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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0089; Project Identifier MCAI–2021–01027–T; Amendment 39–22031; AD 2022–09–11]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–14–17, which applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2021–14–17 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2021–14–17, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This AD continues to require the revision of the existing maintenance/inspection program, and also requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 21, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 21, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of August 23, 2021 (86 FR 37891, July 19, 2021).

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0089.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0089; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0207, dated September 15, 2021 (EASA AD 2021–0207) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–14–17, Amendment 39–21644 (86 FR 37891, July 19, 2021) (AD 2021–14–17). AD 2021–14–17 applied to certain Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on February 7, 2022 (87 FR 6795). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to retain the requirements in AD 2021–14–17, and also proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in EASA AD 2021–0207.

The FAA is issuing this AD to address reduced structural integrity of the airplane. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from the Air Line Pilots Association who supported the NPRM without change.

Conclusion

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

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0207 describes new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This AD would also require EASA AD 2020–0210, dated October 5, 2020, which the Director of the Federal Register approved for incorporation by reference as of August 23, 2021 (86 FR 37891, July 19, 2021).

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

Costs of Compliance

The FAA estimates that this AD affects 15 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from

AD 2021–14–17 to be $7,650 (90 work-hours × $85 per work-hour). The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2021–14–17, Amendment 39–21644 (86 FR 37891, July 19, 2021); and

■ b. Adding the following new AD:

2022–09–11 Airbus SAS: Amendment 39–22031; Docket No. FAA–2022–0089; Project Identifier MCAI–2021–01027–T.

(a) Effective Date

This airworthiness directive (AD) is effective June 21, 2022.

(b) Affected ADs

This AD replaces AD 2021–14–17, Amendment 39–21644 (86 FR 37891, July 19, 2021) (AD 2021–14–17).

(c) Applicability

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

(d) Subject

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

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2021–14–17, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before May 29, 2020: 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 2020–0210, dated October 5, 2020 (EASA AD 2020–0210). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2020–0210, With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2021–14–17, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before May 29, 2020:

(1) Where EASA AD 2020–0210 refers to its effective date, this AD requires using August 23, 2021 (the effective date of AD 2021–14–17).

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0210 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2020–0210 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after August 23, 2021 (the effective date of AD 2021–14–17).

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA 2020–0210 is at the ''applicable thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2020–0210, or within 90 days after August 23, 2021 (the effective date of AD 2021–14–17), whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2020–0210 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2020–0210 does not apply to this AD.

(i) Retained Provisions for Alternative Actions or Intervals, With a New Exception

This paragraph restates the requirements of paragraph (i) of AD 2021–14–17, with a new exception. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before May 29, 2020: Except as required by paragraph (j) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0210.

(j) New Maintenance or Inspection Program Revision

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0207, dated September 15, 2021 (EASA AD 2021–0207). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2021–0207

(1) Where EASA AD 2021–0207 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0207 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0207 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2021–0207 is at the applicable ''thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0207, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2021–0207 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0207 does not apply to this AD.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0207.

(m) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (n) 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.

(n) Related Information

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

(o) 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.

(3) The following service information was approved for IBR on June 21, 2022.

(i) European Union Aviation Safety Agency AD 2021–0207, dated September 15, 2021.

(ii) [Reserved]

(4) The following service information was approved for IBR on August 23, 2021 (86 FR 37891, July 19, 2021).

(i) European Union Aviation Safety Agency AD 2020–0210, dated October 5, 2020.

(ii) [Reserved]

(5) For EASA ADs 2020–0210 and 2021–0207, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find these EASA ADs on the EASA website at *https://ad.easa.europa.eu.*

(6) 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.

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

Issued on April 20, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–10524 Filed 5–16–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0098; Project Identifier MCAI–2021–01084–T; Amendment 39–22032; AD 2022–09–12]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by a report indicating that on the A350 final assembly line (FAL), certain load sensing drive struts (LSDS) and drive struts (DS) were found not adjusted (the nut was not torqued) and not locked. Investigation revealed that the LSDS and DS had been changed as re-work action due to pre-installation damage, but production operations (adjustment and locking) were not done afterwards. This AD requires, for certain airplanes, inspection of the LSDS for correct adjustment and locking, and replacement if necessary, and, for certain other airplanes, replacement of each affected DS with a serviceable part, as specified in a European Union Aviation Safety Agency (EASA) AD which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 21, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 21, 2022.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0098.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0098; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0220, dated October 1, 2021 (EASA AD 2021–0220) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A350–941 and –1041 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on February 10, 2022 (87 FR 7765). The NPRM was prompted by a report indicating that on the A350 FAL, LSDS track 1 and DS track 2 were found not adjusted (the nut was not torqued) and not locked. Investigation revealed that the LSDS and DS had been changed as re-work action due to pre-installation damage, but production operations (adjustment and locking) were not done afterwards. The NPRM proposed to require, for certain airplanes, inspection of the LSDS for correct adjustment and locking, and replacement if necessary, and, for certain other airplanes, replacement of each affected DS with a serviceable part, as specified in EASA AD 2021–0220.

The FAA is issuing this AD to prevent degradation of the load-carrying capability of an LSDS or DS, which could result in the in-flight detachment of a flap, resulting in structural damage and reduced controllability of the airplane. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from the Air Line Pilots Association, International (ALPA), and an individual, who supported the NPRM without change.

Conclusion

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

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0220 describes procedures for a detailed inspection of the LSDS for correct adjustment and locking, and replacement of the LSDS if any discrepancy (movement of either nut) is found, for airplanes in Configurations 1 through 4. The service information also describes procedures for replacement of each affected DS with a serviceable part, for airplanes in Configurations 5 and 6. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 6 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
LSDS inspection: Up to 14 work-hours × $85 per hour = Up to $1,190	$0	Up to $1,190	Up to $7,140 (6 airplanes).
DS replacement: Up to 11 work-hours × $85 per hour = Up to $935	Up to $84,470	Up to $85,405	Up to $85,405 (1 airplane).

The FAA estimates the following costs to do any necessary on-condition LSDS replacement that is 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 replacement:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 10 work-hours (2 per LSDS) × $85 per hour = Up to $850	Up to $76,173	Up to $77,023.

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 individuals. The FAA does not control warranty coverage for affected individuals. 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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–09–12 Airbus SAS: Amendment 39–22032; Docket No. FAA–2022–0098; Project Identifier MCAI–2021–01084–T.

(a) Effective Date

This airworthiness directive (AD) is effective June 21, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2021–0220, dated October 1, 2021 (EASA AD 2021–0220).

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by a report indicating that on the A350 final assembly line (FAL), certain load sensing drive struts (LSDS) and drive struts (DS) were found not adjusted (the nut was not torqued) and not locked. Investigation revealed that the LSDS and DS had been changed as re-work action due to pre-installation damage, but production operations (adjustment and locking) were not done afterwards. The FAA is issuing this AD to prevent degradation of the load-carrying capability of an LSDS or DS, which could result in the in-flight detachment of a flap, resulting in structural damage and 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, EASA AD 2021–0220.

(h) Exceptions to EASA AD 2021–0220

(1) Where EASA AD 2021–0220 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (2) of EASA AD 2021–0220 refers to a ''discrepancy, as defined in the SB,'' this AD defines a discrepancy as movement of either nut.

(3) The ''Remarks'' section of EASA AD 2021–0220 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0220 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

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

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

(k) Related Information

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

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference 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 2021–0220, dated October 1, 2021.

(ii) [Reserved]

(3) For EASA 2021–0220, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

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

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

Issued on April 20, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–10525 Filed 5–16–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0347; Airspace Docket No. 22–AWA–1]

RIN 2120–AA66

Amendment of Class B Airspace; Kansas City, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Kansas City, MO, Class B airspace description to update the Kansas City International Airport airport reference point (ARP) geographic coordinates information, the Noah's Ark Private Airport airport name, and the Fort Leavenworth, Sherman Army Airfield airport name and ARP geographic coordinates information to match the FAA's aeronautical database. Additionally, this action amends the Class B airspace header information and

sub-area descriptions for clarity and readability and to match the charted airspace. This action does not change the Class B airspace's boundaries, altitudes, or operating requirements.

DATES: Effective date 0901 UTC, July 14, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Policy Directorate, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it updates airport names and ARP geographic coordinates information contained in the Kansas City, MO, Class B airspace description, and corrects the Class B subarea descriptions.

History

The primary purpose of a Class B airspace area is to reduce the potential for midair collisions in the airspace surrounding airports with high density air traffic operations by providing an area in which all aircraft are subject to certain operating rules and equipment requirements. The configuration of each Class B airspace area is individually tailored and consists of a surface area and two or more airspace shelves, and is designed to contain all published instrument procedures. An air traffic control (ATC) clearance is required for all aircraft to operate in the area, and all aircraft that receive clearance receive separation services within the area.

During a recent review of the Kansas City, MO, Class B airspace, the FAA identified that the Kansas City International Airport ARP geographic coordinates information are incorrect, the Noah's Ark Private Airport name is incorrect, and the Fort Leavenworth, Sherman Army Airfield name and ARP geographic coordinates are incorrect in the Class B airspace description. This action updates the ARP geographic coordinates information and airport names to coincide with the FAA's aeronautical database information. There are no changes to the Class B airspace's boundaries, altitudes, or operating requirements.

Class B airspace areas are published in paragraph 3000 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class B airspace listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending the Kansas City, MO, Class B airspace description to update the incorrect ARP geographic coordinates information and airport names contained in the description. The Kansas City International Airport ARP geographic coordinate information for the airport are changed from ''lat. 39°17′57″ N, long. 94°43′05″ W″ to ''lat. 39°17′51″ N, long. 094°42′50″ W″ the airport name ''Noah's Ark Private Airport'' is changed to ''Noah's Ark Airport''; and the airport name ''Fort Leavenworth, Sherman Army Airfield'' is changed to ''Sherman Army Airfield'' with the associated ARP geographic coordinates information for the airport changed from ''lat. 39°22′06″ N, long. 94°54′53″ W″ to ''lat. 39°22′03″ N, long. 094°54′52″ W″. These changes to the ARP geographic coordinates information and airport names reflect the current information in the FAA's aeronautical database. Finally, this action amends the Class B airspace header information and subarea descriptions for clarity and readability and to match the charted airspace.

Accordingly, since this is an administrative change, and does not affect the boundaries, altitudes, or operating requirements of the airspace, notice and public procedures under 5 U.S.C. 553(b) are unnecessary. FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15th.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action making administrative edits to the Kansas City, MO, Class B airspace description qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have

a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 3000 Class B Airspace.

ACE MO B Kansas City, MO

Kansas City International Airport, MO (Primary Airport)
(Lat. 39°17′51″ N, long. 094°42′50″ W)
Noah's Ark Airport, MO (Pvt)
(Lat. 39°13′50″ N, long. 094°48′16″ W)
Sherman Army Airfield, KS
(Lat. 39°22′03″ N, long. 094°54′52″ W)

Boundaries.

Area A. That airspace extending upward from the surface to and including 8,000 feet MSL within a 6-mile radius of the Kansas City International Airport, excluding that airspace within a 1-mile radius arc of Noah's Ark Airport and that airspace between the 4-mile radius arc and 6-mile radius arc of the Kansas City International Airport, bounded on the south by a line parallel to, and 2 miles north of the Kansas City International Airport Runway 9 ILS localizer course, and on the north by a line parallel to, and 2 miles west of the Kansas City International Airport Runway 19R ILS localizer course.

Area B. That airspace extending upward from 2,400 feet MSL to and including 8,000 feet MSL within a 10-mile radius of the Kansas City International Airport, excluding that airspace designated as Area A, that airspace within a 1½-mile radius arc of Sherman Army Airfield, and that airspace bounded by lat. 39°08′00″ N, long. 94°40′34″ W located on the 10-mile radius arc of the Kansas City International Airport, then northeastward to lat. 39°11′30″ N, long. 94°37′00″ W, then eastward to lat. 39°12′04″ N, long. 94°32′20″ W located on the 10-mile radius arc of the Kansas City International Airport, then clockwise along the 10-mile radius arc of the Kansas City International Airport to lat. 39°08′00″ N, long. 94°40′34″ W.

Area C. That airspace extending upward from 3,000 feet MSL to and including 8,000 feet MSL within a 15-mile radius of the Kansas City International Airport, excluding that airspace designated as Area A and Area B, and that airspace bounded by lat. 39°02′56″ N, long. 094°40′44″ W located at the intersection of Interstate Highway 635 and the 15-mile radius arc of the Kansas City International Airport, then northward to lat. 39°08′00″ N, long. 94°40′34″ W located on the 10-mile radius arc of the Kansas City International Airport, then northeastward to lat. 39°11′30″ N, long. 94°37′00″ W, then eastward over lat. 39°12′04″ N, long. 94°32′20″ W located on the 10-mile radius arc of the Kansas City International Airport to lat. 39°13′00″ N, long. 094°24′34″ W located on the 15-mile radius arc of the Kansas City International Airport, then clockwise along the 15-mile radius arc of the Kansas City International Airport to lat. 39°02′56″ N, long. 094°40′44″ W.

Area D. That airspace extending upward from 4,000 feet MSL to and including 8,000 feet MSL within a 20-mile radius of the Kansas City International Airport excluding that airspace designated as Area A, Area B, and Area C.

* * * * *

Issued in Washington, DC.

Scott M. Rosenbloom,

Manager, Rules and Regulations Group.

[FR Doc. 2022–10555 Filed 5–16–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1093; Airspace Docket No. 21–ASO–8]

RIN 2120–AA66

Amendment and Removal of VOR Federal Airways; Southeastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: In the proposed rule for this action, the FAA proposed to amend 11 VHF Omnidirectional Radar (VOR) Federal airways and remove 6 airways in support of the VOR Minimum Operational Network (MON) project in the southeastern United States. However, due to need for additional coordination with the Department of Defense (DoD), modifications of 9 airways will be made at a later date. Eight airways remain in this rule with some changes from the proposed route structure.

DATES: Effective date 0901 UTC, July 14, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2021–1093 in the **Federal Register** (86 FR 72897; December 23, 2021), to modify 11 VOR Federal airways and remove 6 airways in the southeastern United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Four persons submitted comments.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order JO 7400.11F, dated August 10, 2021 and effective September 15, 2021, which is incorporated by reference in 14

CFR 71.1. The VOR Federal airways listed in this document will be subsequently published in, or removed from FAA Order JO 7400.11.

Discussion of Comments

All commenters opposed the removal of VOR Federal airways unless they are replaced by Area Navigation (RNAV) T routes, or there are suitable existing routes to be used as alternatives. The commenters wrote that the lack of replacement routes would hurt efficiency, and limit pilots' ability to flight plan for lower altitudes, especially when necessary to avoid inflight icing conditions. They stated that T routes and VOR airways provide minimum en route altitudes (MEA) that are depicted on aeronautical charts. Pilots can rely on these routes for safe navigation. However, a lack of suitable charted routes would require more reliance on random route navigation, which would require pilots to plan a flight using the Off Route Obstacle Clearance Altitude (OROCA), which may be much higher than a published MEA.

Additionally, the DoD has not yet provided comments on the route structure changes proposed in the NPRM, and requested the FAA not remove any route structure pending DoD review.

The Federal Aviation Administration recognizes the challenges associated with the modification or removal of airways in support of the VOR MON project, and the transition of the NAS to performance-based navigation.

As a result, pending further evaluation and DoD feedback, the FAA has not included the following airways in this final rule: V–5, V–20, V–51, V–70, V–155, V–179, V–243, V–267 and V–578. Modification of these airways will be made in subsequent actions at a later date. They will remain as currently shown on aeronautical charts pending later action.

Consequently, only the following airway modifications are implemented by this rule: V–35, V–56, V–66, V–97, V–154, V–323, and V–454. The route descriptions differ from those that were published in the NPRM and are described in the ''Differences from the NPRM'' section. In addition, T route substitutions for the affected routes are added in that section. The rule also removes airway V–362 as proposed in the NPRM.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Differences From the NPRM

Based on comments received and continuing coordination with the Department of Defense, this docket action is revised to facilitate only those structural changes necessary due to the scheduled decommissioning of the Atlanta, GA, (ATL); Crimson, AL, (LDK); and Macon, GA, (MCN) VORTACs.

The proposed changes to the following airways are not included in this final rule and will be slipped to a subsequent docket action at a later date: V–5, V–20, V–51, V–70, V–155, V–179, V–243, V–267, and V–578. These airways will remain in place as currently depicted on IFR En Route Charts.

Airway actions for V–35, V–56, V–66, V–97, V–154, V–323, and V–454 are included in this final rule, but with changes to the descriptions that were published in the NPRM, as noted below. In addition, changes to V–362 are as published in the NPRM.

The Rule

This action amends 14 CFR part 71 by modifying the following VOR Federal airways: V–35, V–56, V–66, V–97, V–154, V–323, V–362, and V–454 as described below.

V–35: V–35 currently consists of two parts: From Dolphin, FL to Morgantown, WV; and From Phillipsburg, PA, to Syracuse, NY. This action removes the segments between Pecan, GA and the intersection of the Dublin, GA 309° and the Athens, GA 195° radials (the SINCA, GA, FIX on aeronautical charts). The segments between the SINCA Fix and Glade Spring, VA, are retained, but the SINCA FIX is redefined as the intersection of the Dublin, GA, and Athens, GA radials due to the decommissioning of the Macon, GA, VORTAC. As amended, V–35 consists of three parts: From Dolphin, FL, to Pecan, GA; From the intersection of the above Dublin, GA and Athens, GA radials (SINCA FIX); to Morgantown, WV, and From Philipsburg, PA to Syracuse, NY. A new T route (T–423) will overlay V–35 from Sugarloaf Mountain, NC, to Charleston, WV. In addition, the words ''The airspace below 2,000 feet MSL outside the United States is excluded,'' and ''The portion outside the United States has no upper limit,'' are removed from the route description. A review of aeronautical charts shows that V–35 does not extend outside the U.S. territorial limit, therefore these exclusions are not necessary.

V–56: V–56 currently extends from Montgomery, AL, to New Bern, NC. This action removes the segments from Montgomery, AL, to Colliers, SC. The routing from Colliers, SC to New Bern, NC is retained. A new T route (T–404) will overlay V–56 from Macon, GA, to Columbia, SC. As amended, V–56 extends from Colliers, SC, to New Bern, NC.

V–66: V–66 currently consists of two parts: From Mission, Bay, CA, to Millsap, TX; and From Crimson, AL, to Franklin, VA. The segments from Crimson, AL, to Brookwood, AL; and from LaGrange, GA to Sandhills, NC are removed. The segment from Brookwood, AL, to LaGrange, GA, is retained. An extension of T route T–258 will overlay V–66 from Crimson, AL, to Sandhills, NC. As amended, V–66 consists of three parts: From Mission Bay, CA, to Millsap, TX (as currently charted); From Brookwood, AL, to LaGrange, GA; and From Sandhills, NC, to Franklin, VA.

V–97: V–97 currently consists of two parts: From Dolphin, FL, to the intersection of the Chicago Heights, IL, 358° and the Dupage, IL, 101° radials; and From Nodine, MN, to Gopher, MN. This action removes the route segments between the intersection of the Pecan, GA, 357° and the Vienna, GA, 300° radials (the charted PRATZ FIX) and the intersection of the Rome, GA, 060° and the Volunteer, TN 197° radials (the charted NELLO FIX). T route T–319 currently exists through the Atlanta Class B airspace area and serves as an overlay for a portion of V–97 that is being removed across Atlanta, GA. As amended, V–97 consists of three parts: From Dolphin, FL, to the intersection of the Pecan, GA, 357° and the Vienna, GA, 300° radials; From the intersection of the Rome, GA 060° and the Volunteer, TN, 197° radials to the intersection of the Chicago Heights 358° and DuPage, IL 101° radials; and From Nodine, MN, to Gopher, MN. The airspace below 2,000 feet MSL outside the United States is excluded.

V–154: V–154 currently extends from Rome, GA, to Savannah, GA. The NPRM proposed to remove the entire route. The FAA has decided to retain V–154 with the following changes. Due to the scheduled decommissioning of the Macon, GA, VORTAC, the point currently defined by the intersection of the Rome, GA 166° and the Macon, GA, 301° radials (charted as the TIROE FIX), is redefined using the intersection of the Rome 166° and the LaGrange, GA, 048° radials. T route T–408 will overlay V–154 from Macon, GA, to Savannah, GA.

This rule amends V–154 to consist of two parts: From Rome, GA to the intersection of the Rome 166° and the LaGrange, GA, 048° radials; and From Dublin, GA, to Savannah, GA.

V–323: V–323 currently extends from Montgomery, AL, to the intersection of the Dublin, GA, 309° and the Athens, GA, 221° radials. The NPRM proposed to remove the entire route. The FAA has decided to retain V–323 with the following changes. The route segments from Macon, GA, to the intersection of the Dublin, GA, 309° and the Athens, GA 221° radials (the charted HUSKY, GA, FIX) is removed from the route. T route T–408 will overlay V–323 from Eufaula, AL, to Columbia, SC. As amended, V–323 extends from Montgomery, AL; via Eufaula, AL; to the intersection of the Eufaula 059° and the Pecan, GA 357° radials (the charted WILMS, GA, FIX).

V–362: V–362 currently extends from Brunswick, GA, to Macon, GA. As proposed in the NPRM, this action removes the entire route. No T route replacement is planned due to low utilization of V–362.

V–454: V–454 currently consists of two parts: From Brookley, AL, to the intersection of the Greenwood, SC, 046° and the Charlotte, NC 227° radials; and From the intersection of the Charlotte, NC, 034° and the Liberty, NC, 253° radials to Hopewell, VA. This action removes the segments from the intersection of the Monroeville, AL, 073° and the Eufaula, AL, 258° radials, to the intersection of the Greenwood, SC, 046° and the Charlotte, NC, 227° radials from the route. In the NPRM, the FAA proposed to change the starting point for the second part of the route from the intersection of the Charlotte 034° and the Liberty 253° radials to Liberty, NC. Subsequently, the FAA decided to retain the segment between the intersection of the above Charlotte and Liberty radials and Liberty, NC. Therefore, as amended, V–454 extends from Brookley, AL, to Monroeville, AL; and From the intersection of the Charlotte, NC, 034° and the Liberty, NC, 253° radials to Hopewell, VA. No T route replacement is planned due to the redundant VOR Federal airway route structure in the area.

The full route descriptions are listed in the ''The Amendment'' section, below.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of amending VOR Federal airways V–35, V–56, V–66, V–97, V–154, V–323, and V–454, and removing airway V–362, in the eastern United States qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .''. As such, this action is not expected to cause any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–35 [Amended]

From Dolphin, FL; INT Dolphin 266° and Cypress, FL, 110° radials; INT Cypress 110° and Lee County, FL, 138° radials; Lee County; INT Lee County 326° and St. Petersburg, FL, 152° radials; St. Petersburg; INT St. Petersburg 350° and Cross City, FL, 168° radials; Cross City; Greenville, FL; to Pecan, GA. From INT Dublin, GA 309° and Athens, GA, 195° radials; Athens; Electric City, SC; Sugarloaf Mountain, NC; Holston Mountain, TN; Glade Spring, VA; Charleston, WV; INT Charleston 051° and Elkins, WV, 264° radials; Clarksburg, WV; to Morgantown, WV. From Philipsburg, PA; Stonyfork, PA; Elmira, NY; to Syracuse, NY.

* * * * *

V–56 [Amended]

From Colliers, SC; Columbia, SC; Florence, SC; Fayetteville, NC, 41 miles 15 MSL, INT Fayetteville 098° and New Bern, NC 256° radials; to New Bern.

* * * * *

V–66 [Amended]

From Mission Bay, CA; Imperial, CA; 13 miles, 24 miles, 25 MSL; Bard, AZ; 12 miles, 35 MSL; INT Bard 089° and Gila Bend, AZ, 261° radials; 46 miles, 35 MSL; Gila Bend; Tucson, AZ, 7 miles wide (3 miles south and 4 miles north of centerline); Douglas, AZ; INT Douglas 064° and Columbus, NM, 277° radials; Columbus; El Paso, TX; 6 miles wide; INT El Paso 109° and Hudspeth, TX, 287° radials; 6 miles wide; Hudspeth; Pecos, TX; Midland, TX; INT Midland 083° and Abilene, TX, 252° radials; Abilene; to Millsap, TX. From Brookwood, AL; to LaGrange, GA. From Sandhills, NC; Raleigh-Durham, NC; to Franklin, VA.

* * * * *

V–97 [Amended]

From Dolphin, FL; La Belle, FL; St. Petersburg, FL; Seminole, FL; Pecan, GA; to

INT Pecan 357° and Vienna, GA 300° radials. From INT Rome, GA 060° and Volunteer, TN, 197° radials; Volunteer; London, KY; Lexington, KY; Cincinnati, KY; Shelbyville, IN; INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; Chicago Heights, IL; to INT Chicago Heights 358° and DuPage, IL, 101° radials. From Nodine, MN; to Gopher, MN. The airspace below 2,000 feet MSL outside the United States is excluded.

* * * * *

V–154 [Amended]

From Rome, GA; INT Rome 166° and LaGrange, GA, 048° radials. From Dublin, GA; INT Dublin 105° and Savannah, GA, 289° radials; to Savannah.

* * * * *

V–323 [Amended]

From Montgomery, AL, via Eufaula, AL; to INT Eufaula 059° and Pecan, GA 357° radials.

* * * * *

V–362 [Removed]

* * * * *

V–454 [Amended]

From Brookley, AL; to Monroeville, AL. From INT Charlotte 034° and Liberty, NC, 253° radials; Liberty, NC; Lawrenceville, VA; to Hopewell, VA.

* * * * *

Issued in Washington, DC, on May 5, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–10031 Filed 5–16–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0440]

RIN 1625–AA00

Safety Zone; Upper Mississippi River, Cape Girardeau, MO

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Upper Mississippi River extending from mile marker (MM) 49 to MM 50 on the Upper Mississippi River near Cape Girardeau, MO. The safety zone is needed to protect personnel and vessels from potential hazards due to a partially sunken cement barge in the navigational channel. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

DATES: This rule is effective without actual notice from May 17, 2022 through June 10, 2022. For the purposes of enforcement, actual notice will be used from May 11, 2022 until May 17, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0440 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email MST2 Evan Dawson, MSU Paducah, U.S. Coast Guard; telephone 270–442–1621 ext. 2135, email *STL-SMB-MSUPaducah-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable. On May 8, 2022 a cement barge became partially sunk in the navigation channel of the Upper Mississippi River at MM 49.5 causing a hazard to navigation. The safety zone must be established immediately to protect people and vessels from hazards associated with the partially sunken barge. It is impracticable to publish an NPRM because we must establish this safety zone by May 11, 2022.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated a partially sunken barge in the navigation channel will be a safety concern for anyone trainsiting between MM 49 and MM 50 on the Upper Mississippi River. The safety zone is needed to protect personnel and vessels from potential hazards due to a partially sunken barge in the navigation channel.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from May 11, 2022 through June 10, 2022, or until the hazard has been mitigated. The temporary safety zone will cover all navigable waters of the Upper Mississippi River extending from mile marker (MM) 49 to MM 50. The COTP will terminate the enforcement of this temporary safety zone before June 10, 2022 if the hazards associated with the partially sunken barge have been resolved. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The COTP may be contacted by telephone at 502–779–5422 or the on scene designated representative can be reached via VHF–FM channel 16.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration. This temporary safety zone will restrict vessel traffic from entering or transiting within a 1 mile area of navigable waters on the Upper Mississippi River between MM 49 and MM 50. While in effect, this rule would allow vessels to seek permission to enter the zone. Moreover, the Coast Guard will issue Broadcast Notice to Mariners

via VHF–FM channel 16 about the temporary safety zone. Additionally, the temporary safety zone will only be in effect while the partially sunken barge remains a hazard to navigation.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting until June 10, 2022 or until salvage operations of the partially sunken barge are complete. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination will be produced. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0440 to read as follows:

§ 165.T08–0440 Safety Zone; Upper Mississippi River, Cape Girardeau, MO

(a) *Location.* The safety zone will cover all navigable waters of the Upper Mississippi River between mile marker (MM) 49 and MM 50.

(b) *Enforcement period.* This section will be enforced from May 11, 2022 and will continue through June 10, 2022 or until the hazards associated with the partially sunken barge have been resolved.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of vessels or persons into the zone during demolition or salvage operations are prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley.

(2) If permission is granted, all persons and vessels must comply with the instructions of the COTP or designated representative while proceeding through the zone.

Dated: May 11, 2022.

J.S. Franz,

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

[FR Doc. 2022–10529 Filed 5–16–22; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 20

International Competitive Services Price Changes

AGENCY: Postal Service™.

ACTION: Final action.

SUMMARY: The Postal Service is revising Notice 123, *Price List,* to reflect the price changes to Competitive Services as established by the Governors of the Postal Service.

DATES: Effective July 10, 2022.

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

SUPPLEMENTARY INFORMATION: New prices are posted under Docket Number CP2022–62 on the Postal Regulatory Commission's website at *http://www.prc.gov.*

This final rule describes the international price changes for the following Competitive Services:

- International Insurance.
- International Postal Money Orders.
- International Money Order Inquiry Fee.
- International Money Transfer Service.

New prices will be located on the Postal Explorer website at *https://pe.usps.com.*

International Extra Services and Fees

Depending on country destination and mail type, customers may add a variety of extra services to their outbound shipments and pay a variety of fees.

The Postal Service proposes to increase fees for certain competitive international extra services as follows:

- *GXG insurance:* There is no charge for GXG insurance for coverage up to $100. The fee for GXG insurance will increase to $2.10 for each additional $100 or fraction over $100, up to a maximum indemnity of $2,499 per shipment (the maximum indemnity varies by country).

GXG Insurance coverage	Fee
Not over $100	$0.00
Each additional $100 or fraction over $100	2.10

Maximum insurance $2,499 (varies by country).

- *PMEI and PMI insurance:* There is no charge for PMEI and PMI merchandise insurance coverage up to $200. The fee for PMEI and PMI merchandise insurance for each additional $100 or fraction over $200 is set forth in the table below, up to a maximum indemnity of $5,000 (the maximum indemnity varies by country).

Indemnity limit not over	Fee
Up to $200	$0.00
$200.01–$300.00	11.05
300.01–400.00	14.00
400.01–500.00	16.95
500.01–600.00	19.90
600.01–700.00	22.85
700.01–800.00	25.80
800.01–900.00	28.75

$28.75 plus $2.95 per $100 or fraction thereof over $900 in declared value. Maximum insurance $5,000 (varies by country).

- *International Postal Money Orders:* The fee for international postal money orders will increase to $49.65.
- *International Money Order Inquiry:* The fee for international money orders inquiry will increase to $36.45.
- *International Money Transfer Service (Sure Money® service):* Prices for international money transfer service will be as follows:

International money transfer service (sure money)	Fee
$0.01–$750.00	$69.30
750.01–1500.00	100.25
Refunds	151.90
Change of Recipient	80.80

Sarah Sullivan,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2022–10500 Filed 5–16–22; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0249; FRL–8724–02–R9]

Rescission of Clean Data Determination and Call for Attainment Plan Revision for the Yuma, AZ 1987 PM10 Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to rescind its previously issued clean data determination (CDD) for the Yuma, Arizona ''Moderate'' nonattainment area (Yuma NAA) for the 1987 24-hour national ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) because recent complete, quality-assured monitoring data show that the area has subsequently violated this NAAQS. We are also determining that the Arizona State Implementation Plan (SIP) is substantially inadequate to attain or maintain the PM_{10} standard in the Yuma NAA and calling for Arizona to revise the SIP to address this inadequacy.

DATES: This rule is effective June 16, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2021–0249. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: John J. Kelly, Air Planning Office (AIR–2), EPA Region IX, (415) 947–4151, *kelly.johnj@epa.gov.*

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

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V. Statutory and Executive Order Reviews

I. Proposed Action and Re-Opening of Comment Period

On June 1, 2021, the EPA proposed to rescind our previously issued CDD for the Yuma NAA because recent complete, quality-assured monitoring data show that the area has

subsequently violated the PM_{10} NAAQS.[1] We also proposed to find that the Arizona SIP is substantially inadequate to attain or maintain the PM_{10} standard and to issue a SIP call requiring Arizona to revise its existing SIP to address this inadequacy. In order to cure this deficiency, we proposed to require Arizona to submit a Moderate nonattainment plan SIP submission meeting applicable requirements for such a SIP submission within 18 months of finalizing the SIP call. We also proposed to set a new attainment date of no later than December 31, 2025, for the 1987 24-hour PM_{10} NAAQS in this area because the original maximum statutory attainment date for this area under Clean Air Act (CAA or ''Act'') section 188(c)(1) was December 31, 1994 (approximately four years from the original designation).[2] Finally, we proposed to reverse our previous finding that the motor vehicle emissions budgets in the Yuma PM_{10} Maintenance Plan were adequate for transportation conformity purposes pursuant to 40 CFR 93.118(f)(1)(vi). Please refer to our proposed rule for background information and additional explanation of the proposed actions.

