minke Whale

Minke whales occur in temperate, tropical, and high-latitude waters. The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45° W) to the Gulf of Mexico (Hayes *et al.,* 2020). This species generally occupies waters less than 100 m deep on the continental shelf. There appears to be a strong seasonal component to minke whale distribution, in which spring to fall are times of relatively widespread and common occurrence, and when the whales are most abundant in New England waters, while during winter the species appears to be largely absent (Hayes *et al.,* 2020). In aerial surveys conducted from 2011–2015 in the project area, sightings of minke whales occurred between March and September, with the greatest number of sightings occurring in May (n=38) and no sightings from October through February (Kraus *et al.,* 2016). Although they do not overlap with the SFWF and SFEC, two minke whale feeding BIAs were defined for the southern Gulf of Maine and surrounding waters (<200 m), including the waters east of Cape Cod and Nantucket, applicable from March through November (LeBreque *et al.,* 2015).

Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from Maine through South Carolina, with a total of 103 strandings recorded when this document was written. This event has been declared a UME. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2019-minke-whale-unusual-mortality-event-along-atlantic-coast.*

Sperm Whale

The distribution of the sperm whale in the U.S. EEZ occurs on the continental shelf edge, over the continental slope, and into mid-ocean regions (Hayes *et al.,* 2020). The basic social unit of the sperm whale appears to be the mixed group of adult females with their calves and some juveniles of both sexes, normally numbering 20–40 animals in all. There is evidence that some social bonds persist for many years (Christal *et al.,* 1998). In summer, the distribution of sperm whales includes the area east and north of Georges Bank and into the Northeast Channel region, as well as the continental shelf (inshore of the 100-m isobath) south of New England. In the fall, sperm whale occurrence south of New England on the continental shelf is at its highest level, and there remains a continental shelf edge occurrence in the mid-Atlantic bight. In winter, sperm whales are concentrated east and northeast of Cape Hatteras. Sperm whales are not expected to be common in the project area due to the relatively shallow depths in the project area. In aerial surveys conducted from 2011–2015 in the project area only four sightings of sperm whales occurred, three in summer and one in autumn (Kraus *et al.,* 2016).

Long-Finned Pilot Whale

Long-finned pilot whales are found from North Carolina and north to Iceland, Greenland and the Barents Sea (Hayes *et al.,* 2020). In U.S. Atlantic waters the species is distributed principally along the continental shelf edge off the northeastern U.S. coast in winter and early spring, and in late spring pilot whales move onto Georges Bank and into the Gulf of Maine and more northern waters and remain in these areas through late autumn (Waring *et al.,* 2016). In aerial surveys conducted from 2011–2015 in the project area the majority of pilot whale sightings were in spring (n=11); sightings were also documented in summer, with no sightings in autumn or winter (Kraus *et al.,* 2016).

Atlantic White-Sided Dolphin

White-sided dolphins are found in temperate and sub-polar waters of the North Atlantic, primarily in continental shelf waters to the 100-m depth contour from central West Greenland to North Carolina (Hayes *et al.,* 2020). The Gulf of Maine stock is most common in continental shelf waters from Hudson Canyon to Georges Bank, and in the Gulf of Maine and lower Bay of Fundy. Sighting data indicate seasonal shifts in distribution (Northridge *et al.,* 1997). During January to May, low numbers of white-sided dolphins are found from Georges Bank to Jeffreys Ledge (off New Hampshire), with even lower numbers south of Georges Bank, as documented by a few strandings collected on beaches of Virginia to South Carolina. From June through September, large numbers of white-sided dolphins are found from Georges Bank to the lower Bay of Fundy. From October to December, white-sided dolphins occur at intermediate densities from southern Georges Bank to southern Gulf of Maine (Payne and Heinemann 1990). Sightings south of Georges Bank, particularly around Hudson Canyon, occur year round but at low densities. In aerial surveys conducted from 2011–2015 in the project area there were sightings of white-sided dolphins in every season except winter (Kraus *et al.,* 2016).

Atlantic Spotted Dolphin

Atlantic spotted dolphins are found in tropical and warm temperate waters ranging from southern New England south to Gulf of Mexico and the Caribbean to Venezuela (Waring *et al.,* 2014). This stock regularly occurs in continental shelf waters south of Cape Hatteras and in continental shelf edge and continental slope waters north of this region (Waring *et al.,* 2014). There are two forms of this species, with the larger ecotype inhabiting the continental shelf, usually found inside or near the 200 m isobath (Waring *et al.,* 2014).

Common Dolphin

The common dolphin is found world-wide in temperate to subtropical seas. In the North Atlantic, common dolphins are found over the continental shelf between the 100-m and 2,000-m isobaths and over prominent underwater topography and east to the mid-Atlantic Ridge (Hayes *et al.,* 2020), but may be found in shallower shelf waters as well. Common dolphins are expected to occur in the vicinity of the project area in relatively high numbers. Common dolphins were the most frequently observed dolphin species in aerial surveys conducted from 2011–2015 in the project area (Kraus *et al.,* 2016). Sightings peaked in the summer between June and August, though there were sightings recorded in nearly every month of the year (Kraus *et al.,* 2016).

Bottlenose Dolphin

There are two distinct bottlenose dolphin morphotypes in the western North Atlantic: The coastal and offshore forms (Hayes *et al.,* 2020). The two morphotypes are genetically distinct based upon both mitochondrial and nuclear markers (Hoelzel *et al.,* 1998; Rosel *et al.,* 2009). The offshore form is distributed primarily along the outer continental shelf and continental slope in the Northwest Atlantic Ocean from Georges Bank to the Florida Keys, and is the only type that may be present in the project area as the northern extent of the range of the Western North Atlantic Northern Migratory Coastal

Stock occurs south of the project area. Bottlenose dolphins are expected to occur in the project area in relatively high numbers. They were the second most frequently observed species of dolphin in aerial surveys conducted from 2011–2015 in the project area, and were observed in every month of the year except January and March (Kraus *et al.,* 2016).

Risso's Dolphin

Risso's dolphins are distributed worldwide in tropical and temperate seas, and in the Northwest Atlantic occur from Florida to eastern Newfoundland (Leatherwood *et al.* 1976; Baird and Stacey 1991). Off the northeastern U.S. coast, Risso's dolphins are distributed along the continental shelf edge from Cape Hatteras northward to Georges Bank during spring, summer, and autumn (CETAP 1982; Payne *et al.* 1984), with the range extending outward into oceanic waters in the winter (Payne *et al.,* 1984). Risso's dolphins are not expected to be common in the project area due to the relatively shallow water depths. In aerial surveys conducted from 2011–2015 in the project there were only two confirmed sightings of Risso's dolphins, both of which occurred in the spring (Kraus *et al.,* 2016).

Harbor Porpoise

Harbor porpoises occur from the coastline to deep waters (>1800 m; Westgate *et al.* 1998), although the majority of the population is found over the continental shelf (Hayes *et al.,* 2020). In the project area, only the Gulf of Maine/Bay of Fundy stock of harbor porpoise may be present. This stock is found in U.S. and Canadian Atlantic waters and is concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150 m deep (Waring *et al.,* 2016). In aerial surveys conducted from 2011–2015 in the project area, sightings of harbor porpoise occurred from November through May, with the highest number of detections occurring in April and almost none during June–September (Kraus *et al.,* 2016).

Harbor Seal

The harbor seal is found in all nearshore waters of the North Atlantic and North Pacific Oceans and adjoining seas above about 30° N (Burns, 2009). In the western North Atlantic, harbor seals are distributed from the eastern Canadian Arctic and Greenland south to southern New England and New York, and occasionally to the Carolinas (Hayes *et al.,* 2020). Haulout and pupping sites are located off Manomet, MA and the Isles of Shoals, ME (Waring *et al.,* 2016). Based on harbor seal sightings reported at sea in shipboard surveys conducted by the NMFS Northeast Fisheries Science Center from 1995–2011, harbor seals would be expected to occur in the project area from September to May (Hayes *et al.,* 2020). Harbor seals are expected to be relatively common in the project area. Since July 2018, elevated numbers of harbor seal and gray seal mortalities have occurred across Maine, New Hampshire and Massachusetts. This event has been declared a UME. Additionally, stranded seals have shown clinical signs as far south as Virginia, although not in elevated numbers; therefore, the UME investigation now encompasses all seal strandings from Maine to Virginia. Full or partial necropsy examinations have been conducted on some of the seals and samples have been collected for testing. Based on tests conducted thus far, the main pathogen found in the seals is phocine distemper virus. NMFS is performing additional testing to identify any other factors that may be involved in this UME. Information on this UME is available online at: *www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2019-pinniped-unusual-mortality-event-along.*

Gray Seal

There are three major populations of gray seals found in the world: Eastern Canada (western North Atlantic stock), northwestern Europe, and the Baltic Sea. Gray seals in the project area belong to the western North Atlantic stock. The range for this stock is from New Jersey to Labrador. Current population trends show that gray seal abundance is likely increasing in the U.S. Atlantic EEZ (Hayes *et al.,* 2020). Although the rate of increase is unknown, surveys conducted since their arrival in the 1980s indicate a steady increase in abundance in both Maine and Massachusetts (Hayes *et al.,* 2020). It is believed that recolonization by Canadian gray seals is the source of the U.S. population (Hayes *et al.,* 2020). Gray seals are expected to be relatively common in the project area. As described above, elevated seal mortalities, including gray seals, have occurred across Maine, New Hampshire and Massachusetts, and as far south as Virginia, since July 2018. This event has been declared a UME, with phocine distemper virus identified as the main pathogen found in the seals. NMFS is performing additional testing to identify any other factors that may be involved in this UME.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.

TABLE 4—MARINE MAMMAL HEARING GROUPS—Continued

[NMFS, 2018]

Hearing group	Generalized hearing range *
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more details concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Sixteen marine mammal species (14 cetacean and 2 pinniped (both phocid species)) have the reasonable potential to co-occur with the proposed activities (Table 3). Of the cetacean species that may be present, six are classified as low-frequency cetaceans (*i.e.,* all mysticete species), seven are classified as mid-frequency cetaceans (*i.e.,* all delphinid species and the sperm whale), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound Sources

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. For general information on sound and its interaction with the marine environment, please see, *e.g.,* Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in Hz or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the dB. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)), and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 micropascal-squared second (μPa^2-s)) represents the total energy in a stated frequency band over a stated time interval or event, and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source, and is represented in the same units as the rms sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for sound produced by the pile driving activity considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels

lacking a single source or point (Richardson *et al.,* 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (ICES 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Underwater ambient sound in the Atlantic Ocean southeast of Rhode Island is comprised of sounds produced by a number of natural and anthropogenic sources. Human-generated sound is a significant contributor to the ambient acoustic environment in the project location. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Impulsive and non-impulsive (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both impulsive and non-impulsive sounds. A signal near a source could be categorized as impulsive, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.,* Greene and Richardson, 1988).

Impulsive sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Impulsive sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-impulsive sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-impulsive sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-impulsive sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

General background information on marine mammal hearing was provided previously (see Description of Marine Mammals in the Area of the Specified Activities). Here, the potential effects of sound on marine mammals are discussed.

Potential Effects of Underwater Sound—Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2003; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to pile driving.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects (*i.e.,* certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that pile driving may result

in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015). The construction activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

Threshold Shift—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which NMFS defines as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level'' (NMFS, 2018). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.,* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and three species of pinnipeds (northern elephant seal (*Mirounga angustirostris*), harbor seal, and California sea lion (*Zalophus californianus*)) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS or PTS in marine mammals or for further discussion of TTS or PTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2018).

Behavioral Effects—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as,

more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud impulsive sound sources (typically airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007). However, many delphinids approach low-frequency airgun source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012), indicating the importance of frequency output in relation to the species' hearing sensitivity.

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a,b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). An understanding of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal can facilitate the assessment of whether foraging disruptions are likely to incur fitness consequences.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007; Gailey *et al.,* 2016).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while North Atlantic right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from airgun surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not

been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment if disrupting behavioral patterns. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled

or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Potential Acoustic Effects of Proposed Activities

Acoustic effects on marine mammals during the specified activity can occur from impact pile driving, vibratory pile driving/removal, and HRG surveys. The effects of underwater noise from construction of the SFWF and SFEC have the potential to result in PTS (Level A harassment) or disruption of behavioral patterns (Level B harassment) of marine mammals in the action area.

The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the type (impact or vibratory), depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the distance between the pile and the animal; and the sound propagation properties of the environment.

When piles are driven with impact hammers, they deform, sending a bulge travelling down the pile that radiates sound into the surrounding air, water, and seabed. This sound may be received by biological receivers such as marine mammals through the water, as the result of reflected paths from the surface, or re-radiated into the water from the seabed (See Figure 3 Appendix J1 of the SFWF COP for a schematic diagram illustrating sound propagation paths associated with pile driving).

Noise generated by impact pile driving consists of regular, impulsive sounds of short duration. These impulsive sounds are typically high energy with fast rise times. Exposure to these sounds may result in harassment depending on proximity to the sound source and a variety of environmental and biological conditions (Dahl *et al.* 2015; Nedwell *et al.,* 2007). Illingworth & Rodkin (2007) measured an unattenuated sound pressure within 10 m (33 ft) at a peak of 220 dB re 1 μPa for a 2.4 m (96 in) steel pile driven by an impact hammer, and Brandt *et al.* (2011) found that for a pile driven in a Danish wind farm in the North Sea, the peak pressure at 720 m (0.4 nm) from the source was 196 dB re 1 μPa. Studies of underwater sound from pile driving finds that most of the acoustic energy is below one to two kHz, with broadband sound energy near the source (40 Hz to >40 kHz) and only low-frequency energy (<~400 Hz) at longer ranges (Bailey *et al.,* 2010; Erbe, 2009; Illingworth & Rodkin, 2007). There is typically a decrease in sound pressure and an increase in pulse duration the greater the distance from the noise source (Bailey *et al.,* 2010). Maximum noise levels from pile driving usually occur during the last stage of driving each pile where the highest hammer energy levels are used (Betke, 2008).

Available information on impacts to marine mammals from pile driving associated with offshore wind is limited to information on harbor porpoises and seals, as the vast majority of this research has occurred at European offshore wind projects where large whales are uncommon. Harbor porpoises, one of the most behaviorally sensitive cetaceans, have received particular attention in European waters due to their protection under the European Union Habitats Directive (EU 1992, Annex IV) and the threats they face as a result of fisheries bycatch. Brandt *et al.* (2016) summarized the effects of the construction of eight offshore wind projects within the German North Sea between 2009 and 2013 on harbor porpoises, combining PAM data from 2010–2013 and aerial surveys from 2009–2013 with data on noise levels associated with pile driving. Baseline analyses were conducted initially to identify the seasonal distribution of porpoises in different geographic subareas. Results of the analysis revealed significant declines in porpoise detections during pile driving when compared to 25–48 hours before pile driving began, with the magnitude of decline during pile driving clearly decreasing with increasing distances to the construction site. During the majority of projects, significant declines in detections (by at least 20 percent) were found within at least 5–10 km of the pile driving site, with declines at up to 20–30 km of the pile driving site documented in some cases. However, there were no indications for a population decline of harbor porpoises over the five year study period based on analyses of daily PAM data and aerial survey data at a larger scale (Brandt *et al.,* 2016). Despite extensive construction activities over the study period and an increase in these activities over time, there was no long-term negative trend in acoustic porpoise detections or densities within any of the subareas studied. In some areas, PAM data even detected a positive trend from 2010 to 2013. Even though clear negative short-term effects (1–2 days in duration) of offshore wind farm construction were found (based on acoustic porpoise detections), the authors found no indication that harbor porpoises within the German Bight were negatively affected by wind farm construction at the population level (Brandt *et al.,* 2016).

Monitoring of harbor porpoises before and after construction at the Egmond aan Zee offshore wind project in the Dutch North Sea showed that more porpoises were found in the wind project area compared to two reference areas post-construction, leading the authors to conclude that this effect was linked to the presence of the wind project, likely due to increased food availability as well as the exclusion of fisheries and reduced vessel traffic in the wind project (Lindeboom *et al.,* 2011). The available literature indicates harbor porpoise avoidance of pile driving at offshore wind projects has occurred during the construction phase. Where long term monitoring has been conducted, harbor porpoises have re-populated the wind farm areas after construction ceased, with the time it takes to re-populate the area varying somewhat, suggesting that while there are short-term impacts to porpoises during construction, population-level or long-term impacts are unlikely.

Harbor seals are also a particularly behaviorally sensitive species. A harbor seal telemetry study off the East coast of England found that seal abundance was significantly reduced up to 25 km from WTG pile driving during construction, but found no significant displacement resulted from construction overall as the seals' distribution was consistent with the non-piling scenario within 2 hours of cessation of pile driving (Russell *et al.,* 2016). Based on 2 years of monitoring at the Egmond aan Zee offshore wind project in the Dutch North Sea, satellite telemetry, while inconclusive, seemed to show that harbor seals avoided an area up to 40 km from the construction site during pile driving, though the seals were documented inside the wind farm after construction ended, indicating any

avoidance was temporary (Lindeboom *et al.,* 2011).