The initial public comment period for the proposed rule started on June 1, 2021 and ended on July 1, 2021. Due to an inadvertent administrative oversight, the EPA did not post all the documents contained in the docket until June 23, 2021. On October 19, 2021, the EPA re-opened the comment period for the proposed rule for an additional 30 days, to allow for a full comment period with access to all docket materials.[3] In response to a comment from the Arizona Department of Environmental Quality (ADEQ), we also sought public comment on whether we should set a maximum attainment date of December 31, 2027 (roughly six years from the expected SIP call effective date), rather than December 31, 2025 (roughly four years from the expected SIP call effective date), for the Yuma NAA, if we were to finalize our proposed finding of inadequacy and SIP call.

In addition to the two public comment periods described in the above paragraphs, the EPA also held a comment period that was announced on our Office of Transportation and Air Quality (OTAQ) website.[4] The purpose of this comment period was to invite public comment on our proposed reversal of our previous finding that the motor vehicle emissions budgets in the Yuma PM_{10} Maintenance Plan were adequate for transportation conformity purposes pursuant to 40 CFR 93.118(f)(1)(vi). We posted our announcement of the public comment period on the OTAQ website on June 4, 2021, and requested comments be submitted by July 6, 2021. We also met with the Yuma Interagency Work Group on June 22, 2022, to inform them of this proposal.[5]

Finally, on October 21, 2021, EPA Region IX staff met with representatives of the Arizona Farm Bureau to discuss issues affecting the agricultural sector, including in the Yuma NAA.[6]

II. Public Comments and EPA Responses

We did not receive any comments during the comment period announced on our OTAQ website. During the two comment periods the EPA announced in the **Federal Register**, we received a total of 13 comment letters from the following parties: ADEQ, the Arizona Farm Bureau Federation, the Seed Trade Association of Arizona, the Wellton-Mohawk Natural Resource Conservation District, the Yuma County Department of Development Services, the Yuma County Farm Bureau, the Yuma Fresh Vegetable Association, the Yuma Natural Resource Conservation District, and the Laguna Natural Resource Conservation District. We summarize and respond to these comments below.

In addition, on October 5, 2021, Senators Kyrsten Sinema and Mark Kelly sent a letter to EPA Administrator Michael Regan regarding the proposed rule. The EPA's Acting Assistant Administrator for Air, Joe Goffman, responded to this letter on November 17, 2021. We have included the Senators' letter and the EPA's responses in the docket for this action.

Comment 1: Several commenters expressed opposition to the proposed CDD rescission and SIP call, arguing that the EPA and ADEQ should instead evaluate whether recent exceedances in the Yuma NAA qualify for exclusion under the EPA's Exceptional Events Rule (EER). The commenters noted that exceedances of the PM_{10} NAAQS in the Yuma NAA are generally due to high wind events that could qualify as exceptional events (EEs). Some of the commenters also asserted that the EPA should develop and approve a new EER. Two commenters added that the CAA does not mandate that a SIP revision be developed prior to submission of an EE demonstration.

Two commenters quoted 40 CFR part 50 appendix K, section 2.4(a), which defines an EE as an uncontrollable event caused by natural sources of particulate matter or an event that is not expected to recur at a given location and allows for the use of more than three years of representative data in calculating a PM_{10} design value in order to reduce the effect of such events.

In addition, several commenters stated that, after many years of stakeholder meetings and studies by ADEQ and independent contractors, the sources of PM_{10} dust in the Yuma NAA are well documented. They expressed opposition to any ''reset'' of this previous work. Commenters also pointed to controls that have already been implemented for specific sources of PM_{10} in the Yuma NAA.

Response 1: We agree with commenters that exceedances of the 1987 24-hour PM_{10} NAAQS in the Yuma NAA are often associated with high wind that could potentially qualify for treatment as natural events under the EPA's EER. In order to qualify for such treatment, all the applicable criteria under the EER must be met, including a demonstration that reasonable control measures were applied at the time of the event.[7] Specifically, for a high wind dust event to qualify as a natural event, the state must show that the windblown dust is entirely from natural undisturbed lands in the area or that all anthropogenic sources are reasonably controlled.[8] We are not aware of any evidence to suggest that windblown dust in the Yuma NAA is entirely from natural undisturbed lands. Therefore, in order to meet this requirement, the state must provide evidence of the effective implementation and enforcement of SIP-approved or other enforceable controls on the anthropogenic sources within the state's jurisdictional boundaries that cause or contribute to the monitored exceedance or violation.[9]

In a number of formal and informal communications over the last several years, the EPA has indicated to ADEQ that we believe the current controls on anthropogenic sources that contribute to the exceedances and are within the state's jurisdiction do not fully meet the requirements for enforceable, reasonable controls under the EER. In 2015, based on identified deficiencies in existing

[1] 86 FR 29219.

[2] 86 FR 29221.

[3] 86 FR 57769.

[4] *https://www.epa.gov/state-and-local-transportation/adequacy-review-state-implementation-plan-sip-submissions-conformity.*

[5] Memorandum dated January 27, 2022, from John Kelly, EPA Region IX, Air and Radiation Division, to Docket ID No. EPA–R09–OAR–2021–0249.

[6] Memorandum dated December 1, 2021, from Cara Gillen, Agriculture Advisor, EPA Region IX, Air and Radiation Division, to Docket ID No. EPA–R09–OAR–2021–0249.

[7] 40 CFR 50.14(b)(8)(iii).

[8] 40 CFR 50.14(b)(5)(ii).

[9] 40 CFR 50.14(b)(8)(vii) and (viii)(A)–(C).

controls for paved roads, we recommended that ''ADEQ re-direct its efforts away from attempts to demonstrate past exceedances as exceptional events and towards developing a PM_{10} State Implementation Plan pursuant to CAA §§ 110, 182 and 189.'' [10] However, due to the suspension of attainment-related requirements under the CDD, ADEQ was not required to develop such a plan. In the absence of such a requirement, ADEQ and the EPA have instead worked with stakeholders in the Yuma NAA for several years on the development of a ''prospective assessment'' of reasonable controls for the Yuma NAA.[11] As noted by commenters, through this process ADEQ and stakeholders have made significant progress in understanding the sources that contribute to exceedances of the PM_{10} NAAQS in the Yuma NAA.

In 2020, ADEQ submitted a draft outline of a prospective assessment of controls on specific source sectors in the Yuma NAA. The EPA provided feedback on this draft, noting that it did not include any proposed new requirements to implement ''reasonable controls'' on several significant source categories in the area.[12] We explained that, under the EER, the EPA would not be able to concur on PM_{10} exceptional events demonstrations in the Yuma NAA without the necessary enforceable and reasonable controls for all significant anthropogenic sources under the State's jurisdiction.[13] Therefore, we indicated that it would be necessary for ADEQ to develop new or revised rules for these source categories before the EPA would be able to concur on exceptional events demonstrations for the Yuma NAA and ultimately redesignate the area to attainment.[14] Following these communications, ADEQ, the EPA, and stakeholders have continued to work on the development of new and revised rules for the affected source categories.

However, to date, no governmental entity has adopted any new enforceable requirement to implement controls on any PM_{10} sources in the Yuma NAA. While we appreciate the efforts of various parties to voluntarily implement control measures, such as street sweeping and agricultural dust controls, the implementation of such voluntary measures does not meet the CAA and EER requirements for enforceable control measures. In the absence of enforceable, reasonable controls measures for all significant anthropogenic sources under the State's jurisdiction, high wind events in the Yuma NAA would not qualify for treatment as EEs under the EER.

We recognize the commenters' frustration regarding the lack of progress toward redesignation of the Yuma NAA to attainment of the PM_{10} NAAQS. However, we do not agree with the suggestion that rescission of the CDD and issuance of a SIP call constitutes a ''reset'' of the current process. On the contrary, by establishing firm deadlines by which enforceable control measures must be submitted to the EPA and implemented by the relevant sources, we believe this action may serve to expedite implementation of enforceable, reasonable controls, which is a prerequisite to the EPA's concurrence on EE demonstrations. We also note that the EPA is not permitted to approve a redesignation to attainment unless the EPA determines that ''improvement in air quality is due to permanent and enforceable reductions in emissions,'' and that a plan demonstrating the area will continue to maintain the NAAQS is in place, among other requirements.[15]

With respect to the suggestion that the EPA develop a new EER, we note that the EER was last revised in 2016 and the EPA has concurred on EE demonstrations submitted by many states, including Arizona, under the provisions of the revised EER. The commenters did not indicate which aspect of the EER they believe should be revised, or why they believe the rule's current provisions are problematic. Regardless, any potential revision to the EER is outside the scope of this current rulemaking.

If, by a ''new EER,'' commenters are referring to submittal of new EE demonstrations by ADEQ, we do not expect that we would be able to concur upon such demonstrations at this time due to the lack of enforceable, reasonable controls, as described in the preceding paragraphs. Furthermore, while we agree that the CAA does not require that a state develop a SIP submission before an EE demonstration, the EPA cannot concur on such a demonstration under the EER unless enforceable, reasonable controls are in place at the time of the event. Under the EER, the EPA considers enforceable control measures implemented in accordance with a SIP to be reasonable controls, if they were approved within five years of the event and address all sources necessary to fulfill the applicable CAA requirements for the SIP.[16] Therefore, a SIP submission including control measures to address the anthropogenic sources contributing to the monitored exceedance would help to ensure that the EER provisions were met for any future EE demonstrations for the relevant monitor and NAAQS.

Finally, we note that 40 CFR part 50 appendix K section 2.4(a) was promulgated in 1987 as part of the original implementing regulations for the 1987 PM_{10} NAAQS.[17] It has not been revised since Congress amended the CAA to address EEs in CAA section 319 in 2005,[18] or since the EER was promulgated in 2007 [19] and revised in 2016.[20] The EER includes a more detailed definition of an EE than the definition cited by the commenters. The EER definition specifies, among other things, that an EE must be ''not reasonably controllable or preventable'' and must ''be determined by the Administrator in accordance with 40 CFR 50.14 to be an exceptional event.'' [21] As described in the preceding paragraphs, we expect that we would not be able to concur on an EE demonstration for the Yuma NAA under 40 CFR 50.14 at this time due to a lack of enforceable, reasonable controls on sources within the State's jurisdiction.

Furthermore, as noted in our proposal, the Yuma NAA has had a violating design value for the 1987 24-hour PM_{10} NAAQS every year since 2006.[22] Therefore, even if we were to consider more than three years of representative data pursuant to 40 CFR part 50 appendix K section 2.4(a), the Yuma NAA would still be violating the PM_{10} NAAQS.

Comment 2: A few commenters noted that much of the land in the Yuma NAA is owned by the federal government, the state government, or local tribes. They indicated that ADEQ cannot control sources of dust on these lands. Commenters also stated that uncontrolled dust enters the Yuma NAA from Mexico and Imperial County,

[10] Letter dated November 19, 2015, from Elizabeth Adams, Acting Director, Air Division, EPA Region IX, to Eric Massey, Air Quality Division Director, ADEQ, 3.

[11] See, *e.g.,* email dated October 26, 2019, from Meredith Kurpius, EPA, to Tim Franquist, ADEQ, subject: ''Yuma PM_{10} EE process.''

[12] Letter dated September 10, 2020, from Elizabeth Adams, Director, Air and Radiation Division, EPA Region IX, to Misael Cabrera, Director, ADEQ.

[13] Id.

[14] Id.

[15] CAA section 107(d)(3)(E).

[16] 40 CFR 50.14(b)(8)(v).

[17] 52 FR 24634, 24667 (July 1, 1987).

[18] Public Law 109–59, title VI, § 6013(a), August 10, 2005, 119 Stat. 1882 (codified in CAA section 319(b)).

[19] 72 FR 13560 (March 22, 2007).

[20] 81 FR 68216.

[21] 40 CFR 50.1(j).

[22] 86 FR 29221 (citing EPA, Air Quality System (AQS) ''Design Value Report,'' dated March 3, 2021.)

California, which are outside of ADEQ's jurisdiction.

Response 2: We agree with the commenters' assertion that ADEQ does not have authority to regulate PM_{10} emissions in Mexico or California, on any Indian reservation land, or in any other area where a tribe has jurisdiction. Under the EER, the State is not required to demonstrate that reasonable controls were in place for emissions-generating activity outside of the State's jurisdictional boundaries.[23] The CAA and the EPA's Tribal Authority Rule also contain provisions addressing emissions from sources on tribal land and other states and countries in relation to SIPs. This action will not affect or alter ADEQ's authorities or obligations with respect to such emissions outside of its jurisdiction.

We do not agree with the commenters' assertion that ADEQ lacks authority to regulate sources of emissions on state or federal government land. Under Arizona State law, rules adopted by ADEQ apply throughout the State.[24] Furthermore, under CAA section 118, federal agencies must comply with all federal, state, interstate, and local requirements concerning air pollution control, unless expressly exempted by the President.[25] Therefore, in the absence of a specific exemption, or an explicit preemption, air pollution control rules adopted by ADEQ apply to both governmental and nongovernmental entities.

Comment 3: One commenter expressed concern that data collected at the Yuma NAA monitoring station are not representative of ambient PM_{10} concentrations in the Yuma NAA. The commenter pointed to differences in reported concentrations between the current and previous locations of the monitoring station and to localized dusty conditions near the current monitoring site.

Response 3: The commenter appears to be referring to the Yuma Supersite, which is the site of the only regulatory PM_{10} monitor in the Yuma NAA. ADEQ's annual monitoring network plans provide information about the location and characteristics of this monitor.[26] As noted in our proposal, the EPA found that the 2018–2020 annual network plans (ANPs) submitted by ADEQ met the relevant PM_{10} requirements under 40 CFR part 58.[27] We have also approved ADEQ's 2021 ANP with respect to these requirements.[28] These ANPs document that the monitoring objective of the Yuma Supersite PM_{10} monitor is NAAQS comparison and its site type is population-oriented, [29] meaning that it is located to measure typical concentrations in areas of high population density.[30] Consistent with this objective and site type, the monitor is sited at the neighborhood scale,[31] meaning that it represents particulate matter concentrations, as well as land use and land surface characteristics, within an area of approximately a few kilometers.[32] ADEQ's selection of this monitoring site, and the EPA's approval of the ANPs including this site, document that the monitor is properly sited and the data is representative of ambient PM_{10} levels in this area.

The fact that the current monitor may record higher concentrations of PM_{10} than the previous monitor, which was located on the roof of the Yuma Courthouse,[33] does not suggest that the monitor is improperly sited, given its monitoring objective, site type, and scale of representativeness. We also note that, even before the State relocated the PM_{10} monitor to the Yuma Supersite, the Yuma NAA had a violating design value every year between 2006 and 2010, based on monitoring data from the Courthouse monitor.[34] Therefore, we do not agree with the commenter's suggestion that data from the Yuma Supersite may be unrepresentative of ambient PM_{10} concentrations in the Yuma NAA.

Comment 4: One commenter asserted that, in proposing to rescind the CDD and issue a SIP call, the EPA failed to consider the cost and effectiveness of additional regulation that this action will impose on the local economy. The commenter also stated that it supports affordable effective measures that significantly reduce PM_{10}, but not ''measures put in place for regulatory purposes only; measures that are not effective, cannot be proven to work or only address an insignificant portion of PM_{10}.''

Response 4: We disagree with the commenter that the EPA should consider costs prior to finalizing this action. The EPA interprets the CAA's nonattainment planning requirements as permitting the Agency to issue a CDD, which suspend a state's requirement to submit certain attainment planning requirements for as long as an area is attaining the NAAQS. In this case, the area is factually no longer attaining the NAAQS, and it is therefore not reasonable to interpret the Act as permitting the suspension of mandatory nonattainment area plan requirements applicable to the State to provide for the attainment of the PM_{10} NAAQS in this area. We therefore do not agree with the commenter that the EPA may consider cost or effectiveness of regulation in rescinding the CDD, where the area is no longer attaining the NAAQS.

Further, the rescission of the CDD and issuance of a SIP call does not in and of itself impose any new costs or establish any new control measures. ADEQ will determine how to revise its SIP to meet Moderate area nonattainment plan requirements in response to the SIP call. The applicable requirements for a Moderate PM_{10} NAA include implementation of reasonably available control measures (RACM) and reasonably available control technology (RACT) for sources of PM_{10} and any necessary PM_{10} precursors.[35] The EPA interprets the PM_{10} RACM requirement to allow states to exclude de minimis source categories, and to consider both technological feasibility and the cost of control in determining which control measures are reasonably available, subject to the overarching requirement to provide for attainment of the NAAQS in the area.[36] Therefore it would be inappropriate and premature for the EPA to analyze the potential costs of controls prior to ADEQ's development of a SIP submission.

Comment 5: One commenter asserted that if the monitoring station measurements continue to increase due to naturally occurring PM_{10} or unrepresentative, localized dusty conditions near the station, there is the potential for ever-changing controls such as contingency measures, findings of SIP inadequacy, or changes in designation.

Response 5: Please refer to Response 3 concerning the representativeness of the Yuma Supersite PM_{10} monitor. With respect to potential increases in ''naturally occurring'' PM_{10}, as discussed in Response 1, for a high wind dust event to qualify as a natural event, the State must show that the windblown dust is entirely from natural

[23] 40 CFR 50.14(b)(8)(vii).

[24] ARS 49–106. Statewide application of rules.

[25] 42 U.S.C. 7418(a) and (b).

[26] See, *e.g.,* ADEQ 2020 Annual Network Plan, Appendix C, 15.

[27] 86 FR 29220.

[28] Letter dated October 29, 2021, from Gwen Yoshimura, Section Chief, Air Quality Analysis Office, EPA Region 9, to Daniel Czecholinski, Director, Air Quality Division, ADEQ.

[29] See, *e.g.,* ADEQ 2020 Annual Network Plan, Appendix C, 15.

[30] 40 CFR part 58, Appendix D, section 1.1.1(b).

[31] See, *e.g.,* ADEQ 2020 Annual Network Plan, Appendix C, 15.

[32] 40 CFR part 58, Appendix D, section 4.6(b)(3).

[33] See, *e.g.,* ADEQ 2009 Annual Network Plan, 122.

[34] EPA, AQS ''Design Value Report,'' dated March 26, 2021.

[35] CAA sections 172(c)(1) and 189(a)(1)(C).

[36] See, *e.g.,* General Preamble, 57 FR 13498, 13540–13541 (April 16, 1992).

undisturbed lands in the area or that all anthropogenic sources are reasonably controlled.

Concerning contingency measures, we note that such measures are a required element of a Moderate area nonattainment plan that the State must submit.[37] However, such contingency measures would only be triggered if the EPA finds that the area failed to make reasonable further progress or to attain the NAAQS by the new attainment date. Prior to making a finding of failure to attain, we would consider any EE demonstrations submitted by ADEQ under the criteria set forth in the EER. If the State has met the criteria for exceptional events, including the requirement for reasonable controls on anthropogenic sources, then the EPA would be able to concur upon the demonstrations and exclude the relevant data.

With respect to a finding of SIP substantial inadequacy, we are determining that the Arizona SIP is substantially inadequate to attain the PM_{10} NAAQS in the Yuma NAA. This determination is based on 15 years of monitoring data showing violations of the PM_{10} NAAQS, rather than any short-term or temporary increase in PM_{10} concentrations. To the extent that there could be a future finding of substantial inadequacy in the Arizona SIP, that would be for the EPA to determine based on its assessment of the relevant facts at such time, not in this action. Section 110(k)(5) explicitly provides that the EPA may elect to issue a SIP call ''whenever'' it determines that a state's existing SIP has substantial inadequacy.

Regarding the commenter's concerns about the Yuma NAA designation changing, the Yuma NAA is already designated nonattainment. That designation is not changing in this action. Any future change in designation for this area for purposes of the 1987 PM_{10} NAAQS would be a redesignation from nonattainment to attainment. In order to redesignate the area to attainment, the EPA would have to determine, among other things, that the area had attained the PM_{10} NAAQS due to reductions in emissions resulting from permanent and enforceable control measures.[38] To the extent that the commenter is concerned about the potential for changes in designation in general, this is a feature of the CAA. Pursuant to section 107(d)(3) either the State or the EPA can initiate a change in designation through the proper process when the facts justify such a change.

Finally, if by ''designation'' the commenter intended to say ''classification,'' the EPA agrees that further controls could be required should the area fail to meet its new Moderate area attainment date. Such failure could lead to a reclassification to Serious nonattainment. This reclassification would require the state to meet additional more stringent Serious area requirements. Again, prior to making a determination that the area failed to attain by the applicable attainment date, we would consider any EE demonstrations submitted by ADEQ under the criteria set forth in the EER.

Comment 6: Three commenters recommended that, concurrent with review of potential EEs, ADEQ develop and submit to the EPA a SIP revision in case there are not enough qualifying EER events to put the Yuma NAA back into compliance. They stated that they did not want a repeat of the August 2006 Yuma SIP that was submitted and recalled by ADEQ.

Response 6: This final SIP call will require ADEQ to submit a SIP revision, which, as discussed in Response 1, may also help ADEQ to meet the requirement for reasonable controls under the EER. We interpret the commenters' reference to the ''August 2006 Yuma SIP'' to mean the ''Yuma Maintenance Plan'' submitted by ADEQ on August 17, 2006 (Yuma Maintenance Plan). We note that ADEQ has not withdrawn this SIP revision and the EPA has not taken action to approve or disapprove this SIP revision at this time. The EPA did find the motor vehicle emissions budgets in the Yuma Maintenance Plan adequate for transportation conformity purposes,[39] but, as discussed in Section IV of this document, we are now reversing that finding.

Comment 7: Two commenters expressed support for a maximum attainment date of December 31, 2027, rather than the December 31, 2025 date proposed by the EPA. Both commenters asserted that a period of approximately six years was necessary to fully implement control measures in the area in time to achieve three years of clean data prior to the attainment date. One commenter elaborated on the statutory basis for such a deadline, noting that CAA section 188(c)(1) establishes two alternative attainment deadlines for Moderate PM_{10} nonattainment areas: Four years after designation for areas designated in 1990, and six years after designation for all other areas. The commenter asserted that the CAA does not require the EPA to set the new maximum attainment date according to the shorter deadline and that the six-year deadline would be more appropriate for the Yuma NAA. The commenter then provided additional background concerning the history of the EPA's PM_{10} nonattainment requirements and noted that the four-year deadline for areas designated under CAA 107(d)(4) was specifically designed for areas that had been required to submit SIPs containing attainment demonstrations prior to enactment of the CAA Amendments of 1990. The commenter argued that application of this deadline to areas subject to subsequent SIP calls requiring submission of a new attainment demonstration would be inappropriate and that such areas should be given the normal six years to attain.

Response 7: We agree with the commenters that an attainment date of as expeditiously as possible, but not later than December 31, 2027, is appropriate for the Yuma NAA. Because the original attainment date of December 31, 1994, has elapsed, CAA section 110(k)(5) provides the EPA with discretion to adjust this date ''as appropriate.'' We proposed a maximum attainment date of December 31, 2025 (approximately four years from our expected final action) because the Yuma NAA's original maximum attainment date was approximately four years from its designation as a NAA in 1990. However, as noted by one of the commenters, the December 31, 1994 date applied only to areas that were designated nonattainment under CAA section 107(d)(4), *i.e.,* those areas that had either been identified as ''Group I areas'' because they had a high probability of violating the NAAQS, or that had, in fact, violated the NAAQS prior to January 1, 1989. Most of these areas, including the Yuma NAA, which had been identified as a Group I area,[40] were already required to have submitted attainment demonstrations.[41] In contrast, for newly designated NAAs which were not previously required to submit a nonattainment plan for the 1987 PM_{10} NAAQS, CAA section 188(c)(1) set a maximum attainment date of ''as expeditiously as practicable but no later than the end of the sixth calendar year after the area's designation as nonattainment.'' The

[37] CAA section 172(c)(9).

[38] CAA section 107(d)(3)(E)(iii).

[39] 72 FR 32295 (June 12, 2007).

[40] 52 FR 29383 (August 7, 1987).

[41] See 52 FR 24672, 24681 (July 1, 1987) (Group I SIPs ''will have to contain full PM_{10} control strategies including a demonstration of attainment . . .'' and Group II SIPS must include an enforceable commitment to ''adopt and submit to EPA a PM_{10} control strategy that assures attainment . . .'')

EPA acknowledges, as noted by the commenter, that areas such as Yuma that were designated nonattainment prior to 1990 would therefore have had a shorter maximum period of time to attain the NAAQS, *i.e.,* only four years from the enactment of section 188(c) to 1994, whereas newly designated areas would have a maximum outer attainment date of six years.

In this action, however, the EPA must determine an appropriate new attainment date, as contemplated in CAA section 110(k)(5), due to the passage of time since the nonattainment designation of the Yuma NAA and intervening events. Because the 2006 CDD suspended the obligation for development and submittal of an attainment demonstration, the Yuma NAA is in a different position now than it was in 1990, when an attainment demonstration had already been required for the area. Therefore, after consideration of comments on this issue, we agree that an attainment date of as expeditiously as practicable but no later than December 31, 2025, is not appropriate for the Yuma NAA. We also note that, if we were newly designating the Yuma NAA as nonattainment for this NAAQS, the maximum attainment date would be December 31, 2028 (*i.e.,* the end of the sixth calendar year after the area's designation as nonattainment). However, given that the area has been designated nonattainment for more than thirty years and ADEQ has already undertaken substantial work to characterize the sources contributing to nonattainment in the Yuma NAA and to develop rules to regulate sources within its jurisdiction, we do not consider it appropriate to provide six full calendar years before the maximum attainment date.

In determining the ''appropriate'' attainment date for the Yuma NAA under CAA section 110(k)(5), we have considered both the provisions of 188(c)(1) (described above) and the provisions of CAA section 172(a)(2)(A), which sets attainment dates for all nonattainment areas, except those for which attainment dates are specifically provided under other provisions of title I, part D.[42] In particular, section 172(a)(2)(A) provides a default attainment date of as expeditiously as practicable, but no later than five years from the nonattainment designation, but permits the EPA to extend this date, as appropriate, up to 10 years from the date of designation as nonattainment, considering the severity of nonattainment and the availability and feasibility of pollution control measures.

Although these provisions of section 172(a)(2)(A) would normally be superseded by 188(c)(1) for newly designated PM_{10} NAAs, in this instance the maximum statutory attainment dates of section 188(c)(1) for the Yuma NAA have long since passed. In such circumstances, the EPA considers it reasonable to look to section 172(a)(2)(A) for relevant guideposts, along with 188(c)(1), in setting an appropriate maximum attainment deadline under 110(k)(5) for the Yuma NAA, as if the area were newly nonattainment. Because the Yuma NAA remains classified as Moderate and because additional controls for the Yuma NAA are clearly available and feasible, we do not believe a lengthy extension (*i.e.,* a year or more) beyond the five-year deadline set forth in section 172(a)(2)(A) is appropriate. However, we find that an extension of several months beyond the five-year default maximum attainment date is appropriate in order to align the maximum attainment date with the end of the calendar year, consistent with end-of-year attainment dates specified for PM_{10} in CAA section 188(c)(1). In this case, the triggering action for the new attainment plan requirements is the final CDD rescission and SIP call, rather than the initial designation of the area as nonattainment. The final effective date for these actions is June 16, 2022. Therefore, we are finalizing a maximum attainment date of December 31, 2027, for the Yuma NAA pursuant to CAA section 110(k)(5).

III. Environmental Justice Assessment

To identify environmental burdens and susceptible populations in underserved communities in the Yuma NAA, and to examine the implications of our proposed action on these communities, we performed a screening-level analysis using the EPA's environmental justice (EJ) screening and mapping tool (''EJSCREEN'').[43] Our screening-level analysis included multiple environmental and demographic indicators, including the EJSCREEN ''Demographic Index,'' which is the average of an area's percent minority and percent low income populations, *i.e.,* the two demographic indicators explicitly named in Executive Order 12898. The Demographic Index for the Yuma NAA exceeds the 75th percentile, compared to the United States as a whole.[44]

As discussed in the EPA's EJ technical guidance, people of color and low-income populations often experience greater exposure and disease burdens than the general population, which can increase their susceptibility to adverse health effects from environmental stressors.[45] Underserved communities can also experience reduced access to health care, nutritional, and fitness resources, further increasing their susceptibility.

This final action requires the State of Arizona to submit to the EPA a SIP revision providing for attainment of the 1987 24-hour PM_{10} NAAQS in the Yuma NAA. The development of required SIP elements will result in air quality improvements and human health benefits for all Yuma NAA residents, including those in underserved communities. Conversely, failure to make the determinations in this final action could inhibit or delay the attainment of the 1987 24-hour PM_{10} NAAQS in the Yuma NAA, which could negatively impact health effects for all Yuma NAA residents and could perpetuate the EJ concerns potentially faced by communities in these areas, including Cocopah and Fort Yuma (Quechan) tribes, which have lands within the Yuma NAA. Thus, we believe that finalizing our proposed action will help to reduce disproportionate health, environmental, economic, and climate impacts on disadvantaged communities in the Yuma NAA and that this action will not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898.

[42] CAA section 172(a)(2)(D).

[43] EJSCREEN provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN is available at *https://www.epa.gov/ejscreen/what-ejscreen.* The EPA used EJSCREEN to obtain environmental and demographic indicators and EJ Indexes representing the Yuma NAA. Our analysis is included in the file titled ''Environmental Justice in Yuma 1987 PM10 Nonattainment Area.pdf,'' available in the rulemaking docket for this action.

[44] EJSCREEN reports environmental indicators (*e.g.,* air toxics cancer risk, lead paint exposure, and traffic proximity and volume) and demographic indicators (*e.g.,* people of color, low income, and linguistically isolated populations). Depending on the indicator, a community that scores highly for an indicator may have a higher percentage of its population within a demographic group or a higher average exposure or proximity to an environmental health hazard compared to the state, region, or national average. EJSCREEN also reports EJ indexes, which are combinations of a single environmental indicator with the EJSCREEN Demographic Index. For additional information about environmental and demographic indicators and EJ indexes reported by EJSCREEN, see EPA, ''EJSCREEN Environmental Justice Mapping and Screening Tool—EJSCREEN Technical Documentation,'' section 2 (September 2019).

[45] EPA, ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,'' section 4 (June 2016).

IV. Final Action

The EPA has evaluated the comments on the proposed action. We have also reviewed the most recent monitoring data from the Yuma Supersite PM_{10} monitor. Based on certified data from 2020, the monitor had a 2018–2020 design value of 5.4.[46] Based on preliminary data from 2021, the monitor had a 2019–2021 design value of 2.7.[47] These design values show continued violations of the 1987 24-hour PM_{10} NAAQS and are therefore consistent with our proposed actions. Taking into consideration these data, and for the reasons described in the proposal and in our responses to comments in section II of this document, we conclude that it is appropriate to finalize the proposed CDD rescission and SIP call. Therefore, we are finalizing the rescission of the 2006 CDD for the Yuma NAA and reinstating the requirements that were suspended under that CDD.

We are also finding, pursuant to CAA section 110(k)(5), that the Arizona SIP is substantially inadequate to attain or maintain the 1987 24-hour PM_{10} NAAQS in the Yuma NAA. In order to address this inadequacy, we are issuing a SIP call under CAA section 110(k)(5), requiring the State to submit a SIP revision meeting the applicable nonattainment plan requirements of the CAA for Moderate PM_{10} NAAs.[48] These requirements include: (i) An approved permit program for construction of new and modified major stationary sources;[49] (ii) a demonstration that the plan provides for attainment by no later than the applicable Moderate area attainment date or a demonstration that attainment by that date is impracticable;[50] (iii) provisions for the implementation of RACM and RACT;[51] (iv) quantitative milestones that will be used to evaluate compliance with the requirement to demonstrate reasonable further progress (RFP);[52] (v) evaluation and regulation of PM_{10} precursors;[53] (vi) a description of the expected annual incremental reductions in emissions that will demonstrate RFP;[54] (vii) emissions inventories, as necessary;[55] (viii) other control measures (besides RACM and RACT) as may be needed for attainment;[56] (ix) contingency measures,[57] and (x) a motor vehicle emissions budget for the purpose of determining the conformity of transportation programs and plans developed by the metropolitan planning organization for the area.[58] The EPA's longstanding guidance on these statutory requirements is embodied in the ''The General Preamble for Implementation of Title I of the Clean Air Act (CAA) Amendments.'' [59]

We are requiring Arizona to submit this Moderate nonattainment plan SIP submission within 18 months of the effective date of this final action. We are establishing an attainment date for the 1987 PM_{10} NAAQS in the Yuma NAA of as expeditiously as practicable but no later than December 31, 2027. Consistent with this attainment date, implementation of RACM/RACT will be required no later than January 1, 2027. Furthermore, as discussed in Response 1, in order for exceedances associated with high wind events to qualify for exclusion under the EER, the state must provide evidence of the effective implementation and enforcement of SIP-approved or other enforceable controls on the anthropogenic sources within the State's jurisdictional boundaries that cause or contribute to the monitored exceedance or violation. Given the prevalence of high wind events in the Yuma NAA and the fact that PM_{10} design values are based on three years of ambient monitoring data, we expect that ADEQ would need to require implementation of reasonable controls on these sources no later than January 1, 2025, in order for the Yuma NAA to attain the PM_{10} NAAQS by December 31, 2027.