Overall, the available literature suggests harbor seals and harbor porpoises have shown avoidance of pile driving at offshore wind projects during the construction phase in some instances, with the duration of avoidance varying greatly, and with re-population of the area generally occurring post-construction. The literature suggests that marine mammal responses to pile driving in the offshore environment are not predictable and may be context-dependent. It should also be noted that the only studies available on marine mammal responses to offshore wind-related pile driving have focused on species which are known to be more behaviorally sensitive to auditory stimuli than the other species that occur in the project area. Therefore, the documented behavioral responses of harbor porpoises and harbor seals to pile driving in Europe should be considered as a worst case scenario in terms of the potential responses among all marine mammals to offshore pile driving, and these responses cannot reliably predict the responses that will occur in other marine mammal species. Harwood *et al.* (2014) discuss a theoretical framework to predict the population level consequences of disturbance from offshore renewable energy development in the UK on bottlenose dolphins and minke whales (among other species), providing illustrative examples of the extent to which each species might be exposed to behavioral disturbance or experience PTS on a given construction day, as well as probabilities of different levels of population decline at the end of the modeled construction period. For bottlenose dolphins, most of the simulated populations had declined in abundance by less than 5 percent by the time construction of the offshore wind project ended; of the simulated minke whale populations, the mean decline in abundance was approximately 3 percent. The results, which relied heavily on assumptions and expert opinion, highlight the need for empirical data to support more robust predictive capabilities for assessment of population level impacts of offshore wind development on affected species (Harwood *et al.,* 2014).

Noise generated from vibratory pile driving is mostly concentrated at lower frequencies. Rise time is slower, and sound energy is distributed over a great amount of time, reducing the probability and severity of injury (Nedwell and Edwards, 2002; Carlson *et al.* 2005). Vibratory hammers produce peak SPLs that may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Measurements from vibratory pile driving of sheet piles during construction activities for bridges and piers indicate that root mean square sound pressure level SPL_{rms} produced by this activity can range from 130 to 170 dB referenced to 1 micropascal squared seconds (dB re 1 μPa^2 s; re 1 μPa) depending on the measured distance from the source and physical properties of the location (Buehler *et al.,* 2015; Illingworth and Rodkin, Inc., 2017).

Masking, which occurs when the receipt of a sound is interfered with by a coincident sound at similar frequencies and similar or higher levels, may occur during the short periods of vibratory pile driving; however, this is unlikely to become biologically significant. It is possible that vibratory pile driving resulting from construction and removal of the temporary cofferdam may mask acoustic signals important to low frequency marine mammals, but the short-term duration (approximately 36 hours over 3 non-consecutive days, 18 hours each for installation and removal) would result in limited impacts from masking. In this case, vibratory pile driving durations are relatively short and no significant seal rookeries or haulouts, or cetacean foraging habitats are located near the inshore proposed cofferdam locations.

While thresholds for auditory impairment consider exposure time, the metrics used for the behavioral harassment threshold do not consider the duration of the animal's exposure to a sound level. Therefore, the traditional assessment for behavioral exposures is dependent solely on the presence or absence of a species within the area ensonified above the threshold. Also, animals are less likely to respond to sounds from more distance sources, even when equivalent sound levels elicit responses at closer ranges; both proximity and received levels are important factors in aversion responses (Dunlop et al., 2017).

HRG surveys may temporarily impact marine mammals in the area due to elevated in-water sound levels. Animals exposed to active acoustic sources during the HRG survey are unlikely to incur TTS hearing impairment due to the characteristics of the sound sources, which include relatively narrow beamwidths (*e.g.,* shallow sub-bottom profilers) and generally very short pulses and duration of the sound. Even for high-frequency cetacean species (*e.g.,* harbor porpoises), which may have increased sensitivity to TTS (Lucke *et al.,* 2009; Kastelein *et al.,* 2012), individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive the multiple exposures at relatively high levels that would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS) (Mooney *et al.,* 2009; Finneran *et al.,* 2010). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range. Further, the restricted beam shape of the majority of the geophysical survey equipment planned for use (Table 2) makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). It is possible that pile driving could result in temporary, short-term changes in an animal's typical behavioral patterns and/or temporary avoidance of the affected area. These behavioral changes may include (Richardson *et al.,* 1995): Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses. The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be

biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could lead to effects on growth, survival, or reproduction, such as drastic changes in diving/surfacing patterns or significant habitat abandonment are considered extremely unlikely in the case of the proposed project, as it is expected that mitigation measures, including clearance zones and soft start (described in detail below, see Proposed Mitigation) will minimize the potential for marine mammals to be exposed to sound levels that would result in more extreme behavioral responses. In addition, marine mammals in the project area are expected to avoid any area that would be ensonified at sound levels high enough for the potential to result in more severe acute behavioral responses, as the offshore environment would allow marine mammals the ability to freely move to other areas without restriction.

In the case of impact pile driving, sound sources would be active for relatively short durations (2 to 3 hours per pile), and only one pile would be driven per day. The acoustic frequencies produced during pile driving activity are lower than those used by most species for communication or foraging expected to be present in the project area. Given the short duration and the frequency spectra produced by pile driving, NMFS expects minimal masking impacts from these activities. Further, any masking events that might qualify as Level B harassment under the MMPA would be expected to occur concurrently within the zones of behavioral harassment already estimated for pile driving, and have, therefore, already been taken into account in the exposure analysis. The zones of behavioral harassment estimated for vibratory pile driving are large (see Estimated Take), but the short duration of this activity coupled with the ephemeral use by LF cetaceans (the group most susceptible to potential masking from these activities) of the nearshore habitat will limit masking impacts. Finally, masking effects from HRG survey activities are not anticipated due to the characteristics of the acoustic sources (intermittent and higher frequency signals), the small isopleths generated by those signals, and the influence of the proposed mitigation.

Anticipated Effects on Marine Mammal Habitat

The proposed activities would result in the placement of 16 permanent structures (*i.e.,* the monopiles and associated scour protection supporting the WTGs and OSS) and a temporary cofferdam in the marine environment. HRG surveys would not impact marine mammal habitat beyond the noise transmission discussed above, and are, therefore, not discussed further in this section. Based on the best available information, the long-term presence of the WTGs and OSS is not expected to have negative impacts on habitats used by marine mammals, and may ultimately have beneficial impacts on those habitats as a result of increased presence of prey species in the project area due to the WTGs and OSS acting as artificial reefs (Russell *et al.,* 2014). Although studies assessing the impacts of offshore wind development on marine mammals are limited, the repopulation of wind energy areas by harbor porpoises (Brandt *et al.,* 2016; Lindeboom *et al.,* 2011) and harbor seals (Lindeboom *et al.,* 2011; Russell *et al.,* 2016) following the installation of wind turbines are promising. SFWF would be located within the migratory corridor BIA for North Atlantic right whales; however, the 13,000 acre (62.5 km^2) lease area occupies a fraction of the available habitat for North Atlantic right whales migrating through the region. Additionally, SFWF would operate a relatively small number of WTGs (15) compared to the number of foundations in offshore wind farms assessed in *e.g.,* Brandt *et al.* (2016) (range: 30–81; mean: 62), making the footprint comparatively small once installation is complete. There are no known foraging hotspots, or other ocean bottom structures of significant biological importance to marine mammals present in the project area. The proposed activities may have potential short-term impacts to food sources such as forage fish and could also affect acoustic habitat (see *Auditory Masking* discussion above), but meaningful impacts are unlikely. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously. The most likely impact to marine mammal habitat occurs from impact and vibratory pile driving effects on marine mammal prey (*e.g.,* fish). Impacts to the immediate substrate during installation of piles are anticipated, but these would be limited to minor, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time, but which would not be expected to have any effects on individual marine mammals. Impacts to substrate are therefore not discussed further.

Effects to Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012). More commonly, though, the impacts of noise on fish are temporary.

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013). As described in the Proposed Mitigation section below, South Fork Wind would utilize a sound attenuation device which would reduce potential for injury to marine mammal prey.

The most likely impact to fish from impact and vibratory pile driving activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the expected short daily duration of individual pile driving events and the relatively small areas being affected.

Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Based on the information discussed herein, NMFS concludes that impacts of South Fork Wind's activities are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as noise from pile driving and HRG surveys has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result from impact pile driving. The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable (see Proposed Mitigation).

As described previously, no mortality is anticipated or proposed to be authorized for these activities. The approach by which take is estimated is described below.

Generally speaking, NMFS estimates take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. NMFS notes that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, NMFS describes the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 μPa (rms) for impulsive and/or intermittent sources. South Fork Wind's proposed activity includes the use of impulsive and intermittent sources (*e.g.,* impact pile driving, HRG acoustic sources), and thus the 160 dB threshold applies.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The components of South Fork Wind's proposed activity that may result in take of marine mammals include the use of impulsive and non-impulsive sources.

These thresholds are provided in Table 5. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance*.

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10 :* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Acoustic Modeling

Here, NMFS describes operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

Impact Pile Driving: Acoustic Range

As described above, South Fork Wind is proposing to install up to 15 WTGs and one OSS in the SFWF (*i.e.,* a maximum of 16 foundations). Two piling scenarios may be encountered in the construction of the project and were therefore considered in the acoustic modeling study conducted to estimate the potential number of marine mammal exposures above relevant harassment thresholds: (1) Maximum design, including one difficult to drive pile, and (2) standard design with no difficult to drive pile included.

In recognition of the need to ensure that the range of potential impacts to marine mammals from the various potential scenarios are accounted for, piling scenarios were modeled separately in order to conservatively assess the impacts of each. The two monopile installation scenarios modeled are:

(1) The ''maximum design'' consisting of fifteen piles requiring ~4,500 strikes per pile (per 24 hrs), and one difficult to drive pile requiring ~8,000 strikes (per 24 hrs).

(2) The ''standard design'' consisting of sixteen piles requiring ~4,500 strike per pile (per 24 hrs).

Representative hammering schedules of increasing hammer energy with increasing penetration depth were modeled, resulting in, generally, higher intensity sound fields as the hammer energy and penetration increases (Table 6).

TABLE 6—HAMMER ENERGY SCHEDULE FOR MONOPILE INSTALLATION

Energy level (kilojoule[kJ])	Standard pile strike count (4,500 total)	Difficult pile strike count (8,000 total)	Pile penetration (m)
1,000	500	800	0–6
1,500	1,000	1,200	6–23.5
2,500	1,500	3,000	23.5–41
4,000	1,500	3,000	41–45

Monopiles were assumed to be vertical and driven to a penetration depth of 45 m. While pile penetrations across the site would vary, this value was chosen as a reasonable penetration depth. All acoustic modeling was performed assuming that only one pile is driven at a time.

Additional modeling assumptions for the monopiles were as follows:

- One pile installed per day.
- 10.97 m steel cylindrical piling with wall thickness of 10 cm.
- *Impact pile driver:* IHC S–4000 (4000 kilojoules (kJ) rated energy; 1977 kilonewtons (kN) ram weight).
- *Helmet weight:* 3234 kN.

Sound fields produced during impact pile driving were modeled by first characterizing the sound signal produced during pile driving using the industry-standard GRLWEAP (wave equation analysis of pile driving) model and JASCO Applied Sciences' (JASCO) Pile Driving Source Model (PDSM). The full JASCO modeling report can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* and we provide a summary of the modelling effort below.

Underwater sound propagation (*i.e.,* transmission loss) as a function of range from each source was modeled using JASCO's Marine Operations Noise Model (MONM) for multiple propagation radials centered at the source to yield 3D transmission loss fields in the surrounding area. The MONM computes received per-pulse SEL for directional sources at specified depths. MONM uses two separate models to estimate transmission loss.

At frequencies less than 2 kHz, MONM computes acoustic propagation via a wide-angle parabolic equation (PE) solution to the acoustic wave equation based on a version of the U.S. Naval Research Laboratory's Range-dependent Acoustic Model (RAM) modified to

account for an elastic seabed. MONM–RAM incorporates bathymetry, underwater sound speed as a function of depth, and a geoacoustic profile based on seafloor composition, and accounts for source horizontal directivity. The PE method has been extensively benchmarked and is widely employed in the underwater acoustics community, and MONM–RAM's predictions have been validated against experimental data in several underwater acoustic measurement programs conducted by JASCO. At frequencies greater than 2 kHz, MONM accounts for increased sound attenuation due to volume absorption at higher frequencies with the widely used BELLHOP Gaussian beam ray-trace propagation model. This component incorporates bathymetry and underwater sound speed as a function of depth with a simplified representation of the sea bottom, as subbottom layers have a negligible influence on the propagation of acoustic waves with frequencies above 1 kHz. MONM–BELLHOP accounts for horizontal directivity of the source and vertical variation of the source beam pattern. Both propagation models account for full exposure from a direct acoustic wave, as well as exposure from acoustic wave reflections and refractions (*i.e.,* multi-path arrivals at the receiver).

The sound field radiating from the pile was simulated using a vertical array of point sources. Because sound itself is an oscillation (vibration) of water particles, acoustic modeling of sound in the water column is inherently an evaluation of vibration. For this study, synthetic pressure waveforms were computed using the full-wave range-dependent acoustic model (FWRAM), which is JASCO's acoustic propagation model capable of producing time-domain waveforms.

Models are more efficient at estimating SEL than SPL_{rms}. Therefore, conversions may be necessary to derive the corresponding SPL_{rms}. Propagation was modeled for a subset of sites using the FWRAM, from which broadband SEL to SPL conversion factors were calculated. The FWRAM required intensive calculation for each site, thus a representative subset of modeling sites were used to develop azimuth-, range-, and depth-dependent conversion factors. These conversion factors were used to calculate the broadband SPL_{rms} from the broadband SEL prediction.

Two locations within the SFWF were selected to provide representative propagation and sound fields for the project area (see Figure 1 in SFWF COP, Appendix J1). The two locations were selected to span the region from shallow to deeper water and varying distances to dominant bathymetric features (*i.e.,* slope and shelf break). Water depth and environmental characteristics (*e.g.,* bottom-type) are similar throughout the SFWF, and therefore minimal differences were found in sound propagation results for the two sites (Denes *et al.,* 2018). The model also incorporated two different sound velocity profiles (related to in situ measurements of temperature, salinity, and pressure within the water column) to account for variations in the acoustic propagation conditions between summer and winter. Estimated pile driving schedules (Table 6) were used to calculate the SEL sound fields at different points in time during pile driving.

The sound propagation modeling incorporated site-specific environmental data that describes the bathymetry, sound speed in the water column, and seabed geoacoustics in the construction area. Sound level estimates are calculated from three-dimensional sound fields and then at each horizontal sampling range, the maximum received level that occurs within the water column is used as the received level at that range. These maximum-over-depth (R_{max}) values are then compared to predetermined threshold levels to determine acoustic ranges to Level A harassment and Level B harassment zone isopleths. However, the ranges to a threshold typically differ among radii from a source, and might not be continuous because sound levels may drop below threshold at some ranges and then exceed threshold at farther ranges. To minimize the influence of these inconsistencies, 5 percent of the farthest such footprints were excluded from the model data. The resulting range, $R_{95percent}$, is used because, regardless of the shape of the maximum-over-depth footprint, the predicted range encompasses at least 95 percent of the horizontal area that would be exposed to sound at or above the specified threshold. The difference between R_{max} and $R_{95percent}$ depends on the source directivity and the heterogeneity of the acoustic environment. $R_{95percent}$ excludes ends of protruding areas or small isolated acoustic foci not representative of the nominal ensonified zone (see Figure 12; SFWF COP Appendix J1).

The modeled source spectrum is provided in Figure 7 of the SFWF COP (Appendix J1). The dominant energy for both pile driving scenarios (''maximum'' and ''standard'') is below 100 Hz. Please see Appendix J1 of the SFWF COP for further details on the modeling methodology (Denes *et al.,* 2020a).

South Fork Wind will employ a noise mitigation system during all impact pile driving of monopiles. Noise mitigation systems, such as bubble curtains, are sometimes used to decrease the sound levels radiated from a source. Bubbles create a local impedance change that acts as a barrier to sound transmission. The size of the bubbles determines their effective frequency band, with larger bubbles needed for lower frequencies. There are a variety of bubble curtain systems, confined or unconfined bubbles, and some with encapsulated bubbles or panels. Attenuation levels also vary by type of system, frequency band, and location. Small bubble curtains have been measured to reduce sound levels but effective attenuation is highly dependent on depth of water, current, and configuration and operation of the curtain (Austin, Denes, MacDonnell, & Warner, 2016; Koschinski & Lüdemann, 2013). Bubble curtains vary in terms of the sizes of the bubbles and those with larger bubbles tend to perform a bit better and more reliably, particularly when deployed with two separate rings (Bellmann, 2014; Koschinski & Lüdemann, 2013; Nehls, Rose, Diederichs, Bellmann, & Pehlke, 2016).