Finally, we are reversing our previous adequacy finding for the motor vehicle emissions budgets in the Yuma Maintenance Plan to a finding of inadequacy pursuant to 40 CFR 93.118(f)(1)(vi). This reversal will require transportation agencies to determine conformity using interim emission tests pursuant to 40 CFR 93.119, instead of the current practice of using the past maintenance plan motor vehicle emissions budgets as part of a budget test.

V. Statutory and Executive Order Reviews

This action is a determination that the Yuma NAA is no longer attaining the 1987 $p.m._{10}$ NAAQS, based on the EPA's review of air quality data, and a SIP call under section 110(k)(5) of the CAA. Upon a finding that a SIP is deficient, section 110(k)(5) of the CAA directs the Agency to require the state to correct the deficiency. Therefore, this action does not impose additional requirements beyond those required by the CAA itself. For that reason, this action:

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

[46] EPA, AQS, 2020 ''Design Value Report,'' dated January 26, 2022.

[47] EPA, AQS, 2021 preliminary ''Design Value Report,'' dated January 26, 2022.

[48] See CAA section 110(k)(5) (''Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made . . .'')

[49] CAA section 189(a)(1)(A). On November 2, 2015, the EPA published a final limited approval and limited disapproval of revisions to ADEQ's new source review permitting rules. 80 FR 67319. On May 4, 2018, the EPA approved additional rule revisions to address many of the deficiencies identified in the 2015 action. 83 FR 19631. Accordingly, we do not expect that any revisions to ADEQ's permit program would be necessary to address this requirement.

[50] CAA section 189(a)(1)(B).

[51] CAA sections 172(c)(1) and 189(a)(1)(C).

[52] CAA section 189(c). Consistent with the General Preamble, 57 FR 13539, the starting point for counting the three-year periods in 189(c)(1) will be the due date for the SIP submittal, *i.e.,* 18 months from this final action.

[53] CAA section 189(e).

[54] CAA section 172(c)(2).

[55] CAA section 172(c)(3).

[56] CAA section 172(c)(6).

[57] CAA section 172(c)(9).

[58] 40 CFR 93.102(b)(1).

[59] 57 FR 13498 (April 16, 1992).

In addition, this action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian tribes and thus this action will not impose substantial direct costs on tribal governments or preempt tribal law. Nonetheless, the EPA intends to notify the Cocopah and Fort Yuma (Quechan) tribes, which have lands within the Yuma NAA and were identified in our EJ screening analysis noted in Section III of this document.

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

• Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: May 5, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the EPA amends chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart D—Arizona

■ 2. Section 52.126 is amended by adding paragraph (d) to read as follows:

§ 52.126 Control strategy and regulations: Particulate matter.

* * * * *

(d) Pursuant to CAA section 110(k)(5), the State of Arizona is required to submit a revision to the Arizona SIP for the Yuma PM_{10} nonattainment area (NAA) to the EPA by November 17, 2023. The SIP revision must, among other elements, provide for attainment of the 24-hour PM_{10} NAAQS in the Yuma NAA as expeditiously as practicable but no later than December 31, 2027.

[FR Doc. 2022–10060 Filed 5–16–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2021–0558; FRL–9224–02–R3]

Air Plan Approval; Pennsylvania; Revision of the Maximum Allowable Sulfur Content Limit for Number 2 and Lighter Commercial Fuel Oil in Allegheny County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania on behalf of the Allegheny County Health Department (ACHD). The revision updates Allegheny County's portion of the Pennsylvania SIP, which includes regulations concerning sulfur content in fuel oil. This revision pertains to the reduction of the maximum allowable sulfur content limit for Number 2 (No. 2) and lighter commercial fuel oil, generally sold and used for residential and commercial furnaces and oil heat burners for home or space heating, water heating or both, from the current limit of 500 parts per million (ppm) to 15 ppm. EPA is approving these revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on June 16, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2021–0558. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Sean Silverman, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–5511. Mr. Silverman can also be reached via electronic mail at *silverman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 26, 2021 (86 FR 67418), EPA published a notice of proposed rulemaking (NPRM) that proposed approval of a SIP revision that incorporates ACHD's updated low-sulfur fuel oil provisions into the Pennsylvania SIP. The SIP revision was submitted by Pennsylvania on December 1, 2020, requesting that EPA incorporate ACHD's revisions to Allegheny County's Regulations, codified at Article XXI section 2104.10, into the Pennsylvania SIP. In response to the NPRM, EPA received one comment supporting the proposed action which can be found in the docket. EPA received no adverse comments.

II. Summary of SIP Revision and EPA Analysis

The SIP revision incorporates amendments to Article XXI section 2104.10 which set the maximum allowable sulfur content limit for various fuel types into the Pennsylvania SIP. The amendments to Article XXI section 2104.10, reduce the SIP approved maximum allowable sulfur content limit for No. 2 and lighter commercial fuel oil, generally sold for

and used in residential and commercial furnaces and oil heat burners for home or space heating, water heating, or both, from a limit of 500 ppm of sulfur to 15 ppm. The amendments to Article XXI section 2104.10, became effective on September 1, 2020.

The low-sulfur fuel oil provisions will aid in reducing regional haze and visibility impairment in Pennsylvania. Additionally, decreased emissions of sulfur dioxide (SO_2) will contribute to the attainment, maintenance, or both, of the SO_2 and particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) in Pennsylvania and surrounding areas. Other specific requirements of the SIP revision and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. Relevant support documents for this action are available online at *http://www.regulations.gov,* Docket number EPA–R03–OAR–2021–0558.

III. EPA's Response to Comments Received

EPA received one comment, from the State of New Jersey, supporting our proposed action in the November 26, 2021, NPRM. The comment received is in the docket for this rulemaking action. We received no adverse comments.

IV. Final Action

EPA is approving, as a SIP revision, the Commonwealth of Pennsylvania's December 1, 2020, submittal revising the maximum allowable sulfur content limit for No. 2 and lighter commercial fuel oil in Alleghany County.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Pennsylvania's maximum allowable sulfur content limit for No. 2 and lighter commercial fuel oil regulation described in Allegheny County's Regulations, codified at Article XXI section 2104.10. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

VI. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action which pertains to commercial fuel oil sulfur limits for combustion and sale in Alleghany County, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Regional Haze, Sulfur oxides.

Adam Ortiz,

Regional Administrator, Region III.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

[1] 62 FR 27968 (May 22, 1997).

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (c)(2) is amended by revising the entry for ''2104.10'' to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(2) * * *

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*
Part D—Pollutant Emission Standards				
*	*	*	*	*
2104.10	Commercial Fuel Oil	09/01/20	05/17/22, [insert **Federal Register**. citation]	Amended sections 2104.10 (a), and 2104.10(d). Previous approval (5/2/2019, 84 FR 18739).
*	*	*	*	*

* * * * *

[FR Doc. 2022–10041 Filed 5–16–22; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 87, No. 95
Tuesday, May 17, 2022

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 26, 50, 51, 52, 72, 73, and 140

[NRC–2015–0070]

RIN 3150–AJ59

Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On March 3, 2022, the U.S. Nuclear Regulatory Commission (NRC) requested comments on the proposed amendments to its regulations that relate to the decommissioning of production and utilization facilities. The public comment period was originally scheduled to close on May 17, 2022. The NRC is extending the public comment period to allow more time for members of the public to develop and submit their comments.

DATES: The comment period for the proposed rule published March 3, 2022 at 87 FR 12254 is extended. Comments should be filed no later than August 30, 2022. Comments received after this date will be considered, if it is practical to do so, but the NRC 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–2015–0070. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Daniel I. Doyle, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3748; email: *Daniel.Doyle@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0070 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2015–0070.
- *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.*
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2015–0070 in your comment submission.

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 will post all comment submissions at *https://www.regulations.gov* as well as enter the 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. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

On March 3, 2022, the NRC solicited comments on the proposed amendments to its regulations that relate to the decommissioning of production and utilization facilities. The NRC's goals in amending these regulations are to maintain a safe, effective, and efficient decommissioning process; reduce the need for license amendment requests and exemptions from existing regulations; address other decommissioning issues deemed relevant by the NRC; and support the NRC's Principles of Good Regulation, including openness, clarity, and reliability.

The public comment period was originally scheduled to close on May 17, 2022. The NRC has decided to extend the comment period for the proposed rule until August 30, 2022, to allow more time for members of the public to submit their comments.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2015–0070. In addition, the Federal rulemaking

website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2015–0070); (2) click the ''Subscribe'' link; and (3) enter an email address and click ''Subscribe.''

Dated May 11, 2022.

For the Nuclear Regulatory Commission.

Brooke P. Clark,

Secretary of the Commission.

[FR Doc. 2022–10479 Filed 5–16–22; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0521; Project Identifier MCAI–2022–00273–T]

RIN 2120–AA64

Airworthiness Directives; MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702); CL–600–2C11 (Regional Jet Series 550); CL–600–2D15 (Regional Jet Series 705); CL–600–2D24 (Regional Jet Series 900); and CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by laboratory tests that showed that the oxygen tubes of the crew oxygen system may be contaminated with lubricants, as a result of the manufacturing and cleaning procedures used. This proposed AD would require cleaning and flushing the crew oxygen system. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 1, 2022.

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

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

For service information identified in this NPRM, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1 Canada; Widebody Customer Response Center North America toll-free telephone +1–844–272–2720 or direct-dial telephone +1–514–855–8500; fax +1–514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.com*. You may view this service information 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.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0521; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0521; Project Identifier MCAI–2022–00273–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2022–06, dated February 28, 2022 (TCCA AD CF–2022–06) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702); CL–600–2C11 (Regional Jet Series 550); CL–600–2D15 (Regional Jet Series 705); CL–600–2D24 (Regional Jet Series 900); and CL–600–2E25 (Regional Jet Series 1000) airplanes. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0521.

This proposed AD was prompted by laboratory tests that showed that the oxygen tubes of the crew oxygen system may be contaminated with lubricants, as a result of the inadvertent use of a non-conforming aqueous degreasing process for oxygen line flushing and cleaning during the manufacturing process. The FAA is proposing this AD to address the contaminated oxygen tubes of the crew oxygen system, which could lead to a

fire within the oxygen tubes, or a health hazard related to the inhalation of lubricant fumes when the masks are in use. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

MHI RJ has issued Service Bulletin 670BA–35–016, Revision B, dated December 17, 2021. This service information describes procedures for low-pressure and high-pressure cleaning of the crew oxygen tubes. The tasks include cleaning the end fittings and threads, cleaning the inner wall of the tubes with solvent, and flushing the inner wall of the tubes with nitrogen. 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.

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 and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

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

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 34 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
51 work-hours × $85 per hour = $4,335	Up to $1,240	Up to $5,575	Up to $189,550.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2022–0521; Project Identifier MCAI–2022–00273–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 1, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) airplanes identified in paragraphs (c)(1) through (4) of this AD certificated in any category.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) and CL–600–2C11 (Regional Jet Series 550) airplanes, serial numbers 10346 and 10347.

(2) Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15413 through 15484 inclusive.

(3) Model CL–600–2E25 (Regional Jet Series 1000) airplanes, serial numbers 19049 through 19064 inclusive.

(4) Model CL–600–2C10, CL–600–2C11, CL–600–2D15, CL–600–2D24 and CL–600–2E25 airplanes equipped with tube part numbers installed after the dates indicated in Section 1.A.(2) of MHIRJ Service Bulletin (SB) 670BA–35–016, Revision B, dated December 17, 2021.

(d) Subject

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

(e) Unsafe Condition

This proposed AD was prompted by laboratory tests that showed that the oxygen tubes of the crew oxygen system may be contaminated with lubricants, as a result of the manufacturing and cleaning procedures. The FAA is proposing this AD to address the contaminated oxygen tubes of the crew oxygen system, which could lead to a fire within the oxygen tubes, or a health hazard related to the inhalation of lubricant fumes when the masks are in use.

(f) Compliance

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

(g) Requirements

Within 8,800 flight hours after the effective date of this AD, clean and flush the crew oxygen system, in accordance with the

Accomplishment Instructions of MHIRJ Service Bulletin 670BA–35–016, Revision B, dated December 17, 2021.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by this AD, if those actions were performed before the effective date of this AD, using the service information identified in paragraph (h)(1) or (2) of this AD.

(1) MHI RJ Service Bulletin 670BA–35–016, dated February 26, 2021.

(2) MHI RJ Service Bulletin 670BA–35–016, Revision A, dated November 5, 2021.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or MHI RJ Aviation ULC's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA CF–2022–06, dated February 28, 2022, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0521.

(2) For more information about this AD, contact Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov*.

(3) For service information identified in this AD, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1 Canada; Widebody Customer Response Center North America toll-free telephone +1–844–272–2720 or direct-dial telephone +1–514–855–8500; fax +1–514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.com*. You may view this service information 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.

Issued on May 9, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–10528 Filed 5–16–22; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2022–0064; FRL–9460–01–OCSPP]

RIN 2070–ZA16

Hypochlorous Acid; Exemption From the Requirement of a Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to exempt residues of the antimicrobial pesticide ingredient hypochlorous acid from the requirement of a tolerance when used on or applied to food-contact surfaces in public eating places. This rulemaking is proposed on the Agency's own initiative under the Federal Food, Drug, and Cosmetic Act (FFDCA) to address residues identified as part of the Agency's registration review program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DATES: Comments must be received on or before July 18, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2020–0244 by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Anita Pease, Antimicrobials Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–566–0737; email address: *pease.anita@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are a pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov*or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets*.

II. Background

A. What action is the Agency taking?

EPA is proposing to establish an exemption from the requirement of a tolerance for residues of the antimicrobial pesticide hypochlorous acid on food-contact surfaces in public eating places. EPA is proposing this exemption to cover residues of hypochlorous acid that may be found in food as a result of the use of these antimicrobials on food-contact surfaces.

As noted in the December 2020 *Hypochlorous Acid Interim Registration Review Decision* (available at *https://www.regulations.gov* in docket ID number EPA–HQ–OPP–2020–0244), hypochlorous acid is registered for use as a disinfectant on food-contact surfaces in public eating places. As a

result of that use, residues of hypochlorous acid may be found in food that comes into contact with treated surfaces.

According to the Agency's 2016 Antimicrobial Use Site Index (*https://www.epa.gov/pesticide-registration/antimicrobial-pesticide-use-site-index*), EPA categorizes that use as an ''indirect food use.'' 40 CFR 158W requires a tolerance or exemption for direct and indirect food uses. Historically, EPA did not require a tolerance or tolerance exemption for the registered uses of hypochlorous acid because the labels required a potable water rinse after application. EPA's scientific assumption had been that if an antimicrobial pesticide use required a potable water rinse on the label, residues of the pesticide would be rinsed away. With no residues available to transfer to foods coming into contact with the treated food surface, the use was considered nonfood; and therefore, no tolerance or tolerance exemption was needed. The presumption that there would be no available residues for transfer to food is no longer supportable because available data now suggest that a potable water rinse may not be 100% efficient in removing residues; therefore, the Agency no longer considers a use to be ''nonfood'' just because the label requires a potable water rinse. Absent information supporting a conclusion that no residues would be available for transfer to food from the use, a tolerance or tolerance exemption is required. At this time, the Agency has not received any information supporting a conclusion that residues of hypochlorous acid would not be available for transfer to food after application to food surfaces.

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

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346(a), authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues are considered unsafe and therefore ''adulterated'' under FFDCA section 402(a), 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce, 21 U.S.C. 331(a).

Section 408(e)(1)(B) of the FFDCA authorizes EPA to issue an exemption from the requirement of a tolerance on its own initiative. 21 U.S.C. 346a(e)(1)(B). It is under section 408(e) of the FFDCA that EPA is proposing to establish the exemption in this rulemaking. The standard for establishing an exemption is found in section 408(c)(2)(A) of the FFDCA and is discussed below. 21 U.S.C. 346a(c)(2)(A).

III. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(c)(2)(B) requires EPA to take into account, among other things, the considerations set forth in section 408(b)(2)(C) and (D). Specifically, section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure to support the establishment of exemptions from the requirement of a tolerance for residues of hypochlorous acid.

As noted in the *Hypochlorous Acid Interim Decision,* there are tolerances under 40 CFR 180.940 (b) and (c), which state that solutions containing hypochlorous acid may be applied to dairy-processing equipment, and food-processing equipment and utensils, with the limitation that the end-use concentration of hypochlorous acid does not exceed 200 ppm determined as total available chlorine. Because the current tolerance exemptions do not cover the antimicrobial products registered for use in public eating areas, the Agency is now establishing a tolerance exemption under section 40 CFR 180.940(a), which would cover all food-contact uses of hypochlorous acid pesticide products in public eating areas not to exceed 200 ppm determined as total available chlorine. EPA's safety determination for establishing a hypochlorous acid tolerance exemption under section 40 CFR 180.940(a) is based on chemical similarity to sodium, calcium, and potassium hypochlorites. Hypochlorous acid risk conclusions, including those related to dietary and aggregate exposure, can be bridged to the risk conclusions from the reevaluation of the sodium, calcium, and potassium hypochlorites (see docket EPA–HQ–OPP–2012–0004 at *https://www.regulations.gov*). Because the Agency did not identify any dietary or aggregate risks of concern for the sodium, calcium, and potassium hypochlorites, due to the lack of toxicity of these substances, there are no dietary or aggregate risks of concern for hypochlorous acid due to a lack of toxicity for hypochlorous acid. For further information, the *Hypochlorous Acid Interim Decision* can be found at *https://www.regulations.gov* in docket identification number EPA–HQ–OPP–2020–0244.

Based on the lack of any aggregate risks of concern, EPA concludes that the exemption from the requirement of a tolerance for residues of hypochlorous acid is safe, *i.e.,* there is a reasonable certainty that no harm will result from aggregate exposures to hypochlorous acid.

IV. Analytical Enforcement Methodology

An analytical method for residue is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of hypochlorous acid in or on any food commodities. EPA is establishing limitations on the amount of hypochlorous acid that may be used in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, food-processing equipment and utensils. These limitations will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.* EPA will not register any antimicrobial pesticide formulation applied to food-contact surfaces in public eating places, dairy-processing equipment, food-processing equipment and utensils that allows for the end-use concentration of the ready to use product to exceed the 200 ppm limit for residues of total available chlorine.

V. Conclusion

Therefore, EPA is proposing to establish an exemption under 40 CFR 180.940(a) from the requirement of a tolerance for residues of hypochlorous acid when used in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils not to exceed 200 ppm determined as total available chlorine. Because the existing entries in paragraph (b) and (c) are duplicative of the new exemption in paragraph (a) of section 40 CFR 180.940, EPA is removing the tolerance exemptions for hypochlorous acid in paragraphs (b) and (c), as unnecessary.

VI. Statutory and Executive Order Reviews

In this document, EPA is proposing to establish exemptions from the requirement of a tolerance under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collection subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*). Nor does it require any special considerations as required by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This proposed rule does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published in the **Federal Register** of May 4, 1981 (46 FR 24950) and December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed rule will not have a significant negative economic impact on a substantial number of small entities. Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed rule that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposed rule and will be addressed prior to issuing a final rule.

In addition, the Agency has determined that this proposed rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers, and food retailers, not States. This proposed rule does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Executive Order 13175 requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the executive order to include regulations that have ''substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.'' This proposed rule will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 9, 2022.

Edward Messina,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Amend § 180.940, by:

■ a. Adding in alphabetical order the pesticide chemical ''Hypochlorous Acid'' to the table in Table 1 to Paragraph (a).

■ b. Removing the entry ''Hypochlorous Acid'' from the table in paragraph (b).

■ c. Removing the entry ''Hypochlorous Acid'' from the table in paragraph (c).

The addition reads as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Pesticide chemical	CAS Reg. No.	Limits
* * *	* * *	* * *
Hypochlorous Acid	7790–92–3	When ready for use, the end-use concentration of all hypochlorous acid chemicals in the solution is not to exceed 200 ppm determined as total available chlorine.
* * *	* * *	* * *

* * * * *

[FR Doc. 2022–10563 Filed 5–16–22; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 87, No. 95

Tuesday, May 17, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0008]

General Conference Committee of the National Poultry Improvement Plan and 45th Biennial Conference

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee (GCC or the Committee) of the National Poultry Improvement Plan (NPIP) and the NPIP's 45th Biennial Conference, which was originally scheduled to take place in 2020 but was postponed due to the COVID–19 pandemic.

DATES: The General Conference Committee meeting will be held on Tuesday, June 7, 2022, from 1:30 p.m. to 6 p.m. The General Session of the Biennial Conference will begin on Wednesday, June 8, 2022, at 7:30 a.m. and end no later than Friday, June 10, 2022, at 2:30 p.m.

ADDRESSES: The meeting and conference will be held at the Dallas/Addison Marriott Quorum by the Galleria, 14901 Dallas Parkway, Dallas, TX.

FOR FURTHER INFORMATION CONTACT: Dr. Elena Behnke, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, 1506 Klondike Road, Suite 101, Conyers, GA 30094; (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health.

Topics for discussion at the upcoming meeting include:

1. NPIP diagnostic tests seeking NPIP approval.
2. Salmonella update.
3. National Veterinary Services Laboratories avian influenza and Newcastle disease virus update.
4. Mycoplasma update.

The meeting will be open to the public; however, public participation in discussions during the sessions will only be allowed if time permits. Written statements may be filed at the meeting or filed with the Committee before or after the meeting by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to Docket No. APHIS–2022–0008 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act (5 U.S.C. App. 2).

Dated: May 10, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–10570 Filed 5–16–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Commodity Credit Corporation

Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention and Commodity Credit Corporation's (CCC) intention to request on behalf of the Commodity Credit Corporation (CCC) an extension from the Office of Management and Budget (OMB) for a currently approved information collection process in support of the USDA's Agricultural Trade Promotion Program.

DATES: Comments on this notice must be received by July 18, 2022 to be assured of consideration.

ADDRESSES: You may send comments, identified by OMB Control Number 0551–0049, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* This portal enables respondents to enter short comments or attach a file containing lengthier comments.
- *Email: PODadmin@usda.gov.* Include OMB Control Number 0551–0049 in the subject line of the message.
- *Mail, Courier, or Hand Delivery:* Curt Alt, U.S. Department of Agriculture, Foreign Agricultural Service, 1400 Independence Avenue SW, Room 6512, Washington, DC 20250.

Instructions: All submissions received must include the agency names and OMB Control Number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Curt Alt, 202 690–4784, *Podadmin@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Agricultural Trade Promotion Program.

OMB Number: 0551–0049.

Expiration Date of Approval: August 31, 2022.

Type of Request: Extension of a currently approved information collection.

Abstract: Under the Agricultural Trade Promotion Program (ATP), information will be gathered from existing program participants that have been approved to conduct market promotion activities that promote U.S. agricultural commodities in foreign markets, including activities that address existing or potential non-tariff barriers to trade. The information collected will be used primarily by FAS to manage, plan, evaluate, and account for government resources.

Estimate of Burden: The public reporting burden for each respondent resulting from information collected under the ATP varies in direct relation to the number and type of agreements entered into by such respondents. The estimated average reporting burden for the ATP is 16 hours per response.

Type of Respondents: Nonprofit U.S. agricultural trade organizations, nonprofit state regional trade groups, U.S. agricultural cooperatives, and state agencies.

Estimated Number of Respondents: 63 per annum.

Estimated Number of Responses per Respondent: 55 per annum.

Estimated Total Annual Burden of Respondents: 55,029 hours.

Copies of this information collection can be obtained from Dacia Rogers, the Agency Information Collection Coordinator, at *Dacia.Rogers@usda.gov.*

Request for Comments: Send comments regarding (a) 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; (b) the accuracy of the agency's estimate of the burden of the collection of information including validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be available without change, including any personal information provided, for inspection online at *http://www.regulations.gov* and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Comments will be summarized and included in the submission for Office of Management and Budget approval.

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact *FAS-ReasonableAccommodation@usda.gov* or Angela Ubrey (Workforce Relations, 202–772–4836).

Robert Ibarra,

Executive Vice President, Commodity Credit Corporation.

Clay Hamilton,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2022–10562 Filed 5–16–22; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Commodity Credit Corporation

Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request on behalf of the Commodity Credit Corporation (CCC) an extension from the Office of Management and Budget (OMB) for a currently approved information collection process in support of the Technical Assistance for Specialty Crops (TASC) program.

DATES: Comments on this notice must be received by May 17, 2022 to be assured of consideration.

ADDRESSES: You may send comments, identified by OMB Control Number 0551–0038, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* This portal enables respondents to enter short comments or attach a file containing lengthier comments.
- *Email: PODadmin@usda.gov.* Include OMB Control Number 0551–0038 in the subject line of the message.
- *Mail, Courier, or Hand Delivery:* Curt Alt, U.S. Department of Agriculture, Foreign Agricultural Service, 1400 Independence Avenue SW, Room 6512, Washington, DC 20250.

Instructions: All submissions received must include the agency names and OMB Control Number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Curt Alt, 202 720–4327, *Podadmin@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Technical Assistance for Specialty Crops.

OMB Number: 0551–0038.

Expiration Date of Approval: July 31, 2022.

Type of Request: Extension of a currently approved information collection.

Abstract: This information is needed to administer CCC's TASC program. The information will be gathered from applicants desiring to receive grants under the program to determine the viability of the request for funds. Regulations governing the program appear at 7 CFR part 1487 and are available on the Foreign Agricultural Service's website.

Estimate of Burden: The agency estimates that the public reporting burden for the associated collection of information averages 32 hours per respondent.

Respondents: U.S. government agencies, State government agencies, non-profit trade associations, universities, agricultural cooperatives, and private companies.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 32 hours.

Estimated Total Annual Burden on Respondents: 1,600 hours.

Copies of this information collection can be obtained from Dacia Rogers, the Agency Information Collection Coordinator, at *Dacia.Rogers@usda.gov.*

Request for Comments: Send comments regarding (a) 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; (b) the accuracy of the agency's estimate of the burden of the collection of information including validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be available without change, including any personal information provided, for inspection online at *http://www.regulations.gov* and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Comments will be summarized and included in the submission for Office of Management and Budget approval.

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact *FAS-ReasonableAccommodation@usda.gov*

or Angela Ubrey (Workforce Relations, 202–772–4836).

Robert Ibarra,

Executive Vice President, Commodity Credit Corporation.

Clay Hamilton,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2022–10573 Filed 5–16–22; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2021–0005]

Proposed Revisions to the National Handbook of Conservation Practices for the Natural Resources Conservation Service

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability; request for comments.

SUMMARY: The Natural Resources Conservation Service (NRCS) is giving notice that it intends to issue a series of revised conservation practice standards in the National Handbook of Conservation Practices (NHCP). NRCS is also giving the public an opportunity to provide comments on specified conservation practice standards in NHCP.

DATES: We will consider comments that we receive by June 16, 2022.

ADDRESSES: We invite you to submit comments in response to this notice. You may submit your comments through one of the methods below:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for docket ID NRCS–2021–0005. Follow the online instructions for submitting comments; or
- *Mail or Hand Delivery:* Mr. Clarence Prestwich, National Agricultural Engineer, Conservation Engineering Division, NRCS, USDA, 1400 Independence Avenue, South Building, Room 4636, Washington, DC 20250. In your comment, please specify the docket ID NRCS–2021–0005.

All comments received will be made publicly available on *http://www.regulations.gov.*

The copies of the proposed revised standards are available through *http://www.regulations.gov* by accessing Docket No. NRCS–2021–0005. Alternatively, the proposed revised standards can be downloaded or printed from *http://go.usa.gov/TXye.*

FOR FURTHER INFORMATION CONTACT: Mr. Clarence Prestwich; telephone: (202) 720–2972; email: *clarence.prestwich@usda.gov.* Persons with disabilities who require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

NRCS plans to revise the conservation practice standards in the NHCP. This notice provides an overview of the planned changes and gives the public an opportunity to offer comments on the specific conservation practice standards and NRCS's proposed changes.

NRCS State Conservationists who choose to adopt these practices in their States will incorporate these practices into the respective electronic Field Office Technical Guide. These practices may be used in conservation systems that treat highly erodible land (HEL) or on land determined to be a wetland. Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment all proposed revisions to conservation practice standards used to carry out HEL and wetland provisions of the law.

Revisions to the National Handbook of Conservation Practices

The amount of the proposed changes varies considerably for each of the conservation practice standards addressed in this notice. To fully understand the proposed changes, individuals are encouraged to compare these changes with each standard's current version, which can be found at: *http://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/technical/cp/ncps/?cid=nrcs143_026849.*

NRCS is requesting comments on the following conservation practice standards:

- Aquatic Organism Passage (Code 396);
- Clearing and Snagging (Code 326);
- Constructed Wetland (Code 656);
- Dike and Levee (Code 356);
- Diversion (Code 362);
- Feed Management (Code 592);
- Firebreak (Code 394);
- Forest Stand Improvement (Code 666);
- Fuel Break (Code 383);
- Hillside Ditch (Code 423);
- Range Planting (Code 550); and
- Soil Carbon Amendment (Code 336).

The following are highlights of some of the proposed changes to each standard:

Aquatic Organism Passage (Code 396): Revisions have been made to clarify the differences between the biological and ecological requirements versus the engineering structural design elements. The Criteria section has been reorganized into subsections that list application criteria for specific barrier situations. References have been updated and minor revisions were made for clarity and readability.

Clearing and Snagging (Code 326): The definition has been changed to clarify that the term stream includes channels. The purposes have been reworded to better clarify the resource concerns being addressed by the standard. Changes have been made in the Criteria section to the capacity analysis to add flexibility for emergency work and to clarify hazardous materials such as propane tanks and car bodies for debris disposal.

Costructed Wetland (Code 656): Changes were made to the Purposes and Conditions Where Practice Applies section of the standard to clarify that the practice can be used to treat tile drainage outflow. References were added and the formatting and writing style were updated to meet current agency requirements. Minor revisions were made for clarity and readability.

Dike and Levee (Code 356): This revision retitles CPS 356 from Dike to Dike and Levee to allow distinction between dikes and levees. A clear distinction is drawn between what is a dike and what is a levee based on purpose and levee hazard potential. This distinction is necessary to align with the definition of a levee used by other Federal agencies. Potential future revisions include splitting this standard into two separate standards after National Levee Safety Guidelines are developed, but the timeframe for that is currently unknown.

Diversion (Code 362): Formatting and writing style were updated to meet current agency requirements. The purposes were consolidated from nine statements to three statements. In the Criteria section, the subsection for cross section would provide additional protection for sensitive sites and vegetative establishment subsection changes would clarify non-vegetated diversions are allowable. The Considerations section addressing potential wetland impacts was expanded to include subsurface seepage and to address the potential water quality impacts of concentrating flows.

Feed Management (Code 592): Multiple changes and additions would be made throughout the standard to meet current agency requirements and language updated to improve clarity. The purpose for Air Quality was expanded to include ammonia, volatile

organic compounds, greenhouse gases, and dust to be consistent with the Air Quality policy.

Firebreak (Code 394): Firebreak definition would be changed to distinguish this practice from Fuel Break (383). Language would be updated throughout the document to improve clarity. Considerations section was reorganized to put similar considerations together. References were updated by adding relevant publications.

Forest Stand Improvement (Code 666): The Definition, Purpose, Criteria, Considerations, and Operation and Maintenance sections were refined to add clarity. The purposes were revised to align with resource concerns. Criteria and Considerations sections were reorganized and revised to match the updated purposes and link to enhancements. New considerations for the use of biomass for bioenergy, renewable energy production, or biochar were added. The References section was updated with relevant publications.

Fuel Break (Code 383): Language was added to better distinguish Fuel Break (383) from Firebreak (394). Purpose, Criteria, and Considerations sections were further refined. The sections on Plans and Specifications and Operation and Maintenance were revised to improve clarity. The References section was updated with relevant publications.

Hillside Ditch (Code 423): The formatting and writing style were updated to meet current agency requirements and minor revisions were made for clarity and readability. The Capacity subsection of Criteria was revised to remove specific limitations for stable channel grade and expanded to be the Channel Stability and Capacity subsection. The required capacity was reduced from conveying runoff from a 10 year-24 hour storm to a 5 year-24 hour storm.