Encapsulated bubble systems (*e.g.,* Hydro Sound Dampers (HSDs)), can be effective within their targeted frequency ranges, *e.g.,* 100–800 Hz, and when used in conjunction with a bubble curtain appear to create the greatest attenuation. The literature presents a wide array of observed attenuation results for bubble curtains. The variability in attenuation levels is the result of variation in design, as well as differences in site conditions and difficulty in properly installing and operating in-water attenuation devices. A California Department of Transportation (CalTrans) study tested several systems and found that the best attenuation systems resulted in 10–15 dB of attenuation (Buehler *et al.,* 2015). Similarly, Dähne *et al.* (2017) found that single bubble curtains that reduced sound levels by 7 to 10 dB reduced the overall sound level by ~12 dB when combined as a double bubble curtain for 6 m steel monopiles in the North Sea. Bellmann *et al.* (2020) provide a review of the efficacy of using bubble curtains (both single and double) as noise abatement systems in the German EEZ of the North and Baltic Seas. For 8 m diameter monopiles, single bubble curtains achieved an average of 11 dB broadband noise reduction (Bellmann *et al.,* 2020). In modeling the sound fields for South Fork Wind's proposed activities, hypothetical broadband attenuation levels of 0 dB, 6 dB, 10 dB,

12 dB, and 15 dB were modeled to gauge the effects on the ranges to thresholds given these levels of attenuation. Although five attenuation levels (and associated ranges) are provided, South Fork Wind anticipates that the use of a noise mitigation system will produce field measurements of the isopleth distances to the Level A harassment and Level B harassment thresholds that accord with those modeled assuming 10 dB of attenuation (see Estimated Take, Proposed Mitigation, and Proposed Monitoring and Reporting sections).

The updated acoustic thresholds for impulsive sounds (such as impact pile driving) contained in the Technical Guidance (NMFS, 2018) were presented as dual metric acoustic thresholds using both SEL_{cum} and peak sound pressure level metrics (Table 5). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group.

Tables 7 and 8 shows the modeled acoustic ranges to the Level A harassment thresholds, with 0, 6, 10, 12 and 15 dB sound attenuation incorporated. For the peak level, the greatest distances expected within a given hearing group are shown, typically occurring at the highest hammer energies (Table 7). The SEL_{cum} Level A harassment threshold is the only metric that is affected by the number of strikes within a 24 hr period; therefore, it is only this acoustic threshold that is associated with differences in range estimates between the standard scenario and the difficult-to drive pile scenario (Table 8). The maximum distances for the other two metrics (peak sound pressure level (SPL_{pk}) and SPL_{rms}) are equal for both scenarios because these metrics are used to define characteristics of a single impulse and do not vary based on the number of strikes (Denes *et al.,* 2020a). The radial distances shown in Tables 7 and 8 are the mean distances from the piles, averaged between the two modeled locations and between summer and winter sound velocity profiles.

TABLE 7—MEAN ACOUSTIC RANGE ($R_{95\%}$) TO LEVEL A PEAK SOUND PRESSURE LEVEL (SPL_{pk}) ACOUSTIC HARASSMENT THRESHOLDS FOR MARINE MAMMALS DUE TO IMPACT PILE DRIVING

Marine mammal hearing group	Threshold SPL_{pk} (dB re 1 μPa)	Mean distance (m) to threshold				
		0 dB attenuation	6 dB attenuation	10 dB attenuation	12 dB attenuation	15 dB attenuation
Low-frequency cetaceans	219	87	22	9	7	2
Mid-frequency cetaceans	230	8	2	1	1	1
High-frequency cetaceans	202	1,545	541	243	183	108
Phocid pinnipeds	218	101	26	12	8	2

dB re 1 μPa = decibel referenced to 1 micropascal.

TABLE 8—MEAN ACOUSTIC RANGE ($R_{95\%}$) TO LEVEL A SOUND EXPOSURE LEVEL (SEL_{cum}) ACOUSTIC HARASSMENT THRESHOLDS FOR MARINE MAMMALS DUE TO IMPACT PILE DRIVING OF A STANDARD PILE (S; 4,500 STRIKES*) AND A DIFFICULT TO DRIVE PILE (D; 8,000 STRIKES*)

Marine mammal hearing group	Threshold SEL_{cum} (dB re 1 $\mu Pa^2 s$)	Mean distance (m) to threshold									
		0 dB attenuation		6 dB attenuation		10 dB attenuation		12 dB attenuation		15 dB attenuation	
		S	D	S	D	S	D	S	D	S	D
Low-frequency cetaceans	183	16,416	21,941	8,888	11,702	6,085	7,846	5,015	6,520	3,676	4,870
Mid-frequency cetaceans	185	107	183	43	59	27	32	27	26	26	26
High-frequency cetaceans	155	9,290	13,374	4,012	6,064	2,174	3,314	2,006	2,315	814	1,388
Phocid pinnipeds	185	3,224	4,523	1,375	2,084	673	1,080	437	769	230	415

dB re 1 μPa^2 s = decibel referenced to 1 micropascal squared second;
* Approximation.

Table 9 shows the acoustic ranges to the Level B harassment threshold with no attenuation, 6, 10, 12, and 15 dB sound attenuation incorporated. Acoustic propagation was modeled at two representative sites in the SFWF as described above. The radial distances shown in Table 8 are the mean distance to the Level B harassment threshold from the piles, derived by averaging the $R_{95percent}$ to the Level B harassment thresholds for summer and winter (see Appendix P2 of the SFWF COP for more details). The range estimated assuming 10 dB attenuation (4,684 m) was used to determine the extent of the Level B harassment zone for impact pile driving.

TABLE 9—MEAN ACOUSTIC RANGE ($R_{95\%}$) TO LEVEL B HARASSMENT ACOUSTIC THRESHOLD (SPL_{rms}) DUE TO IMPACT PILE DRIVING

Threshold SPL_{rms} (dB re 1 μPa)	Mean distance (m) to threshold				
	0 dB attenuation	6 dB attenuation	10 dB attenuation	12 dB attenuation	15 dB attenuation
160	11,382	6,884	4,684	4,164	3,272

dB re 1 μPa = decibel referenced to 1 micropascal.

Impact Pile Driving: Exposure-Based Ranges

Modeled acoustic ranges to threshold levels may overestimate the actual distances at which animals receive exposures meeting the Level A (SEL_{cum}) harassment threshold criterion. In addition, modeled acoustic ranges to thresholds assume that receivers (*i.e.,* animals) are stationary. Therefore, such ranges are not realistic, particularly for accumulating metrics like SEL_{cum}. Applying animal movement and behavior (Denes *et al.* 2020c) within the propagated noise fields provides the exposure range, which results in a more realistic indication of the distances at which acoustic thresholds are met. For modeled animals that have received enough acoustic energy to exceed a given threshold, the exposure range for each animal is defined as the closest point of approach (CPA) to the source made by that animal while it moved throughout the modeled sound field, accumulating received acoustic energy. The resulting exposure range for each species is the 95th percentile of the CPA distances for all animals that exceeded threshold levels for that species (termed the 95 percent exposure range [$ER_{95percent}$]). Notably, the $ER_{95percent}$ are species-specific rather than categorized only by hearing group which affords more biologically-relevant data (*e.g.,* dive durations, swim speeds, etc.) to be considered when assessing impact ranges. The $ER_{95percent}$ for SEL_{cum} are provided in Table 10 and are smaller than the acoustic ranges calculated using propagation modeling alone (Table 7 and 8). Please see the Estimated Take section below and Appendix P1 of the SFWF COP for further detail on the acoustic modeling methodology. The $ER_{95percent}$ ranges assuming 10 dB attenuation for a difficult-to-drive pile were used to determine the Level A harassment zones for impact pile driving.

TABLE 10—EXPOSURE-BASED RANGES ($ER_{95\%}$) TO LEVEL A SOUND EXPOSURE LEVEL (SEL_{cum}) HARASSMENT ACOUSTIC THRESHOLDS DUE TO IMPACT PILE DRIVING OF A STANDARD PILE (S; 4,500 STRIKES*) AND A DIFFICULT TO DRIVE PILE (D; 8,000 STRIKES*)

Species	$ER_{95\%}$ to SEL_{cum} thresholds (m)									
	0 dB attenuation		6 dB attenuation		10 dB attenuation		12 dB attenuation		15 dB attenuation	
	S	D	S	D	S	D	S	D	S	D
Low-Frequency Cetaceans										
Fin whale	5,386	6,741	2,655	2,982	1,451	1,769	959	1,381	552	621
Minke whale	5,196	6,033	2,845	2,882	1,488	1,571	887	964	524	628
Sei whale	5,287	6,488	2,648	3,144	1,346	1,756	1,023	1,518	396	591
Humpback whale	9,333	11,287	5,195	5,947	3,034	3,642	2,450	2,693	1,593	1,813
North Atlantic right whale	4,931	5,857	2,514	3,295	1,481	1,621	918	1,070	427	725
Blue whale [1]	5,386	6,741	2,655	2,982	1,451	1,769	959	1,381	552	621
Mid-Frequency Cetaceans										
Sperm whale	0	0	0	0	0	0	0	0	0	0
Atlantic spotted dolphin	0	0	0	0	0	0	0	0	0	0
Atlantic white-sided dolphin	20	6	20	6	0	0	0	0	0	0
Common dolphin	0	0	0	0	0	0	0	0	0	0
Risso's dolphin	24	13	24	0	0	0	0	0	0	0
Bottlenose dolphin	13	13	0	0	0	0	0	0	0	0
Long-finned pilot whale	0	0	0	0	0	0	0	0	0	0
High-Frequency Cetaceans										
Harbor porpoise	2,845	3,934	683	996	79	365	26	39	21	26
Pinnipeds in Water										
Gray seal	1,559	1,986	276	552	46	117	0	21	0	21
Harbor seal	1,421	2,284	362	513	22	85	22	0	21	0

dB re 1 μPa^2 s = decibel referenced to 1 micropascal squared second.
* Approximation.
[1] There were no Level A SEL_{cum} exposures as a result of animal movement modeling for the blue whale which resulted in a ''0'' exposure range; however, an expected exposure range for mitigation purposes must be applied to each species. Therefore, the fin whale exposure range was used as a proxy for the blue whale given similarity of species and activity.

Cofferdam Installation and Removal

For vibratory pile driving (non-impulsive sounds), sound source characteristics were generated by JASCO using GRLWEAP 2010 wave equation model (Pile Dynamics, Inc., 2010). Installation and removal of the cofferdam were modeled from a single location. The radiated sound waves were modeled as discrete point sources over the full length of the pile in the water and sediment (9.1 m [30 ft] water depth, 9.1 m [30 ft] penetration) with a vertical separation of 0.1 m (0.32 ft). Removal of the cofferdam using a vibratory extractor is expected to be acoustically comparable to installation activities. No noise mitigation system will be used during vibratory piling. Summaries of the maximum ranges to Level A harassment thresholds and Level B harassment thresholds resulting from propagation modeling of vibratory pile driving are provided in Table 11. Peak thresholds were not reached for any marine mammal hearing group.

The large Level B harassment isopleths resulting from vibratory piling installation and removal are a reflection of the threshold set for behavioral disturbance from a continuous noise (*i.e.,* 120 dB_{rms}). Level B harassment thresholds are highly contextual for species and the isopleth distance does not represent a definitive impact zone or a suggested mitigation zone; rather, the information serves as the basis for assessing potential impacts within the context of the project and potentially exposed species.

TABLE 11—DISTANCES TO LEVEL A CUMULATIVE SOUND EXPOSURE LEVEL (SEL_{cum}) HARASSMENT ACOUSTIC THRESHOLDS AND LEVEL B ROOT-MEAN-SQUARE SOUND PRESSURE LEVEL (SPL_{rms}) ACOUSTIC THRESHOLD DUE TO 18 HOURS OF VIBRATORY PILE DRIVING

Marine mammal hearing group	Level A threshold SEL_{cum} (dB re 1 μPa² s)	Maximum distance (m) to Level A threshold	Level B threshold SPL_{rms} (dB re 1 μPa)	Maximum distance (m) to Level B threshold
Low-frequency cetaceans	199	1,470	120	36,766
Mid-frequency cetaceans	198	0	120	36,766
High-frequency cetaceans	173	63	120	36,766
Phocid pinnipeds	201	103	120	36,766

dB re 1 μPa = decibel referenced to 1 micropascal; μPa² s = decibel referenced to 1 micropascal squared second.

HRG Surveys

Isopleth distances to Level A harassment thresholds for all types of HRG equipment and all marine mammal functional hearing groups were modeled using the NMFS User Spreadsheet and NMFS Technical Guidance (2018), which provides a conservative approach to exposure estimation.

NMFS has developed a user-friendly methodology for determining the rms sound pressure level (SPL_{rms}) at the 160-dB isopleth for the purposes of estimating the extent of Level B harassment isopleths associated with HRG survey equipment (NMFS, 2020). This methodology incorporates frequency-dependent absorption and some directionality to refine estimated ensonified zones. South Fork Wind used NMFS's methodology with additional modifications to incorporate a seawater absorption formula and account for energy emitted outside of the primary beam of the source. For sources that operate with different beam widths, the maximum beam width was used (see Table 2). The lowest frequency of the source was used when calculating the absorption coefficient (Table 2).

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to the Level A harassment and Level B harassment thresholds. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 2 shows the HRG equipment types that may be used during the proposed surveys and the sound levels associated with those HRG equipment types.

Results of modeling using the methodology described above indicated that, of the HRG survey equipment planned for use by South Fork Wind that has the potential to result in Level B harassment of marine mammals, sound produced by the Applied Acoustics Dura-Spark UHD sparkers and GeoMarine Geo-Source sparker would propagate furthest to the Level B harassment threshold (141 m; Table 12). For the purposes of the exposure analysis, it was conservatively assumed that sparkers would be the dominant acoustic source for all survey days. Thus, the distances to the isopleths corresponding to the threshold for Level B harassment for sparkers (141 m) was used as the basis of the take calculation for all marine mammals.

TABLE 12—DISTANCE TO WEIGHTED LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS FOR EACH HRG SOUND SOURCE OR COMPARABLE SOUND SOURCE CATEGORY FOR MARINE MAMMAL HEARING GROUPS

Source	Distance to Level A threshold (m)					Distance to Level B (m)
	LF (SEL_{cum} threshold)	MF (SEL_{cum} threshold)	HF (SEL_{cum} threshold)	HF ($SPL_{0\text{-}pk}$ threshold)	PW (SEL_{cum} threshold)	All species (160 dB SPL_{rms} threshold)
Shallow SBPs						
ET 216 CHIRP	<1	<1	2.9	—	0	12
ET 424 CHIRP	0	0	0	—	0	4
ET 512i CHIRP	0	0	<1	—	0	6
GeoPulse 5430	<1	<1	36.5	—	<1	29
TB CHIRP III	1.5	<1	16.9	—	<1	54
Medium SBPs						
AA Triple plate S-Boom (700/1,000 J)	<1	0	0	4.7	<1	76
AA, Dura-spark UHD (500 J/400 tip)	<1	0	0	2.8	<1	141
AA, Dura-spark UHD 400+400	<1	0	0	2.8	<1	141
GeoMarine, Geo-Source dual 400 tip sparker	<1	0	0	2.8	<1	141

— = not applicable; μPa = micropascal; AA = Applied Acoustics; CHIRP = Compressed High-Intensity Radiated Pulse; dB = decibels; ET = EdgeTech; HF = high-frequency; J = joules; LF= low-frequency; MF = mid-frequency; PW = Phocids in water; re= referenced to; SBP = sub-bottom profiler; SEL_{cum} = cumulative sound exposure level in dB re 1 μPa² s; $SPL_{0\text{-}pk}$ = zero to peak sound pressure level in dB re 1 μPa; TB = teledyne benthos; UHD = ultra-high definition; USBL = ultra-short baseline.

Marine Mammal Occurrence

This section provides information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. The best available information regarding marine mammal densities in the project area is provided by habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016, 2017, 2018, 2020). Density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016); more information, including the model results and supplementary information for each of those models, is available at *seamap.env.duke.edu/models/Duke-EC-GOM-2015/.* In subsequent years, certain models have been updated on the basis of additional data as well as certain methodological improvements. Although these updated models (and a newly developed seal density model) are not currently publicly available, our evaluation of the changes leads to a conclusion that these represent the best scientific evidence available. Marine mammal density estimates in the SFWF (animals/km^2) were obtained using these model results (Roberts *et al.,* 2016, 2017, 2018, 2020). As noted, the updated models incorporate additional sighting data, including sightings from the NOAA Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys from 2010–2016 which included some aerial surveys over the RI/MA & MA WEAs (NEFSC & SEFSC, 2011a, 2011b, 2012, 2014a, 2014b, 2015, 2016). Roberts *et al.* (2020) further updated model results for North Atlantic right whales by incorporating additional sighting data and implementing three major changes: Increasing spatial resolution, generating monthly estimates on three time periods of survey data, and dividing the study area into five discrete regions.

Densities of marine mammals and their subsequent exposure risk are different for the wind farm area (where impact pile driving will occur), the near shore export cable area (where vibratory pile driving will occur), and the HRG survey area. Therefore, density blocks (Roberts *et al.,* 2016; Roberts, 2018) specific to each construction area were selected for evaluating the potential takes of the 16 assessed species. The Denes *et al.* (2020c) model analysis utilized North Atlantic right whale densities from the most recent survey time period, 2010–2018, as suggested by Roberts *et al.* (2020).

Monopile Installation

Mean monthly densities for all animals were calculated using a 60 km (37.3 mi) square centered on SFWF and overlaying it on the density maps from Roberts *et al.* (2016, 2017, 2018, 2020). The relatively large area selected for density estimation encompasses and extends beyond the estimated distances to the isopleth corresponding to the Level B harassment (with no attenuation, as well as with 6, 10, 12 and 15 dB sound attenuation) for all hearing groups using the unweighted threshold of 160 dB re 1 μPa (rms) (Table 9). Please see Figure 3 in the SFWF COP (Appendix P2) for an example of a density map showing Roberts *et al.* (2016, 2017, 2018, 2020) density grid cells overlaid on a map of the SFWF.

The mean density for each month was determined by calculating the unweighted mean of all 10 x 10 km (6.2 x 6.2 mi) grid cells partially or fully within the buffer zone polygon. Mean values from the density maps were converted from units of abundance (animals/100 km^2 [38.6 miles^2]) to units of density (animals/km^2). Densities were computed for the months of May to December to coincide with planned pile driving activities (as described above, no pile driving would occur from January through April). In cases where monthly densities were unavailable, annual mean densities (*e.g.,* pilot whales) and seasonal mean densities (*e.g.,* all seals) were used instead. Table 13 shows the monthly marine mammal density estimates for each species incorporated in the exposure modeling analysis. To obtain conservative exposure estimates, South Fork Wind used the maximum of the mean monthly (May to December) densities for each species to estimate the number of individuals of each species exposed above Level A harassment and Level B harassment thresholds. The maximum densities applied are denoted by an asterisk.

TABLE 13—ESTIMATED DENSITIES (ANIMALS/KM^{-2}) USED FOR MODELING MARINE MAMMAL EXPOSURES WITHIN SOUTH FORK WIND FARM

Common name	Monthly density (animals km^{-2})							
	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Fin whale	0.00201	0.00219	*0.00264	0.00251	0.00217	0.00145	0.00102	0.00105
Minke whale	*0.00163	0.00143	0.00047	0.00026	0.00027	0.00049	0.00022	0.00032
Sei whale	*0.00019	0.00013	0.00003	0.00002	0.00003	0.00000	0.00001	0.00001
Humpback whale	0.00133	0.00148	0.00069	0.00094	*0.00317	0.00156	0.00042	0.00061
North Atlantic right whale	*0.00154	0.00011	0.00002	0.00001	0.00001	0.00005	0.00029	0.00151
Blue whale	*0.00001							
Sperm whale	0.00002	0.00008	*0.00031	0.00024	0.00010	0.00007	0.00007	0.00001
Atlantic white-sided dolphin	*0.03900	0.03600	0.02500	0.01300	0.01500	0.02200	0.02100	0.02800
Atlantic spotted dolphin	0.00012	0.00016	0.00034	0.00041	0.00051	*0.00058	0.00037	0.00007
Common bottlenose dolphin	0.00496	0.01800	0.03700	0.03800	*0.04000	0.02000	0.00962	0.00846
Pilot whales [1]	*0.00596							
Risso's dolphin	0.00005	0.00005	0.00018	*0.00026	0.00015	0.00005	0.00009	0.00019
Common dolphin	0.04400	0.04600	0.04300	0.06200	0.10200	0.12800	0.09800	*0.20400
Harbor porpoise	*0.03800	0.00236	0.00160	0.00172	0.00161	0.00399	0.02400	0.02300
Gray seal	*0.03900	0.02600	0.00874	0.00357	0.00529	0.00955	0.00630	0.03400
Harbor seal	*0.03900	0.02600	0.00874	0.00357	0.00529	0.00955	0.00630	0.03400

*Denotes the highest monthly density estimated.

[1] Long- and short-finned pilot whales are grouped together to estimate the total density of both species.

Cofferdam Installation and Removal

Marine mammal densities in the near shore export cable area were estimated from the 10 × 10 km habitat density blocks that contained the anticipated location of the cofferdam. Monthly marine mammal densities for the potential construction locations of the cofferdam are provided in Table 14. The maximum densities (denoted by an asterisk) were incorporated in the exposure modeling to obtain the most conservative estimates of potential take by Level A harassment or Level B harassment.

The species listed in each respective density table represent animals that could be reasonably expected within the propagated Level B harassment threshold distances at each location, in the months during which the cofferdam may be installed and extracted (*e.g.,* October through April). Several of the outer continental shelf and deeper water species that appear in the SFWF area are not included in the cofferdam species list because the densities were zero for those species.

TABLE 14—ESTIMATED DENSITIES (ANIMALS/KM^{-2}) USED FOR MODELING MARINE MAMMAL EXPOSURES WITHIN THE AFFECTED AREA AND CONSTRUCTION SCHEDULE OF THE COFFERDAM INSTALLATION

Species [1]	Jan	Feb	Mar	Apr	May	Oct	Nov	Dec
Fin whale	0.0001	0.0001	0.0002	*0.0005	0.0002	0.0002	0.0001	0.0001
Minke whale	0.0005	*0.0008	0.0008	0.0000	0.0000	0.0000	0.0005	0.0005
Sei whale	0.0001	0.0001	0.0001	0.0000	0.0000	0.0000	0.0000	0.0001
Humpback whale	*0.0002	0.0002	0.0002	0.0000	0.0000	0.0000	0.0000	0.0002
North Atlantic right whale	*0.0014	0.0014	0.0013	0.0008	0.0003	0.0000	0.0002	0.0008
Atlantic white-sided dolphin	0.0001	0.0000	0.0001	0.0002	*0.0003	0.0003	0.0003	0.0002
Common dolphin	0.0003	0.0001	0.0001	0.0003	0.0007	0.0007	*0.0010	0.0008
Common bottlenose dolphin	0.0694	0.0296	0.0157	0.0474	0.3625	*0.4822	0.2614	0.0809
Harbor porpoise	0.0007	0.0005	0.0005	0.0011	0.0007	*0.0026	0.0003	0.0006
Gray seal	*0.3136	0.3136	0.3136	0.3136	0.3136	0.3136	0.3136	0.3136
Harbor seal	*0.3136	0.3136	0.3136	0.3136	0.3136	0.3136	0.3136	0.3136

*Denotes density used for take estimates.
[1] Only species with potential exposures are listed.

HRG Surveys

Densities for HRG surveys were combined for the wind farm area (inter-array cables) and the export cable route using density blocks that encompassed those areas. The densities used for HRG surveys are provided in Table 15. Average annual, rather than maximum monthly, densities were estimated to account for spatial variability in the distribution of marine mammals throughout the SFWF and SFEC and temporal variability in distribution over the 12-month timeframe during which HRG surveys would occur.

TABLE 15—ESTIMATED DENSITIES (ANIMALS/KM^{-2}) OF MARINE MAMMALS WITHIN THE HIGH RESOLUTION GEOPHYSICAL SURVEY AREA

[Export cable route and inter-array cables]

Species	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec	Annual average *
Fin whale	0.0020	0.0015	0.0016	0.0027	0.0022	0.0022	0.0025	0.0024	0.0018	0.0018	0.0016	0.0022	0.0020
Minke whale	0.0006	0.0007	0.0006	0.0004	0.0005	0.0006	0.0006	0.0004	0.0002	0.0001	0.0006	0.0006	0.0005
Sei whale	0.0001	0.0001	0.0001	0.0002	0.0004	0.0002	0.0001	0.0000	0.0000	0.0000	0.0000	0.0001	0.0001
Humpback whale	0.0008	0.0007	0.0008	0.0006	0.0009	0.0013	0.0008	0.0010	0.0013	0.0013	0.0013	0.0007	0.0010
North Atlantic right whale	0.0038	0.0053	0.0060	0.0054	0.0016	0.0001	0.0000	0.0000	0.0000	0.0000	0.0003	0.0017	0.0020
Sperm whale	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001
Atlantic white-sided dolphin	0.0227	0.0103	0.0078	0.0172	0.0326	0.0276	0.0178	0.0126	0.0202	0.0267	0.0298	0.0352	0.0217
Atlantic spotted dolphin	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001
Common dolphin	0.0218	0.0100	0.0085	0.0182	0.0568	0.0645	0.0417	0.0456	0.0468	0.0538	0.0600	0.0506	0.0399
Common bottlenose dolphin	0.0081	0.0033	0.0014	0.0035	0.0241	0.0324	0.0544	0.0405	0.0393	0.0392	0.0271	0.0108	0.0237
Risso's dolphin	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
Long-finned pilot whale	0.0033	0.0033	0.0033	0.0033	0.0033	0.0033	0.0033	0.0033	0.0033	0.0033	0.0033	0.0033	0.0033
Harbor porpoise	0.0871	0.0584	0.0475	0.0964	0.0547	0.0182	0.0037	0.0014	0.0024	0.0150	0.0046	0.0482	0.0365
Gray seal	0.0151	0.0151	0.0151	0.0151	0.0151	0.0030	0.0030	0.0030	0.0151	0.0151	0.0151	0.0151	0.0121
Harbor seal	0.0151	0.0151	0.0151	0.0151	0.0151	0.0030	0.0030	0.0030	0.0151	0.0151	0.0151	0.0151	0.0121

*Annual average density used for take estimates.

Take Calculation and Estimation

Below is a description of how the information provided above is brought together to produce a quantitative take estimate. The following steps were performed to estimate the potential numbers of marine mammal exposures above Level A harassment and Level B harassment thresholds as a result of the proposed activities.

Monopile Installation

JASCO's Animal Simulation Model Including Noise Exposure (JASMINE) animal movement model was used to predict the probability of marine mammal exposure to impact pile driving sound. Sound exposure models like JASMINE use simulated animals (also known as ''animats'') to forecast behaviors of animals in new situations and locations based on previously documented behaviors of those animals. The predicted 3D sound fields (*i.e.,* the output of the acoustic modeling process described earlier) are sampled by animats using movement rules derived from animal observations. The output of the simulation is the exposure history for each animat within the simulation.

The precise location of animats (and their pathways) are not known prior to a project, therefore a repeated random sampling technique (Monte Carlo) is used to estimate exposure probability with many animats and randomized starting positions. The probability of an

animat starting out in or transitioning into a given behavioral state can be defined in terms of the animat's current behavioral state, depth, and the time of day. In addition, each travel parameter and behavioral state has a termination function that governs how long the parameter value or overall behavioral state persists in the simulation.

The output of the simulation is the exposure history for each animat within the simulation, and the combined history of all animats gives a probability density function of exposure during the project. Scaling the probability density function by the real-world density of animals (Table 13) results in the mean number of animats expected to be exposed over the duration of the project. Due to the probabilistic nature of the process, fractions of animats may be predicted to exceed threshold. If, for example, 0.1 animats are predicted to exceed threshold in the model, that is interpreted as a 10% chance that one animat will exceed a relevant threshold during the project, or equivalently, if the simulation were re-run ten times, one of the ten simulations would result in an animat exceeding the threshold. Similarly, a mean number prediction of 33.11 animats can be interpreted as re-running the simulation where the number of animats exceeding the threshold may differ in each simulation but the mean number of animats over all of the simulations is 33.11. A portion of an individual marine mammal cannot be taken during a project, so it is common practice to round mean number animat exposure values to integers using standard rounding methods. However, for low-probability events it is more precise to provide the actual values.

Sound fields were input into the JASMINE model and animats were programmed based on the best available information to ''behave'' in ways that reflect the behaviors of the 16 marine mammal species expected to occur in the project area during the proposed activity. The various parameters for forecasting realistic marine mammal behaviors (*e.g.,* diving, foraging, surface times, etc.) are determined based on the available literature (*e.g.,* tagging studies); when literature on these behaviors was not available for a particular species, it was extrapolated from a similar species for which behaviors would be expected to be similar to the species of interest. Please refer to the footnotes on Tables 16 and 17, and Appendix P2 of SFWF COP for a more detailed description of the species that were used as proxies when data on a particular species was not available. The parameters used in JASMINE describe animat movement in both the vertical and horizontal planes (*e.g.,* direction, travel rate, ascent and descent rates, depth, bottom following, reversals, inter-dive surface interval). More information regarding modeling parameters can be found in Denes *et al.* (2020c).

The mean number of animats that may be exposed to noise exceeding acoustic thresholds were calculated for two construction schedules; one representing the most likely schedule, and one representing a more aggressive, or maximum schedule (Denes *et al.,* 2019). The most likely schedule assumes that three foundations are installed per week with an average of one pile installed every other day. The maximum schedule assumes six monopile foundations are installed per week with one pile installation per day. Within each of the construction schedules, a single difficult-to-drive pile was included in the model assumptions to account for the potential for additional strikes (Denes *et al.,* 2019). Animats were modeled to move throughout the three-dimensional sound fields produced by each construction schedule for the entire construction period. For PTS exposures, both SPLpk and SELcum were calculated for each species based on the corresponding acoustic criteria. Once an animat is taken within a 24-hrs period, the model does not allow it to be taken a second time in that same period but rather resets the 24-hrs period on a sliding scale across 7 days of exposure. An individual animat's exposure levels are summed over that 24-hrs period to determine its total received energy, and then compared to the threshold criteria. Potential behavioral exposures are estimated when an animat is within the area ensonified by sound levels exceeding the corresponding thresholds. It should be noted that the estimated numbers of individuals exceeding any of the thresholds is conservative because the 24-hrs evaluation window allows individuals to be counted on multiple days or can be interpreted as different individuals each 24-hrs period when in the real world it may in fact be the same individual experiencing repeated exposures (Denes *et al.,* 2019). Also note that animal aversion was not incorporated into the JASMINE model runs that were the basis for the take estimate for any species. See Appendix P2 of the SFWF COP for more details on the JASMINE modeling methodology, including the literature sources used for the parameters that were input in JASMINE to describe animal movement for each species that is expected to occur in the project area.

In summary, exposures were estimated in the following way:

(1) The characteristics of the sound output from the proposed pile-driving activities were modeled using the GRLWEAP (wave equation analysis of pile driving) model and JASCO's PDSM;

(2) Acoustic propagation modeling was performed within the exposure model framework using JASCO's MONM and FWRAM that combined the outputs of the source model with the spatial and temporal environmental context (*e.g.,* location, oceanographic conditions, seabed type) to estimate sound fields;

(3) Animal movement modeling integrated the estimated sound fields with species-typical behavioral parameters in the JASMINE model to estimate received sound levels for the animals that may occur in the operational area; and

(4) The number of potential exposures above Level A and Level B harassment thresholds was calculated for each potential piling scenario (standard, maximum).

All scenarios were modeled with no sound attenuation and 6, 10, 12, and 15 dB sound attenuation. The results of marine mammal exposure modeling for the potentially more impactful maximum piling scenarios are shown in Tables 16 and 17, as these form the basis for the take authorization proposed in this document.

TABLE 16—MODELED POTENTIAL LEVEL A HARASSMENT EXPOSURES [1] DUE TO IMPACT PILE DRIVING USING THE MAXIMUM DESIGN SCENARIO WITH THE INCLUSION OF 1 DIFFICULT PILE AND 0, 6, 10, 12, AND 15 dB BROADBAND ATTENUATION

Species	0 dB attenuation		6 dB attenuation		10 dB attenuation		12 dB attenuation		15 dB attenuation	
	SEL_{cum}	SPL_{pk}	SEL_{cum}	SPL_{pk}	SEL_{cum}	SPL_{pk}	SEL_{cum}	SPL_{pk}	SEL_{cum}	SPL_{pk}
Low-Frequency Cetaceans										
Fin whale	7	<1	3	<1	1	<1	1	<1	<1	<1
Minke whale [2]	7	<1	3	<1	1	<1	1	<1	<1	<1
Sei whale [3]	1	<1	<1	<1	<1	<1	<1	<1	<1	<1
Humpback whale [2]	21	<1	9	<1	4	<1	3	<1	3	<1
North Atlantic right whale [2]	4	<1	1	<1	<1	<1	<1	<1	<1	<1
Blue whale	<1	<1	<1	<1	<1	<1	<1	<1	<1	<1
Mid-Frequency Cetaceans										
Sperm whale	<1	<1	<1	<1	<1	<1	<1	<1	<1	<1
Atlantic spotted dolphin [4]	<1	<1	<1	<1	<1	<1	<1	<1	<1	<1
Atlantic white sided dolphin [4]	<1	<1	<1	<1	<1	<1	<1	<1	<1	<1
Bottlenose dolphin	<1	<1	<1	<1	<1	<1	<1	<1	<1	<1
Common dolphin [4]	<1	<1	<1	<1	<1	<1	<1	<1	<1	<1
Risso's dolphin [4]	<1	<1	<1	<1	<1	<1	<1	<1	<1	<1
Pilot whale [5]	<1	<1	<1	<1	<1	<1	<1	<1	<1	<1
High-Frequency Cetaceans										
Harbor porpoise	33	23	4	7	[7] 1	3	1	3	<1	1
Pinnipeds in Water										
Gray seal [6]	6	<1	1	<1	<1	<1	<1	<1	<1	<1
Harbor seal	8	1	2	<1	<1	<1	<1	<1	<1	<1

dB = decibel; SEL_{cum} = sound exposure level in units of dB referenced to 1 micropascal squared second; SPL_{pk} = peak sound pressure level in units of dB referenced to 1 micropascal.