Range Planting (Code 550): The Definition and Conditions Where Practice Applies sections were edited for clarity. In the Criteria section, the general criteria applicable to all purposes was edited for completeness and a multi-year seeding strategy was added to Considerations. References were updated to include a Conservation Effects Assessment Project (CEAP) study and the PLANTS database.

Soil Carbon Amendment (Code 336): Supports the application of biochar, compost, and other state-approved carbon amendments (for example, harvested aquatic plant biomass, bagasse, distillation residue) to increase soil carbon sequestration and improve soil health on all land uses. The evaluation and monitoring of soil properties, amendment characterization, and short and long-term conservation objectives form the basis for the soil carbon amendment practice plan.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and TTY) or (844) 433–2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Louis Aspey,

Acting Chief, Natural Resources Conservation Service.

[FR Doc. 2022–10537 Filed 5–16–22; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket No. RBS–22–BUSINESS–0011]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice; comment requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the above-named agency to request Office of Management and Budget's (OMB) approval for an extension of a currently approved information collection in support of the Rural Business-Cooperative Service's Business and Industry guarantee loan program.

DATES: Comments on this notice must be received by July 18, 2022.

FOR FURTHER INFORMATION CONTACT: Susan Woolard, Management Analyst, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 720–9631. Email *susan.woolard@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an existing information collection that the Agency is submitting to OMB for extension.

Comments

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) The accuracy of the Agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques, or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''RBS'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select [RBS–22–BUSINESS–0011] to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Title: 7 CFR part 4287, subpart B.

OMB Control Number: 0570–0069.

Type of Request: Extension of a currently approved collection.

Abstract: This subpart contains requirements applicable to the servicing of B&I Guaranteed Loan Program administered by the Agency. This includes lender and borrower performance, routine and delinquency servicing and secondary market activities for loans made before October 1, 2020. The information is used by Agency loan officers for program monitoring.

The estimates do not include burden hours for customary and usual business practices of entities other than the Agency. Therefore, this package only considers the information the Agency requires in excess of what a lender would typically require of a business, as well as the information the Agency regulation requires from the lender in excess of what it would typically do for a non-guaranteed loan.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.07 hours per response.

Respondents: Businesses, not-for-profit institutions and others.

Estimated Number of Respondents: 2,800.

Total Annual Responses: 18,562.

Estimated Number of Responses per Respondent: 6.63.

Estimated Total Annual Burden on Respondents: 19,842 hours.

Copies of this information collection can be obtained from Susan Woolard, Management Analyst, Innovation Center—Regulations Management Division, at (202) 720–9631. Email: *susan.woolard@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Karama Neal,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2022–10544 Filed 5–16–22; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the American Samoa Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the American Samoa Advisory Committee (Committee) will hold a series of meetings via Webex platform on the following dates and times listed below. These meetings are for the purpose of discussing the Committee's first project topic.

DATES: These meetings will be held on:

- Thursday, June 16, 2022, from 12:00 p.m.–1:00 p.m. Samoa Standard Time (SST)
- Thursday, July 21, 2022, from 12:00 p.m.–1:00 p.m. Samoa Standard Time (SST)
- Thursday, August 18, 2022, from 12:00 p.m.–1:00 p.m. Samoa Standard Time (SST)

Public Webex Registertion Link

- Thursday, June 16th: *https://tinyurl.com/4wnps2y2*
- Thursday, July 21st: *https://tinyurl.com/49b68ws4*
- Thursday, August 18th: *https://tinyurl.com/3f3xw5fk*

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO) at *bpeery@usccr.gov* or by phone at (202) 701–1376. 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 emailed to Brooke Peery (DFO) at *bpeery@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/apex/FACAPublicCommittee?id=a10t000000BD8SMAA1.*

Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Committee Discussion
III. Public Comment
IV. Adjournment

Dated: May 11, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–10502 Filed 5–16–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–017]

Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review in Part; 2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is amending the final results of the administrative review of the countervailing duty (CVD) order on certain passenger vehicle and light truck tires from the People's Republic of China (China) to correct a ministerial error.

DATES: Applicable May 17, 2022.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski or Richard Roberts, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1395 and (202) 482–3463, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Final Results* of this review on March 10, 2022.[1] On March 14, 2022, we received timely submitted ministerial error comments from the petitioner [2] and interested party Shandong Province Sanli Tire Manufactured Co. Ltd (Sanli).[3] On March 18, 2022, Sumitomo Rubber (Hunan) Co., Ltd. (SRH), filed comments rebutting the petitioner's assertion that Commerce committed a ministerial error.[4] Commerce is amending its *Final Results* to correct the ministerial error raised by the petitioner.

Legal Framework

A ministerial error, as defined in section 751(h) of the Tariff Act of 1930, as amended (the Act), includes ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.'' [5] With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce ''will analyze any comments received and if appropriate, correct any ministerial error by amending . . . the final results of review. . . .''

Ministerial Error

Commerce determines that, in accordance with section 751(h) of the Act and 19 CFR 351.224(f), it made a ministerial error in the *Final Results.* Pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Results* to reflect the correction of this ministerial error in the calculation of the countervailable subsidy rate assigned to SRH, which changes from 24.79 percent to 25.63 percent.[6] For a detailed discussion of Commerce's analysis, *see* Amended Final Analysis Memorandum.[7] As a result of this change, the rate for the three non-selected companies under review also changes to 25.63 percent. Finally, the adverse facts available (AFA) rate for Triangle Tyre Co., Ltd. changes to 125.17 percent.

Amended Final Results of Review

As a result of correcting the ministerial error described above, Commerce determines the following net countervailable subsidy rates for the period of review (POR), January 1, 2019, through December 31, 2019:

Producer/exporter	Subsidy rate (percent *ad valorem*)
Sumitomo Rubber (Hunan) Co., Ltd. and its cross-owned affiliates.[8]	25.63
Triangle Tyre Co., Ltd	125.17
Review-Specific Rate Applicable to the Following Companies	
Jiangsu Hankook Tire Co., Ltd	25.63
Qingdao Landwinner Tyre Co., Ltd	25.63
Shandong Province Sanli Tire Manufacture Co., Ltd	25.63

Disclosure

We intend to disclose the calculations performed for these amended final results in accordance with 19 CFR 351.224(b).

Assessment

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce shall determine and U.S. Customs and Border Protections (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review. We will calculate importer-specific assessment rate on the basis of the total amount of antidumping duties calculated for each importer's examined sales and the total entered values of the sales in accordance with 19 CFR 351.212.(b)(1).

We intend to issue liquidation instructions to CBP 15 days after publication of the amended *Final Results* of this review. However, as stated in the *Final Results,* we will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired.

Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for the companies subject to this review. For all non-reviewed companies, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company specific or all-others rate applicable to the company, as appropriate. These cash deposits, effective upon publication of these amended final results, shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is sanctionable violation.

[1] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Rescission of Review, in Part; 2019,* 87 FR 13704 (March 10, 2022) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

[2] *See* Petitioner's letter, ''Passenger Vehicles and Light Truck Tires from the People's Republic of China: Ministerial Error Comments,'' dated March 14, 2022. The Petitioner is United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union, AFL–CIO.

[3] *See* Sanli's Letter, ''Passenger Vehicle and Light Truck Tires from the People's Republic of China: Ministerial Error,'' dated March 14, 2022.

[4] *See* Sumitomo's Letter, ''Passenger Vehicle and Light Truck Tires from the People's Republic of China: Rebuttal to Petitioner's Allegation of Ministerial Error 2019,'' dated March 18, 2022.

[5] *See* 19 CFR 351.224(f).

[6] *See* Memorandum, ''Ministerial Error Memorandum for the Final Results of the 2019 Administerial Review of the Antidumping Duty Stainless certain passenger tires from China,'' dated concurrently with, and hereby adopted by, this notice; *see also* Memorandum, ''Administrative Review of the Antidumping Duty Order on Passenger Vehicle Tires from China Amended Final Analysis Memorandum for SRH,'' dated concurrently with this notice (Amended Final Analysis).

[7] *Id.*

[8] Commerce finds the following companies to be cross owned with Sumitomo Rubber (Hunan) Co., Ltd.: Sumitomo Rubber (China) Co., Ltd. and Sumitomo Rubber (Changshu) Co. Ltd.

Notification to Interested Parties

We are issuing and publishing these amended final results of review in accordance with sections 751(h) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: May 5, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–10567 Filed 5–16–22; 8:45 am]

BILLING CODE 3510–DS–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; Capital Construction Fund Agreement, Certificate Family of Forms and Deposit/Withdrawal Report

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 December 28, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: Capital Construction Fund Agreement, Certificate Family of Forms, and Deposit/Withdrawal Report.

OMB Control Number: 0648–0041.

Form Number(s): NOAA Form 34–82, NOAA Form 88–14.

Type of Request: Regular submission. Revision and extension of a current information collection.

Number of Respondents: 1,575.

Average Hours per Response: NOAA Form 34–82, 2 hours; NOAA Form 88–14, 2 hours; and 1.5 hours for the Certificate Family of Forms (includes Fishing Vessel CCF Application, Schedule A, Schedule B, Schedule of Tax Basis, Certificate of Construction/Reconstruction.

Total Annual Burden Hours: 2,900.

Needs and Uses: This request is for a revision and extension of a currently approved information collection. The Merchant Marine Act of 1936, as amended by Public Law 91–469 and Public Law 99–514, provides for the administration of a Capital Construction Fund (CCF) Program by NOAA's National Marine Fisheries Service (NMFS). The law requires that applicants enter into formal Agreements with the Secretary of Commerce. The Agreement allows the fishermen to defer taxable income from operation of their fishing vessels if the money is placed into an account to fund the construction, reconstruction, or replacement of a fishing vessel. The program requirements are detailed at 50 CFR part 259. The Agreement is a contract between the Secretary of Commerce and the Agreement holder specifying the obligations of each party. Schedule A specifies the vessel which earned the income which is eligible for deposit in to a CCF account. Schedule B specifies the construction, acquisition, or reconstruction objectives planned under the Agreement. The Certificate of Construction/Reconstruction certifies the total cost at completion of Schedule B objectives.

Under a Capital Construction Fund (CCF) Agreement, the participant cannot deposit more than the amount specified at 46 U.S.C. 53505. NMFS must approve any withdrawals made before they take place. It is essential that a reasonably detailed record be kept of each participant's deposit/withdrawal activity. If withdrawn monies are not used for allowed purposes, the withdrawn amount (a nonqualified withdrawal) is considered income to the participant in the year withdrawn and taxed at the highest marginal tax rate for the entity involved.

Respondents will be commercial fishing industry individuals, partnerships, and corporations that entered into Capital Construction Fund (CCF) agreements with the Secretary of Commerce. The information collected from applicants for the CCF Agreement (NOAA Form 88–14) is used to determine their eligibility to participate in the CCF Program. The information collected from agreement holders for the Certificate Family of Forms is used to identify their program eligible vessels, their program projects, and to certify the cost of a project at completion. The information collected on the Deposit/Withdrawal Report (NOAA Form 34–82) is required to ensure that agreement holders are complying with fund deposit/withdrawal requirements established in program regulations and properly accounting for fund activity on their Federal income tax returns. The information collected on the Deposit/Withdrawal Report must also be reported semi-annually to the Secretary of Treasury in accordance with Public Law 115– 97.

NMFS is proposing to add an additional form to the Certificate of Family Forms, the Schedule of Tax Basis, which is required upon completion of a Schedule B project in order to determine the remaining tax basis of the qualified vessel.

Affected Public: Business or other for-profit organizations.

Frequency: NOAA Form 34–82 (annual); NOAA Form 88–14 (one time when applying for program benefits); Certificate Family of Forms (varies).

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: 46 U.S.C. 535, Public Law 115–97 and 50 CFR part 259.

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 0648–0041.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–10533 Filed 5–16–22; 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; Licensing of Private Remote-Sensing Space Systems

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 February 8, 2022 and February 18, 2022 (correction) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: Licensing of Private Remote-Sensing Space Systems.

OMB Control Number: 0648–0174.

Form Number(s): None.

Type of Request: Regular (revision and extension of a current information collection).

Number of Respondents: 100.

Average Hours per Response: 15 hours for the submission of a license application; 1 hour each for the submission of a license amendment, notification of disposal of on-orbit component, notification of detection of anomaly, and notification of financial insolvency or dissolution; 2 hours each for notification of launch or deployment of spacecraft and the annual compliance certification; 20 minutes for the Initial Contact Form; 10 minutes for the Data Availability Notification; and 15 minutes for the Licensee Notification Form.

Total Annual Burden Hours: 388.

Needs and Uses: This is a request for revision and extension of an approved information collection.

The Department of Commerce (DOC), through the National Oceanic and Atmospheric Administration (NOAA) Commercial Remote Sensing Regulatory Affairs (CRSRA), has the authority to regulate private space-based remote sensing under the Land Remote Sensing Policy Act of 1992, 51 U.S.C. 60101 *et seq.* (the Act) and regulations at 15 CFR part 960. The regulations facilitate the development of the U.S. private remote sensing industry and thus promote the collection and widespread availability of remote sensing data, while preserving essential U.S. national security interests and observing international obligations.

Applications are made in response to the requirements in the Act, as amended, and NOAA sends applicants an Application Guide, which walks the applicant through the application questions and criteria listed in Appendix A to 15 CFR part 960. The application information received is used to determine if the applicant meets the legal criteria for issuance of a license to operate a private remote sensing space system, *i.e.,* the proposed system will be operated in accordance with the Act, U.S. national security concerns and international obligations. Application information includes information about the applicant (such as corporate information), the launch dates of any components going to space, and technical specifications of all components (especially the components in space that are capable of collecting imagery data).

If a licensee wishes to modify its license, either to reflect changes in its business practices or technical changes to its system, or to request different license conditions, it may submit such a request to CRSRA and explain why the change is sought. CRSRA needs this information to be able to keep licenses accurate and to respond to the regulated community's needs.

Licensees are required to notify CRSRA when a spacecraft launches or deploys; upon disposal of an on-orbit component of the licensed system; upon detection of an anomaly; and upon the licensee's financial insolvency or dissolution. This information is critical to fulfilling one of the United States' key international obligations, which is to authorize and continually supervise U.S. nationals' activities in space. CRSRA, therefore, must be notified when spacecraft are deployed and disposed of so that CRSRA can supervise the space activities of U.S. nationals. Similarly, anomalies may indicate loss of control of a spacecraft, so CRSRA must monitor any anomalies to meaningfully supervise the activities of U.S. nationals in space. Finally, the financial insolvency or dissolution of a licensee may indicate that a change in control of the spacecraft will follow, because an insolvent licensee may go through a bankruptcy process that might put the licensed system's ownership in question. It is critical that CRSRA be able to intervene as early as possible in this process so that a sensitive system does not pass into the ownership of an entity who might jeopardize national security or international obligations.

CRSRA will require licensees to submit an annual compliance certification, which requires the licensee to verify that all facts in the license remain true. Facts that must be verified in this certification include the technical specifications of the system and other foundational facts that CRSRA relies upon in reviewing license applications. This information is critical to ensuring that only those entities who are legally fit to obtain a license do so.

NOAA is proposing to add three additional forms to this information collection. The optional information is being collected to reduce the total paperwork required to support regulation of the private space-based remote sensing industry, which involves (1) determining whether an applicant is required to apply for a license; (2) comparing the capabilities of remote sensing systems to other foreign and domestic remote sensing systems; and (3) recording important events in the lifecycle of licensed systems.

The optional Initial Contact Form (ICF) information includes contact information and general remote sensing system information. The ICF may be submitted electronically through the NOAA website prior to the submission of a full application. The ICF information received is used to determine if the applicant is required to submit a full application for the issuance of a license to operate a private remote sensing space system *i.e.,* the proposed system falls under the authority defined in the Act and the regulations. If NOAA determines after reviewing the ICF that an application is not required, the potential applicant will save 40–50 hours of paperwork by not submitting the application. Additionally, the ICF gives NOAA the opportunity to provide early feedback and guidance on an application package, lowering the likelihood of time-consuming rewrites and edits to an application before it can be deemed complete. Therefore, the ICF can save significant time for industry and private entities, as well as government time.

The optional Data Availability Notification (DAN) information includes contact information and general data availability information. The DAN may be submitted electronically through the NOAA website during the application process, while an applicant holds a license, or by any interested party. The DAN information received is used to help determine the availability of unenhanced data from a foreign or domestic remote sensing system, which may then be compared to unenhanced data produced by an applicant's system for the purpose of adjusting the conditions and/or restrictions in a license. The DAN form ensures that only required information is submitted, thereby reducing unnecessary paperwork and/or follow-up correspondence.

The optional Licensee Notification Form (LNF) information is not a new information collection, but is instead an optional form that streamlines the reporting of the four Notifications described above. The LNF form includes contact information and the option to report one of four types of events, including (1) the launch or deployment of a system component; (2) the disposal of a system component; (3) the detection

of an anomaly in a system; and (4) the financial insolvency of the licensee. The existing IC already allows for the collection of this information, the collection of which is required by statute and regulations. The LNF will ease the burden on licensees when reporting this already-required information. The LNF may be submitted electronically through the NOAA website throughout the term of a license. The LNF information received is used to record events in the lifecycle of the system and to help determine if modifications to a license are required. The LNF ensures that only required information is submitted, thereby reducing unnecessary paperwork and/or follow-up correspondence.

Affected Public: Business or other for-profit organizations.

Frequency: Once per year.

Respondent's Obligation: Voluntary.

Legal Authority: Land Remote Sensing Policy Act of 1992, 51 U.S.C. 60101 *et seq;* and 15 CFR part 960—Licensing of Private Remote Sensing Space Systems.

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 0648–0174.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–10586 Filed 5–16–22; 8:45 am]

BILLING CODE 3510–HR–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Request a New Collection: Qualification Information for Candidates to Advisory Committees and Subcommittees

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is announcing an opportunity for public comment on the proposed collection of qualification information for advisory committee and subcommittee candidates by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment.

DATES: Comments must be received on or before July 18, 2022.

ADDRESSES: You may submit comments, identified by subject matter ''Qualification Information for Candidates to Advisory Committees and Subcommittees,'' and by any of the following methods:

- The Agency's website, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Michelle Ghim, Legal Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581; (202) 418–5667; email: *FACA@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public obtain or report information. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.[1]

Title: ''Qualification Information for Candidates to Advisory Committees and Subcommittees.'' This is a request for a new OMB control number.

Abstract: The CFTC's advisory committees were created to provide input and make recommendations to the Commission on a variety of regulatory and market issues that affect the integrity and competitiveness of U.S. derivatives markets. The committees facilitate communication between the Commission and U.S. derivatives markets, trading firms, market participants, and end users. The CFTC currently has five advisory committees. The Energy and Environmental Markets Advisory Committee was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, and subsequently codified in the Commodity Exchange Act, 7 U.S.C. 1 *et seq.,* at 7 U.S.C. 2(a)(15), and is not subject to the Federal Advisory Committee Act (FACA), Public Law 92–463 codified as 5 U.S.C. App. 2. The Agricultural Advisory Committee, Global Markets Advisory Committee, Market Risk Advisory Committee, and the Technology Advisory Committee are discretionary committees under the FACA. The Commission also establishes subcommittees that report to advisory committees as needed. Advisory committee and subcommittee members are generally representatives, but depending on the issues to be addressed, the Commission will appoint special government employees and officials from other federal agencies from time to time. Representatives provide the viewpoints of entities or recognizable groups, and they are expected to represent a particular and known bias. On the other hand, special government employees are expected to provide their own independent judgment in committee deliberations and are expected to discuss and deliberate in a manner that is free from conflicts of interest.[2] Advisory committee and subcommittee members generally serve 2, 3 or 4-year terms, and appointments are made following the establishment of a new subcommittee or as committee or subcommittee vacancies arise.

The CFTC identifies candidates for advisory committee and subcommittee membership through a variety of methods, including public requests for nominations; recommendations from existing advisory committee members;

[1] 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8 (b)(3)(vi).

[2] 18 U.S.C. 202(a).

consultations with knowledgeable persons outside the CFTC (industry, consumer groups, other state or federal government agencies, academia, etc.); requests to be represented received from individuals and organizations; and Commissioners' and CFTC staff's professional knowledge of those experienced in the derivatives and underlying commodities markets. Following the identification process, the CFTC develops a list of proposed members with the relevant points of view needed to ensure membership balance. The Commission then votes to appoint individuals, or specified organizations, to serve.[3]

The collection of information is necessary to support the CFTC Advisory Committee Program which includes committees, most of which are governed by the FACA, and subcommittees that report directly to the CFTC FACA committees, as noted above. Pursuant to the FACA, an agency must ensure that a committee is balanced with respect to the viewpoints represented and the functions to be performed by that committee. Consistent with this, in order to select individuals for potential membership on an advisory committee, the CFTC must determine that potential members are qualified to serve on an advisory committee and that the viewpoints are properly balanced on the committee. The CFTC is also required to ensure that committee members are properly designated as special government employees or representatives.[4] While CFTC subcommittees are not subject to the FACA, the selection process for subcommittee members who are not already serving on the parent committee is similar to that of new committee members. Additionally, the agency follows similar member selection procedures for the agency's non-FACA committee.

CFTC staff would use the information collected to determine the experience and expertise of potential advisory committee and subcommittee members, ensure that the membership on a committee or subcommittee is balanced, and ensure that committee and subcommittee members are properly designated as representatives or special government employees.

The CFTC seeks to collect the following information: Information that supports an individual's experience and expertise to serve on an advisory committee or subcommittee, including letters of interest, recommendation letters, nomination letters (including self-nominations), resumes, curriculum vitae or other similar biographical information document. Additionally, information that ensures membership balance (*e.g.,* represented viewpoint category) and appropriate designation of an individual as either a representative or special government employee.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[5]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 91.

Estimated Average Burden Hours Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 91 hours.

Frequency of Collection: As needed.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: May 12, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–10534 Filed 5–16–22; 8:45 am]

BILLING CODE 6351–01–P

[3] Appendix A to Subpart C of 41 CFR 102–3, the Federal Advisory Committee Management Final Rule notes that the FACA (5 U.S.C. App. 2) does not specify the manner in which advisory committee members and staff must be appointed.

[4] See, OGE DO–04X9, DO–04–022, and DO–05–012.

[5] 17 CFR 145.9.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Services; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Women in the Services (DACOWITS) will take place.

DATES: Day 1—Open to the public Thursday, June 23, 2022 from 8:30 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held by videoconference. Participant access information will be provided after registering. (Pre-meeting registration is required. See guidance in **SUPPLEMENTARY INFORMATION**, ''Meeting Accessibility'').

FOR FURTHER INFORMATION CONTACT: COL Seana Jardin, (571) 232–7415 (voice), *seana.m.jardin.mil@mail.mil* (email). Website: *https://dacowits.defense.gov.*

The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Availability of Materials for the Meeting: Additional information, including the agenda or any updates to the agenda, is available at the DACOWITS website, *https://dacowits.defense.gov/.* Materials

presented in the meeting may also be obtained on the DACOWITS website.

Purpose of the Meeting: The purpose of the meeting is for the DACOWITS to receive briefings and have discussions on topics related to the recruitment, retention, employment, integration, well-being, and treatment of women in the Armed Forces of the United States.

Agenda: Thursday, June 23, 2022, from 8:30 a.m. to 12:30 p.m.—Welcome, Introductions, Announcements, Briefings, and DACOWITS discussion.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public from 8:30 a.m. to 12:30 p.m. on June 23, 2022. The meeting will be held by videoconference. The number of participants is limited and is on a first-come basis. All members of the public who wish to participate must register by contacting DACOWITS at *osd.pentagon.ousd-p-r.mbx.dacowits@mail.mil* or by contacting Mr. Robert Bowling at (703) 380–0116 no later than Wednesday, June 15, 2022. Once registered, the web address and/or audio number will be provided.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Mr. Robert Bowling no later than Wednesday, June 15, 2022 so that appropriate arrangements can be made.*Written Statements:* Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the FACA, interested persons may submit a written statement to the DACOWITS. Individuals submitting a written statement must submit their statement no later than 5:00 p.m., Wednesday, June 15, 2022 to Mr. Robert Bowling (703) 380–0116 (voice) or to *osd.pentagon.ousd-p-r.mbx.dacowits@mail.mil* (email). If a statement is not received by Wednesday, June 15, 2022, prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Committee during this quarterly business meeting. The Designated Federal Officer will review all timely submissions with the DACOWITS Chair and ensure they are provided to the members of the Committee.

Dated: May 11, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–10495 Filed 5–16–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0055]

Department of Defense Science and Technology Reinvention Laboratory Personnel Demonstration Project; Correction

AGENCY: Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)), Department of Defense (DoD).

ACTION: Notice; correction.

SUMMARY: The DoD is correcting a notice that appeared in the **Federal Register** on May 12, 2022. Subsequent to publication of the notice, the DoD discovered that the Docket ID was not listed in the notice. DoD is issuing this correction to provide the Docket ID.

DATES: This correction is effective on May 17, 2022.

FOR FURTHER INFORMATION CONTACT: Patricia Toppings, 571–372–0485.

SUPPLEMENTARY INFORMATION: In FR Doc. 2022–10141 appearing at 87 FR 29134–29137 in the **Federal Register** of Thursday, May 12, 2022, the following Docket ID is inserted to read [Docket ID: DoD–2022–OS–0055] as set forth above.

Dated: May 12, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–10568 Filed 5–16–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries, hereafter, ''Board'' will take place.

DATES: Open to the public Friday, July 29, 2022, from 10:00 a.m. to 1:00 p.m.

ADDRESSES: THIS MEETING WILL BE HELD VIRTUALLY. For information on accessing the meeting, please contact Inger Pettygrove, (703) 225–8803 or *Inger.M.Pettygrove.civ@mail.mil* before July 15, 2022 at 12:00 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Inger Pettygrove, (703) 225–8803 (voice), *Inger.M.Pettygrove.civ@mail.mil* (email). Mailing address is Defense Human Resources Activity, DoD Office of the Actuary, 4800 Mark Center Drive, STE. 03E25, Alexandria, VA 22350–8000. Website: *https://actuary.defense.gov/*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to execute the provisions of 10 U.S.C. chapter 56 (10 U.S.C. 1114 *et. seq*). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of benefits under DoD retiree health care programs for Medicare-eligible beneficiaries.

Agenda: Discussion includes (1) Approve actuarial assumptions and methods needed for calculating: The September 30, 2021, unfunded liability payment (UFL)*, the FY 2024 per capita full-time and part-time normal cost amounts *, and the October 1, 2022, Treasury UFL amortization payment *; (2) Approve per capita full-time and part-time normal cost amounts for the October 1, 2022 (FY 2023) normal cost payments *; (3) Trust Fund investment experience update; (4) Medicare-Eligible Retiree Health Care Fund Update; (5) September 30, 2020, Actuarial Valuation Results; and (6) September 30, 2021, Actuarial Valuation Proposals. For * items, Board approval is required. Registered participants may obtain the most recent public agenda and other documentation by emailing the points of contact in the **FOR FURTHER INFORMATION CONTACT** section or on the Board's website.

Meeting Accessibility: Pursuant to FACA and 41 CFR 102–3.140, this meeting is open to the public.

Written Statements: In accordance with Section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration at any time, but should be received at least 10 business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting.

Written statements should be submitted via email to Inger Pettygrove at *Inger.M.Pettygrove.civ@mail.mil,* by July 15, 2022, in either Adobe or Microsoft Word format. Please note that since the Board operates under the provisions of the FACA, as amended, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board website.

Dated: May 12, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–10581 Filed 5–16–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Certificate of Alternate Compliance for USS SANTA BARBARA (LCS 32)

AGENCY: Department of the Navy (DoN), Department of Defense (DoD).

ACTION: Notice of issuance of Certificate of Alternate Compliance.

SUMMARY: The U.S. Navy hereby announces that a Certificate of Alternate Compliance has been issued for USS SANTA BARBARA (LCS 32). Due to the special construction and purpose of this vessel, the Admiralty Counsel of the Navy has determined it is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the navigation lights provisions of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) without interfering with its special function as a naval ship. The intended effect of this notice is to warn mariners in waters where 72 COLREGS apply.

DATES: This Certificate of Alternate Compliance is effective May 17, 2022 and is applicable beginning May 5, 2022.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander J. Martin Bunt, JAGC, U.S. Navy, Admiralty Attorney, Office of the Judge Advocate General, Admiralty and Claims Division (Code 15A), 1322 Patterson Ave. SE, Suite 3000, Washington Navy Yard, DC 20374–5066, 202–685–5040, or *admiralty@navy.mil.*

SUPPLEMENTARY INFORMATION: Background and Purpose. Executive Order (E.O.) 11964 of January 19, 1977 and 33 U.S.C. 1605 provide that the requirements of 72 COLREGS as to the number, position, range, or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signaling appliances, shall not apply to a vessel or class of vessels of the Navy where the Secretary of the Navy shall find and certify that, by reason of special construction or purpose, it is not possible for such vessel(s) to comply fully with the provisions without interfering with the special function of the vessel(s). Notice of issuance of a Certificate of Alternate Compliance must be made in the **Federal Register**.

In accordance with 33 U.S.C. 1605, the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law)/Admiralty Counsel of the Navy, under authority delegated by the Secretary of the Navy, hereby finds and certifies that USS SANTA BARBARA (LCS 32) is a vessel of special construction or purpose, and that, with respect to the position of the following navigational lights, it is not possible to comply fully with the requirements of the provisions enumerated in the 72 COLREGS without interfering with the special function of the vessel:

Annex I, paragraph 2(a)(i) pertaining to the vertical position of the forward masthead light; Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in relation to the forward quarter of the ship; Annex I, paragraph 2(f)(i) pertaining to obstructions of the aft masthead light; Annex I, paragraph 3(a) pertaining to the horizontal distance between the masthead lights; Annex I, Paragraph (3)(a) pertaining to the horizontal separation of the masthead lights; Annex I, Paragraph 2(f)(ii) and Annex I, Paragraph 3(c) pertaining to the vertical and horizontal position of the task lights in relation to the masthead lights; Annex I, Paragraph 9(b) pertaining to the degree of obstruction of the task lights.

The DAJAG (Admiralty and Maritime Law)/Admiralty Counsel of the Navy further finds and certifies that these navigational lights are in closest possible compliance with the applicable provision of the 72 COLREGS.

Authority: 33 U.S.C. 1605(c), E.O. 11964.

Approved: May 10, 2022.

J.M. Pike,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2022–10506 Filed 5–16–22; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD21–15–000]

Joint Federal-State Task Force on Electric Transmission; Notice Inviting Post-Meeting Comments

On May 6, 2022, the Joint Federal-State Task Force on Electric Transmission convened for a public meeting.

All interested persons are invited to file post-meeting comments to address issues raised during the meeting and identified in the Agenda issued April 22, 2022. For reference, questions asked by the meeting moderator are included below. Comments must be submitted on or before 21 days from the date of this Notice.

Comments may be filed electronically via the internet.[1] Instructions are available on the Commission's website *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, submissions sent via the U.S. Postal Service must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For more information about this Notice, please contact: Gretchen Kershaw (Legal Information), Office of the General Counsel, (202) 502–8213, *Gretchen.Kershaw@ferc.gov.*

Dated: May 11, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10549 Filed 5–16–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

[1] *See* 18 CFR 385.2001(a)(1)(iii) (2021).

Filings in Existing Proceedings

Docket Numbers: RP22–864–001.
Applicants: ANR Pipeline Company.
Description: Tariff Amendment: Cashout Surcharge 2022 Amendment to be effective 6/1/2022.
Filed Date: 5/10/22.
Accession Number: 20220510–5178.
Comment Date: 5 p.m. ET 5/23/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

Filings Instituting Proceedings

Docket Numbers: RP22–919–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Castleton 808116 Releases eff 5–10–22 to be effective 5/10/2022.
Filed Date: 5/10/22.
Accession Number: 20220510–5167.
Comment Date: 5 p.m. ET 5/23/22.

Docket Numbers: RP22–920–000.
Applicants: Elba Express Company, L.L.C.
Description: Compliance filing: Annual Cashout True-up 2022 to be effective N/A.
Filed Date: 5/11/22.
Accession Number: 20220511–5026.
Comment Date: 5 p.m. ET 5/23/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at:*http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 11, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10551 Filed 5–16–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–65–000.
Applicants: Sunlight Storage, LLC, NEP US SellCo, LLC, NextEra Energy Partners Acquisitions, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Sunlight Storage, LLC et al.
Filed Date: 5/10/22.
Accession Number: 20220510–5217.
Comment Date: 5 p.m. ET 5/31/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–115–000.
Applicants: Tres Bahias Solar Power, LLC.
Description: Tres Bahias Solar Power, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/11/22.
Accession Number: 20220511–5096.
Comment Date: 5 p.m. ET 6/1/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–201–001.
Applicants: Atlantic City Electric Company, PJM Interconnection, L.L.C.
Description: Compliance filing: Atlantic City Electric Company submits tariff filing per 35: ACE Order No. 864 Deficiency Letter Response to be effective N/A.
Filed Date: 5/11/22.
Accession Number: 20220511–5020.
Comment Date: 5 p.m. ET 6/1/22.