[1] The maximum density available for any month was used for each species to estimate the maximum potential exposures (*i.e.,* exposure estimates for all species are not for the same month).

[2] Subset of fin whale behaviors used to approximate model parameters.

[3] Fin whale used as proxy species for exposure modeling.

[4] Subset of sperm whale and Atlantic spotted dolphin behaviors used to approximate model parameters.

[5] Subset of sperm whale behaviors used to approximate model parameters.

[6] Harbor seal used as proxy species for exposure modeling.

[7] Calculated exposures with 10 dB for harbor porpoises were <1 but >0.5; therefore they were rounded up to the nearest whole number.

Again, only the estimated Level B harassment exposures for the maximum design pile driving schedule are presented here (Table 17).

TABLE 17—MODELED POTENTIAL LEVEL B HARASSMENT EXPOSURES [1] DUE TO IMPACT PILE DRIVING USING THE MAXIMUM DESIGN SCENARIO WITH 1 DIFFICULT PILE AND 0, 6, 10, 12, AND 15 dB BROADBAND ATTENUATION

Species	Level B exposures by noise attenuation level				
	0 dB attenuation	6 dB attenuation	10 dB attenuation	12 dB attenuation	15 dB attenuation
Low-Frequency Cetaceans:					
Fin whale	21	10	6	5	4
Minke whale [2]	27	15	10	8	6
Sei whale [3]	<1	<1	<1	<1	<1
Humpback whale [2]	26	13	8	7	6
North Atlantic right whale [2]	16	7	4	3	3
Blue whale	<1	<1	<1	<1	<1
Mid-Frequency Cetaceans:					
Sperm whale	<1	<1	<1	<1	<1
Atlantic spotted dolphin [4]	6	3	2	1	<1
Atlantic white sided dolphin [4]	322	152	107	85	48
Bottlenose dolphin	1,261	459	197	148	73
Common dolphin [4]	2	1	<1	<1	<1
Risso's dolphin [4]	212	85	43	34	14
Pilot whale [5]	<1	<1	<1	<1	<1
High-Frequency Cetaceans:					
Harbor porpoise	272	129	78	67	40
Pinnipeds in Water:					
Gray seal [6]	307	116	60	52	28
Harbor seal	319	119	54	45	28

dB = decibel.

[1] The maximum density available for any month was used for each species to estimate the maximum potential exposures (*i.e.,* exposure estimates for all species are not for the same).
[2] Subset of fin whale behaviors used to approximate model parameters.
[3] Fin whale used as proxy species for exposure modeling.
[4] Subset of sperm whale and Atlantic spotted dolphin behaviors used to approximate model parameters.
[5] Subset of sperm whale behaviors used to approximate model parameters.
[6] Harbor seal used as proxy species for exposure modeling.

Although exposures are presented according to a range of attenuation levels, proposed take numbers are based on an assumption of 10 dB attenuation and are shown below in Table 18. South Fork Wind considers an attenuation level of 10 dB achievable using a single big bubble curtain (BBC), which is the most likely noise mitigation system that will be used during construction of SFWF. Recently reported in situ measurements during installation of large monopiles (~8 m) for more than 150 WTGs in comparable water depths (>25 m) and conditions in Europe indicate that attenuation levels of 10 dB are readily achieved (Bellmann, 2019; Bellmann *et al.,* 2020) using single BBCs as a noise mitigation system. Designed to gather additional data regarding the efficacy of BBCs, the Coastal Virginia Offshore Wind (CVOW) pilot project systematically measured noise resulting from the impact driven installation of two 7.8 m monopiles, one with a noise mitigation system (double bubble curtain (dBBC)) and one without (CVOW, unpublished data). Although many factors contributed to variability in received levels throughout the installation of the piles (*e.g.,* hammer energy, technical challenges during operation of the dBBC), reduction in broadband SEL using the dBBC (comparing measurements derived from the mitigated and the unmitigated monopiles) ranged from approximately 9 to 15 dB. The effectiveness of the dBBC as a noise mitigation measure was found to be frequency dependent, reaching a maximum around 1 kHz; this finding is consistent with other studies (*e.g.,* Bellman, 2014; Bellman *et al.,* 2020). The noise measurements were incorporated into a dampened cylindrical transmission loss model to estimate distances to Level A and Level B harassment thresholds. The distances to Level A harassment and Level B harassment thresholds estimated for the monopile with the dBBC were more than 90 percent and 74 percent smaller than those estimated for the unmitigated pile, respectively (CVOW).

TABLE 18—PROPOSED LEVEL A HARASSMENT AND LEVEL B HARASSMENT TAKES OF MARINE MAMMALS RESULTING FROM IMPACT PILE DRIVING OF UP TO 15, 11-m MONOPILES WITHIN INCLUSION OF A SINGLE DIFFICULT PILE AT SOUTH FORK WIND FARM USING 10 dB BROADBAND NOISE ATTENUATION

Species/stock	Abundance estimate	Proposed takes [1]	
		Level A	Level B
Fin whale	6,802	1	6
Minke whale	21,968	1	10
Sei whale	6,292	1(0)	1
Humpback whale	1,393	4	8
North Atlantic right whale	412	0	4
Blue whale	402	0	1(0)
Sperm whale	4,349	0	3(0)
Long-finned pilot whale	39,921	0	2
Atlantic spotted dolphin	39,921	0	2
Atlantic white-sided dolphin	93,233	0	107
Common dolphin	172,974	0	197
Risso's dolphin	35,493	0	30(1)
Common bottlenose dolphin	62,851	0	43
Harbor porpoise	95,543	0	78
Gray seal	505,000	0	60
Harbor seal	75,834	0	54

[1] Parentheses denote animal exposure model estimates. For species with no modeled exposures for Level A harassment or Level B harassment, proposed takes for impact pile driving are based on mean group sizes (*e.g.,* sei whale, blue whale, long-finned pilot whale: Kenney and Vigness-Raposa, 2010; sperm whale, Risso's dolphin: Barkaszi and Kelly, 2018).

South Fork Wind conservatively based their exposure modeling on the maximum piling scenario, including one difficult-to-drive monopile (out of 16) and a compressed buildout schedule (16 piles installed over 20 days).

In addition, the acoustic modeling scenario represents only that which produced the largest harassment zones and does not reflect all the mitigation measures that will be employed during piling operations that will serve to reduce the Zone of Influence (ZOI) or increase mitigation actions, which may reduce take (see the Proposed Mitigation section for details on the measures proposed for implementation).

Variability in monthly species densities is not considered in South Fork Wind's take estimates for monopile driving, which are based on the highest mean density value for any month for each species. Given that less than 30 days of pile driving will occur, it is unlikely that maximum monthly densities would be encountered for all species.

Finally, start delays and shutdowns of pile hammering are not considered in the exposure modeling parameters for monopile driving. However, South Fork Wind will delay pile driving if a North Atlantic right whale is observed within the Level B harassment zone prior to initiating pile driving to avoid take and if a marine mammal is observed entering or within the respective exclusion zones after pile driving has commenced, an immediate shutdown of pile driving will be implemented unless South Fork Wind and/or its contractor determines shutdown is not practicable due to an imminent risk of injury or loss of life to an individual; or risk of damage to a vessel that creates risk of

injury or loss of life for individuals. There are two scenarios, approaching pile refusal and pile instability, where this imminent risk could be a factor. These scenarios are considered unlikely and it is expected that shutdowns will predominately be practicable during operations. See the Proposed Mitigation section for shutdown procedural details.

Although the exposure modeling indicated that Level A harassment takes are only expected for a three species of baleen whales (fin whale, minke whale, and humpback whale), South Fork Wind requested authorization of take by Level A harassment of one sei whale based on the occurrence of sei whales in the project area documented during prior and ongoing HRG surveys of the SFWF.

South Fork Wind requested authorization of take equal to the mean group size for Level B harassment, based on the best available data (seals, Herr *et al.,* 2009; blue whale, long-finned pilot whale, Kenney and Vigness-Raposa, 2010; sperm whale, and Risso's dolphin, Barkaszi and Kelly, 2018). NMFS agrees that this approach is appropriate in cases where instantaneous exposure is expected to result in harassment, *e.g.,* Level B harassment and calculated take estimates are either zero or less than the group size.

Cofferdam Installation and Removal

Animal movement and exposure modeling was not used to determine potential exposures from vibratory pile driving. Rather, the modeled acoustic range distances to isopleths corresponding to the Level A harassment and Level B harassment threshold values were used to calculate the area around the cofferdam predicted to be ensonified daily to levels that exceed the thresholds, or the ZOI. ZOI is calculated as the following:

$ZOI = \pi r^2$,

where r is the linear acoustic range distance from the source to the isopleth for Level A harassment or Level B harassment thresholds. This area was adjusted to account for the portion of the ZOI truncated by the coastline of Long Island, NY.

The daily area was then multiplied by the maximum monthly density of a given marine mammal species. Roberts *et al.* (2018) produced density models for all seals but did not differentiate by seal species. Because the seasonality and habitat use by gray seals roughly overlaps with that of harbor seals in the survey areas, it was assumed that the mean annual density of seals could refer to either of the respective species and was, therefore, divided equally between the two species.

Finally, the resulting value was multiplied by the number of proposed activity days which is, for cofferdam installation and removal, conservatively estimated as two days. Modeling of the Level A harassment exposures resulting from two 18-hrs periods of vibratory pile driving and removal resulted in less than one exposure for all species for each month between October 1 and May 31. Modeled potential Level B harassment exposures resulting from installation and extraction of the cofferdam are shown in Table 19.

TABLE 19—MODELED LEVEL B HARASSMENT EXPOSURES RESULTING FROM VIBRATORY PILE DRIVING AND REMOVAL OF THE COFFERDAM

Species	Jan	Feb	Mar	Apr	May	Oct	Nov	Dec
Fin whale	0	0	1	2	1	1	0	0
Minke whale	2	3	3	0	0	0	2	2
Sei whale	0	0	0	0	0	0	0	0
Humpback whale	1	1	1	0	0	0	0	1
North Atlantic right whale	6	6	5	3	1	0	1	3
Atlantic white-sided dolphin	0	0	0	1	1	1	1	1
Common dolphin	1	0	0	1	3	3	4	3
Common bottlenose dolphin	289	123	65	197	1,509	2,007	1,088	337
Harbor porpoise	3	2	2	5	3	11	1	2
Gray seal	1,305	1,305	1,305	1,305	1,305	1,305	1,305	1,305
Harbor seal	1,305	1,305	1,305	1,305	1,305	1,305	1,305	1,305

Maximum 18-hour periods of vibratory pile driving or removal will be separated by at least 24 hours of no vibratory sound source operating at the cofferdam.

Modeled vibratory pile driving activities for the SFEC (SFWF COP Appendix J1 [Denes *et al.,* 2018]) resulted in mean acoustic ranges to the PTS threshold for low frequency cetaceans, ranging from 742 m for 6 hrs of piling to 1,470 m for 18 hrs of piling (Denes *et al.,* 2018). Maximum acoustic ranges to PTS thresholds for other marine mammal hearing groups are all under 103 m. Level A harassment exposures are not expected due to low population densities of LFC species in the project area, animal movement and required accumulation periods (Denes *et al.,* 2019), the short duration of vibratory pile driving, and proposed mitigation measures (see Proposed Mitigation section).

Vibratory pile driving during cofferdam installation and removal for the SFEC does have the potential to elicit behavioral responses in marine mammals. However, predicting Level B harassment exposure estimates resulting from vibratory pile driving is complicated by the nearshore location, short duration of cofferdam installation and removal, and static species density data that are not indicative of animals transiting the nearshore environment. Marine mammal densities at the near shore export cable area were estimated from the 10 x 10 km habitat density block from Roberts *et al.* (2016) and Roberts *et al.* (2018) that contained the anticipated location of the temporary cofferdam. However, the density estimates are not provided for the area adjacent to the shoreline, although some density blocks do intersect the shore. Due to this structure, densities are artificially weighted to the nearest 100 km^2 offshore and do not adequately represent the low numbers expected for some groups like large whales. In addition, the species densities represented in the Roberts *et al.* (2016) and Robert *et al.* (2018) are provided as monthly estimates and are, therefore, not indicative of a single-day distribution of animals within the potential ensonified zone. The modeled behavioral harassment threshold acoustic ranges extend beyond 36 km from the source (Table 11); despite this extensive Level B harassment zone, only bottlenose dolphin, harbor seal, and gray seal exposure estimates are relatively large. However, the low densities of most species nearshore, the seasonality of occurrence, and the transitory nature of marine mammals

within the small time period of vibratory pile driving significantly reduces the risk of behavioral harassment exposures. In addition, marine mammal species in this region are not expected to remain in proximity to the cofferdam location for an extended amount of time. Although the modeled Level B harassment exposure estimates for harbor and gray seals were large (1,305), seals are only expected to be seasonally present in the region, and there are no known rookeries documented near the cofferdam location. Seals typically haul-out for some portion of their daily activities, often in large groups (Hayes *et al.,* 2020); however, the in-water median group size is estimated to be 1–3 animals depending on the distance to shore (Herr *et al.,* 2009) with larger groups typically being associated with direct proximity to a haul-out site. There are a few documented haul-out sites around Long Island, New York; the nearest site is in Montauk Point, approximately 20 km northeast of the cofferdam location, where seals are primarily observed in winter (CRESLI, 2019). Long Island, NY represents the northernmost portion of the range for the Western North Atlantic Migratory Coast Stock of bottlenose dolphins. Bottlenose dolphin occurrence is also seasonal along the coast of Long Island, peaking in late summer/early fall (Hayes *et al.,* 2020). Potential exposures of bottlenose dolphins varied substantially across the proposed construction months, with a minimum number of potential Level B harassment exposures in March (65) and a maximum in October (2007). The impact of vibratory pile driving on this species (and both seal species) will be largely dependent on the timing of the installation and extraction of the cofferdam.

Given the possibility that vibratory pile driving could occur anytime between October and May, the maximum modeled exposure for each species (across months) was used to conservatively predict take numbers and assess impacts resulting from vibratory pile driving (Table 20).

TABLE 20—PROPOSED LEVEL B HARASSMENT TAKE RESULTING FROM VIBRATORY PILE DRIVING

Species/stock	Population estimate	Proposed level B takes
Fin whale	6,802	2
Minke whale	21,968	3
Sei whale	6,292	0
Humpback whale	1,393	1
North Atlantic right whale	412	6
Atlantic white sided dolphin	93,233	1
Common dolphin	172,974	4
Bottlenose dolphin	62,851	2,007
Harbor porpoise	95,543	11
Gray seal	505,000	1,305
Harbor seal	75,834	1,305

HRG Surveys

Potential exposures of marine mammals to acoustic impacts from HRG survey activities were estimated using an approach similar to that described for installation and removal of a cofferdam. For HRG surveys, however, the ZOI was calculated as follows:

$$ZOI = 2rd + \pi r^2$$

where r is the linear acoustic range from the source to the largest estimated Level A harassment (36.5 m) and Level B harassment (141 m) isopleths, and d is the survey trackline distance per day (70 km).

The daily area was then multiplied by the mean annual density of a given marine mammal species. Finally, the resulting value was multiplied by the number of proposed survey days (60).

Modeled distances to isopleths corresponding to the Level A harassment threshold are very small (<1 m) for three of the four marine mammal functional hearing groups that may be impacted by the proposed activities (*i.e.,* low frequency and mid frequency cetaceans, and phocid pinnipeds; see Table 12). Based on the extremely small Level A harassment zones for these functional hearing groups, the potential for species within these functional hearing groups to be taken by Level A harassment is considered so low as to be discountable. These three functional hearing groups encompass all but one of the marine mammal species listed in Table 3 that may be impacted by the proposed activities. There is one species (harbor porpoise) within the high frequency functional hearing group that may be impacted by the proposed activities. However, the largest modeled distance to the Level A harassment threshold for the high frequency functional hearing group was only 36.5 m (Table 12). More importantly, Level A harassment would also be more likely to occur at close approach to the sound source or as a result of longer duration exposure to the sound source, and the narrow beam width and directional nature of the sources, as well as the mitigation measures (including a 100 m exclusion zone for harbor porpoises), minimize the potential for exposure to HRG sources that would result in Level A harassment. In addition, harbor porpoises are a notoriously shy species which is known to avoid vessels and would also be expected to avoid a sound source prior to that source reaching a level that would result in injury (Level A harassment). Therefore, NMFS has determined that the potential for take by Level A harassment of harbor porpoises is so low as to be discountable. The modeled Level B harassment exposures of marine mammals resulting from HRG survey activities are shown in Table 21.

TABLE 21—MODELED LEVEL B HARASSMENT EXPOSURES SPECIES RESULTING FROM HIGH RESOLUTION GEOPHYSICAL SURVEYS OF THE SFWF AND SFEC

Species	Population estimate	Estimated level B exposures
Fin whale	6,802	3
Minke whale	21,968	1
Sei whale	6,292	<1
Humpback whale	1,393	1
North Atlantic right whale	412	3
Sperm whale	4,349	<1
Atlantic spotted dolphin	39,921	<1
Atlantic white-sided dolphin	93,233	26
Common dolphin	172,974	47
Bottlenose dolphin	62,851	28
Risso's dolphin	35,493	<1
Long-finned pilot whale	39,215	4
Harbor porpoise	95,543	43
Gray Seal	505,000	14
Harbor seal	75,834	14

The proposed number of takes by Level B harassment resulting from HRG survey activities are shown in Table 22. Again, as NMFS has determined that the likelihood of take of any marine mammals in the form of Level A harassment occurring as a result of the proposed surveys is so low as to be discountable and South Fork Wind did not request any take by Level A harassment associated with HRG surveys, NMFS does not propose to authorize take by Level A harassment of any marine mammals.

The seasonal mean number of minke whales sighted during HRG surveys conducted by South Fork Wind in 2017 and 2018 was 19; therefore, South Fork increased the number of takes requested for minke whales from 1 to 19. Preliminary Protected Species Observer (PSO) reports from SFWF during 2019 and 2020 HRG surveys show a high number of common dolphin detections within the estimated Level B harassment zones. Using a mean group size of 25, South Fork Wind multiplied the mean group size by the number of Level B harassment exposures modeled (47) to produce the number of takes they requested by Level B harassment (1,175). There were no exposures estimated for several species; however, as a precautionary measure, South Fork Wind requested Level B harassment takes for those species based on published values of mean group sizes (sei whale, Kenney and Vigness-Raposa, 2010; sperm whale, Barkaszi and Kelly, 2018; Atlantic spotted dolphin, Barkaszi and Kelly, 2018; Risso's dolphin, Barkaszi and Kelly, 2018). The number of minke whale Level B harassment takes requested by South Fork Wind is based on the seasonal mean number of minke whales sighted during HRG surveys of SFWF in 2017 and 2018.

TABLE 22—PROPOSED AMOUNT OF LEVEL B HARASSMENT TAKE RESULTING FROM HIGH RESOLUTION GEOPHYSICAL SURVEYS OF THE SFWF AND SFEC

Species/stock	Population estimate	Proposed level B takes [1]
Fin whale	6,802	3
Minke whale	21,968	19(1)
Sei whale	6,292	1(0)
Humpback whale	1,393	1
North Atlantic right whale	412	3
Sperm whale	4,349	3(0)
Long-finned pilot whale	39,215	4
Atlantic spotted dolphin	39,921	13(0)
Atlantic white sided dolphin	93,233	26
Common dolphin	172,974	1,175(47)
Risso's dolphin	35,493	30(0)
Common bottlenose dolphin	62,851	28
Harbor porpoise	95,543	43
Gray seal	505,000	14
Harbor seal	75,834	14

[1] The modeled number of takes is shown in parenthesis.

Combined Activity Proposed Takes

Level A harassment and Level B harassment proposed takes for the combined activities of impact pile driving using a noise attenuation device, vibratory pile driving, and HRG surveys are provided in Table 23. NMFS also presents the percentage of each stock taken based on the total amount of take. The mitigation and monitoring measures provided in the Proposed Mitigation and Proposed Monitoring and Reporting sections are activity-specific and are designed to minimize acoustic exposures to marine mammal species.

The take numbers NMFS proposes for authorization (Table 23) are considered

conservative for the following key reasons:

- Proposed take numbers for impact pile driving assume a maximum piling schedule (16 monopiles installed in 20 days);
- Proposed take numbers for vibratory pile driving assume that a sheet pile temporary cofferdam will installed (versus the alternative installation of a gravity cell cofferdam, for which no take is anticipated);
- Proposed take numbers for pile driving are conservatively based on maximum densities across the proposed construction months;
- Proposed Level A harassment take numbers do not fully account for the likelihood that marine mammals will avoid a stimulus when possible before the individual accumulates enough acoustic energy to potentially cause auditory injury;
- Proposed take numbers do not fully account for the effectiveness of proposed mitigation and monitoring measures in reducing the number of takes to effect the least practicable adverse impact (with the exception of the seasonal restriction on impact pile driving, which is accounted for in the proposed take numbers).

TABLE 23—PROPOSED TAKES BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT FOR ALL ACTIVITIES [1] CONDUCTED DURING SFWF CONSTRUCTION

Species/stock	Population estimate	Proposed take authorization combined for all construction activities		Total proposed takes (level A + level B)	* Percentage of population or stock (%)
		Proposed level A takes	Proposed level B takes		
Fin whale	6,802	1	11	12	0.18
Minke whale	21,968	1	32	33	0.15
Sei whale	6,292	1	2	3	0.05
Humpback whale	1,393	4	10	14	1.01
North Atlantic right whale	412	0	13	13	3.16
Blue whale	402	0	1	1	0.20
Sperm whale	4,349	0	6	6	0.14
Pilot whales (long-finned)	39,215	0	16	16	0.04
Atlantic spotted dolphin	39,921	0	15	15	0.04
Atlantic white sided dolphin	93,233	0	133	133	0.14
Common dolphin	172,974	0	1,372	1,372	0.79
Risso's dolphin	35,493	0	60	60	0.17
Common Bottlenose dolphin	62,851	0	2,078	2,078	3.31
Harbor porpoise	95,543	0	132	132	0.14
Gray seal	505,000	0	1,379	1,379	0.27
Harbor seal	75,834	0	1,379	1,379	1.81

[1] Activities include impact pile driving using a noise mitigation system (NMS) from May through October, vibratory pile driving (October through May), and HRG surveys (year-round).

* Calculations of percentage of stock taken are based on the best available abundance estimate as shown in Table 3. The best available abundance estimates are derived from the draft 2020 NMFS Stock Assessment Reports (Hayes *et al.,* 2020). NMFS stock abundance estimate for gray seals applies to U.S. population only, actual stock abundance is approximately 505,000.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS carefully considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

The mitigation strategies described below are consistent with those required and successfully implemented under previous incidental take authorizations issued in association with in-water construction activities. Additional measures have also been incorporated to account for the fact that the proposed construction activities would occur offshore. Modeling was performed to estimate harassment zones, which were used to inform mitigation measures for pile driving activities to minimize Level A harassment and Level B harassment to the extent practicable.

In addition to the specific measures described later in this section, South Fork Wind would conduct briefings for construction supervisors and crews, the marine mammal and acoustic monitoring teams, and South Fork Wind staff prior to the start of all pile driving and HRG survey activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, the marine mammal monitoring protocol, and operational procedures.

Monopile Installation

Seasonal Restriction on Impact Pile Driving

No impact pile driving activities would occur January 1 through April 30. This seasonal restriction would minimize the potential for North Atlantic right whales to be exposed to pile driving noise. Based on the best available information (Kraus *et al.,* 2016; Roberts *et al.,* 2020), the highest densities of North Atlantic right whales in the project area are expected during the months of January through April. This restriction is expected to greatly reduce the potential for North Atlantic right whale exposure to pile driving noise associated with the proposed project.

Clearance and Exclusion Zones

South Fork Wind would use PSOs to establish clearance zones around the pile driving equipment to ensure these zones are clear of marine mammals prior to the start of pile driving. The purpose of ''clearance'' of a particular zone is to prevent potential instances of auditory injury and potential instances of more severe behavioral disturbance as a result of exposure to pile driving noise (serious injury or death are unlikely outcomes even in the absence of mitigation measures) by delaying the activity before it begins if marine mammals are detected within certain pre-defined distances of the pile driving equipment. The primary goal in this case is to prevent auditory injury (Level A harassment), and the proposed clearance zones are larger than the modeled distances to the isopleths (assuming an effective 10 dB attenuation of pile driving noise) corresponding to Level A harassment for all marine mammal species (excluding humpback whales). These zones vary depending on species and are shown in Table 24. All distances to the perimeter of clearance zones are the radius from the center of the pile. The pre-start clearance zones for large whales, harbor porpoises, and seals are based upon the maximum distance to the Level A harassment isopleth for each group (excluding humpback whales) plus a 20 percent buffer, rounded up for PSO clarity. The North Atlantic right whale Level A harassment zone is conservatively based on the Level B harassment zone, and the distance to the perimeter of the clearance zone is rounded up from 4,684 m to 5,000 m. Although the Level A harassment zones are small, mid-frequency cetacean (except sperm whales) zones were established using a precautionary distance of 100 m and will extend to that distance or just beyond the placement of the noise mitigation system, whichever is further.

The exclusion zones for large whales, North Atlantic right whale, porpoise, and seals are based upon the maximum Level A harassment zone for each group (excluding humpback whales), increased by a 10 percent buffer and rounded up for PSO clarity. Similar to clearance zones, mid-frequency cetacean (except sperm whale) exclusion zones will extend to the larger of two distances: 50 m or just outside the noise mitigation system.

The Level A harassment zone is larger for humpback whales than other low frequency baleen whales because animal movement modeling used to estimate the associated isopleth relies on behavior-based exposures with no aversion (based on the best available data that inform the animat models); specific movement parameters help drive the larger zone size for humpbacks, including a modeled preference for slightly deeper water than the depths in the SFWF. This modeled preference resulted in fewer exposures, but each exposure was farther from the impact piling location, producing the larger Level A harassment zone. While the clearance zone (2,200 m) for humpback whales is smaller than the Level A harassment zone (3,642 m), visual monitoring would be conducted from both the construction vessel and a secondary, smaller vessel (on which dedicated PSOs would be deployed) surveying the circumference of the construction vessel at a radius approximate to the pre-start clearance zone for large whales (2,200 m). NMFS expects that this additional visual monitoring would facilitate detection of humpback whales within the Level A harassment zone.

South Fork Wind would establish a clearance zone for North Atlantic right whales slightly larger than the Level B harassment zone to minimize all take. If a North Atlantic right whale is detected nearing the exclusion zone, shutdown would be triggered. NMFS agrees that, under typical conditions, South Fork Wind would be capable of monitoring this zone using a combination of visual monitoring from both the construction vessel and secondary monitoring vessel (described above), and real-time PAM, which would occur before, during, and after driving using a combination of acoustic detection systems (*e.g.,* moored buoys, free-floating arrays). Communication of marine mammal detections, either visual or acoustic, among PSOs on both vessels and PAM operators would facilitate both clearance of the zone and initiation of shutdown, if required.

TABLE 24—PROPOSED CLEARANCE AND EXCLUSION ZONES [1] DURING SOUTH FORK WIND IMPACT PILE DRIVING WITH A NOISE MITIGATION SYSTEM

Species	Level A harassment zone (m) (SEL)	Level A harassment zone (m) (PK)	Level B harassment zone (m)	Pre-start clearance zone (m)	Exclusion zone (m)	Vessel separation distance (m)
Low-frequency Cetaceans:						
Fin whale	1,756	≤10	4,684	2,200	2,000	100
Minke whale	1,571	≤10	4,684	2,200	2,000	100
Sei whale	1,769	≤10	4,684	2,200	2,000	100
Humpback whale	3,642	≤10	4,684	2,200	2,000	100
North Atlantic right whale	1,621	≤10	4,684	5,000	2,000	500
Blue whale [2]	1,756	≤10	4,684	2,200	2,000	100
Mid-frequency Cetaceans:						
Sperm whale		≤10	4,684	2,200	2,000	100
Atlantic spotted dolphin		≤10	4,684	100	50	50
Atlantic white-sided dolphin		≤10	4,684	100	50	50
Common dolphin		≤10	4,684	100	50	50
Risso's dolphin		≤10	4,684	100	50	50
Bottlenose dolphin		≤10	4,684	100	50	50
Long-finned pilot whale		≤10	4,684	100	50	50
High-frequency Cetaceans:						

TABLE 24—PROPOSED CLEARANCE AND EXCLUSION ZONES [1] DURING SOUTH FORK WIND IMPACT PILE DRIVING WITH A NOISE MITIGATION SYSTEM—Continued

Species	Level A harassment zone (m) (SEL)	Level A harassment zone (m) (PK)	Level B harassment zone (m)	Pre-start clearance zone (m)	Exclusion zone (m)	Vessel separation distance (m)
Harbor porpoise	365	301	4,684	450	450	50
Phocid Pinnipeds in Water:						
Gray seal	120	≤10	4,684	150	150	50
Harbor seal	85	≤10	4,684	150	150	50

dB = decibel; SEL = cumulative sound exposure level PK = peak sound pressure level.

[1] Zones are based upon the following modeling assumptions: 11-m monopile installation with inclusion of a difficult to install pile that requires approximately 8,000 hammer strikes and mitigated with10 dB broadband noise attenuation from a noise mitigation system. Only 1 pile out of the 16 total monopiles is expected to be a difficult pile.

[2] No Level A exposures were calculated for blue whales resulting in no expected Level A exposure range; therefore, the exposure range for fin whales was used as a proxy due to similarities in species.

If a marine mammal is observed approaching or entering the relevant clearance zones prior to the start of pile driving, pile driving activity will be delayed until either the marine mammal has voluntarily left the respective clearance zone and been visually confirmed beyond that clearance zone, or, 30 minutes have elapsed without re-detection of the animal in the case of mysticetes, sperm whales, Risso's dolphins and pilot whales, or 15 minutes have elapsed without re-detection of the animal in the case of all other marine mammals.

Prior to the start of pile driving activity, the clearance zones will be monitored for 60 minutes using a combined effort of passive acoustic monitoring and visual observation to ensure that they are clear of the relevant species of marine mammals. Pile driving would only commence once PSOs have declared the respective clearance zones clear of marine mammals. Marine mammals observed within a clearance zone will be allowed to remain in the clearance zone (*i.e.,* must leave of their own volition), and their behavior will be monitored and documented. The clearance zones may only be declared clear, and pile driving started, when the entire clearance zones are visible (*i.e.,* when not obscured by dark, rain, fog, etc.) for a full 60 minutes immediately prior to commencing pile driving. For North Atlantic right whales, the clearance zone may be declared clear if no visual or acoustic detections have occurred during the 60 minute monitoring period. If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the exclusion zone, shutdown would be required.

Soft Start of Impact Pile Driving

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning marine mammals or providing them with a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. South Fork Wind will utilize soft start techniques for impact pile driving including by performing 4–6 strikes per minute at 10 to 20 percent of the maximum hammer energy, for a minimum of 20 minutes. NMFS notes that it is difficult to specify the reduction in energy for any given hammer because of variation across drivers and, for impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in ''bouncing'' of the hammer as it strikes the pile, resulting in multiple ''strikes''; however, as mentioned previously, South Fork Wind has proposed that they will target less than 20 percent of total hammer energy for the initial hammer strikes during soft start. Soft start would be required at the beginning of each day's impact pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer.

Shutdown of Impact Pile Driving Equipment

The purpose of a shutdown is to prevent some undesirable outcome, such as auditory injury or severe behavioral disturbance of sensitive species, by halting the activity. If a marine mammal is observed entering or within the respective exclusion zone (Table 24) after pile driving has begun, the PSO will request a temporary cessation of pile driving.

In situations when shutdown is called for but South Fork Wind determines shutdown is not practicable due to imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that created risk of injury or loss of life for individuals, reduced hammer energy would be implemented when practicable. After shutdown, pile driving may be initiated once all clearance zones are clear of marine mammals for the minimum species-specific time periods, or, if required to maintain installation feasibility. Installation feasibility refers to ensuring that the pile installation results in a usable foundation for the WTG (*e.g.,* installed to the target penetration depth without refusal and with a horizontal foundation/tower interface flange).

Visibility Requirements

Pile driving would not be initiated at night, or, when the full extent of all relevant clearance zones cannot be confirmed to be clear of marine mammals, as determined by the lead PSO on duty. The clearance zones may only be declared clear, and pile driving started, when the full extent of all clearance zones are visible (*i.e.,* when not obscured by dark, rain, fog, etc.) for a full 60 minutes prior to pile driving. Pile driving may continue after dark only when the driving of the same pile began no less than 90 minutes prior to civil sunset, when clearance zones were fully visible, and must proceed for human safety or installation feasibility reasons. PSOs would utilize night vision devices (NVDs) (Infrared (IR) and/or thermal cameras) to monitor clearance zones if pile driving continues past civil sunset.

Sound Attenuation Devices

South Fork Wind would implement sound attenuation technology designed to result in an average of 10 dB attenuation of impact pile driving noise (see *Acoustic Monitoring for Sound Source and Harassment Isopleth*

Verification section below). The attenuation system would likely be a single bubble curtain, but may include one of the following or some combination of the following: A double BBC, Hydro-sound Damper, and/or Noise Abatement System. South Fork would also have a second back-up attenuation device (*e.g.,* additional bubble curtain or similar) available, if needed, to achieve the targeted reduction in noise levels that would result in the measured Level A harassment and Level B harassment isopleths corresponding to those modeled assuming 10 dB attenuation, pending results of sound field verification testing.

If South Fork Wind uses a bubble curtain, the bubble curtain must distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. The lowest bubble ring shall be in contact with the mudline for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact. South Fork Wind would require that construction contractors train personnel in the proper balancing of airflow to the bubblers, and would require that construction contractors submit an inspection/performance report for approval by South Fork Wind within 72 hours following the performance test. Corrections to the attenuation device to meet the performance standards would occur prior to impact driving. If South Fork Wind uses a noise attenuation device other than a BBC, similar quality control measures would be required.