Docket Numbers: ER21–203–001.
Applicants: Baltimore Gas and Electric Company, PJM Interconnection, L.L.C.
Description: Compliance filing: Baltimore Gas and Electric Company submits tariff filing per 35: BGE Order No. 864 Deficiency Letter Response to be effective N/A.
Filed Date: 5/11/22.
Accession Number: 20220511–5023.
Comment Date: 5 p.m. ET 6/1/22.

Docket Numbers: ER21–204–001.
Applicants: Commonwealth Edison Company, PJM Interconnection, L.L.C.
Description: Compliance filing: Commonwealth Edison Company submits tariff filing per 35: ComEd Order No. 864 Deficiency Letter Response to be effective N/A.
Filed Date: 5/11/22.
Accession Number: 20220511–5027.
Comment Date: 5 p.m. ET 6/1/22.

Docket Numbers: ER21–205–001.
Applicants: Delmarva Power & Light Company, PJM Interconnection, L.L.C.
Description: Compliance filing: Delmarva Power & Light Company submits tariff filing per 35: DPL Order No. 864 Deficiency Letter Response to be effective N/A.
Filed Date: 5/11/22.
Accession Number: 20220511–5037.
Comment Date: 5 p.m. ET 6/1/22.

Docket Numbers: ER21–206–001.
Applicants: Potomac Electric Power Company, PJM Interconnection, L.L.C.
Description: Compliance filing: Potomac Electric Power Company submits tariff filing per 35: Pepco Order No. 864 Deficiency Letter Response to be effective N/A.
Filed Date: 5/11/22.
Accession Number: 20220511–5051.
Comment Date: 5 p.m. ET 6/1/22.

Docket Numbers: ER21–209–001.
Applicants: PECO Energy Company, PJM Interconnection, L.L.C.
Description: Compliance filing: PECO Energy Company submits tariff filing per 35: PECO Order No. 864 Deficiency Letter Response to be effective N/A.
Filed Date: 5/11/22.
Accession Number: 20220511–5052.
Comment Date: 5 p.m. ET 6/1/22.

Docket Numbers: ER22–1851–000.
Applicants: RE Gaskell West 4 LLC.
Description: Tariff Amendment: Cancellation of Market Based Rate and Certificate of Concurrence to be effective 5/11/2022.
Filed Date: 5/10/22.
Accession Number: 20220510–5179.
Comment Date: 5 p.m. ET 5/31/22.

Docket Numbers: ER22–1852–000.
Applicants: RE Gaskell West 5 LLC.
Description: Tariff Amendment: Cancellation of Market Based Rate and Certificate of Concurrence to be effective 5/11/2022.
Filed Date: 5/10/22.
Accession Number: 20220510–5184.
Comment Date: 5 p.m. ET 5/31/22.

Docket Numbers: ER22–1853–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3944 WAPA/NorVal Electric Coop/Central Montana Electric IA to be effective 5/10/2022.
Filed Date: 5/11/22.
Accession Number: 20220511–5021.
Comment Date: 5 p.m. ET 6/1/22.

Docket Numbers: ER22–1854–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: Deseret Const Agmt Mona Relay to be effective 7/11/2022.

Filed Date: 5/11/22.
Accession Number: 20220511–5072.
Comment Date: 5 p.m. ET 6/1/22.

Docket Numbers: ER22–1855–000.
Applicants: Appalachian Power Company.
Description: § 205(d) Rate Filing: Rate Schedule 306 Power Coordination Bridge Agreement to be effective 12/31/9998.
Filed Date: 5/11/22.
Accession Number: 20220511–5090.
Comment Date: 5 p.m. ET 6/1/22.

Docket Numbers: ER22–1856–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: § 205(d) Rate Filing: 2022–05–11 NSP–GRE–SISA-Eidswold-709–0.0.0 to be effective 5/12/2022.
Filed Date: 5/11/22.
Accession Number: 20220511–5113.
Comment Date: 5 p.m. ET 6/1/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at:*http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 11, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10548 Filed 5–16–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

TIME AND DATE: May 19, 2022, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426.

Open to the public via video Webcast only. Join FERC online to view this event live at *http://ferc.capitolconnection.org/.*

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* *Note*—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's website at *https://elibrary.ferc.gov/eLibrary/search* using the eLibrary link.

1090TH MEETING—OPEN MEETING

[May 19, 2022, 10:00 a.m.]

Item No.	Docket No.	Company
	Administrative	
A–1	AD22–1–000	Agency Administrative Matters.
A–2	AD22–2–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Market Update.
	Electric	
E–1	RM20–16–001	Managing Transmission Line Ratings.
E–2	OMITTED.	
E–3	ER21–62–000	Uniper Global Commodities North America LLC.
E–4	ER21–65–000	Tri-State Generation and Transmission Association, Inc.
E–5	ER21–59–000, ER21–59–001	Brookfield Renewable Trading and Marketing LP.
E–6	ER21–64–000	Macquarie Energy LLC.
E–7	ER22–1246–000	California Independent System Operator Corporation.
E–8	QF21–222–002	Board of Trustees of Michigan State University.
E–9	ER22–476–001	Alabama Power Company.
E–10	EL22–44–000	Grand River Dam Authority.
E–11	EL22–45–000	Lincoln Electric System.
E–12	EL22–46–000	Nebraska Public Power District.
E–13	EL22–47–000	Omaha Public Power District.
E–14	OMITTED.	
E–15	EC22–24–000	GridLiance High Plains LLC.
E–16	RR21–10–000	North American Electric Reliability Corporation.
	Miscellaneous	
M–1	RM22–15–000	Certification of Uncontested Settlements by Settlement Judges.
	Gas	
G–1	RM21–18–000	Revised Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs.
G–2	OR19–14–000	MPLX Ozark Pipe Line LLC.
G–3	RP21–1001–006	Texas Eastern Transmission, LP.

1090TH MEETING—OPEN MEETING—Continued

[May 19, 2022, 10:00 a.m.]

Item No.	Docket No.	Company
Hydro		
H–1	P–15246–000	PacifiCorp.
H–2	P–15239–000	PacifiCorp.
H–3	P–2188–259	NorthWestern Corporation.
Certificates		
C–1	CP21–197–000	Kern River Gas Transmission Company.
C–2	CP21–78–000	ANR Pipeline Company.
C–3	IN19–4–001	Rover Pipeline, LLC and Energy Transfer Partners, L.P.
C–4	CP21–6–000	Spire Storage West LLC.

Issued: May 12, 2022

A free webcast of this event is available through *http://ferc.capitolconnection.org/.* Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://ferc.capitolconnection.org/* or contact Shirley Al-Jarani at 703–993–3104.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10681 Filed 5–13–22; 4:15 pm]

BILLING CODE 6717–01–P

EXPORT-IMPORT BANK

[Public Notice: EIB–2022–0002]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP089430XX.

AGENCY: Export-Import Bank.

ACTION: Notice.

SUMMARY: This Notice is to inform the public the Export-Import Bank of the United States (''EXIM'') has received an application for final commitments for aggregated long-term loans or financial guarantees in excess of $100 million. Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to final action on these Transactions.

DATES: Comments must be received on or before June 13, 2022 to be assured of consideration before final consideration of the transactions by the Board of Directors of EXIM.

ADDRESSES: Comments may be submitted through *Regulations.gov* at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2022–0002 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2022–0002 on any attached document.

SUPPLEMENTARY INFORMATION:

Reference: AP089430XX.

Purpose and Use:

Brief description of the purpose of the transactions: To support the export of U.S.-manufactured commercial aircraft to the Netherlands.

Brief non-proprietary description of the anticipated use of the items being exported: To be used for passenger and cargo air transport between the Netherlands and Europe, the Americas, Asia and Africa.

To the extent that EXIM is reasonably aware, the item(s) being exported may be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: The Boeing Company.

Obligor: Koninklijke Luchtvaart Maatschappij N.V. ''KLM''.

Guarantor(s): N/A.

Description of Items Being Exported: Boeing commercial jet aircraft.

Information on Decision: Information on the final decision for these transactions will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Authority: Section 3(c)(10) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635a(c)(10)).

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2022–10554 Filed 5–16–22; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: May 24, 2022 at 10:00 a.m.

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1–202–599–1426, Code: 399 176 570#; or via web: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_MTc0MDQyNDctYzE3My00NTUwLWI1ODQtOTU1MTY2NmEyM2Ji%40thread.v2/0?context=%7b%22Tid%22%3a%223f6323b7-e3fd-4f35-b43d-1a7afae5910d%22%2c%22Oid%22%3a%227c8d802c-5559-41ed-9868-8bfad5d44af9%22%7d.*

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION:

Board Meeting Agenda

Open Session

1. Approval of the April 26, 2022 Board Meeting Minutes
2. Approval of the October 19, 2021 ETAC Meeting Minutes
3. Monthly Reports
   (a) Participant Activity Report
   (b) Investment Report
   (c) Legislative Report
4. Quarterly Report
   (d) Metrics
5. L Funds Study
6. Converge Update
7. Office of Communications and Education Annual Report

Authority: 5 U.S.C. 552b(e)(1).

Dated: May 11, 2022.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2022–10496 Filed 5–16–22; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. P222100]

HISA Registration Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of Horseracing Integrity and Safety Authority (HISA) proposed rule; request for public comment.

SUMMARY: The Horseracing Integrity and Safety Act of 2020 recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority, which is charged with developing proposed rules on a variety of subjects. Those proposed rules and later proposed rule modifications take effect only if approved by the Federal Trade Commission. The proposed rules and rule modifications must be published in the **Federal Register** for public comment. Thereafter, the Commission has 60 days from the date of publication to approve or disapprove the proposed rule or rule modification. The Authority submitted to the Commission a proposed rule on Registration on April 25, 2022. The Office of the Secretary of the Commission determined that the proposal complied with the Commission's rule governing such submissions. This document publicizes the Authority's proposed rule text and explanation, and it seeks public comment on whether the Commission should approve or disapprove the proposed rule.

DATES: If approved, the HISA proposed rule would take effect on July 1, 2022. Comments must be received on or before May 31, 2022.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Comment Submissions part of the **SUPPLEMENTARY INFORMATION** section below. Write ''HISA Registration'' on your comment and file your comment online at *https://www.regulations.gov* under docket number FTC–2022–0028. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Austin King, (202–326–3166), Associate General Counsel for Rulemaking, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

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b. Statutory Basis
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III. Self-Regulatory Organization's Summary of Comments Received Pre-Submission and Its Responses to Those Comments
IV. Legal Authority
V. Effective Date
VI. Request for Comments
VII. Comment and Submissions
VIII. Communications by Outside Parities to the Commissioners or Their Advisors
IX. Self-Regulatory Organization's Proposed Rule Language

Background

The Horseracing Integrity and Safety Act of 2020 [1] recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority, which is charged with developing proposed rules on a variety of subjects. Those proposed rules and later proposed rule modifications take effect only if approved by the Federal Trade Commission.[2] The proposed rules and rule modifications must be published in the **Federal Register** for public comment.[3] Thereafter, the Commission has 60 days from the date of publication to approve or disapprove the proposed rule or rule modification.[4]

Pursuant to Section 3053(a) of the Horseracing Integrity and Safety Act of 2020 and Commission Rule 1.142, notice is hereby given that, on April 25, 2022, the Horseracing Integrity and Safety Authority (''HISA'' or the ''Authority'') filed with the Federal Trade Commission a proposed Registration rule and supporting documentation as described in Items I, II, III, IV, and IX below, which Items have been prepared by HISA. The Office of the Secretary of the Commission determined that the filing complied with the Commission's rule governing such submissions.[5] The Commission publishes this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Background, Purpose of, and Statutory Basis for, the Proposed Rule

a. Background and Purpose

The Horseracing Integrity and Safety Act of 2020 (''Act'') recognizes that the establishment of a national set of uniform standards for racetrack safety and medication control will enhance the safety and integrity of horseracing. The Act specifically states that the Commission, the Authority, and the anti-doping medication control enforcement agency ''shall have safety, performance, and anti-doping and medication control authority over covered persons similar to such authority of the State racing commissions before the program effective date.'' State racing commissions routinely license participants in horse racing as a prerequisite for participation in the sport. In the same manner, Congress mandated in the Act that the Authority require the registration of Covered Persons: ''As a condition of participating in covered races and in the care, ownership, treatment, and training of covered horses, a covered person shall register with the Authority in accordance with rules promulgated by the Authority and approved by the Commission in accordance with section 3053 of this title.'' [6]

In requiring the registration of Covered Persons, Congress recognized that the effective regulation of horseracing under the Act requires that Covered Persons participating in Covered Horseraces must be identifiable as individuals to the Authority. This is necessary for a number of reasons, including the need to contact a Covered Person to request information required under Authority rules and to initiate disciplinary proceedings if a Covered Person fails to comply with the rules. To this end, the Registration proposed rule requires a Covered Person to register with the Authority, providing his or her name, contact information, state licensing status, and other pertinent information to the Authority. The Registration proposed rule fulfills Congress's registration mandate by

[1] 15 U.S.C. 3051 through 3060.

[2] 15 U.S.C. 3053(b)(2).

[3] 15 U.S.C. 3053(b)(1).

[4] 15 U.S.C. 3053(c)(1).

[5] 16 CFR 1.140 through 1.144; *see also* Fed. Trade Comm'n, Procedures for Submission of Rules Under the Horseracing Integrity and Safety Act, 86 FR 54819 (Oct. 5, 2021).

[6] 15 U.S.C. 3054(d)(1).

establishing the procedures and rules under which Covered Persons register with the Authority. The Registration proposed rule also requires Covered Persons to ensure that Covered Horses for which they are responsible are registered with the Authority. In registering Covered Horses, Covered Persons must identify the location of the Covered Horse and provide the equine vaccine and health information required by Rule 2143 of the Authority's Racetrack Safety Rules. These requirements serve the vital function of enabling the Authority to quickly locate a Covered Horse if medication testing is required or if a Covered Horse's health and safety becomes a concern and to review the health and vaccine information entered into the Authority's database at the time of registration.

In developing the Registration proposed rule, the Authority considered creating a registration system that paralleled existing state licensing requirements. State licensing schemes routinely require substantial amounts of information from a license applicant, including the applicant's licensing and disciplinary history, citizenship status, criminal history, civil judgments entered against the applicant, and employment status; similar information is often required regarding an applicant's spouse. (Attached as supporting documentation are the licensing rules and applications that the Authority consulted in developing the Registration proposed rule). Ultimately, the Authority opted not to fully duplicate state licensing information requirements, since the Authority may obtain information concerning state licensees from cooperating state racing commissions, the Association of Racing Commissioners International, and The Jockey Club. The Authority's Registration proposed rule therefore creates a narrower and more streamlined process that focuses primarily on requiring Covered Persons to provide and update contact information, to register Covered Horses as necessary, and to agree to comply with the rules, standards, and procedures developed and approved under 15 U.S.C. 3054(c). Certain categories of Covered Persons are required to submit additional information. Veterinarians are required to list the jurisdictions in which they are currently licensed by state veterinary licensing authorities. Jockeys are required to provide the names of the jockey agents who represent them, and jockey agents are in turn required to identify the jockeys they represent. Racetracks are required to identify the majority or controlling interests of the Racetrack and to report any changes in ownership and control to the Authority.

The Registration proposed rule will affect Covered Persons by requiring them to register with the Authority and provide and update the information specified in the proposed rule. The Registration proposed rule also requires Covered Persons to agree to comply with all rules, standards, and procedures developed and approved under 15 U.S.C. 3054(c). As noted previously, the registration process is necessary for the effective regulation of Covered Persons, but it is not overly burdensome and is less extensive than state licensing requirements. The Registration proposed rule affects Covered Horses by requiring a Covered Person to register with the Authority all Covered Horses for which the Covered Person is the Responsible Person. (The Responsible Person concept is more fully described below in Item II of this Notice, the ''Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rules''). The safety and welfare of Covered Horses will be enhanced by their registration with the Authority, since, as described previously, the Authority will be able to locate a horse for testing and safety purposes and to review the horse health information provided during registration. The registration of Covered Horses and Covered Persons, including racetracks, will further the purpose of enhancing the safety, welfare, and integrity of Covered Persons and Covered Horses, and the safe conduct of Covered Horseraces will be significantly enhanced as a result.

The Registration proposed rule is consistent with the Act in that it complies with and fulfills the Act's specific mandate in 15 U.S.C. 3054(d)(1) to require the registration of Covered Persons with the Authority in accordance with rules promulgated by the Authority and approved by the Commission. The Registration proposed rule provides Covered Persons with the information and guidance necessary to properly register with the Authority, establishes certain exemptions to registration, requires that registration information be updated as necessary, and provides for the registration of Covered Horses.

b. Statutory Basis

The Horseracing Integrity and Safety Act of 2020, 15 U.S.C. 3051 through 3060.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Registration Proposed Rule and Discussion of Alternatives

The Authority's Registration proposed rule was guided by the purposes and objectives of the Act, in particular the Act's explicit directive in 15 U.S.C. 3054(d)(1) that Covered Persons be required to register with the Authority in accordance with rules promulgated by the Authority and approved by the Commission. The Registration proposed rule establishes the requirements and procedures for the registration of Covered Persons.

Covered Persons are required to register for 12-month periods and, at the end of this period, to review and update registration information previously submitted to the Authority. The Registration proposed rule sets forth the information required for a Covered Person to register, including name and contact information, identification of the states in which the Covered Person is currently licensed, and the occupations for which the Covered Person is licensed. The registration website allows a registrant to upload a copy of a currently valid racing license, from which the computerized registration system extracts information that permits the Authority to verify the registrant's identity and compare it with the databases of The Jockey Club and the Association of Racing Commissioners International. If the user is unable to upload a photo of the racing license, the website will allow the user to manually enter all required information.

Particular provisions have been included regarding certain categories of Covered Persons. Veterinarians are required to identity those states in which they are licensed to practice veterinary medicine. Jockeys are required to provide the names of the jockey agents who represent them, and jockey agents are similarly required to identify the jockeys they represent. Racetracks are defined in the Act as Covered Persons, and are required to provide the racetrack's physical address, mailing address, phone number, and general delivery email address. In addition, racetracks are required to provide the name and contact information for the Director or Officer with the principal responsibility for conducting Covered Horseraces. This person will serve as the Authority's primary point of contact in communicating with the racetrack. Racetracks are also required to identify the majority or controlling ownership interests of the racetrack.

The Registration proposed rule includes a provision exempting from the registration requirement persons performing certain functions at a racetrack. The exemption is set forth in paragraph (f) of the rule as follows: ''Vendors of goods or services and racetrack employees or contractors who do not have access to restricted areas of a Racetrack in the ordinary course of carrying out their duties are not required to register with the Authority. For purposes of this rule, mutuel employees are deemed not to have access to restricted areas of a Racetrack.''

The Act, in 15 U.S.C. 3054(d)(2), specifically requires that registration include ''an agreement by the covered person to be subject to and comply with the rules, standards, and procedures developed and approved under [15 U.S.C. 3054(c)].'' The Registration proposed rule includes a provision that requires a Covered Person to agree to these rules, standards, and procedures, and further states that these rules, standards, and procedures are set forth in the Authority's Rule 8000 Series. The Authority's registration website also requires the Covered Person to affirm this agreement and provides a link to the Rule 8000 Series if the Covered Person desires to read the rules.

The Registration proposed rule further requires that the information provided by a Covered Person be complete and correct, and it requires Covered Persons to update registration information to accurately report any material changes in the information required for registration. The Registration proposed rule also establishes penalties for failure to register with the Authority, for making a knowingly false statement or omission of information in an application for registration with the Authority, and for failure to advise the Authority of material changes in information provided to the Authority as required under any provision in Authority rules.

The Act defines Covered Horse at 15 U.S.C. 3051(4).[7] A key requirement in the Authority's regulation scheme is that all Covered Horses shall have at all times a Responsible Person who is ultimately responsible for the safety and welfare of the Covered Horse. The definition of Responsible Person was developed by the Racetrack Safety Committee and is set forth in the Racetrack Safety and Accreditation Rule 2000 Series.[8] The Registration proposed rule requires that Responsible Persons, as defined in Rule 2010 of the Racetrack Safety Rules, shall ensure that Covered Horses are registered with the Authority. The Registration proposed rule specifies the information to be submitted, including the Covered Horse's name and year of birth, the dam of the Covered Horse, the ID number of the Owner of the covered Horse, the horse's location and Vaccine and Health Information required in Rule 2143 of the Racetrack Safety Regulations, and other information reasonably required by the Authority to fulfill its statutory duties under the Act. The Registration proposed rule also makes clear that failure to register a Covered Horse shall constitute a violation and is subject to the sanctions set forth in Rule 8200 and the disciplinary procedures set forth in Rule 8300.

III. Self-Regulatory Organization's Summary of Comments Received Pre-Submission and Its Responses to Those Comments

As encouraged by the Commission's procedural rule, the Authority, before finalizing this submission to the Commission, made a draft of the Registration proposed rule available to the public for review and comment on the HISA website, *https://www.hisausregs.org/*. Comments on the Registration proposed rule were received from various individuals and groups in the horseracing industry.

Some commenters urged that accommodation be made for members of the horseracing industry who do not have access to computers or are not computer literate.[9] The Authority recognizes that this can be a concern. But the registration process is not complex, and assistance is often available from other members of the industry and from horseracing organizations such as the Jockey's Guild. Concerns were also expressed about members of the horseracing industry who do not speak English.[10] The Authority is developing the website to accommodate the many Spanish-speaking members of the horseracing industry. One commenter asked whether a fee will be imposed for registration.[11] The Authority will not be imposing registration fees at this time.

One commenter offered suggested language to be added to the Registration proposed rule, similar to the more extensive information requirements of state licensing applications.[12] Other commenters asked whether the Authority would collaborate with state racing commissions in obtaining information pertaining to HISA registrants that has previously been submitted to state racing commissions.[13] Some commenters assumed that the HISA registration system would duplicate the state licensing system in many respects. As noted elsewhere in this filing, the Registration proposed rule will not require the extensive licensing, disciplinary, employment, and spousal information that state racing commissions routinely require, and it will therefore not duplicate state licensing information requirements. The Registration proposed rule will focus primarily on the identification of Covered Persons and Covered Horses. The Authority will collaborate with the state racing commissions and other organizations as needed if additional information specific to a particular individual is required.

A commenter asked how information concerning horses will be kept current, in view of the fact that horse ownership, custody, and control can change frequently.[14] The commenter asked whether it is realistic to assume that owners and trainers will be in frequent contact with HISA to update ownership and control. The commenter asked whether this information can be obtained directly from the racetracks through their internal systems or InCompass. In response to these

[7] 15 U.S.C. 3051(4) (''Covered Horse. The term 'covered horse' means any Thoroughbred horse, or any other horse made subject to this chapter by election of the applicable State racing commission or the breed governing organization for such horse under section 3054(j) of this title, during the period—(A) beginning on the date of the horse's first timed and reported workout at a racetrack that participates in covered horseraces or at a training facility; and (B) ending on the date on which the Authority receives written notice that the horse has been retired.'').

[8] Definition of Responsible Person in Rule 2010: ''Responsible Person means the individual designated in the registration with the Authority as the Responsible Person in accordance with the following: (1) For a Covered Horse that has not yet performed its first Workout (or competed in a Race, whichever is earlier), the Responsible Person shall be the Owner of the Covered Horse unless the Horse is in training in another country. (2) Once in training, the Responsible Person shall be the licensed Trainer for the Covered Horse. The licensed Trainer's designation as the Responsible Person shall be filed with the Authority. The Trainer designation must be kept current with the Authority. Designation transfers must be in writing and on record with the Authority prior to the effective date of the transfer, except for claiming Races in which transfers must be recorded the same day. (3) If a Covered Horse ceases training for a period of time, the designation may be transferred to the Owner prior to the effective date. (4) If the Owner is an entity, the managing Owner shall be named.''

[9] Thoroughbred Horsemen's Association (''THA'') and the Jockey's Guild (''Jockey's Guild'').

[10] THA, Jockey's Guild.

[11] THA.

[12] Racing Officials Accreditation Program.

[13] THA, Jockey's Guild.

[14] THA.

comments, the Authority notes that the InCompass system records the name of the trainer at the time of entry and of racing but does not track the identity of the trainer at any other time. The Authority believes that the registration of horses is vital to securing horse safety and welfare and that the requirements placed upon Responsible Persons are not unreasonable or burdensome. The Authority's website registration system has been specifically designed to be user-friendly and to make registration a relatively simple and time-efficient process. The commenter asked several questions as to how personal information will be maintained and the privacy of rights of individual secured. The Authority has developed privacy policies and a terms-and-conditions policy that will govern these matters.

A commenter asked whether certain classes of individuals are Covered Persons required to register, including personnel working for horsemen's organizations and suppliers who have access to certain areas of the racetrack. In response, the Authority states that the Registration proposed rule and the exemption provision in paragraph 9000(f) of the rule make clear those persons who are required to register. Another commenter offered suggestions to clarify the language in an early draft of the Registration proposed rule concerning persons who are exempted from registration.[15] The suggestions were helpful to the Authority in finalizing the language in the registration exemption.

A commenter asked whether Covered Persons will include jockeys engaged in quarter horse racing.[16] Currently, quarter horse racing is not subject to the Act. Quarter horse jockeys will not be required to register, unless they participate in thoroughbred races.[17]

A commenter asked whether the current penalty structure in Rule 8300, which authorizes penalties of up to $50,000.00 for a first violation, can be tailored to the specific violations of the Registration proposed rule, including the failure to update contact information.[18] The commenter noted that some of the penalties would be excessive as applied to a person who fails to update contact information. The Authority believes that the current penalty structure, which offers considerable flexibility in tailoring penalties to the nature of a violation, will not result in excessive penalties for failure to update contact information or other violations.

A commenter asked whether changes in jockey and agent relationships, which are currently provided to the racing office or stewards at the track where the jockey is riding, can be automatically updated.[19] In response, the Authority states that it would be impractical to attempt to obtain this information from every racetrack in operation in the United States. The HISA website provides a centralized method of obtaining the information, and it is a simple process for jockeys and jockey agents to record and update the required information on the website.

One commenter asked to be kept informed as to whether horses at the two-year-old training sales will be considered Covered Horses.[20] Pursuant to 15 U.S.C. 3051(4) and Rule 2010, a horse is not a Covered Horse until the horse's first timed and reported workout. Workouts at two-year-old training sales are not considered timed and reported workouts. It is possible that the Authority may be addressing this issue in the anti-doping and medication control rules, which will be published at a future date.

One commenter noted that owners do not always receive photo IDs from the various state racing commissions by which they are licensed.[21] The HISA registration system does not require that a license contain a photo of the licensee. The commenter also noted that the National Racing License issued by the National Racing Compact is not a physical document that can be uploaded. In response to this comment and to avoid confusion, the Authority deleted a reference to the National Racing License in the Registration proposed rule.

Several commenters offered suggestions concerning helpful minor adjustments of the language used in early drafts of the Registration proposed rule. These comments were carefully reviewed, and several of the changes were incorporated into the draft Registration proposed rule as it developed into its final form.[22]

IV. Legal Authority

This rule is proposed by the Authority for approval or disapproval by the Commission under 15 U.S.C. 3053(c)(1).

V. Effective Date

If approved by the Commission, this proposed rule will take effect on July 1, 2022.

VI. Request for Comments

Members of the public are invited to comment on the Authority's proposed rule. The Commission requests that factual data on which the comments are based be submitted with the comments. The supporting documentation referred to in the Authority's filing, as well as the written comments it received before submitting the proposed rule to the Commission, are available for public inspection at *https://www.regulations.gov* under docket number FTC–2022–0028.

The Commission seeks comments that address the decisional criteria provided by the Act. The Act gives the Commission two criteria against which to measure proposed rules and rule modifications: ''The Commission shall approve a proposed rule or modification if the Commission finds that the proposed rule or modification is consistent with—(A) this chapter; and (B) applicable rules approved by the Commission.''[23] In other words, the Commission will evaluate the proposed rule for its consistency with the specific requirements, factors, standards, or considerations in the text of the Act as well as the Commission's procedural rule.

Although the Commission must approve the proposed rule if the Commission finds that the proposed rule is consistent with the Act and the Commission's procedural rule, the Commission may consider broader questions about the health and safety of horses or the integrity of horseraces and wagering on horseraces in another context: ''The Commission may adopt an interim final rule, to take effect immediately, . . . if the Commission finds that such a rule is necessary to protect—(1) the health and safety of covered horses; or (2) the integrity of covered horseraces and wagering on those horseraces.''[24] The Commission may exercise its power to issue an interim final rule on its own initiative or in response to a petition from a member from the public. If members of the public wish to provide comments to the Commission that bear on protecting the health and safety of horses or the integrity of horseraces and wagering on horseraces but do not discuss whether HISA's proposed rule on Registration is consistent with the Act or the applicable rules, they should not submit a

[15] Colonial Downs.

[16] Jockey's Guild.

[17] The Act defines jockey as ''a rider or driver of a covered horse in covered horseraces.'' 15 U.S.C. 3051(12).

[18] Jockey's Guild.

[19] Jockey's Guild.

[20] American Association of Equine Practitioners.

[21] Maryland Racing Commission.

[22] The Jockey Club, Racing Officials Accreditation Program.

[23] 15 U.S.C. 3053(c)(2).

[24] 15 U.S.C. 3053(e).

comment here. Instead, they are encouraged to submit a petition requesting that the Commission issue an interim final rule addressing the subject of interest. The petition must meet all the criteria established in the Rules of Practice (Part 1, Subpart D); [25] if it does, the petition will be published in the **Federal Register** for public comment. In particular, the petition for an interim final rule must ''identify the problem the requested action is intended to address and explain why the requested action is necessary to address the problem.'' [26] As relevant here, the petition should provide sufficient information for the public to comment on, and for the Commission to find, that the requested interim final rule is ''necessary to protect—(1) the health and safety of covered horses; or (2) the integrity of covered horseraces and wagering on those horseraces.'' [27]

VII. Comment Submissions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 31, 2022. Write ''HISA Registration'' on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the website *https://www.regulations.gov*.

Because of the public health emergency in response to the COVID–19 outbreak and the Commission's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. To ensure that the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write ''HISA Registration'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not contain sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other State identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential''—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *https://www.regulations.gov*—as legally required by FTC Rule 4.9(b), 16 CFR 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before May 31, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/siteinformation/privacypolicy*.

VIII. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. *See* 16 CFR 1.26(b)(5).

IX. Self-Regulatory Organization's Proposed Rule Language

9000. Registration of Covered Persons and Covered Horses.

(a) Registration Requirement for Covered Persons. A Covered Person as defined by 15 U.S.C. 3051(6) shall register with the Authority in accordance with this rule on the Horseracing Integrity and Safety Authority website at *https://portal.hisausapps.org/registration*. At the end of each successive twelve-month period, calculated from the date of a Covered Person's initial registration, a Covered Person shall be required to review the accuracy of information previously submitted on the website and to update the information as necessary. An individual who is no longer a Covered Person may request the Authority to have his or her name removed from registration with Authority.

(b) Information Required for Registration of Covered Persons. The following information shall be provided by all Covered Persons who register as individuals with the Authority:

(1) The Covered Person's name, physical address, and permanent mailing address;

(2) The Covered Person's mobile phone number or email address, or both if available;

(3) Identification of all racing jurisdictions in which the Covered Person is currently licensed and the occupation(s) for which the Covered Person is licensed;

(4) An image of at least one currently valid license issued to the Covered Person by a racing regulatory authority; and

(5) Any other information reasonably required by the Authority to fulfill its statutory duties under the Act.

(c) Jockeys and Jockey Agents. Jockeys shall identify the Jockey agents who represent them. Jockey agents shall identify the Jockeys whom they represent.

(d) Veterinarians. A Covered Person who registers as a veterinarian shall also list the jurisdictions in which the registrant is currently licensed by state veterinary licensing authorities.

(e) Racetracks. A Racetrack licensed by a state racing commission to conduct

[25] 16 CFR 1.31; *see* Fed. Trade Comm'n, Procedures for Responding to Petitions for Rulemaking, 86 FR 59851 (Oct. 29, 2021).

[26] 16 CFR 1.31(b)(3).

[27] 15 U.S.C. 3053(e).

Covered Horseraces as defined by 15 U.S.C. 3051(5) shall register with the Authority, and shall provide and update as necessary the following information:

(1) The name and contact information, including email address and direct phone number, of the Director or Officer with principal responsibility for conducting Covered Horseraces to serve as the contact person for the Racetrack;

(2) The Racetrack's physical address, mailing address, phone number, and general delivery email address; and

(3) Identification of the majority or controlling ownership interests of the Racetrack. Any change in the majority or controlling ownership interests or control of a Racetrack shall constitute a material change and shall be reported to the Authority within 30 days of the change.