Cofferdam Installation and Removal

Clearance and Exclusion Zones

South Fork Wind would implement visual monitoring of the clearance zones for 30 minutes prior to the initiation of ramp-up of vibratory piling equipment (Table 25). During this period, the clearance zone will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is detected within its respective exclusion zone. If a marine mammal is observed within a clearance zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective clearance zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species).

TABLE 25—PROPOSED CLEARANCE AND EXCLUSION ZONES DURING INSTALLATION AND REMOVAL OF A TEMPORARY COFFERDAM

Species	Level A harassment zone (m) (SEL)	Level B harassment zone (m) (SPL)	Pre-start clearance zone (m)	Exclusion zone (m)	Vessel separation distance (m)
Low-Frequency Cetaceans:					
Fin whale	1,470	36,766	1,500	1,500	100
Minke whale	1,470	36,766	1,500	1,500	100
Sei whale	1,470	36,766	1,500	1,500	100
Humpback whale	1,470	36,766	1,500	1,500	100
North Atlantic right whale	1,470	36,766	1,500	1,500	500
Blue whale	1,470	36,766	1,500	1,500	100
Mid-Frequency Cetaceans:					
Sperm whale		36,766	1,500	1,500	100
Atlantic spotted dolphin		36,766	100	50	50
Atlantic white-sided dolphin		36,766	100	50	50
Common dolphin		36,766	100	50	50
Risso's dolphin		36,766	100	50	50
Bottlenose dolphin		36,766	100	50	50
Long-finned pilot whale		36,766	100	50	50
High-Frequency Cetaceans:					
Harbor porpoise	63	36,766	100	100	50
Phocid Pinnipeds in Water:					
Gray seal	103	36,766	150	125	50
Harbor seal	103	36,766	150	125	50

SEL = cumulative sound exposure level in units of decibels referenced to 1 micropascal squared second; SPL = root-mean-square sound pressure level in units of decibels referenced to 1 micropascal.

Shutdown of Vibratory Pile Driving

An immediate shutdown of vibratory pile driving equipment must be implemented if a marine mammal is sighted entering or within its respective exclusion zone after cofferdam installation has commenced. Resumption of vibratory pile driving can begin if the animal has been observed exiting its respective exclusion zone or an additional time period has elapsed without a resighting *(i.e.,* 15 minutes for small odontocetes and seals and 30 minutes for all other species). If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the exclusion zone, shutdown would be required.

HRG Surveys

Clearance and Exclusion Zones

South Fork Wind would implement a 30-minute pre-clearance period of the clearance zones prior to the initiation of ramp-up of HRG equipment (Table 26). During this period, the clearance zone will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective clearance zone. If a marine mammal is observed within a clearance zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective clearance zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species).

TABLE 26—PROPOSED MONITORING, CLEARANCE, AND EXCLUSION ZONES DURING HRG SURVEYS OPERATING CHIRP SUB-BOTTOM PROFILERS, BOOMERS, AND SPARKERS

Species	Level A harassment zone (SEL)	Level A harassment zone (PK)	Maximum extent of zone in meters (m) from all potential HRG sound sources				Vessel separation distance (m)
			Level B zones		Pre-start clearance zone	Exclusion zone	
			CHIRPS	Boomers and sparkers			
Low-Frequency Cetaceans:							
Fin whale	<1	<1	50	141	100	100	100
Minke whale	<1	<1	50	141	100	100	100
Sei whale	<1	<1	50	141	100	100	100
Humpback whale	<1	<1	50	141	100	100	100
N.A. right whale	<1	<1	50	141	500	500	500
Blue whale	<1	<1	50	141	100	100	100
Mid-Frequency Cetaceans:							
Sperm whale	<1	<1	50	141	100	100	100
Atlantic spotted dolphin	<1	<1	50	141	100	.....	50
Atlantic white-sided dolphin	<1	<1	50	141	100	.....	50
Common dolphin	<1	<1	50	141	100	.....	50
Risso's dolphin	<1	<1	50	141	100	.....	50
Bottlenose dolphin	<1	<1	50	141	100	.....	50
Long-finned pilot whale	<1	<1	50	141	100	.....	50
High-Frequency Cetaceans:							
Harbor porpoise	37	5	50	141	100	100	50
Phocid Pinnipeds in Water:							
Gray seal	<1	<1	50	141	100	.....	50
Harbor seal	<1	<1	50	141	100	.....	50

Ramp-Up of HRG Survey Equipment

When practicable, a ramp-up procedure would be used for HRG survey equipment capable of adjusting energy levels at the start or restart of survey activities. The ramp-up procedure would be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the Survey Area by allowing them to vacate the area prior to the commencement of survey equipment operation at full power.

A ramp-up would begin with the powering up of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. When practicable, the power would then be gradually turned up and other acoustic sources would be added.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective exclusion zone. Ramp-up will continue if the animal has been observed exiting its respective exclusion zone or until an additional time period has elapsed with no further sighting (*i.e,* 15 minutes for small odontocetes and seals and 30 minutes for all other species).

Shutdown of HRG Survey Equipment

An immediate shutdown of the impulsive HRG survey equipment would be required if a marine mammal is sighted entering or within its respective exclusion zone. No shutdown is required for surveys operating only non-impulsive acoustic sources. The vessel operator must comply immediately with any call for shutdown by the Lead PSO. Any disagreement between the Lead PSO and vessel operator should be discussed only after shutdown has occurred. Subsequent restart of the survey equipment can be initiated if the animal has been observed exiting its respective exclusion zone or until an additional time period has elapsed *(i.e.,* 15 minutes for small odontocetes and seals and 30 minutes for all other species).

If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the Level B harassment zone, shutdown would occur.

If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant observation and no detections of any marine mammal have occurred within the respective exclusion zones. If the acoustic source is shut down for a period longer than 30 minutes and PSOs have maintained constant observation, then pre-clearance and ramp-up procedures will be initiated as described in the previous section.

The shutdown requirement would be waived for small delphinids of the following genera: *Delphinus, Lagenorhynchus, Stenella,* and *Tursiops.* Specifically, if a delphinid from the specified genera is visually detected approaching the vessel (*i.e.,* to bow ride) or towed equipment, shutdown is not required. Furthermore, if there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgement in making the decision to call for a shutdown. Additionally, shutdown is required if a delphinid is detected in the exclusion zone and belongs to a genus other than those specified.

Vessel Strike Avoidance

Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish marine mammals from other phenomena and broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammal. Vessel strike avoidance measures will include, but are not limited to, the following, except under circumstances when complying with these measures would put the safety of the vessel or crew at risk:

- All vessels greater than or equal to 65 ft (19.8 m) in overall length must comply with the 10 knot speed restriction in any Seasonal Management Area (SMA) per the NOAA ship strike reduction rule (73 FR 60173; October 10, 2008).
- Vessels of all sizes will operate port to port at 10 knots or less between November 1 and April 30, except for vessels transiting inside Narragansett Bay or Long Island Sound.
- A trained, dedicated visual observer and alternative visual detection system (*e.g.,* thermal cameras) will be stationed on all transiting vessels that intend to operate at greater than 10 knots from November 1 through April 30. The primary role of the visual observer is to alert the vessel navigation crew to the presence of marine mammals and to report transit activities and marine mammal sightings to the designated South Fork Wind information system.
- Vessels of all sizes will operate at 10 knots or less in any North Atlantic right whale Dynamic Management Area (DMA).
- Outside of DMAs, SMAs, and the November 1 through April 30 time period, localized detections of North Atlantic right whales, using passive acoustics, would trigger a slow-down to 10 knots or less in the area of detection (zone) for the following 12 hours (hrs). Each subsequent detection would trigger a 12-hr reset. A slow-down in that zone expires when there has been no further visual or acoustic detection in the past 12-hr within the triggered zone.
- For all vessels greater than or equal to 65 ft (19.8 m) in overall length, vessel speeds must be reduced to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.
- All vessels must maintain a minimum separation distance of 500 m from North Atlantic right whales. If a whale is observed but cannot be confirmed as a species other than a right whale, the vessel operator must assume that it is a right whale and take appropriate action.
- All vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales.
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an exception made for those that approach the vessel.
- When marine mammals are sighted while a vessel is underway, the vessel must take action as necessary to avoid violating the relevant separation distance, *e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area. If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.
- These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.
- When not on active watch duty, members of the monitoring team must consult NMFS' North Atlantic right whale reporting systems for the presence of North Atlantic right whales in the project area.
- Project-specific training must be conducted for all vessel crew prior to the start of in-water construction activities. Confirmation of the training and understanding of the requirements must be documented on a training course log sheet.

NMFS has carefully evaluated South Fork Wind's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on NMFS' evaluation of these measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).

• Mitigation and monitoring effectiveness.

Monitoring would be conducted before, during, and after impact pile driving, vibratory pile driving and during HRG surveys. In addition, observers will record all incidents of marine mammal occurrence at any distance from the piling location or active HRG acoustic source, and monitors will document any behavioral reactions in concert with distance from an acoustic source. Observations made outside the clearance zones will not result in delay of project activities.

A pile segment or HRG survey trackline may be completed without cessation, unless the marine mammal approaches or enters the clearance zone, at which point pile driving or survey activities would be halted when practicable, as described above.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified, trained PSOs, who will be placed on the installation (monopile and cofferdam installation), secondary observation (monopile installation only), or HRG survey vessels, which represents the best vantage point to monitor for marine mammals and implement shutdown procedures when applicable;

(2) PSOs may not exceed 4 consecutive watch hours; must have a minimum 2 hour break between watches; and may not exceed a combined watch schedule of more than 12 hours in a 24-hour period;

(3) PSOs will have no other construction-related tasks while conducting monitoring;

(4) PSOs should have the following minimum qualifications:

• Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

• Ability to conduct field observations and collect data according to assigned protocols;

• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• Writing skills sufficient to document observations including, but not limited to: The number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury of marine mammals from construction noise within a defined shutdown zone; and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Observer teams employed by South Fork Wind in satisfaction of the mitigation and monitoring requirements described herein must meet the following additional requirements:

• Independent observers (*i.e.,* not construction personnel) are required;

• At least one observer must have prior experience working as an observer;

• Other observers may substitute education (degree in biological science or related field) or training for experience;

• One observer will be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and

• NMFS will require submission and approval of observer curriculum vitae.

Visual Marine Mammal Observations

Monopile Installation

South Fork Wind will collect sighting data and behavioral responses to pile driving for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. PSOs would monitor all clearance zones at all times. PSOs would also monitor Level B harassment zones and would document any marine mammals observed within these zones, to the extent practicable (noting that some distances to these zones are too large to fully observe). South Fork Wind would conduct monitoring before, during, and after pile driving, with observers located at the best practicable vantage points on the pile driving vessel.

South Fork Wind would implement the following procedures for pile driving:

• A minimum of two PSOs on the impact pile driving vessel will maintain watch at all times when pile driving is underway.

• A minimum of two PSOs on a secondary PSO vessel located at the outer edge of the 2,200 m clearance zone will maintain watch at all times when pile driving is underway.

• PSOs would be located at the best vantage point(s) on the impact pile driving and secondary vessels to ensure that they are able to observe the entire clearance zones and as much of the Level B harassment zone as possible.

• During all observation periods, PSOs will use binoculars and the naked eye to search continuously for marine mammals.

• PSOs will be provided reticle binoculars, NVDs, and a thermal/IR camera system.

• If the clearance zones are obscured by fog or poor lighting conditions, pile driving will not be initiated until clearance zones are fully visible. Should such conditions arise while impact driving is underway, the activity would be halted when practicable, as described above.

• The clearance zones will be monitored for the presence of marine mammals for 60 mins before, throughout the installation of the pile, and for 30 mins after all pile driving activity.

When monitoring is required during vessel transit (as described above), the PSO(s) will be stationed on vessels at the best vantage points to ensure maintenance of standoff distances between marine mammals and vessels (as described above). South Fork Wind would implement the following measures during vessel transit when there is an observation of a marine mammal:

• PSOs or dedicated observers will record the vessel's position and speed, water depth, sea state, and visibility at the beginning and end of each observation period, and whenever there is a change in any of those variables that materially affects sighting conditions.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. PSOs will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to the protocol will be coordinated between NMFS and South Fork Wind.

Cofferdam Installation and Removal

The visual monitoring requirements for installation of the cofferdam would be consistent with those described for monopile installation, differing as follows:

• A minimum of two PSOs on the vibratory pile driving platform or construction vessel will maintain watch at all times when vibratory pile driving is underway.

• During daytime (*i.e.,* 30 minutes prior to sunrise through 30 minutes following sunset) observations, one PSO will monitor the exclusion zone using naked eye/reticle binoculars; a second PSO will also periodically scan outside the exclusion zone, using mounted big eye binoculars.

• During daytime low visibility conditions, one PSO will monitor the exclusion zone with a mounted IR camera, while the second PSO maintains visual watch using naked eye/reticle binoculars.

• If nighttime observations are required, two PSOs will monitor the exclusion zone using a mounted IR camera and hand-held/wearable NVDs.

HRG Surveys

The visual monitoring requirements for HRG surveys would be consistent with those described for monopile installation, differing as follows:

• At least one PSO must be on duty during daylight operations on each survey vessel, conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset).

• A minimum of two PSOs must be on watch during nighttime operations.

• PSO(s) would ensure 360° visual coverage around the vessel from the most appropriate observation posts and would conduct visual observations using binoculars and/or NVDs and the naked eye.

• In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all nearby survey vessels.

Data Collection

Among other pieces of information, South Fork Wind will record detailed information about any implementation of delays or shutdowns, including the distance of animals to the pile and a description of specific actions that ensued and resulting behavior of the animal, if any. NMFS requires that, at a minimum, the following information be collected on the sighting forms:

• Date and time that monitored activity begins or ends;

• Construction activities occurring during each observation period;

• Weather parameters (*e.g.,* wind speed, percent cloud cover, visibility);

• Water conditions (*e.g.,* sea state, tide state);

• Species, numbers, and, if possible, sex and age class of marine mammals;

• Description of any observable marine mammal behavioral patterns, including:

○ Bearing and direction of travel and distance from pile driving activity,

○ changes in behavioral patterns, noting when/if they correspond to change in activity (*e.g.,* turning source on or off), and

○ amount of time spent within Level A and Level B harassment zones

• Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

• Type of construction activity (*e.g.,* vibratory or impact pile driving, HRG survey) and specific phase of activity (*e.g.,* ramp-up for HRG survey, HRG acoustic source on/off, soft start for pile driving, active pile driving, etc.) when marine mammals are observed.

• Description of implementation of mitigation measures (*e.g.,* delay or shutdown).

• Locations of all marine mammal observations; and

• Other human activity in the area.

Marine Mammal Passive Acoustic Monitoring

South Fork Wind would utilize a PAM system to supplement visual monitoring during all pre-clearance, WTG and OSS impact piling operations, and post visual monitoring periods. The PAM system would be monitored by a minimum of one acoustic PSO beginning at least 60 minutes prior to soft start of pile driving and at all times during pile driving. Acoustic PSOs would immediately communicate all detections of marine mammals to visual PSOs, including any determination regarding species identification, distance, and bearing and the degree of confidence in the determination. PAM would be used to inform visual monitoring during construction. The PAM system would not be located on the pile installation vessel.

Acoustic PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches, and for a maximum of twelve hours per day. Acoustic PSOs would be required to complete specialized training for operating PAM systems. PSOs can act as acoustic or visual observers (but not simultaneously) as long as they demonstrate that their training and experience are sufficient to perform each task.

Acoustic Monitoring for Sound Source and Harassment Isopleth Verification

During the first monopile installation, South Fork Wind would be required to empirically determine the distances to the isopleths corresponding to Level B harassment thresholds either by extrapolating from in situ measurements conducted at distances approximately 100 m (or less, depending on the position of the noise mitigation system), 750 m, 1500 m, 3000 m, and 6000 m from the pile being driven, or by direct measurements to locate the distance where the received levels reach the relevant thresholds or below. Additionally, measurements conducted at multiple distances from the pile will be used to estimate propagation loss. Isopleths corresponding to the Level B harassment threshold would be verified for comparison with the acoustic propagation range and $R_{95percent}$ modeled isopleths used to estimate proposed authorized take.

If initial acoustic field measurements indicate distances to the isopleths corresponding to Level B harassment thresholds are greater than the distances predicted by modeling (as presented in the IHA application), South Fork Wind must implement additional sound attenuation measures prior to conducting additional pile driving. Initial additional measures may include improving the efficacy of the implemented noise attenuation technology and/or modifying the piling schedule to reduce the sound source. If implementation of these corrective actions does not result in distances to the Level B harassment isopleths that are similar to or less than those used to calculate take, South Fork Wind would install a second noise mitigation system to achieve the modelled ranges. Each sequential modification would be evaluated empirically by acoustic field measurements.