(f) Registration exemptions. Vendors of goods or services and racetrack employees or contractors who do not have access to restricted areas of a Racetrack in the ordinary course of carrying out their duties are not required to register with the Authority. For purposes of this rule, mutuel employees are deemed not to have access to restricted areas of a Racetrack.

(g) Agreement with respect to Authority rules, standards, and procedures. Pursuant to 15 U.S.C. 3054(d) of the Act, a Covered Person who registers with the Authority shall agree to be subject to and comply with the rules, standards, and procedures of the Authority developed and approved under 15 U.S.C. 3054(c). These rules, standards, and procedures are set forth in the Rule 8000 Series.

(h) Accuracy of and Changes to Registration Information.

(1) Complete and Correct Information. Information provided by a Covered Person in the course of registration shall be complete and correct.

(2) Material Changes in Registration Information. A Covered Person registered with the Authority shall update registration information to accurately report any material changes in any information required for registration by the Authority.

(3) Penalties. As set forth in Rule 8100(g), failure to register with the Authority, making a knowingly false statement or omission of information in an application for registration with the Authority, or failure to advise the Authority of material changes in information provided to the Authority as required under any provision in Authority rules shall constitute a violation and shall be subject to the sanctions set forth in Rule 8200 and the disciplinary procedures set forth in Rule 8300.

(i) Registration of Covered Horses. Responsible Persons as defined in Rule 2010 shall ensure that Covered Horses as defined by 15 U.S.C. 3051(4) are registered with the Authority. The following information shall be provided by all Covered Persons who register horses with the Authority:

(1) The Covered Horse's name and year of birth;

(2) The name of the dam of the Covered Horse;

(3) The ID number of the Owner of the Covered Horse;

(4) The location of the Covered Horse;

(5) The Vaccine and Health Information required by Rule 2143; and

(6) Any other information reasonably required by the Authority to fulfill its statutory duties under the Act.

(j) Penalty for Failure to Register a Covered Horse. Failure by a Responsible Person to register a Covered Horse with the Authority shall constitute a violation and shall be subject to the sanctions set forth in Rule 8200 and the disciplinary procedures set forth in Rule 8300.

By direction of the Commission.

Joel Christie,

Acting Secretary.

[FR Doc. 2022–10709 Filed 5–16–22; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2022–01; Docket No. 2022–0002; Sequence No. 09]

Federal Management Regulation; Designation of Federal Building

AGENCY: Public Buildings Service (PBS), General Services Administration (GSA).

ACTION: Notice of a bulletin.

SUMMARY: The attached bulletin announces the redesignation of a Federal building.

DATES: This bulletin expires November 16, 2022. The building designation remains in effect until canceled or superseded by another bulletin.

FOR FURTHER INFORMATION CONTACT: General Services Administration, Public Buildings Service (PBS), Office of Portfolio Management, Attn: Chandra Kelley, 77 Forsyth Street SW, Atlanta, GA 30303, at 404–562–2763, or by email at *chandra.kelley@gsa.gov.*

SUPPLEMENTARY INFORMATION: This bulletin announces the redesignation of a Federal building. Public Law 117–74, dated December 21, 2021, redesignated the Federal building located at 167 North Main Street in Memphis, TN, as the ''Odell Horton Federal Building.''

Katy Kale,

Deputy Administrator of General Services.

[FR Doc. 2022–10478 Filed 5–16–22; 8:45 am]

BILLING CODE 6820–Y1–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–1226]

Howard Stanley Head, Jr.: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Howard Stanley Head, Jr. for a period of 5 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Head was convicted of one felony count under Federal law for conspiracy to import misbranded prescription drugs. The factual basis supporting Mr. Head's conviction, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Mr. Head was given notice of the proposed debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of March 24, 2022 (30 days after receipt of the notice), Mr. Head had not responded. Mr. Head's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

DATES: This order is applicable May 17, 2022.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, or at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Enforcement (ELEM–4029), Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8743, or at *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance.

On November 2, 2021, Mr. Head was convicted, as defined in section 306(l)(1) of FD&C Act, in the U.S. District Court for the Eastern District of Kentucky-Central Division of Frankfort, when the court entered judgment against him for the offense of conspiracy to import misbranded prescription drugs, in violation of 18 U.S.C. 371. FDA's finding that debarment is appropriate is based on the felony conviction referenced herein. The factual basis for this conviction is as follows:

As contained in the indictment, filed on November 5, 2020, and in the plea agreement in Mr. Head's case, filed June 10, 2021, in or about June 2015 and continuing through October 2019, Mr. Head conducted a business under the name ''Dr. Head's Meds.'' In conducting this business, on multiple occasions Mr. Head purchased thousands of generic medication tablets for erectile dysfunction from overseas suppliers located in countries such as India and Singapore. At his request, these suppliers sent packages containing generic versions of VIAGRA and CIALIS to Mr. Head's residence and other locations via the U.S. Postal Service. The labeling accompanying these packages described their contents in an inaccurate or misleading manner, such as ''Supplement.'' After receiving the bulk shipments of generic erectile dysfunction tablets, Mr. Head sold them in smaller quantities to customers in the United States.

As a result of this conviction, FDA sent Mr. Head, by certified mail, on January 21, 2022, a notice proposing to debar him for a 5-year period from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C) of the FD&C Act that Mr. Head's felony conviction under Federal law for conspiracy to import misbranded prescription drugs, in violation of 18 U.S.C. 371, was for conduct relating to the importation into the United States of any drug or controlled substance because he illegally imported and introduced misbranded prescription drug products into interstate commerce. In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Head's offense and concluded that the offense warranted the imposition of a 5-year period of debarment.

The proposal informed Mr. Head of the proposed debarment and offered him an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. U.S. Postal Service records indicate that after a delivery attempt to Mr. Head's residence was made and a notice left, the proposal and notice of opportunity for a hearing letter was picked up at his local post office on February 22, 2022. Mr. Head failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Howard Stanley Head, Jr. has been convicted of a felony under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that the offense should be accorded a debarment period of 5 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Mr. Head is debarred for a period of five years from importing or offering for import any drug into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug or controlled substance by, with the assistance of, or at the direction of Mr. Head is a prohibited act.

Any application by Mr. Head for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2021–N–1226 and sent to the Dockets Management Staff (see **ADDRESSSES**). The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions will be placed in the docket and will be viewable at *https://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

Dated: May 11, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–10505 Filed 5–16–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information (RFI): 2022 HHS Environmental Justice Strategy and Implementation Plan Draft Outline; Comment Period Extended

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services (HHS).

ACTION: Notice of request for information; comment period extended.

SUMMARY: On April 8, 2022, the Department of Health and Human Services (HHS) published into the **Federal Register** a Request for Information (RFI) which is located at 87 FR 20876 to receive input from the public on HHS's draft outline to further the development of the 2022 Environmental Justice Strategy and Implementation Plan. Consistent with the policy of this administration directing HHS to make achieving environmental justice part of its mission, HHS would like to identify priority actions and strategies to best address environmental injustices and health inequities for people of color, disadvantaged, vulnerable, low-income, marginalized, and indigenous populations. With the engagement of and input from the public, the 2022 Environmental Justice Strategy and Implementation Plan will serve as a guide to confront environmental and health disparities and implement a multifaceted approach that will serve vulnerable populations and communities disproportionately impacted by environmental burdens.

DATES: To be assured consideration, comments must be received at the email address provided below, no later than midnight Eastern Time (ET) on June 18, 2022. HHS will not reply individually to responders but will consider all comments submitted by the deadline. Do not provide confidential information as comments may be published or otherwise used for agency purposes.

ADDRESSES: Please submit all responses via email to *OASHcomments@hhs.gov* as a Word document or in the body of an email.

FOR FURTHER INFORMATION CONTACT: Dr. LaToria Whitehead, Senior Public Health Analyst, email: *ceq6@cdc.gov,* phone: (770) 488–3633.

Dated: May 11, 2022.

Arsenio Mataka,

Senior Advisor, Office of the Assistant Secretary for Health, Department of Health and Human Services.

[FR Doc. 2022–10540 Filed 5–16–22; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0407–60D]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the information collection request (ICR) must be received on or before July 18, 2022.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier OS–0990–0407–60D and project title for reference. Submit requests to Sherrette A. Funn, the Reports Clearance Officer, at *Sherrette.Funn@hhs.gov* or call (202) 795–7714.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (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.

Title of the Collection: Think Cultural Health (TCH) website Quality Improvement Effort.

Type of Collection: Reinstatement with Change.

OMB No. 0990–0407.

Abstract: The Office of Minority Health (OMH), Office of the Secretary (OS), Department of Health and Human Services (HHS) is requesting approval by OMB on a reinstatement with change to a previously approved data collection. The Think Cultural Health (TCH) website is an initiative of the HHS OMH's Center for Linguistic and Cultural Competence in Health Care (CLCCHC) and is a repository of resources and tools to promote cultural and linguistic competency in health and health care. The TCH website offers a suite of e-learning programs that afford health and health care professionals the ability to earn continuing education credits through training in cultural and linguistic competency. The revision to this information collection request includes revisions to the online website registration form to streamline and change response options for some elements.

Need and Proposed Use of the Information: The data will be used to ensure that the offerings on the TCH website are relevant, useful, and appropriate to their target audiences. The findings from the data collection will be of interest to HHS OMH in supporting maintenance and revisions of the offerings on the TCH website.

Likely Respondents: Likely respondents are users of the TCH e-learning program(s) and/or e-resource(s). There are no requirements for annual, quarterly or monthly responses. A single respondent completes the registration process to access an e-learning program or e-resource on the website only one time and completes a course-specific evaluation form for each e-learning program course/unit or e-resource per completion. A respondent may be invited to participate in the follow-up survey, a focus group, or a key informant interview and will not be asked to participate in more than one follow-up activity (*i.e.,* survey, focus group, or key informant interview).

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Forms	Respondents	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
Registration Form	Health and Health Care Professionals.	9,460	1	3/60	473
Course/unit Evaluation Form	Health and Health Care Professionals.	9,460	1	5/60	788
Follow-Up Survey	Health and Health Care Professionals.	4,208	1	10/60	701
Focus Groups	Health and Health Care Professionals.	15	1	120/60	30
Key Informant Interviews	Health and Health Care Professionals.	13	1	60/60	13
Total		23,156			2,005

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–10521 Filed 5–16–22; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors of the NIH Clinical Center.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the

CLINICAL CENTER, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors of the NIH Clinical Center.

Date: June 16, 2022.

Time: 10:00 a.m. to 4:45 p.m.

Agenda: To review and evaluate department of Transfusion Medicine, Presentations, Interviews, and other business of the Board.

Place: Clinical Center, 10 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Date: June 17, 2022.

Time: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate department of Transfusion Medicine, Presentations, Interviews, and other business of the Board.

Place: Clinical Center, 10 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ronald Neumann, MD, Deputy Scientific Director, Clinical Center, National Institutes of Health, 10 Center Drive, Bethesda, MD 20892, 301–496–6455, *rneumann@cc.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.

Dated: May 12, 2022.

Patricia B. Hansberger,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10579 Filed 5–16–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Resource-Related Research Projects (R24 Clinical Trial Not Allowed).

Date: June 9, 2022.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E72, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Hailey Weerts, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E72, Rockville, MD 20852, (240) 669–5931, *weertshp@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 10, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10499 Filed 5–16–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7054–N–01; OMB Control No. 2501–0033]

60-Day Notice of Proposed Information Collection: Promise Zones Preference Point Certification Form 50153

AGENCY: Office of Field Policy and Management, HUD.

ACTION: Notice.

SUMMARY: The U.S. Department of Housing and Urban Development (HUD) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 16, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Promise Zones Preference Point Certification Form.

OMB Approval Number: 2501–0033.

Type of Request: Revision.

Form Number: HUD Form 50153.

Description of the need for the information and proposed use: This collection is a revision of the Promise Zone Preference Point Certification Form (HUD Form 50153). The revisions to the form include the addition of a Paperwork Reduction Act burden statement; the addition of drop-down options to two of the information fields in the form, which will result in less typing for the applicant and fewer typos; the addition of HUD's agency name to the top of the form; and the addition of descriptions to interactive fields to ensure 508 complaince. The Promise Zone Certification Form is used by federal agencies to document that an application or proposal should receive preferences for certain competitive federal programs and technical assistance. The Certification Form should be submitted by organizations applying for federal assistance, in the specific manner described in notices, application materials and other

documents, providing instructions on applying for the specific federal program from which the assistance is sought. The Certification Form should be signed by the primary contact of the Lead Organization of a designated Promise Zones community, an individual authorized to make commitments on behalf of and legally bind the Lead Organization. The Certification Form provides evidence to the federal agency administering the program that the entity or entities named in the Form are:

1. Engaged in activities, that in consultation with the Promise Zone lead organization further the purposes of the initiative;

2. Proposing activities that either directly reflect the goals of the Promise Zone or will result in the delivery of services that are consistent with the goals of Promise Zone; and

3. Committed to maintain an on-going relationship with the Promise Zone lead organization for the purposes of coordinating with other Promise Zone activities, reporting on milestones and outcomes, and collaborating with the lead organization and other Promise Zone organizations in securing additional resources and partnerships, as necessary.

HUD designated fourteen communities as urban Promise Zones between 2014 and 2016. Under the Promise Zones initiative, the federal government invests in and partners with high-poverty urban, rural, and tribal communities to create jobs, increase economic activity, improve educational opportunities, leverage private investment, and reduce violent crime. Additional information about the Promise Zones initiative can be found at *https://www.hud.gov/program_offices/field_policy_mgt/fieldpolicymgtpz,* and questions can be addressed to *promisezone@hud.gov.* The federal administrative duties pertaining to these designations shall be managed and executed by HUD for ten years from the designation dates pursuant to sections 2 and 3 of the HUD Act, 42 U.S.C. 3531–32, to assist the President in achieving maximum coordination of the various federal activities which have a major effect upon urban community, suburban, or metropolitan development; to develop and recommend the President policies for fostering orderly growth and development of the Nation's urban areas; and to exercise leadership, at the direction of the President, in coordinating federal activities affecting housing and urban development. To facilitate communication between local and federal partners, HUD proposes that Promise Zone Lead Organizations submit minimal reports and documents to support collaboration and problem solving between local and federal partners. These reports will also assist in communications and stakeholder engagement, both locally and nationally.

Respondents: Fourteen Promise Zone Lead Organizations.

Estimated Number of Respondents:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Certification of Consistency Form HUD—50153	22	6	132	0.1	13.2	$36.13	$476.92
Total							476.92

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

James A.Cunningham,

Acting National Director, Office of Field Policy and Management.

[FR Doc. 2022–10522 Filed 5–16–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7059–N–01]

60 Day Notice of Proposed Information Collection: Comment Request; Notice of Application for Designation as a Single Family Foreclosure Commissioner; OMB No.: 2510–0012

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 18, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Nacheshia Foxx, Reports Liaison Officer, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Associate General Counsel, Legislation and Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10282, Washington, DC 20410–0500, telephone (202 708–1793) (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Notice of Application for Designation As a Single Family Foreclosure

Commissioner (Single Family Mortgage Foreclosure Act of 1994).

OMB Control Number: 2510–0012.

Description of the need for the information and proposed use: Under the Single Family Mortgage Foreclosure Act of 1994, HUD may exercise a nonjudicial Power of Sale of single family HUD-held mortgages and may appoint Foreclsoure Commissioners to do this. HUD needs the Notice and resulting applications for compliance with the Act's requirements that commissioners be qualified. Most respondents will be attorneys, but anyone may apply.

Agency form numbers, if applicable: None.

Members of affected public: Business or Other For-Profit and Individuals or Households.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents	Frequency of response	Hours per response	Total burden hours
30	1	.5	15

Status of the proposed information collection: Reinstatement of collection.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Aaron Santa Anna,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2022–10535 Filed 5–16–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2022–0056; FF09M21200–223–FXMB1231099BPP0; OMB Control Number 1018–0022]

Agency Information Collection Activities; Federal Fish and Wildlife Permit Applications and Reports—Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an existing information collection with revisions.

DATES: Interested persons are invited to submit comments on or before July 18, 2022.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (please reference OMB Control Number ''1018–0022'' in the subject line of your comment):

- *Internet (preferred): https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2022–0056.
- *Email: Info_Coll@fws.gov.*
- *U.S. mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Docket No. FWS–HQ–MB–2022–0056, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*) and its implementing regulations in the Code of Federal Regulations (CFR) at 5 CFR 1320, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of

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

Abstract: The U.S. Fish and Wildlife Service's regional migratory bird permit offices use information that we collect on permit applications to determine the eligibility of applicants for permits requested in accordance with the criteria in various Federal wildlife conservation laws and international treaties, including:

(1) Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*).

(2) Lacey Act (18 U.S.C. 42; 16 U.S.C. 3371 *et seq.*).

(3) Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*).

Service regulations implementing these statutes and treaties are in chapter I, subchapter B of title 50 of the Code of Federal Regulations (CFR), parts 10, 13, 20, and 21. These regulations stipulate general and specific requirements that, when met, allow us to issue permits to authorize activities that are otherwise prohibited.

Generally, with the exception of forms 3–186 and 3–186a, all Service migratory bird permit application and report forms are in the 3–200 and 3–202 series of forms, each tailored to a specific activity based on the requirements for specific types of permits. We collect standard identifier information for all permits. The information that we collect on applications and reports is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity.

In accordance with Federal regulations at 50 CFR 13.12, we collect standard identifier information for all permit applications, such as:

- Applicant's full name and address (street address, city, county, State, and zip code; and mailing address if different from street address); home and work telephone numbers; and a fax number and email address (if available), and
  - —If the applicant resides or is located outside the United States, an address in the United States, and, if the applicant is applying for permission to conduct commercial activities, the name and address of his or her agent that is located in the United States; and
  - —If the applicant is an individual, the date of birth, occupation, and any business, agency, organizational, or institutional affiliation associated with the wildlife or plants to be covered by the license or permit; or
  - —If the applicant is a business, corporation, public agency, or institution, the tax identification number; description of the business type, corporation, agency, or institution; and the name and title of the person responsible for the permit (such as president, principal officer, or director);
- Location where the requested permitted activity is to occur or be conducted;
- Certification containing the following language:
  - —''I hereby certify that I have read and am familiar with the regulations contained in title 50, part 13, of the Code of Federal Regulations and the other applicable parts in subchapter B of chapter I of title 50, Code of Federal Regulations, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to suspension or revocation of this permit and to the criminal penalties of 18 U.S.C. 1001.''
- Requested effective date of permit (except where issuance date is fixed by the part under which the permit is issued);
- Current date;
- Signature of the applicant;
- Such other information as the Director determines relevant to the processing of the application, including but not limited to
  - —Information on the environmental effects of the activity consistent with 40 CFR 1506.5 and Departmental procedures at 516 DM 6, appendix 1.3A; and
  - —Additional information required on applications for other types of permits may be found by referring to Table 1 to Paragraph (b) in 50 CFR 13.12.

Standardization of general information common to the application forms makes the filing of applications easier for the public, as well as expediting our review of applications. The information that we collect on applications and reports is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity.

Proposed Revisions to This Information Collection

With this submission, we are proposing the following revisions to the existing information collection:

Revisions to Section E in Permit Applications

In 2020, the Service implemented a new automated permit application called ePermits. The ePermits system allowed the Service to move towards a streamlined permitting process to reduce the information collection burden on the public, particularly small businesses. Public burden reduction is a priority for the Service; the Assistant Secretary for Fish and Wildlife and Parks; and senior leadership at the Department of the Interior. The intent of the ePermits system is to fully automate the permitting process to improve the customer experience and to reduce time burden on respondents. This system enhances the user experience by allowing users to enter data from any device that has internet access, including personal computers, tablets, and smartphones. It also links the permit applicant to the *Pay.gov* system for payment of the associated permit application fee.

Users of the ePermits system register for and use an account which will then automatically populate the forms they complete with the required identification information. The system eliminates the need for applicants to enter their information multiple times when they apply for separate permits and reducing burden on the applicant. The account registration process will also provide private sector users an opportunity to self-identify as a small business which will enable the Service to more accurately report burden associated with information collection requirements placed on them.

At this time, the ePermits system is unable to fully automate Section E of the permit application process. Section E of each permit application is customized based on the permit type. We anticipate being able to begin digitizing Section E on our forms in calendar year 2022. As a result of challenges with the development of forms within the ePermits system, we do not have a timeline for full automation of Section E. We anticipate beginning the digitization of the report forms contained in this collection by 2023 and believe the digitization of Section E on application forms should be finalized by fiscal year 2024, as funding and resources become available.

We do not anticipate changes to the questions within Section E of each

application form. We also do not plan to make changes to the annual report forms contained in this collection. However, we do anticipate proposing the following changes to certain permit application forms contained in this collection, to include:

• Applicants will be able to select the type of business they manage (for-profit, small business, farm, not-for-profit, or government entity).

• Requesting businesses using ePermits provide email addresses for both the principal officer and the business.

• The signature block will be replaced by with electronic submission of the online applications.

• The ePermits system will also:

—Allow users to apply on behalf of another individual or business as a new way to identify if a consultant is applying for a client.

—Ask for the name of the authorized individual to include on the permit and will allow a business to nickname their applications.

—Ask the applicant to identify the location where the majority of the authorized activities will occur.

—Ask the applicant to identify the physical address of the preparer of application.

—Ask the applicants to identify if they are tax exempt.

—Prompt applicants to provide their preferred contact method.

—Prompt the applicant to describe changes associated with amendments or renewals (with changes) of their permit.

—Prompt applicants to opt in or out to release their information for all applications except migratory bird rehabilitation permits (businesses are automatically opted in).

—Prompt the applicant to provide a parent permit number, which allows the ePermits System to direct the user to the correct version of their permit for renewals or amendments to a permit.

Falconry Program

We propose to modify FWS Form 3–186A to update the field ''USFWS Band Number'' to say ''USFWS/State/Tribe/Territory band number'' and ''USFWS Permit Number'' to ''USFWS/State/Tribe/Territory permit number.''

Migratory Bird Permit Program Service Manual Chapters

With this submission, we will seek OMB approval of the Migratory Bird Permit Program Handbook and associated Service Manual chapters at 724 FW 1 (''Migratory Bird Permits'') and 724 FW 2 (''Migratory Bird Management''), all of which contain information collections. The Handbook provides detailed procedures and other operational information to implement the Service Manual chapters in part 724 and more generally in part 720.

New and existing information collections contained in the Handbook requiring OMB approval include the following:

• Renewal procedures associated with the reauthorization of an existing permit (with or without changes to the conditions);

• Reinstatement procedures associated with the reauthorization of an existing permit (with or without changes to the conditions);

• Discontinuance procedures at the permittee's request to discontinue a valid permit;

• Solicitation of appropriate documentation from entities authorized to act on behalf of State, local, Tribal, and Federal government agencies to verify their exempt status for fee exemption purposes;

• Fee waiver request process as outlined in 50 CFR 13.11(d)(3)(iii);

• Requests for reconsideration of a denial, partial denial, suspension, or revocation of a permit (requiring submission of a written request with the required information in 50 CFR 13.29(b) within 45 days after the permit decision); and

• Appeals of reconsideration request decisions (requiring the permittee submit a written request to the Regional Director (see 50 CFR 13.29(e)) within 45 days of the reconsideration decision).

The public may request copies of any form or document contained in this information collection by sending a request to the Service Information Collection Clearance Officer in **ADDRESSES**, above.

Title of Collection: Federal Fish and Wildlife Permit Applications and Reports—Migratory Birds; 50 CFR 10, 13, 20, and 21.

OMB Control Number: 1018–0022.

Form Numbers: FWS Forms 3–186, 3–186A, 3–200–6 through 3–200–9, 3–200–10a through 3–200–10c, 3–200–10e, 3–200–10f, 3–200–12 through 3–200–13, 3–200–67, 3–200–79, 3–200–81, 3–202–1 through 3–202–10, 3–202–12, and 3–202–17.

Type of Review: Revision of an existing information collection.

Respondents/Affected Public: Individuals; private sector (including zoological parks, museums, universities, scientists, taxidermists, businesses, and utilities); and State, local, Tribal, and Federal governments.

Total Estimated Number of Annual Respondents: 27,980.

Total Estimated Number of Annual Responses: 53,510.

Estimated Completion Time per Response: Varies from 15 minutes to 260 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 394,967.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for applications; annually or on occasion for reports.

Total Estimated Annual Nonhour Burden Cost: $491,050 (primarily associated with application processing fees).

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2022–10538 Filed 5–16–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX22WB12E6R03; OMB Control Number 1028–NEW]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Caribou Video Data Scoring

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before June 16, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Comments may also be sent by mail to the U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159,

Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact Heather Johnson by email at *heatherjohnson@usgs.gov,* or by telephone at (907) 786–7155. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on November 8, 2021 (86 FR 61780). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: We have developed an online application for project collaborators and volunteers to watch video clips that were collected from caribou collars (animal-borne video collars) and enter information about the behaviors and habitats observed in the clips. Information collected from the participants will be analyzed (scored) to describe caribou foraging behavior, how it varies across the summer, and the factors that influence it. This information is being collected as part of a long-term project to understand how climate variability influences caribou forage conditions, behaviors, distributions, and population dynamics. Results of the analyses will be published in peer-reviewed scientific publications that will be available to the public.

Title of Collection: Caribou Video Data Scoring.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: USGS staff, project collaborators, and citizen volunteers.

Total Estimated Number of Annual Respondents: 24.

Total Estimated Number of Annual Responses: 24.

Estimated Completion Time per Response: 1,320 minutes.

Total Estimated Number of Annual Burden Hours: 528 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: Varies.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

John Pearce,

Associate Center Director for Ecosystems, U.S. Geological Survey.

[FR Doc. 2022–10574 Filed 5–16–22; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GC22LK000036U00; OMB Control Number 1028–NEW]

Agency Information Collection Activities; Surveys for Ambient Groundwater Quality Monitoring

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before July 18, 2022.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Devin Gaige by email at *dgaige@usgs.gov,* or by telephone at 518–285–5668.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the

estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use 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 personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: As part of a long-term effort to quantify and report on the ambient groundwater quality in upstate New York, the USGS New York Water Science Center will sample pre-existing wells drilled in bedrock and glacial-drift aquifers. The well selection process will include mailing an informational postcard, with a QR code linked to a survey, to well owners within the study region. For respondents who allow their well to be sampled, construction logs and information about the well set-up, treatment, and usage will be used to determine if the well meets the project requirements for sampling. Samples will be analyzed for a broad suite of properties and constituents, including physicochemical properties and concentrations of dissolved gases, major ions, nutrients, trace elements, pesticides, volatile organic compounds, radionuclides, and indicator bacteria. The resulting dataset will contribute to characterizing the ambient groundwater-quality conditions in New York State and can be used to identify long-term trends. The results will be provided to the well owners and will be available to the public through the USGS National Water Information System database (*https://nwis.waterdata.usgs.gov/ny/nwis/qw*), published reports, and published data releases.

Title of Collection: Surveys for Ambient Groundwater-Quality Monitoring.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Individuals/households.

Total Estimated Number of Annual Respondents: 150 individuals, 30 local governments.

Total Estimated Number of Annual Responses: 180.

Estimated Completion Time per Response: 15 minutes.

Total Estimated Number of Annual Burden Hours: 45 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jennifer Graham,

Center Director, NYWSC.

[FR Doc. 2022–10578 Filed 5–16–22; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14400000.BJ0000 223]

Notice of Filing of Plats of Survey, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the U.S. Forest Service and the BLM, are necessary for the management of these lands.

DATES: Unless there are protests of this action, the plats described in this notice will be filed on June 16, 2022.

ADDRESSES: You may submit written protests to the BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7210.

FOR FURTHER INFORMATION CONTACT: Janet Wilkins, Chief Cadastral Surveyor for Colorado, telephone: (303) 239–3818; email: *j1wilkin@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339 to contact Ms. Wilkins during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plat and field notes of the dependent resurvey of certain mineral surveys in partially surveyed Township 4 South, Range 75 West, Sixth Principal Meridian, Colorado, were accepted on February 9, 2022. The plat, in nine sheets, incorporating the field notes of the dependent resurvey and subdivision of sections in Township 1 North, Range 78 West, Sixth Principal Meridian, Colorado, was accepted on March 18, 2022.

The plat and field notes of the dependent resurvey and survey in Township 6 North, Range 81 West, Sixth Principal Meridian, Colorado, were accepted on March 31, 2022. The plat and field notes of the dependent resurvey and subdivision of section 36 in Township 9 South, Range 78 West, Sixth Principal Meridian, Colorado, were accepted on April 28, 2022.

A person or party who wishes to protest any of the above surveys must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

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

(Authority: 43 U.S.C. Chap. 3)

Janet Wilkins,

Chief Cadastral Surveyor.

[FR Doc. 2022–10536 Filed 5–16–22; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1174–1175 (Second Review)]

Seamless Refined Copper Pipe and Tube From China and Mexico

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty orders on seamless refined copper pipe and tube from China and Mexico would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on November 1, 2021 (86 FR 60287) and determined on February 4, 2022, that it would conduct expedited reviews (87 FR 18817, March 31, 2022).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on May 11, 2022. The views of the Commission are contained in USITC Publication 5323 (May 2022), entitled *Seamless Refined Copper Pipe and Tube from China and Mexico: Investigation Nos. 731–TA–1174–1175 (Second Review).*

By order of the Commission.

Issued: May 11, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–10517 Filed 5–16–22; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–666 and 731–TA–1558 (Final)]

Walk-Behind Snow Throwers From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of walk-behind snow throwers from China, provided for in subheading 8430.20.00 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''), and to be subsidized by the government of China.[2]

Background

The Commission instituted these investigations effective March 30, 2021, following receipt of petitions filed with the Commission and Commerce by MTD Products Inc., Valley City, Ohio. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of walk-behind snow throwers from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on November 5, 2021 (86 FR 69294). The Commission conducted its hearing on March 23, 3022. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on May 11, 2022. The views of the Commission are contained in USITC Publication 5322 (May 2022), entitled *Walk-Behind Snow Throwers from China: Investigation Nos. 701–TA–666 and 731–TA–1558 (Final).*

By order of the Commission.

Issued: May 11, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–10518 Filed 5–16–22; 8:45 am]

BILLING CODE 7020–02–P

[2] 87 FR 17984 (March 29, 2022); 87 FR 17987 (March 29, 2022).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1576 (Final)]

Emulsion Styrene-Butadiene Rubber (ESBR) From Italy; Termination of Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: On May 2, 2022, counsel for petitioner, Lion Elastomers LLC, filed with the Department of Commerce and the Commission a withdrawal of their petition regarding imports of emulsion styrene-butadiene rubber (''ESBR'') from Italy. Accordingly, the antidumping duty investigation concerning ESBR from Italy (Investigation No. 731–TA–1576 (Final)) is terminated.

DATES: May 11, 2022.

FOR FURTHER INFORMATION CONTACT: Charles Cummings (202–708–1666), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. 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 (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930 and pursuant to 19 U.S.C. 1673c(a)(1)(A) and section 207.40(a) of the Commission's rules (19 CFR 207.40(a)). This notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: May 12, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–10546 Filed 5–16–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–379 and 731–TA–788, 792–793 (Fourth Review)]

Stainless Steel Plate From Belgium, South Africa, and Taiwan; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the countervailing and antidumping duty orders on stainless steel plate from Belgium, South Africa, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: March 7, 2022.

FOR FURTHER INFORMATION CONTACT: Andres Andrade (202–205–2078), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On March 7, 2022, the Commission determined that the domestic interested party group response to its notice of institution (86 FR 68278, December 1, 2021) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on June 13, 2022. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before June 21, 2022 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by June 21, 2022. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 12, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–10547 Filed 5–16–22; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the joint response to its notice of institution filed on behalf of ATI Flat Rolled Products Holdings, LLC, North American Stainless, and Outokumpu Stainless USA, LLC, domestic producers of stainless steel plate, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–562 and 731–TA–1329 (Review)]

Ammonium Sulfate From China; Notice of Commission Determination To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to the Tariff Act of 1930 to determine whether revocation of the countervailing and antidumping duty orders on ammonium sulfate from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

DATES: May 9, 2022.

FOR FURTHER INFORMATION CONTACT: Peter Stebbins (202–205–2039), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the

Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On May 9, 2022, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that both the domestic and respondent interested party group responses to its notice of institution (87 FR 5503, February 1, 2022) were adequate. A record of the Commissioners' votes will be available from the Office of the Secretary and at the Commission's website.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 11, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–10516 Filed 5–16–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1244]

Certain Batteries and Products Containing Same; Commission Decision To Review in Part an Initial Determination Granting in Part Complainants' Motion for Summary Determination of a Violation of Section 337; Request for Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part an initial determination (''ID'') (Order No. 15) of the presiding Administrative Law Judge (''ALJ'') granting-in-part the complainants' motion for summary determination of a violation of section 337. The Commission also requests written submissions from the parties on the issue under review and from the parties, interested government agencies, and interested persons on the issues of remedy, bonding, and the public interest, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 5, 2021, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by complainants One World Technologies, Inc. (''One World'') and Techtronic Power Tools Technology Ltd. (''TTT'') (collectively, ''Complainants''). 86 FR 8379–80 (Feb. 5, 2021). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, or 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 Nos. D579,868 (''the '868 patent''); D580,353 (''the '353 patent''); and D593,944 (''the '944 patent''). *Id.* at 8379. The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation (''NOI'') names thirteen (13) respondents: Darui Development Limited (''Darui Development''); Dongguan Xinjitong Electronic Technology Co., Ltd. (''Dongguan Electronic''); Shenzhen Laipaili Electronics Co., Ltd. (''Shenzhen Laipaili''); Shenzhen MingYang Creation Electronic Co., Ltd. (''Shenzhen MingYang''); Shenzhen Rich Hao Yuan Energy Technology Co., Ltd. (''Shenzhen Rich Hao''); Shenzhen Runsensheng Trading Co., Ltd. (''Shenzhen Runsensheng''); Shenzhen Saen Trading Co., Ltd. (''Shenzhen Saen''); Shenzhen Shengruixiang E-Commerce Co., Ltd. (''Shenzhen E-Commerce''); Shenzhen Uni-Sun Electronics Co., Ltd. (''Shenzhen Uni-Sun''); and Shenzhen Vmartego Electronic Commerce Co., Ltd. (''Shenzhen Vmartego'') (collectively, the ''Defaulted Respondents''); Shenzhen Liancheng Weiye Industrial Co., Ltd.; Shenzhen Ollop Technology Co. Ltd.; and Shenzhen Tuo Yu Technology Co., Ltd. *Id.* The Office of Unfair Import Investigations (''OUII'') is participating in this investigation. *Id.*

On May 17, 2021, Commission terminated the investigation based upon the withdrawal of the complaint with respect to respondents Shenzhen Liancheng Weiye Industrial Co., Ltd., Shenzhen Ollop Technology Co. Ltd., and Shenzhen Tuo Yu Technology Co., Ltd., after Complainants were unable to serve these respondents with copies of the Complaint and NOI. Order No. 7 (Apr. 21, 2021), *unreviewed by* Notice (May 17, 2021).

On April 20, 2021, Complainants filed a motion for an order to show cause why the remaining ten (10) named respondents (*i.e.,* the Defaulted Respondents) should not be found in default after failing to respond to the Complaint and NOI, which had been duly served upon them. On May 4, 2021, the motion was granted and an order to show cause was issued. Order No. 8 (May 4, 2021). On June 3, 2021, after they failed to respond to the order to show cause, ALJ issued an ID finding all ten Defaulted Respondents to be in default. Order No. 9 (June 3, 2021), *unreviewed by* Notice (June 23, 2021).

On June 21, 2021, Complainants moved for a summary determination of violation of Section 337 by the Defaulted Respondents and for a recommended determination recommending entry of a general exclusion order and a bond at the rate of 100 percent during the Presidential review period.

On July 16, 2021, OUII filed a response to Complainants' motion supporting a finding of summary determination against only four (4) of the Defaulted Respondents: Darui Development, Dongguan Electronic, Shenzhen Rich Hao, and Shenzhen Saen. Specifically, OUII argued Complainants did not sufficiently connect the importation, sale, or sale after importation of certain of the Accused Products to the Defaulted Respondents. Otherwise, OUII stated it generally supports a finding that Complainants have satisfied the economic prong of the domestic industry requirement under section 337(a)(3)(A) and (B) (19 U.S.C.

1337(a)(3)(A), (B)) and also supports Complainants' remedy requests.

On March 25, 2022, the presiding ALJ issued the subject ID (Order No. 15) granting in part and denying in part Complainants' motion for summary determination. The ID finds that Complainants have shown by reliable, probative, and substantial evidence that a violation of section 337 has occurred with respect to the Asserted Patents as to the following four Defaulted Respondents: Darui Development, Dongguan Electronic, Shenzhen Rich Hao, and Shenzhen Saen. The ID finds that no violation has been established as to any other respondent. The ALJ's recommended determination on remedy and bonding (''RD'') recommends issuance of a general exclusion order with respect to the asserted patents. The RD does not recommend issuance of any cease and desist order.

On April 6, 2022, the IA petitioned for review of certain aspects of the subject ID. No other petitions or responses to petitions were filed.

Having examined the record in this investigation, including the final ID and the petition for review, the Commission has determined to review the ID's findings regarding the economic prong of the domestic industry requirement. In addition, the Commission has determined to review in part the ID with the limited purpose of modifying the ID on review by making certain corrections in the ID.

Specifically, the Commission has determined to modify the subject ID as follows: (1) On page 8 of the ID, to strike the specific identification of the ''remaining six (6) Defaulted Respondents'' from summary finding number thirteen (13); (2) on page 34 of the ID, to strike the sentence that reads ''The model numbers of the Lasica batteries that Defaulted Respondent Shenzhen MingYang offered for sale on the Amazon website are among the DI Products identified in this investigation.''; (3) on page 34 of the ID, to strike the sentence that reads ''A Lasica battery that was purchased from the Defaulted Respondent Shenzhen MingYang Amazon website was received in the United States on July 23, 2018 and is clearly marked as 'Made in China.' (Memo. at 17; SMF No. 69.).''; (4) on page 37 of the ID, to strike the sentence that reads ''It is undisputed that Defaulted Respondent Shenzhen E-Commerce has sold for importation, imported, and/or sold in the United States after importation the accused FUZADEL Battery. (Memo. at 15–16; SMF No. 57; Staff Resp. at 33.).''; (5) on page 38 of the ID, to strike the sentence that reads ''The RYOBI™ battery pack model numbers that are offered for sale as a FUZADEL battery pack that Defaulted Respondent Shenzhen E-Commerce offers for sale on the Amazon website are among the DI Products identified in this investigation.''; (6) on page 39 of the ID, to strike the sentence that reads ''The RYOBI™ model numbers identified on the jolege battery pack that Defaulted Respondent Shenzhen Uni-Sun offers for sale on the Amazon website are among the DI Products identified in this investigation.''; (7) on page 29 of the ID, to modify the last line to read ''Dongguan Electronic'' instead of ''Darui Development;'' (8) on page 30 of the ID, to modify the first line on page 30 of the ID by striking the word ''Dongguan;'' (9) to modify the last line to read ''Shenzhen Rich Hao'' instead of ''Darui Development;'' (10) on page 31 of the ID, to modify the first line to read ''Shenzhen Saen'' instead of ''Dongguan Shenzhen Rich Hao;'' (11) on page 31 of the ID, to modify the last line to read ''Shenzhen Saen'' instead of ''Darui Development;'' (12) on page 36 of the ID, to modify the fifth line from the top by striking the symbols ''4.''; (13) on page 37 of the ID, to modify the sixth line from the bottom to read ''Respondent Shenzhen Runsensheng, either alone or in association with Defaulted Respondent Vmartego, is the owner or seller of the Enegitech Accused Product'' instead of ''Respondent MingYang is the owner or seller of the Lasica Accused Product;'' (14) on page 39 of the ID, to modify the fourth line from the bottom to read ''Respondent Shenzhen Uni-Sun'' instead of ''Respondent Shenzhen E-Commerce''; (15) on page 47 of the ID, to strike the text ''(Memo at 26 (citing SMF No. 102 and Fletcher Decl. at upper end chamfered and the extrusion of this surface to the Foot Platform. . . .' '' on lines eight and nine from the bottom; (16) on page 63 of the ID, to modify the citation on lines 9 and 10 to read ''(Fletcher Decl. at ¶¶ 105–115 ('868 patent); ¶¶ 170–181 ('353 patent); ¶¶ 241–252 ('944 patent))'' instead of ''(Fletcher Decl. at ¶¶ 105–114 ('868 patent); ¶¶ 133–142 ('353 patent); ¶¶ 161–170).)''); and (17) on page 65 of the ID, to insert ''takes place'' after ''engineering'' to read ''engineering takes place in the United States.''

In connection with its review, the Commission requests responses to the following question. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

1. Please discuss what evidence of record supports a finding that complainants' investments under Section 337(a)(3)(A) and (B), 19 U.S.C. 1337(a)(3)(A), (B), are quantitatively and qualitatively significant.

The parties are invited to brief only the discrete issues requested above. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia,* (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have on: (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that

should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issue identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In their initial submissions, Complainants are also requested to identify the remedy sought and Complainants and OUII are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates on which the asserted patents expire, the HTSUS subheadings under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on May 25, 2022. Reply submissions must be filed no later than the close of business on June 1, 2022. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1244'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/secretary/documents/handbookonfilingprocedures.pdf*). Persons with questions regarding filing should contact the Secretary at (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on May 11, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: May 11, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–10523 Filed 5–16–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Quarterly Census of Employment and Wages Business Supplement

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before June 16, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Quarterly Census of Employment and Wages Business Supplement (QBS) is a versatile collection instrument designed to capture information on the U.S. economy quicky and efficiently using the BLS Annual Refiling Survey as the data collection platform. The QBS collection is designed to incorporate new questionnaires as the need arises to allow BLS to collect and publish information quickly so that stakeholders and data users can understand the impact of specific events on the U.S. economy as they occur. The initial QBS survey, the 2021 Business Response Survey, collected information on how establishments were coping with the transition from the height of the coronavirus pandemic into a period of relative economic recovery. It followed the 2020 Business Response Survey (1220–0197), a one-time survey which captured information about changes to business operations, employment and workforce flexibilities, and benefits that occurred as a result of the onset of the pandemic. The BLS is now seeking approval to conduct another survey under the QBS information collection to capture information on telework, hiring and vacancies at establishments. This

second QBS survey will ask questions about the availability of telework at businesses, hiring and current vacancies in an attempted to better understand current labor market conditions at this stage of the coronavirus pandemic. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 3, 2021 (86 FRN 8037).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. DOL seeks authorization for this information collection under OMB Control Number 1220–0198. The current approval is scheduled to expire on July 31, 2024.

Agency: DOL–BLS.

Title of Collection: Quarterly Census of Employment and Wages Business Supplement.

OMB Control Number: 1220–0198.

Affected Public: Businesses or other for-profit institutions, not-for-profit institutions, and farms.

Total Estimated Number of Respondents: 80,000.

Total Estimated Number of Responses: 80,000.

Total Estimated Annual Time Burden: 6,667 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2022–10543 Filed 5–16–22; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 22–036]

Name of Information Collection: NASA Aviation Safety Reporting System (ASRS) and Related Voluntary Safety Reporting Systems

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by July 18, 2022.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, Washington, DC 20546 or email *claire.a.little@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The NASA Ames Research Center, Human Systems Integration Division, manages voluntary safety reporting systems to collect and share safety information including, but not limited to, the NASA Aviation Safety Reporting System (ASRS) and the Confidential Close Call Reporting System (C3RS). Both systems are voluntary reporting systems for the reporting of safety incidents, events, or situations. Respondents include, but are not limited to, any participant involved in safety-critical domains such as aviation or railway operations including commercial and general aviation pilots, drone operators, air traffic controllers, flight attendants, ground crews, maintenance technicians, dispatchers, train engineers, conductors, and other members of the public.

The collected safety data are used by NASA, Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), and other organizations that are engaged in research and the promotion of safety. The data are used to (1) Identify deficiencies and discrepancies so that these can be remedied by appropriate authorities, (2) Support policy formulation and planning for improvements and, (3) Strengthen the foundation of human factors safety research. Respondents are not reimbursed for associated cost to provide the information. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

II. Methods of Collection

NASA collects this information electronically and that is the preferred manner, however information may also be collected via mail.

III. Data

Title: NASA Aviation Safety Reporting System (ASRS) and Related Voluntary Safety Reporting Systems.

OMB Number: 2700–0172.

Type of review: Renewal of a previously approved collection.

Affected Public: Individuals.

Estimated Annual Number of Activities: 100,000.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 100,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 50,000 hours.

Estimated Total Annual Cost: $3,880,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2022–10487 Filed 5–16–22; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. EA–22–038; NRC–2022–0112]

Order Suspending General License Authority To Export Radioactive Material and Deuterium to the Russian Federation

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an Order

suspending the general license authority under NRC regulations to export radioactive material, and deuterium for nuclear end use, to the Russian Federation. Exporters are no longer authorized to use the general license to export radioactive material, or deuterium for nuclear end use, to the Russian Federation and now must apply for a specific license pursuant to NRC regulations.

DATES: This Order takes effect immediately.

ADDRESSES: Please refer to Docket ID NRC–2022–0112 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0112. Address questions about Dockets IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the office listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–287–9241, email: *IP.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated: May 12, 2022.

For the Nuclear Regulatory Commission.

Nader L. Mamish,

Director, Office of International Programs.

Attachment—Order

In the Matter of General License Holders—EA–22–038

Order Suspending General License Authority To Export Radioactive Material and Deuterium to the Russian Federation (Effective Immediately)

The licensees that are subject to this order are authorized by the NRC through the general licenses granted in sections 110.21 through 110.24 of title 10 of the *Code of Federal Regulations* (CFR), pursuant to Sections 54, 64, 82, and 109b of the Atomic Energy Act of 1954, as amended (AEA), to export radioactive material, and deuterium for nuclear end use, to the Russian Federation.

The Executive Branch has determined that exports of radioactive material, and of deuterium for nuclear end use, to the Russian Federation under these 10 CFR part 110 general licenses would be inimical to the common defense and security of the United States. For this reason, the Executive Branch has requested that the NRC suspend the general license authority in 10 CFR 110.21 through 110.24 for any exports of radioactive material and deuterium for nuclear end use to the Russian Federation. It is the view of the Executive Branch that this action is necessary to further the national security interests of the United States and to enhance the United States common defense and security and is consistent with the Atomic Energy Act of 1954, as amended. Accordingly, pursuant to Sections 161b., 161i., 183, and 186 of the AEA, and 10 CFR 110.20(b) and (f) and 10 CFR 110.50(a)(1) and (2), NRC general license authority to export radioactive material, and deuterium for nuclear end use, to the Russian Federation under Sections 54, 64, 82 and 109b of the AEA and 10 CFR 110.21 through 110.24 is suspended, effective immediately. This suspension will remain in effect until further notice. Any person wishing to export radioactive material, or deuterium for nuclear end use, to the Russian Federation must apply for a specific license in accordance with 10 CFR 110.31.

Dated: May 12, 2022.

For the Nuclear Regulatory Commission.

/RA/

Nader L. Mamish, Director,

Office of International Programs.

[FR Doc. 2022–10565 Filed 5–16–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0108]

Monthly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Monthly notice.

SUMMARY: Pursuant to section 189.a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular monthly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person. This monthly notice includes all amendments issued, or proposed to be issued, from April 1, 2022, to April 28, 2022. The last monthly notice was published on April 19, 2022.

DATES: Comments must be filed June 16, 2022. A request for a hearing or petitions for leave to intervene must be filed by July 18, 2022.

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–2022–0108. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Susan Lent, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1365, email: *Susan.Lent@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0108, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0108.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0108, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

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 will post all comment submissions at *https://www.regulations.gov* as well as enter the 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. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown in this notice, the Commission finds that the licensees' analyses provided, consistent with section 50.91 of title 10 of *the Code of Federal Regulations* (10 CFR), are sufficient to support the proposed determinations that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take action on any amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr.* If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions that the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue

of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of NSHC, the Commission will make a final determination on the issue of NSHC. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a petition is submitted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as discussed in this notice, is granted. Detailed guidance on electronic submissions is located in the Guidance for Electronic Submissions to the NRC (ADAMS Accession No. ML13031A056) and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html*.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html*. After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html*. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system timestamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9:00 a.m. and 6:00 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper

filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensees' proposed NSHC determinations. For further details with respect to these license amendment applications, see the applications for amendment, which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT REQUEST(S)

Constellation Energy Generation, LLC; Braidwood Station, Units 1 and 2, Will County, IL; Byron Station, Units 1 and 2, Ogle County, IL; Constellation Energy Generation, LLC; R. E. Ginna Nuclear Power Plant; Wayne County, New York	
Docket No(s)	50–454, 50–455, 50–456, 50–457, 50–244.
Application date	March 24, 2022.
ADAMS Accession No	ML22083A224.
Location in Application of NSHC	Attachment 1, Pages 4 and 5.
Brief Description of Amendment(s)	The proposed amendments would adopt previously NRC-approved Technical Specifications Task Force Traveler 246 (TSTF–246), Revision 0, ''RTS [Reactor Trip System] Instrumentation, 3.3.1 Condition F Completion Time.'' The proposed technical specification (TS) changes the completion time of the Limiting Conditions for Operation 3.3.1, Condition F, for TS 3.3.1, from 2 hours to 24 hours.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Tamra Domeyer Associate General Counsel Constellation Energy Generation, LLC 4300 Winfield Road Warrenville, IL 60565.
NRC Project Manager, Telephone Number	Joel Wiebe, 301–415–6606.

Constellation Energy Generation, LLC; Clinton Power Station, Unit 1; DeWitt County, IL	
Docket No(s)	50–461.
Application date	April 7, 2022.
ADAMS Accession No	ML22097A208.
Location in Application of NSHC	Pages 12—15 of Attachment 1.
Brief Description of Amendment(s)	The proposed amendment would change various parts of the Updated Safety Analysis Report description of the secondary containment design basis to include the Fuel Building Railroad Airlock.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Tamra Domeyer Associate General Counsel Constellation Energy Generation, LLC 4300 Winfield Road Warrenville, IL 60565.
NRC Project Manager, Telephone Number	Joel Wiebe, 301–415–6606.

Duke Energy Carolinas, LLC; Oconee Nuclear Station, Units 1, 2, and 3; Oconee County, SC	
Docket No(s)	50–269, 50–270, 50–287.
Application date	March 31, 2022.
ADAMS Accession No	ML22090A090.
Location in Application of NSHC	Enclosure, pages 5–7.
Brief Description of Amendment(s)	The proposed amendments would revise the technical specifications to address additional mode change limitations applicable to the adoption of Technical Specifications Tasks Force Traveler No. 359, Revision 9, ''Increase Flexibility in Mode Restraints'' (ADAMS Accession No. ML031190607).
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Tracey Mitchell LeRoy, Deputy General Counsel, Duke Energy Corporation, 550 South Tryon Street, Mail Code DEC45A, Charlotte, NC 28202.
NRC Project Manager, Telephone Number	Shawn Williams, 301–415–1009.

NextEra Energy Point Beach, LLC; Point Beach Nuclear Plant, Units 1 and 2; Manitowoc County, WI	
Docket No(s)	50–266, 50–301.
Application date	March 25, 2022.
ADAMS Accession No	ML22084A062.

LICENSE AMENDMENT REQUEST(S)—Continued

Location in Application of NSHC	Page 1 of the Enclosure which sites **Federal Register** notice on October 31, 2000 (65 FR 65023).
Brief Description of Amendment(s)	The license amendment requests adoption of Technical Specification Task Force (TSTF) Traveler TSTF–366 ''Elimination of Requirements for a Post-Accident Sampling System (PASS).''.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Steven Hamrick, Senior Attorney 801 Pennsylvania Ave. NW, Suite 220 Washington, D.C. 20004.
NRC Project Manager, Telephone Number	Robert Kuntz, 301–415–3733.

Northern States Power Company; Monticello Nuclear Generating Plant; Wright County, MN

Docket No(s)	50–263.
Application date	March 18, 2022.
ADAMS Accession No	ML22077A034.
Location in Application of NSHC	Pages 8–10 of Enclosure.
Brief Description of Amendment(s)	The proposed amendment would modify the frequency of technical specification surveillance requirement 3.6.1.8.2 for drywell spray nozzles to an event-based frequency, specifically, change the frequency from ''10 years'' to ''Following maintenance that could result in nozzle blockage.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Peter M. Glass, Assistant General Counsel, Xcel Energy, 414 Nicollet Mall—401–8, Minneapolis, MN 55401.
NRC Project Manager, Telephone Number	Robert Kuntz, 301–415–3733.

Pacific Gas and Electric Company; Diablo Canyon Power Plant, Units 1 and 2; San Luis Obispo County, CA

Docket No(s)	50–275, 50–323.
Application date	March 10, 2022.
ADAMS Accession No	ML22069B122.
Location in Application of NSHC	Pages 3–5 of the Enclosure.
Brief Description of Amendment(s)	The amendments would revise the ''Steam Generator (SG) Tube Integrity,'' ''Steam Generator (SG) Tube Inspection Program,'' and ''Steam Generator Tube Inspection Report'' technical specifications based on Technical Specifications Task Force (TSTF) Traveler TSTF–577, Revision 1, ''Revised Frequencies for Steam Generator Tube Inspections'' (ADAMS Accession No. ML21060B434).
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jennifer Post, Esq., Pacific Gas and Electric Co., 77 Beale Street, Room 3065, Mail Code B30A, San Francisco, CA 94105.
NRC Project Manager, Telephone Number	Samson Lee, 301–415–3168.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated in the safety evaluation for each amendment.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to each action, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession numbers for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT ISSUANCE(S)

DTE Electric Company; Fermi, Unit 2; Monroe County, MI

Docket No(s)	50–341.
Amendment Date	April 7, 2022.
ADAMS Accession No	ML21335A280.
Amendment No(s)	222.

LICENSE AMENDMENT ISSUANCE(S)—Continued

Brief Description of Amendment(s)	The amendment removes obsolete information, makes minor corrections, and makes miscellaneous editorial changes to the Fermi 2 technical specifications.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Entergy Louisiana, LLC, and Entergy Operations, Inc.; River Bend Station, Unit 1; West Feliciana Parish, LA; Entergy Operations, Inc., System Energy Resources, Inc., Cooperative Energy, A Mississippi Electric Cooperative, and Entergy Mississippi, LLC; Grand Gulf Nuclear Station, Unit 1; Claiborne County, MS; Entergy Operations, Inc.; Arkansas Nuclear One, Units 1 and 2; Pope County, AR; Entergy Operations, Inc.; Waterford Steam Electric Station, Unit 3; St. Charles Parish, LA

Docket No(s)	50–313, 50–368, 50–416, 50–458, 50–382.
Amendment Date	April 28, 2022.
ADAMS Accession No	ML22083A124.
Amendment No(s)	275 (ANO–1), 329 (ANO–2), 230 (Grand Gulf), 209 (River Bend), and 263 (Waterford 3).
Brief Description of Amendment(s)	The amendments revised technical specifications (TSs) to adopt Technical Specifications Task Force (TSTF) Traveler TSTF–541, Revision 2, ''Add Exceptions to Surveillance Requirements for Valves and Dampers Locked in the Actuated Position.'' The amendments modified certain TS surveillance requirements (SRs) by adding exceptions to consider the SR met when automatic valves or dampers are locked, sealed, or otherwise secured in the actuated position, in order to consider the SR met. Securing the automatic valve or damper in the actuated position may affect the operability of the system or any supported systems. The associated limiting condition for operation is met if the subject structure, system, or component remains operable (*i.e.,* capable of performing its specified safety function).
Public Comments Received as to Proposed NSHC (Yes/No).	No.

La Crosse Solutions, LLC; La Crosse Boiling Water Reactor; Vernon County, WI

Docket No(s)	50–409, 72–046.
Amendment Date	April 20, 2022.
ADAMS Accession No	ML22068A210.
Amendment No(s)	77.
Brief Description of Amendment(s)	The amendment revises the Dairyland Power Cooperative (DPC) license for the La Crosse Independent Spent Fuel Storage Installation (ISFSI) to approve Revision 40 to the ISFSI Emergency Plan. The amendment will not be effective until the remainder of the Part 50 operating license is terminated and the license for the remaining ISFSI structures is transferred from LaCrosse Solutions, LLC to DPC.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Northern States Power Company—Minnesota; Prairie Island Nuclear Generating Plant, Units 1 and 2; Goodhue County, MN

Docket No(s)	50–282, 50–306.
Amendment Date	April 1, 2022.
ADAMS Accession No	ML22061A206.
Amendment No(s)	Unit 1—238, Unit—226.
Brief Description of Amendment(s)	The amendments modify the technical specifications to adopt Technical Specifications Task Force (TSTF) Traveler TSTF–471, Revision 1, ''Eliminate use of term CORE ALTERATIONS in ACTIONS and Notes,'' TSTF–571–T, ''Revise Actions for Inoperable Source Range Neutron Flux Monitor,'' and makes an administrative change to reformat numbering of TSs Section 5.0 and remove unused pages.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

PSEG Nuclear LLC; Salem Nuclear Generating Station, Unit Nos. 1 and 2; Salem County, NJ

Docket No(s)	50–272, 50–311.
Amendment Date	April 4, 2022.
ADAMS Accession No	ML22061A030.
Amendment No(s)	343 (Unit 1), 324 (Unit 2).
Brief Description of Amendment(s)	The amendments revised the Salem Nuclear Generating Station, Unit No. 2, Technical Specification (TS) Table 4.3–2 Functional Unit 8.f, ''Auxiliary Feedwater—Trip of Main Feedwater Pumps,'' Channel Functional Test surveillance frequency and the mode in which Salem, Unit No.1, TS Table 4.3–2 Functional Unit 8.f, ''Auxiliary Feedwater—Trip of Main Feedwater Pumps'' is required; and removed Salem, Unit No. 2, Surveillance Requirement 4.7.1.3.4 to verify the service water spool piece is onsite.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Southern Nuclear Operating Company, Inc.; Joseph M. Farley Nuclear Plant, Units 1 and 2; Houston County, AL; Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Burke County, GA

Docket No(s)	50–348, 50–364, 50–424, 50–425.
Amendment Date	April 27, 2022.
ADAMS Accession No	ML22069A004.

LICENSE AMENDMENT ISSUANCE(S)—Continued

Amendment No(s)	242, 239, 214, and 197.
Brief Description of Amendment(s)	The amendments revised technical specifications to adopt Technical Specification Task Force (TSTF)–269–A, Revision 2, ''Allow Administrative Means of Position Verification for Locked or Sealed Valves,'' as described in the safety evaluation.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Union Electric Company; Callaway Plant, Unit No. 1; Callaway County, MO	
Docket No(s)	50–483.
Amendment Date	April 7, 2022.
ADAMS Accession No	ML22053A283.
Amendment No(s)	227.
Brief Description of Amendment(s)	The amendment modified technical specification (TS) requirements in Callaway Plant, Unit No. 1, TS Sections 1.3 and 3.0 regarding limiting condition for operation and surveillance requirement usage. These changes are consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–529, ''Clarify Use and Application Rules.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Virginia Electric and Power Company, Dominion Nuclear Company; North Anna Power Station, Unit Nos. 1 and 2; Louisa County, VA	
Docket No(s)	50–338, 50–339.
Amendment Date	March 22, 2022.
ADAMS Accession No	ML22068A071.
Amendment No(s)	292 (Unit 1) and 275 (Unit 2).
Brief Description of Amendment(s)	The amendments revised Technical Specification (TS) 5.6.7, ''Steam Generator (SG) Program,'' and TS 5.5.8, ''Steam Generator Tube Inspection Report,'' in accordance with Technical Specification Task Force (TSTF) Traveler TSTF–577, Revision 1, ''Revised Frequencies for Steam Generator Tube Inspections.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Dated: May 3, 2022.

For the Nuclear Regulatory Commission.

Caroline L. Carusone,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–09846 Filed 5–16–22; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collections for OMB Review; Comment Request; Multiemployer Plan Regulations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval of information collections.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of collections of information in PBGC's regulations on multiemployer plans. This notice informs the public of PBGC's request and solicits public comment on the collections of information.

DATES: Comments must be submitted by June 16, 2022.

ADDRESSES: Written comments for the proposed information collections should be sent within 30 days of publication of this notice to *www.reginfo.gov/PRAMain.* Find these particular collections of information by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. A copy of the request will be posted on PBGC's website at *https://www.pbgc.gov/prac/laws-and-regulation/federal-register-notices-open-for-comment.* It may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street NW, Washington, DC 20005–4026; or, calling 202–229–4040 during normal business hours. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT: Karen Levin (*levin.karen@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, 202–229–3559. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: OMB has approved and issued control numbers for three collections of information in PBGC's regulations relating to multiemployer plans under the Employee Retirement Income Security Act of 1974 (ERISA). These collections of information are described below. OMB approvals for these collections of information expire June 30, 2022. On March 8, 2022, PBGC published (at 87 FR 13020) a notice of its intent to request that OMB extend approval of these collections of information. No comments were received. PBGC is requesting that OMB extend its approval of these collections of information for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Termination of Multiemployer Plans (29 CFR Part 4041A) (OMB Control Number 1212–0020) (Expires June 30, 2022)

Section 4041A(f)(2) of ERISA authorizes PBGC to prescribe reporting requirements and other rules and standards for administering terminated multiemployer plans. Section 4041A(c) and (f)(1) of ERISA prohibit the payment by a mass-withdrawal-terminated plan of lump sums greater than $1,750 or of nonvested plan benefits unless authorized by PBGC.

The regulation requires the plan sponsor of a terminated plan to file a

notice of termination with PBGC. The notice of termination must contain the information and certification specified in the instructions for the notice of termination on *http://www.pbgc.gov.* The regulation also requires the plan sponsor of a mass-withdrawal-terminated plan that is closing out to give notices to participants regarding the election of alternative forms of benefit distribution and, if the plan is not closing out, to obtain PBGC approval to pay lump sums greater than $1,750 or to pay nonvested plan benefits.

PBGC uses the information in a notice of termination to assess the likelihood that PBGC financial assistance will be needed. Plan participants and beneficiaries use the information on alternative forms of benefit to make personal financial decisions. PBGC uses the information in an application for approval to pay lump sums greater than $1,750 or to pay nonvested plan benefits to determine whether such payments should be permitted.

The regulation also requires plans terminated by mass withdrawal, plans terminated by plan amendment that are expected to become insolvent, and insolvent plans under part 4245 receiving financial assistance from PBGC (whether terminated or not terminated) to file with PBGC withdrawal liability information and actuarial valuations or, for smaller plans receiving financial assistance where the present value of the plan's nonforfeitable benefits is $50 million or less, alternative information. PBGC uses the withdrawal liability and actuarial valuation information to estimate PBGC's multiemployer liabilities for purposes of its financial statements and to provide financial assistance to plans that become insolvent.

PBGC estimates that each year, plan sponsors submit notices of termination for five plans, distribute election notices to participants in one of those plans and submit requests to pay benefits or benefit forms not otherwise permitted for one of those plans. The estimated annual burden of this part of this collection of information is 25 hours and $25,000.

Furthermore, PBGC estimates that each year, plan sponsors file actuarial valuations electronically for 100 plans that are terminated or insolvent, and that only 1 smaller plan will file alternative information. The estimated annual burden of this part of the collection of information is 26 hours and $10,400.

PBGC estimates that each year plan sponsors file withdrawal liability payment information from approximately 10 plans. The estimated annual burden of this part of the collection of information is 10 hours and $4,000.

The estimated total hour burden is 61 hours (25 + 26 + 10). The estimated annual burden of the collection of information is estimated to be $39,400 ($25,000 + $4,000 + $10,400).

2. Notice of Insolvency (29 CFR Part 4245) (OMB Control Number 1212–0033) (Expires June 30, 2022)

Section 4245(e) of ERISA requires two types of notice: A ''notice of insolvency,'' stating a plan sponsor's determination that the plan is or may become insolvent, and a ''notice of insolvency benefit level,'' stating the level of benefits that will be paid during an insolvency year. The recipients of these notices are PBGC, contributing employers, employee organizations representing participants, and participants and beneficiaries.

The regulation establishes the procedure for complying with these notice requirements. It allows a plan sponsor to combine the notice of insolvency and notice of insolvency benefit level. In addition, the regulation only requires a plan sponsor to provide an updated notice to participants and beneficiaries if there is a change in the amount of benefits paid to participants and beneficiaries. PBGC uses the information submitted to estimate cash needs for financial assistance to troubled plans. The collective bargaining parties use the information to decide whether additional plan contributions will be made to avoid the insolvency and consequent benefit suspensions. Plan participants and beneficiaries use the information in personal financial decisions.

PBGC estimates that at most one plan sponsor of an ongoing plan gives notices each year under section 4245. The estimated annual burden of the collection of information is 16 hours and $10,000.