If acoustic measurements indicate that distances to isopleths corresponding to the Level B harassment threshold are less than the distances predicted by modeling (as presented in the IHA application), South Fork Wind may request a modification to the clearance and exclusion zones for impact pile driving. If modifications are approved by NMFS, each sequential modification to decrease zone sizes would also be evaluated empirically by acoustic field measurements.

Reporting

A draft report would be submitted to NMFS within 90 days of the completion of monitoring for each installation's in-water work window. The report would include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and would also provide descriptions of any changes in marine mammal behavioral patterns resulting from construction activities. The report would detail the monitoring protocol, summarize the data recorded during monitoring including an estimate of the number of marine mammals that may have been harassed during the period of the report, and describe any mitigation actions taken (*i.e.,* delays or shutdowns due to detections of marine mammals, and documentation of when shutdowns

were called for but not implemented and why). The report would also include results from acoustic monitoring including dates and times of all detections, types and nature of sounds heard, whether detections were linked with visual sightings, water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), spectrogram screenshot, a record of the PAM operator's review of any acoustic detections, and any other notable information. A final report must be submitted within 30 days following resolution of comments on the draft report.

South Fork Wind would be required to submit a preliminary acoustic monitoring report to NMFS within 24 hrs of completing sound source verification (SSV) on the first monopile. In addition to in situ measured distances to the Level A harassment and Level B harassment thresholds, the acoustic monitoring report would include: SPLpk, SPLrms that contains 90 percent of the acoustic energy, single strike sound exposure level, integration time for SPLrms, SELss spectrum (⅓ octave band or power density spectra). All these levels would be reported in the form of median, mean, max, and minimum. The sound levels reported would be in median and linear average (*i.e.,* taking averages of sound intensity before converting to dB). The acoustic monitoring report would also include a description of the hydrophones used, hydrophone and water depth, distance to the pile driven, and sediment type at the recording location.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. NMFS also assesses the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving and HRG survey activities associated with the proposed project, as described previously, have the potential to disturb or temporarily displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A harassment (potential injury; from impact pile driving only) or Level B harassment (potential behavioral disturbance) from underwater sounds generated from pile driving (impact and vibratory) and certain HRG active acoustic sources. Potential takes could occur if individual marine mammals are present in the ensonified zone when pile driving or HRG survey activities are occurring.

To avoid repetition, the majority of our analyses apply to all the species listed in Table 3, given that many of the anticipated effects of the proposed project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks—as is the case of the North Atlantic right whale—they are included as separate subsections below.

North Atlantic Right Whales

North Atlantic right whales are currently threatened by low population abundance, higher than normal mortality rates and lower than normal reproductive rates. As described above, the project area represents part of an important migratory area for North Atlantic right whales, which make annual migrations up and down the Atlantic coast. Due to the current status of North Atlantic right whales, and the spatial overlap of the proposed project with an area of biological significance for North Atlantic right whales, the potential impacts of the proposed project on North Atlantic right whales warrant particular attention.

As described above, North Atlantic right whale presence in the project area is largely seasonal. As a result of several years of aerial surveys and PAM deployments in the area, NMFS has confidence that North Atlantic right whales are expected in the project area predominately during certain times of year while at other times of year North Atlantic right whales are expected to occur less frequently in the project area. During aerial surveys conducted from 2011–2015 in the project area, North Atlantic right whale sightings occurred only December through April, with no sightings from May through November (Kraus *et al.,* 2016). There was not significant variability in sighting rate among years, indicating consistent annual seasonal use of the area by North Atlantic right whales over the timespan of the surveys (Kraus *et al.,* 2016). However, as described previously, North Atlantic right whale presence is increasingly variable in identified core habitats, including the area south of Martha's Vineyard and Nantucket islands (northeast of the proposed SFWF) where both visual and acoustic detections of North Atlantic right whales indicate a nearly year-round presence (Oleson *et al.,* 2020), although seasonal trends are still prominent (Hayes *et al.,* 2020).

Due to this seasonal pattern in North Atlantic right whale occurrence in the project area, NMFS expects the most significant measure in minimizing impacts to North Atlantic right whales to be the proposed seasonal closure that would occur from January through April, when North Atlantic right whale abundance in the project area is greatest. In addition, proposed mitigation measures outside of those months—including a 5 km clearance zone facilitated through PAM and PSOs—will greatly minimize any takes that may otherwise occur outside of the months of peak abundance in the area. As a result of these mitigation measures, NMFS expects the already small potential for North Atlantic right whales to be exposed to project-related sound above the Level A harassment threshold to be eliminated. Therefore, South Fork did not request nor is NMFS proposing to authorize take by Level A harassment. NMFS also expects these proposed measures to greatly reduce the amount of exposures to project-related noise above the Level B harassment threshold, and the duration and intensity of any exposures above the Level B harassment threshold that do occur. No serious injury or mortality of North Atlantic right whales would be expected even in the absence of the proposed mitigation measures.

Instances of Level B harassment of North Atlantic right whales will be reduced to the level of least practicable adverse impact through use of proposed mitigation measures, including soft start

and exclusion zones larger than the Level A harassment zone. Any individuals that are exposed above the Level B harassment threshold are expected to move away from the sound source and temporarily avoid the areas of pile driving. Therefore, North Atlantic right whales taken by the activity are likely to be exposed to lower noise levels (closer to the 120dB threshold than the Level A harassment threshold) and therefore, behavioral reactions are expected to be less intense than during exposures to louder sounds (but still below the Level A harassment threshold). NMFS expects that any avoidance of the project area by North Atlantic right whales would be temporary in nature and that any North Atlantic right whales that avoid the project area during construction would not be permanently displaced. Even limited repeated Level B harassment of some small subset of the overall stock, although not expected to occur given the transitory nature of marine mammals in the project area, is unlikely to result in any significant realized decrease in fitness or viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole.

Prey for North Atlantic right whales are mobile and broadly distributed throughout the project area; therefore, North Atlantic right whales that may be temporarily displaced during construction activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to North Atlantic right whales and the food sources that they utilize are not expected to cause significant or long-term consequences for individual North Atlantic right whales or their population. In addition, there are no North Atlantic right whale mating or calving areas within the proposed project area.

As described above, North Atlantic right whales are experiencing an ongoing UME. However, as described above, no injury of North Atlantic right whales as a result of the proposed project is expected or proposed for authorization, and Level B harassment takes of North Atlantic right whales are expected to be in the form of avoidance of the immediate area of construction. As no injury or mortality is expected or proposed for authorization, and Level B harassment of North Atlantic right whales will be reduced to the level of least practicable adverse impact through use of proposed mitigation measures, the proposed authorized takes of North Atlantic right whales would not exacerbate or compound the effects of the ongoing UME in any way.

NMFS concludes that the additional proposed mitigation measures would ensure that any exposures above the Level B harassment threshold would result in only short-term effects to individuals exposed. With implementation of the proposed mitigation requirements, take by Level A harassment is unlikely and is therefore not proposed for authorization. Potential impacts associated with Level B harassment would include only low-level, temporary behavioral modifications, most likely in the form of avoidance behavior or potential alteration of vocalizations.

Although acoustic masking may occur, based on the acoustic characteristics of noise associated with impact pile driving (*e.g.,* frequency spectra, short duration) and HRG surveys (*e.g.,* higher frequency, intermittent signals) and the limited duration of vibratory pile driving activity, NMFS expects masking effects to be minimal (*e.g.,* pile driving) to none (*e.g.,* HRG surveys). As mentioned previously, masking events that might be considered Level B harassment have already been accounted for in the exposure analysis as they would be expected to occur within the behavioral harassment zones predetermined for pile driving. Avoidance of the SFWF or SFEC during construction would represent a potential manifestation of behavioral disturbance. Although the project area is located within the migratory BIA for North Atlantic right whales, impact pile driving of monopile foundations would only occur on 16 days (one pile would be driven per day for a maximum of 3 hours), and vibratory pile driving would be limited to a maximum of 36 hours of the 12-month project. Further, seasonal restrictions preclude impact pile driving during the months in which North Atlantic right whale occurrence is expected to be highest (January through April). If avoidance of the project area by North Atlantic right whales occurs, it is expected to be temporary. Finally, consistent North Atlantic right whale utilization of the habitat south of Martha's Vineyard and Nantucket Islands (Oleson *et al.,* 2020) indicates that suitable alternative nearby habitat would be available to North Atlantic right whales that might avoid the project area during construction.

In order to evaluate whether or not individual behavioral responses, in combination with other stressors, impact animal populations, scientists have developed theoretical frameworks which can then be applied to particular case studies when the supporting data are available. One such framework is the population consequences of disturbance model (PCoD), which attempts to assess the combined effects of individual animal exposures to stressors at the population level (NAS 2017). Nearly all PCoD studies considering multiple marine mammal species and experts agree that infrequent exposures of a single day or less are unlikely to impact individual fitness, let alone lead to population level effects (Booth *et al.,* 2016; Booth *et al.,* 2017; Christiansen and Lusseau 2015; Farmer *et al.,* 2018; Harris *et al.,* 2017; Harwood et al., 2014; Harwood and Booth 2016; King *et al.,* 2015; McHuron *et al.,* 2018; NAS 2017; New *et al.,* 2014; Pirotta *et al.,* 2018; Southall *et al.,* 2007; Villegas-Amtmann *et al.,* 2015). Since NMFS expects that any exposures would be brief (no more than 3 hours per day for impact pile driving or 36 hours over 6 days for vibratory pile driving, and likely less given probable avoidance response), and repeat exposures to the same individuals are unlikely, any behavioral responses that would occur due to animals being exposed to construction activity are expected to be temporary, with behavior returning to a baseline state shortly after the acoustic stimuli ceases, similar to findings during European wind farm construction. Given this, and NMFS' evaluation of the available PCoD studies, any such behavioral responses are not expected to impact individual animals' health or have effects on individual animals' survival or reproduction, thus no detrimental impacts at the population level are anticipated. North Atlantic right whales may temporarily avoid the immediate area but are not expected to permanently abandon the area. NMFS does not anticipate North Atlantic right whales takes that would result from the proposed project would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

All Other Marine Mammal Species

Impact pile driving has source characteristics (short, sharp pulses with higher peak levels and sharper rise time to reach those peaks) that are potentially injurious or more likely to produce severe behavioral reactions. No Level A harassment from HRG surveys or vibratory pile driving is expected, even in the absence of mitigation; therefore, our discussion regarding auditory injury is limited to impact pile driving.

Modeling indicates there is limited potential for auditory injury to humpback whales during pile driving even in the absence of the proposed mitigation measures; the remaining fifteen species are predicted to experience no Level A harassment, based on modeling results that assumed 10 dB attenuation (Table 16).

NMFS expects that any exposures above the Level A harassment threshold would be in the form of slight PTS, *i.e.* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by pile driving (*i.e.* the low-frequency region below 2 kHz), not severe hearing impairment. If hearing impairment occurs, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics, much less impact reproduction or survival.

Additionally, the number of Level A harassment takes proposed for authorization are relatively low for all marine mammal stocks and species: For three of the stocks, only one take by Level A harassment is proposed for authorization (*i.e.,* fin whale, sei whale, and minke whale), and for most of the remaining stocks, NMFS does not propose to authorize any takes by Level A harassment over the duration of the project; for the remaining stock (*i.e.,* humpback whale), NMFS proposes to authorize four takes by Level A harassment. As described above, any PTS incurred would be no more than a few decibels of lost hearing sensitivity that would not impact annual rates of recruitment or survival for any individual.

Repeated exposures of individuals to relatively low levels of sound outside of preferred habitat areas are unlikely to significantly disrupt critical behaviors. Thus, even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable adverse impact through use of proposed mitigation measures and, if sound produced by project activities is sufficiently disturbing, marine mammals are likely to simply avoid the area while the activity is occurring. Therefore, NMFS expects that animals disturbed by project sound would likely move away from the sound source during project activities in favor of other, similar habitats. NMFS expects that any avoidance of the project area by marine mammals would be temporary in nature and that any marine mammals that avoid the project area during construction would not be permanently displaced.

Feeding behavior is not likely to be significantly impacted, as prey species are mobile and are broadly distributed throughout the project area; therefore, marine mammals that may be temporarily displaced during construction activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. There are no areas of notable biological significance for marine mammal feeding known to exist in the project area. In addition, there are no rookeries or mating or calving areas known to be biologically important to marine mammals within the proposed project area.

NMFS concludes that exposures to marine mammals due to the proposed project would result in only short-term effects to individuals exposed. Marine mammals may temporarily avoid the immediate area but are not expected to permanently abandon the area. Impacts to breeding, feeding, sheltering, resting, or migration are not expected, nor are shifts in habitat use, distribution, or foraging success. NMFS does not anticipate the marine mammal takes that would result from the proposed project would impact annual rates of recruitment or survival.

As described above, humpback whales, minke whales, and gray and harbor seals are experiencing ongoing UMEs. For minke whales, although the ongoing UME is under investigation (as occurs for all UMEs), this event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales. With regard to humpback whales, the UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains healthy. The West Indies DPS, which consists of the whales whose breeding range includes the Atlantic margin of the Antilles from Cuba to northern Venezuela, and whose feeding range primarily includes the Gulf of Maine, eastern Canada, and western Greenland, was delisted. The status review identified harmful algal blooms, vessel collisions, and fishing gear entanglements as relevant threats for this DPS, but noted that all other threats are considered likely to have no or minor impact on population size or the growth rate of this DPS (Bettridge *et al.,* 2015). As described in Bettridge *et al.* (2015), the West Indies DPS has a substantial population size (*i.e.,* approximately 10,000; Stevick *et al.,* 2003; Smith *et al.,* 1999; Bettridge *et al.,* 2015), and appears to be experiencing consistent growth. With regard to gray seals and harbor seals, although the ongoing UME is under investigation, the UME does not yet provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 75,000 and annual M/SI (345) is well below PBR (2,006) (Hayes *et al.,* 2020). For gray seals, the population abundance is over 500,000, and abundance is likely increasing in the U.S. Atlantic EEZ and in Canada (Hayes *et al.,* 2020). Proposed authorized takes by Level A harassment of humpback whales are low (*i.e.,* no more than four takes by Level A harassment proposed for authorization) and, as described above, any Level A harassment would be expected to be in the form of slight PTS, *i.e.* minor degradation of hearing capabilities which is not likely to meaningfully affect the ability to forage or communicate with conspecifics. No serious injury or mortality is expected or proposed for authorization, and Level B harassment of humpback whales and minke whales and gray and harbor seals will be reduced to the level of least practicable adverse impact through use of proposed mitigation measures. As such, the proposed authorized takes of these species would not exacerbate or compound the effects of the ongoing UMEs on the populations.

In summary and as described above, the following factors primarily support NMFS' preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or proposed for authorization;
- No Level A harassment of North Atlantic right whales would occur and Level B harassment will be minimized via extended mitigation measures;
- The anticipated impacts of the proposed activity on marine mammals would be temporary behavioral changes (primarily avoidance of the project area) and limited instances of Level A

harassment of humpback whales in the form of a slight PTS;

• Potential instances of exposure above the Level A harassment threshold are limited to four of the 16 species expected to occur in the project area and are expected to be relatively low, and the severity of any PTS would be minimized by proposed mitigation measures including clearance zones;

• The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the project area during the proposed project to avoid exposure to sounds from the activity;

• Effects on species that serve as prey species for marine mammals from the proposed project are expected to be short-term and are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations;

• There are no known important feeding, breeding or calving areas in the project area. A biologically important migratory area exists for North Atlantic right whales; however, the proposed seasonal moratorium on construction is expected to largely avoid impacts to the North Atlantic right whale migration, as described above.

• The proposed mitigation measures, including visual and acoustic monitoring, clearance and exclusion zones, soft start (pile driving only), ramp up (HRG only), shutdown, are designed to reduce frequency and intensity of exposures and are, therefore, expected to minimize potential impacts to marine mammals.

• Total proposed authorized takes as a percentage of population are very low for all species and stocks (*i.e.,* less than 3.5 percent for four stocks, and less than 1 percent for the remaining 12 stocks);

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is less than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS proposes to authorize incidental take of 16 marine mammal stocks. The total amount of taking proposed for authorization is less than 3.5 percent for four of these stocks, and less than 1 percent for the 12 remaining stocks (Table 23), which NMFS preliminarily finds are small numbers of marine mammals relative to the estimated overall population abundances for those stocks.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of all affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the ESA (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of North Atlantic right, fin, sei, and sperm whales, which are listed under the ESA. The NMFS Office of Protected Resources has requested initiation of Section 7 consultation with the NMFS Greater Atlantic Regional Fisheries Office for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to South Fork Wind for conducting construction activities southeast of Rhode Island for a period of one year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

NMFS requests comment on the analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed construction of the South Fork Wind offshore wind project. NMFS also requests comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform NMFS' final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-time, 1 year IHA renewal with an expedited public comment period (15 days) when: (1) Another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the *Dates and Duration* section, provided all of the following conditions are met:

• A request for renewal is received no later than 60 days prior to expiration of the current IHA;

• The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the proposed Renewal are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take because only a subset of the initially analyzed activities remain to be completed under the Renewal); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do

not indicate impacts of a scale or nature not previously analyzed or authorized;

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: January 29, 2021.

Donna Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

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