3. Duties of Plan Sponsor Following Mass Withdrawal (29 CFR Part 4281) (OMB Control Number 1212–0032) (Expires June 30, 2022)

Section 4281 of ERISA provides rules for plans that have terminated by mass withdrawal. Under section 4281, if nonforfeitable benefits exceed plan assets, the plan sponsor must amend the plan to reduce benefits. If the plan nevertheless becomes insolvent, the plan sponsor must suspend certain benefits that cannot be paid. If available resources are inadequate to pay guaranteed benefits, the plan sponsor must request financial assistance from PBGC.

The regulation requires a plan sponsor to give notices of benefit reduction, notices of insolvency, and notices of insolvency benefit level to PBGC and to participants and beneficiaries and, if necessary, to apply to PBGC for financial assistance. A plan sponsor can combine the notice of insolvency and the notice of insolvency benefit level.

PBGC uses the information it receives to make determinations required by ERISA, to identify and estimate the cash needed for financial assistance to terminated plans, and to verify the appropriateness of financial assistance payments. Plan participants and beneficiaries use the information to make personal financial decisions.

PBGC estimates that plan sponsors of terminated plans each year will file with PBGC 1 notice of benefit reduction, 7 notices of insolvency, 3 combined notices of insolvency and insolvency benefit level, and 5 notices of insolvency benefit level. PBGC also estimates that plan sponsors each year will file initial requests for financial assistance for 10 plans and will submit 425 non-initial applications for financial assistance. The estimated annual burden of the collection of information is 241 hours and $420,400.

Stephanie Cibinic,

Deputy Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2022–10580 Filed 5–16–22; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–58 and CP2022–63; MC2022–59 and CP2022–64]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 19, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER**

INFORMATION CONTACT section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2022–58 and CP2022–63; *Filing Title:* USPS Request to Add Priority Mail Contract 741 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 11, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* May 19, 2022.

2. *Docket No(s).:* MC2022–59 and CP2022–64; *Filing Title:* USPS Request to Add Priority Mail Contract 742 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 11, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* May 19, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–10572 Filed 5–16–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–774, OMB Control No. 3235–0726]

Submission for OMB Review; Comment Request; Extension: Rules 300–304 of Regulation Crowdfunding (Intermediaries)

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rules 300–304 of Regulation Crowdfunding.[1]

Rules 300–304 of Regulation Crowdfunding enumerate the requirements with which intermediaries must comply to participate in the offer and sale of securities in reliance on Section 4(a)(6) of the Securities Act of 1933 (''Section 4(a)(6)''). Rule 300 requires an intermediary to be registered with the Commission as a broker or as a funding portal and be a member of a registered national securities association.[2]

Rule 301 requires intermediaries to have a reasonable basis for believing that an issuer seeking to offer and sell securities in reliance on Section 4(a)(6) through the intermediary's platform complies with the requirements in Section 4A(b) of the Securities Act and the related requirements in Regulation Crowdfunding. Rule 302 provides that no intermediary or associated person of an intermediary may accept an investment commitment in a transaction involving the offer or sale of securities made in reliance on Section 4(a)(6) until the investor has opened an account with the intermediary and the intermediary has obtained from the investor consent to electronic delivery of materials. Rule 303 requires an intermediary to make publicly available on its platform the information that an issuer of crowdfunding securities is required to provide to potential investors, in a manner that reasonably permits a person accessing the platform to save, download, or otherwise store the information, for a minimum of 21 days before any securities are sold in the offering, during which time the intermediary may accept investment commitments. Rule 303 also requires intermediaries to comply with the requirements related to the maintenance and transmission of funds. An intermediary that is a registered broker is required to comply with the requirements of Rule 15c2–4 of the Securities Exchange Act of 1934 (''Exchange Act'') (Transmission or Maintenance of Payments Received in Connection with Underwritings).[3] An intermediary that is a registered funding portal must direct investors to transmit the money or other consideration directly to a qualified third party that has agreed in writing to hold the funds for the benefit of, and to promptly transmit or return the funds to, the persons entitled thereto in accordance with Regulation Crowdfunding.

The rules also require intermediaries to implement and maintain systems to comply with the information disclosure, communication channels, and investor notification requirements. These requirements include providing disclosure about compensation at account opening (Rule 302), obtaining investor acknowledgements to confirm

[1] *See Regulation Crowdfunding,* Exchange Act Release No. 76324 (Oct. 30, 2015), 80 FR 71387 (Nov. 16, 2015) (Final Rule) (''Regulation Crowdfunding'').

[2] Currently, FINRA is the only registered national securities association.

[3] 17 CFR 240.15c2–4.

investor qualifications and review of educational materials (Rule 303), providing investor questionnaires (Rule 303), providing communication channels with third parties and among investors (Rule 303), notifying investors of investment commitments (Rule 303), confirming completed transactions (Rule 303) and confirming or reconfirming offering cancellations (Rule 304).

The Commission staff estimates that there will be 136 intermediaries engaged in crowdfunding activity and therefore subject to Rules 300–304. The Commission staff estimates the annualized industry burden will be 38,317 hours to comply with Rules 300–304. The Commission staff further estimates that the costs associated with complying with Rules 300–304 will be a total amount of $18,750,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: >*www.reginfo.gov*<. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by June 16, 2022 to (i) >*MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov*< and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: May 11, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10503 Filed 5–16–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34582; File No. 812–15079]

WCB Investment Pool LLC; Notice of Application

May 12, 2022.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from all provisions of the Act and all rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicant requests an order for an exemption from all provisions of the Act and all rules and regulations thereunder, as Applicant is a private investment company wholly owned and controlled by a single family.

APPLICANT: WCB Investment Pool LLC (''Applicant'').

FILING DATES: The application was filed on December 2, 2019 and amended on June 11, 2021 and May 10, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving Applicant with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on June 6, 2022, and should be accompanied by proof of service on applicant, 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.* Applicant: c/o Steven Boehm, by email to *stevenboehm@eversheds-sutherland.com.*

FOR FURTHER INFORMATION CONTACT: Joseph Toner, Senior Counsel, at (202) 551–7595, or Marc Mehrespand, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to the Applicant's most recently filed application, dated May 10, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for the Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10588 Filed 5–16–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94888; File No. SR–PEARL–2022–18]

Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Filing of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase Certain Connectivity Fees and To Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

May 11, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2022, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

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 Pearl Options Fee Schedule (the ''Fee Schedule'') to amend certain connectivity fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV [sic] 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 increase the fees for a 10 gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection and the fees for the Exchange's MIAX Express Network Full Service (''MEO'') [3] Ports. The Exchange last increased the fees for its 10Gb ULL fiber connections in a filing that became effective beginning January 1, 2021 (subsequently withdrawn and refiled one time).[4] The Exchange increased the fee for 10Gb ULL fiber connections from $9,300 to $10,000 per month. Also, in connection with that fee change, the Exchange's affiliate, Miami International Securities Exchange, LLC (''MIAX''), increased its 10Gb ULL connectivity fee to $10,000 per month.[5] The Exchange and MIAX shared a combined cost analysis in those filings. In those filings, the Exchange and MIAX allocated a combined total of $17.9 million in expenses to providing 10Gb ULL fiber connectivity.

Since the time of that filing, the Exchange and MIAX have experienced an increase in expenses, particularly regarding internal expenses. For example, from January 2021 to March 2022 expenses related to employee compensation for 10Gb ULL connectivity increased from a combined $6,892,689 to $7,063,801 and occupancy increased from $560,408 to $701,437. In addition, from January 2021 to March 2022, the Exchange's third party related expense increased as well. In January 2021, the Exchange and MIAX allocated a combined $4,079,910 of their shared third party expenses to providing the 10Gb ULL fiber connectivity. As described more fully below, the Exchange and MIAX are now allocating $4,382,307 of their shared third party expense to 10Gb ULL fiber connectivity, which represents only a portion of the total combined third party expense of $7,575,888.[6]

As discussed more fully below, the Exchange and MIAX recently calculated the combined annual aggregate costs for providing 10Gb ULL connectivity, plus the cost of providing Full Service MEO Ports (on MIAX Pearl Options only) to be $22,589,805, or $1,882,484 per month. The Exchange now proposes to amend the Fee Schedule to amend the fees for 10Gb ULL connectivity and Full Service MEO Ports (Bulk and Single) in order to recoup these ongoing costs and as a result of the increase in expenses described above.[7]

First, the Exchange proposes to amend the Fee Schedule to increase the fees for Members [8] and non-Members to access the Exchange's System Networks [9] via a 10Gb ULL fiber connection. Specifically, the Exchange proposes to amend Sections 5(a)–(b) of the Fee Schedule to increase the 10Gb ULL connectivity fee for Members and non-Members from $10,000 per month to $12,000 per month (''10Gb ULL Fee''). Prior to the proposed fee change, the Exchange assessed Members and non-Members a flat monthly fee of $10,000 per 10Gb ULL connection for access to the Exchange's primary and secondary facilities.[10]

The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the primary and secondary facilities in any month the Member or non-Member is credentialed to use any of the Exchange APIs or market data feeds in the production environment. The Exchange proposes to pro-rate the fees when a Member or non-Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the Member or non-Member has been credentialed to utilize any of the Exchange APIs or market data feeds in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate. The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the disaster recovery facility in each month during which the Member or non-Member has established connectivity with the disaster recovery facility.

The Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of both the Exchange and its affiliate, MIAX, via a single, shared connection. Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and MIAX via a single, shared connection will continue to only be assessed one monthly connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

Second, the Exchange proposes to amend Section (5)(d) of the Fee Schedule to amend the fees for Full Service MEO Ports. The Exchange currently offers different types of MEO Ports depending on the services required by the Member, including a Full Service MEO Port-Bulk,[11] a Full Service MEO Port-Single,[12] and a

[3] The term ''MEO Interface'' or ''MEO'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[4] *See* Securities Exchange Act Release No. 90981 (January 25, 2021), 86 FR 7582 (January 29, 2021) (SR–PEARL–2021–01).

[5] *See* Securities Exchange Act Release No. 90980 (January 25, 2021), 86 FR 7602 (January 29, 2021) (SR–MIAX–2021–02).

[6] The Exchange notes that it last filed to amend the fees for Full Service MEO Ports (Bulk and Single) in 2018, prior to which the Exchange provided Full Service MEO Ports (Bulk and Single) free of charge since the Exchange launched operations in 2017 and had absorbed all costs since that time. *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07). This prior filing did not include a cost analysis.

[7] The Exchange notes that MIAX will make a similar filing to increase its 10Gb ULL connectivity fees (plus the fees for MIAX's Limited Service MEI Ports).

[8] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[9] The Exchange's System Networks consist of the Exchange's extranet, internal network, and external network.

[10] The Exchange notes that it employed a tiered pricing structure for 10Gb ULL connectivity from August 2021 through March 2022. *See infra* notes 25–27.

[11] ''Full Service MEO Port—Bulk'' means an MEO port that supports all MEO input message types and binary bulk order entry. *See* the Definitions Section of the Fee Schedule.

[12] ''Full Service MEO Port—Single'' means an MEO port that supports all MEO input message types and binary order entry on a single order-by-order basis, but not bulk orders. *See* the Definitions Section of the Fee Schedule.

Limited Service MEO Port.[13] For one monthly price, a Member may be allocated two (2) Full-Service MEO Ports of either type per matching engine [14] and may request Limited Service MEO Ports for which MIAX Pearl will assess Members Limited Service MEO Port fees per matching engine based on a sliding scale for the number of Limited Service MEO Ports utilized each month. The two (2) Full-Service MEO Ports that may be allocated per matching engine to a Member may consist of: (a) Two (2) Full Service MEO Ports—Bulk; (b) two (2) Full Service MEO Ports—Single; or (c) one (1) Full Service MEO Port—Bulk and one (1) Full Service MEO Port—Single.

Unlike other options exchanges that provide similar port functionality and charge fees on a per port basis,[15] the Exchange offers Full Service MEO Ports as a package and provides Members with the option to receive up to two Full Service MEO Ports (described above) per matching engine to which that Member connects. The Exchange currently has twelve (12) matching engines, which means Members may receive up to twenty-four (24) Full Service MEO Ports for a single monthly fee, that can vary based on certain volume percentages, as described below. For illustrative purposes and as described in more detail below, the Exchange currently assesses a fee of $5,000 per month for Members that reach the highest Full Service MEO Port—Bulk Tier, regardless of the number of Full Service MEO Ports allocated to the Member. For example, assuming a Member connects to all twelve (12) matching engines during a month, with two Full Service MEO Ports per matching engine, this results in a cost of $208.33 per Full Service MEO Port ($5,000 divided by 24) for the month. This fee had been unchanged since the Exchange adopted Full Service MEO Port fees in 2018.[16] The Exchange proposes to increase Full Service MEO Port fees as further described below, with the highest monthly fee of $10,000 for the Full Service MEO Port—Bulk. Members will continue to receive two (2) Full Service MEO Ports to each matching engine to which they connect for the single flat monthly fee. Assuming a Member connects to all twelve (12) matching engines during the month, with two Full Service MEO Ports per matching engine, this would result in a cost of $416.67 per Full Service MEO Port ($10,000 divided by 24).

The Exchange assesses Members Full Service MEO Port Fees, either for a Full Service MEO Port—Bulk and/or for a Full Service MEO Port—Single, based upon the monthly total volume executed by a Member and its Affiliates [17] on the Exchange across all origin types, not including Excluded Contracts,[18] as compared to the Total Consolidated Volume (''TCV''),[19] in all MIAX Pearl-listed options. The Exchange adopted a tier-based fee structure based upon the volume-based tiers detailed in the definition of ''Non-Transaction Fees Volume-Based Tiers'' described in the Definitions section of the Fee Schedule. The Exchange assesses these and other monthly Port fees to Members in each month the market participant is credentialed to use a Port in the production environment.

Current Full Service MEO Port—Bulk Fees. The Exchange currently assesses Members monthly Full Service MEO Port—Bulk fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $3,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $4,500; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $5,000.

Proposed Full Service MEO Port—Bulk Fees. The Exchange proposes to assess Members monthly Full Service MEO Port—Bulk fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-

[13] ''Limited Service MEO Port'' means an MEO port that supports all MEO input message types, but does not support bulk order entry and only supports limited order types, as specified by the Exchange via Regulatory Circular. *See* the Definitions Section of the Fee Schedule.

[14] A ''Matching Engine'' is a part of the MIAX Pearl electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol. 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.

[15] *See* NYSE American Options Fee Schedule, Section V.A., Port Fees (each port charged on a per matching engine basis, with NYSE American having 17 match engines). *See* NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020) (providing a link to an Excel file detailing the number of matching engines per options exchange); NYSE Arca Options Fee Schedule, Port Fees (each port charged on a per matching engine basis, NYSE Arca having 19 match engines); *and* NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020) (providing a link to an Excel file detailing the number of matching engines per options exchange). *See* NASDAQ Fee Schedule, Nasdaq Options 7 Pricing Schedule, Section 3, Nasdaq Options Market—Ports and Other Services (each port charged on a per matching engine basis, with Nasdaq having multiple matching engines). *See* Nasdaq Specialized Quote Interface (SQF) Specification, Version 6.5b (updated February 13, 2020), Section 2, Architecture, *available at https://www.nasdaq.com/docs/2020/02/18/Specialized-Quote-Interface-SQI-6.5b.pdf* (the ''NASDAQ SQF Interface Specification''). The NASDAQ SQF Interface Specification also provides that NASDAQ's affiliates, Nasdaq PHLX LLC (''Nasdaq Phlx'') and Nasdaq BX, Inc. (''Nasdaq BX''), have trading infrastructures that may consist of multiple matching engines with each matching engine trading only a range of option underlyings. Further, the NASDAQ SQF Interface Specification provides that the SQF infrastructure is such that the firms connect to one or more servers residing directly on the matching engine infrastructure. Since there may be multiple matching engines, firms will need to connect to each engine's infrastructure in order to establish the ability to quote the symbols handled by that engine.

[16] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[17] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Pearl Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the following process. A MIAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to *membership@miaxoptions.com* no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. *See* the Definitions Section of the Fee Schedule.

[18] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[19] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* the Definitions Section of the Fee Schedule.

Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $5,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $7,500; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $10,000.

Current Full Service MEO Port—Single Fees. The Exchange currently assesses Members monthly Full Service MEO Port—Single fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $2,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $3,375; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $3,750.

Proposed Full Service MEO Port—Single Fees. The Exchange proposes to assess Members monthly Full Service MEO Port—Single fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $2,500;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $3,500; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $4,500.

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, MEO ports allow for a higher throughput and can handle much higher quote/order rates than FIX ports. Members that are Market Makers [20] 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. Certain Members 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 the System has to assess. Those Members may account for the vast majority of network capacity utilization and volume executed on the Exchange, as discussed throughout.

The Exchange proposes to increase its monthly Full Service MEO Port fees since it has not done so since the fees were adopted in 2018,[21] which are designed to recover a portion of the costs associated with directly accessing the Exchange. The Exchange notes that its affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald''), charge fees for their high throughput, low latency MIAX Express Interface (''MEI'') Ports in a similar fashion as the Exchange charges for its MEO Ports—generally, the more active user the Member (*i.e.,* the greater number/greater national ADV of classes assigned to quote on MIAX and MIAX Emerald), the higher the MEI Port fee.[22] This concept is not new or novel.

The Exchange believes that other exchanges' connectivity and port fees are useful examples and provides the following table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar connectivity and port access. As shown by the below table, the Exchange's proposed fees are similar to or less than fees charged for similar access to other options exchanges.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
MIAX Pearl (as proposed) (equity options market share of 4.61% as of April 29, 2022 for the month of April).[23]	10Gb ULL connection	$12,000.
	Full Service MEO Port (Bulk)	Tier 1: $5,000 (or $208.33 per Matching Engine).
		Tier 2: $7,500 (or $312.50 per Matching Engine).
		Tier 3: $10,000 (or $416.66 per Matching Engine).
	Full Service MEO Port (Single)	Tier 1: $2,500 (or $104.16 per Matching Engine).
		Tier 2: $3,500 (or $145.83 per Matching Engine).
		Tier 3: $4,500 (or $187.50 per Matching Engine).
The NASDAQ Stock Market LLC (''NASDAQ'')[24] (equity options market share of 8.47% as of April 29, 2022 for the month of April).[25]	10Gb Ultra fiber connection	$15,000.
	SQF Port	1–5 ports. $1,500.
		6–20 ports. $1,000.
		21 or more ports. $500.
Nasdaq ISE LLC (''ISE'')[26] (equity options market share of 5.48% as of April 29, 2022 for the month of April).[27]	10Gb Ultra fiber connection	$15,000.
	SQF Port	$1,100.
NYSE American LLC (''NYSE American'')[28] (equity options market share of 8.13% as of April 29, 2022 for the month of April).[29]	10Gb LX LCN connection	$22,000.
	Order/Quote Entry Port	Ports 1–40. $450
		Ports 41 and greater. $150.

[20] The term ''Market Maker'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[21] *See supra* note 6.

[22] *See* MIAX Fee Schedule, Section (5)(d)(ii); MIAX Emerald Fee Schedule, Section (5)(d)(ii).

[23] *See* ''The market at a glance,'' *available at https://www.miaxoptions.com/* (last visited April 29, 2022).

[24] *See* NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services *and* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.

[25] *See supra* note 23.

[26] *See* ISE Pricing Schedule, Options 7, Section 7, Connectivity Fees *and* ISE Rules, General 8: Connectivity.

[27] *See supra* note 23.

[28] *See* NYSE American Options Fee Schedule, Section V.A. Port Fees *and* Section V.B. Co-Location Fees.

[29] *See supra* note 23.

[30] *See* GEMX Pricing Schedule, Options 7, Section 6, Connectivity Fees *and* GEMX Rules, General 8: Connectivity.

[31] *See supra* note 23.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
Nasdaq GEMX, LLC (''GEMX'')[30] (equity options market share of 2.36% as of April 29, 2022 for the month of April).[31]	10Gb Ultra connection	$15,000.
	SQF Port	$1,250.

Implementation and Procedural History

The proposed rule change will be effective May 2, 2022. The Exchange initially filed proposals to adopt tiered-pricing structures for the 10Gb ULL connections and amend the fees for Full Service MEO Ports, with the proposed fees being effective beginning August 1, 2021. Between August 2021 and February 2022, the Exchange withdrew and refiled the proposed rule changes, each time to meaningfully attempt to provide additional justification for the proposed fee changes, provide enhanced details regarding the Exchange's cost methodology, and address questions contained in the Commission's suspension orders. The Exchange received six comment letters from three separate commenters on the filings.[32] This revised proposal provided additional details regarding the Exchange's cost methodology, revenue projections, and responded to various questions and requests for information contained in the Commission's suspension orders.[33] On April 1, 2022, the Exchange submitted revised proposals to provide additional clarity regarding the Exchange's cost justification and those proposals were subsequently suspended by the Commission.[34] The Exchange withdrew those revised proposals and submitted this filing on May 2, 2022. This newest revised filing builds upon the additional details regarding the Exchange's cost methodology and revenue projections, as well as the Exchange's responses to various questions and requests for information contained in the Commission's suspension orders.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with Section 6(b) of the Act[35] in general, and furthers the objectives of Section 6(b)(4) of the Act[36] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposed fees further the objectives of Section 6(b)(5) of the Act[37] in that they are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes as set forth in recent Commission and Commission Staff guidance. On March 29, 2019, the Commission issued an Order disapproving a proposed fee change by the BOX Market LLC Options Facility to establish connectivity fees for its BOX Network (the ''BOX Order'').[38] On May 21, 2019, the Commission Staff issued guidance ''to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act.''[39] Based on both the BOX Order and the Guidance, the Exchange believes that the proposed fees are consistent with the Act because they are: (i) Reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; and (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Proposed Fees Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.''[40] The Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.''[41] In the Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supra-competitive profit, specific information, including quantitative information, should be provided to support that

[32] *See* letters from Richard J. McDonald, Susquehanna International Group, LLC (''SIG''), to Vanessa Countryman, Secretary, Commission, dated September 7, 2021, October 1, 2021, October 26, 2021, and March 15, 2022 (''SIG Letters''). *See also* letter from Tyler Gellasch, Executive Director, Healthy Markets Association (''HMA''), to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021 (''HMA Letter''); *and* letter from Ellen Green, Managing Director, Equity and Options Market Structure, Securities Industry and Financial Markets Association (''SIFMA''), to Vanessa Countryman, Secretary, Commission, dated November 26, 2021 (''SIFMA Letter'').

[33] *See* Securities Exchange Act Release Nos. 92644 (August 11, 2021), 86 FR 46055 (August 17, 2021) (SR–PEARL–2021–36); 92798 (August 27, 2021), 86 FR 49360 (September 2, 2021) (SR–PEARL–2021–33); 93162 (September 28, 2021), 86 FR 54739 (October 4, 2021) (SR–PEARL–2021–45); 93556 (November 10, 2021), 86 FR 64235 (November 17, 2021) (SR–PEARL–2021–53); 93639 (November 22, 2021), 86 FR 67758 (November 29, 2021) (SR–PEARL–2021–45); 93774 (December 14, 2021), 86 FR 71952 (December 20, 2021) (SR–PEARL–2021–57); 94088 (January 27, 2022), 87 FR 5901 (February 2, 2022) (SR–PEARL–2021–57); 94258 (February 15, 2022), 87 FR 9659 (February 22, 2022) (SR–PEARL–2022–03).

[34] *See* Securities Exchange Act Release Nos. 94721 (April 14, 2022), 87 FR 23573 (April 20, 2022) (SR–PEARL–2022–11) *and* 94722 (April 14, 2022), 87 FR 23660 (April 20, 2022) (SR–PEARL–2022–12).

[35] 15 U.S.C. 78f(b).

[36] 15 U.S.C. 78f(b)(4).

[37] 15 U.S.C. 78f(b)(5).

[38] *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) (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).

[39] *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'').

[40] *See id.*

[41] *Id.*

argument.'' [42] The Exchange does not assert that the proposed fees are constrained by competitive forces. Rather, the Exchange asserts that the proposed fees are reasonable because they will permit recovery of the Exchange's costs in providing access services to supply 10Gb ULL connectivity and Full Service MEO Ports and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [43] The Commission Staff further states in the Guidance that ''the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.'' [44] The Exchange provides this analysis below.

The proposed fees are based on a cost-plus model. The Exchange believes that it is important to demonstrate that the proposed fees are based on its costs and reasonable business needs and believes the proposed fees will allow the Exchange to begin to offset expenses. However, as discussed more fully below, such fees may also result in the Exchange recouping less than, or more than, all of its costs of providing 10Gb ULL connectivity and Full Service MEO Ports because of the uncertainty of forecasting subscriber decision making with respect to firms' access needs. The Exchange believes that the proposed fees will not result in excessive pricing or supra-competitive profit based on the total expenses the Exchange incurs versus the total revenue the Exchange projects to collect, and therefore meets the standards in the Act as interpreted by the Commission and the Commission Staff in the BOX Order and the Guidance.

The suspension orders sought additional information and comments on various aspects of the prior proposed fee changes. In many respects, the Commission's questions about the prior proposed fee changes raise broader questions around the factors the Commission should consider and the type of data and analysis an exchange should provide in considering whether market data, port fees, or connectivity fees are fair and reasonable under a cost-based methodology. The suspension orders also sought more specific information regarding the allocation of third-party expenses, such as the overall estimated cost for each category of external expenses or at minimum the total applicable third-party expenses and percentage allocation or statements regarding the Exchange's overall estimated costs for the internal expense categories and general shared expenses figure. The Exchange added this additional information below.

In this filing, the Exchange offers a conceptual framework for further considering the Commission's questions that draws on the Exchange's own experience over several years of analyzing its own costs. The elements of that framework are as follows:

First, the Exchange proposes a flat, simple 10Gb ULL Fee that imposes a single monthly fee for Members and non-Members. The Exchange believes this relatively simple, flat fee structure is transparent and easy for users to apply, and also helps show that it meets the objectives of the Act. The Exchange also proposes to amend the fees for Full Service MEO Ports, which tiered-pricing structure has been in place since 2018. Accordingly, the pricing structure for Full Service MEO Ports is already transparent and easy for users to apply, and is a common pricing method used by the other options exchanges when charging for port connectivity.[45]

The Exchange then conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to providing 10Gb ULL connectivity and Full Service MEO Ports. That methodology does not allow for ''double-counting'' of the same costs for different classes of exchange products—for example transaction services, market data, physical connectivity, ''logical'' port connections or regulatory resources. As a result of this review, the Exchange determined that it experienced an increase in costs since January 2021 as set forth above and determined to propose to increase select connectivity fees as described herein to attempt to recoup this increased expense.

The Exchange then sought to narrowly allocate specific costs to 10Gb ULL connectivity and Full Service MEO Ports to which the proposed fees would apply. In this filing, the Exchange provided more detail about how that allocation was determined and included information about tangential cost items that were not included. In determining what portion (or percentage) to allocate to access services, each Exchange department head, in coordination with other Exchange personnel, determined the expenses that support access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports. This included numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders. The analysis also included each department head meeting with the divisions of teams within each department to determine the amount of time and resources allocated by employees within each division towards the access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports. The Exchange reviewed each individual expense to determine if such expense was related to 10Gb ULL connectivity and Full Service MEO Ports. Once the expenses were identified, the Exchange department heads, with the assistance of the Exchange's internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing access services and the System Networks. The sum of all such portions of expenses represents the total cost to the Exchange to provide access services associated with 10Gb ULL connectivity and Full Service MEO Ports. For the avoidance of doubt, no expense amount is allocated twice. Specifically, no expense amount is allocated to more than one expense category within this filing and no expense amount that is allocated as a cost to provide and maintain access to the 10Gb ULL connectivity and Full Service MEO Ports in this filing have been or will be allocated as a cost to provide any other exchange product or service in any other fee filing. In the suspension orders, the Commission questioned whether further explanation of the Exchange's cost analysis was necessary. The Exchange provides further details concerning its cost analysis in response to this question.

The Exchange believes exchanges, like all businesses, should be provided flexibility when developing and applying a methodology to allocate costs and resources they deem necessary to operate their business, including providing market data and access services. The Exchange notes that costs and resource allocations may vary from business to business and, likewise, costs

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *See* MIAX Fee Schedule, Section (5)(d)(ii); MIAX Emerald Fee Schedule, Section (5)(d)(ii); *see also supra* notes 24, 26, 28, and 30.

and resource allocations may differ from exchange to exchange when it comes to providing market data and access services. It is a business decision that must be evaluated by each exchange as to how to allocate internal resources and what costs to incur internally or via third parties that it may deem necessary to support its business and its provision of market data and access services to market participants.

Finally, the Exchange acknowledges that it is difficult to predict how much revenue the Exchange will receive from the proposed fees with precision. The analysis conducted by the Exchange is designed to make a fair and reasonable assessment of costs and resources allocated to support the provision of access services associated with the proposed fees. The Exchange further acknowledges that this assessment can only capture a moment in time and that costs and resource allocations may change. That is why the Exchange historically, and on an ongoing basis, reviews its costs and resource allocations to ensure it appropriately allocates resources to properly provide services to the Exchange's constituents. As part of this proposed rule change, and as described further below, the Exchange is committing to conduct an annual cost review with respect to fees that are cost justified in this proposed rule change beginning one year from the date of this proposal, and annually thereafter. The Exchange expects that it may propose to adjust fees at that time, either to increase fees in the event that revenues fail to reasonably cover costs at the estimated margin set forth below, or to decrease fees in the event that revenue materially exceeds the Exchange's current projections. In the event that the Exchange determines to propose a fee change, updated cost estimates will be included in a rule filing proposing the fee change.

The Exchange believes applying this framework to the proposed fees shows that they are consistent with the requirements of the Act, leaving aside that the proposed fees are relatively similar to fees charged by other exchanges for connectivity and port access.

Exchange Costs and Cost Methodology

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully support access to the Exchange via connectivity and ports. As described below, 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. Both fixed and variable expenses have significant impact on the Exchange's overall costs to provide 10Gb ULL connectivity and Full Service MEO Ports. For example, to accommodate new Members, the Exchange may need to purchase additional hardware to support those Members and provide access through 10Gb ULL connectivity and Full Service MEO Ports.[46] Further, as the total number of Members increases, the Exchange 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 the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the proposed fees are a reasonable attempt to offset those costs associated with providing access to and maintaining its System Networks' infrastructure.

The Exchange estimated its total annual expense to provide 10Gb ULL connectivity and Full Service MEO Ports based on the following general expense categories: (1) External expenses, which include fees paid to third parties for certain products and services; (2) internal expenses relating to the internal costs to provide the services associated with 10Gb ULL connectivity and Full Service MEO Ports; and (3) general shared expenses.[47] The below table details each of these individual external and internal annual costs considered by the Exchange to be directly related to offering 10Gb ULL connectivity and Full Service MEO Ports, and not any other product or service offered by the Exchange. The below table also details the general shared expense allocated to this proposal. Each of these expenses are discussed in more detail further below.

For 2022, the total annual expense for providing the access services associated with providing 10Gb ULL connectivity for MIAX and MIAX Pearl Options combined, and Full Service MEO Ports for MIAX Pearl Options only, is estimated to be $22,589,805, or $1,882,484 per month. The Exchange utilized its estimated 2022 revenue and costs, which utilize the same methodology set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[48]

External expenses

Category	Percentage of total expense amount allocated		
	10Gb ULL connectivity (MIAX)	10Gb ULL connectivity (MIAX pearl options)	Full service MEO ports (MIAX pearl options only)
Data Center Provider	61%	61%	10.8%.
Fiber Connectivity Provider	61%	61%	5.4%.
Security Financial Transaction Infrastructure ("SFTI"), and Other Connectivity and Content Service Providers.	73.6%	73.6%	4.4%.
Hardware and Software Providers	50%	50%	6.4%.
Total of External Expenses	$4,677,491.[49]		

[46] The Exchange is not considering future costs associated with accommodating new 10Gb ULL connectivity and Full Service MEO Ports subscriptions.

[47] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

[48] 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. 87876 (December 31, 2019), 85 FR 757 (January 7, 2020) (SR–PEARL–2019–36). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2022 Form 1 Amendment, which will be filed in 2023. In its suspension orders, the Commission also asked should the Exchange use cost projections or actual costs estimated for 2021 in a filing made in 2022, or make cost projections for 2022. The Exchange utilized expenses from its most recent audited financial statement as those numbers are more reliable than more recent unaudited numbers, which may be subject to change.

Internal expenses

Category	Expense amount allocated		
	10Gb ULL connectivity (MIAX)	10Gb ULL connectivity (MIAX pearl options)	Full service MEO ports (MIAX pearl options only)
Employee Compensation	$4,108,382 (representing 27.5% of total $14,957,861 expense).	$2,955,419 (representing 27.5% of total $10,760,135 expense).	$2,066,488 (representing 19.2% of total $10,760,135 expense).
Depreciation and Amortization	$2,724,062 (representing 66% of total $4,135,294 expense).	$1,460,789 (representing 61.3% of total $2,382,314 expense).	$161,579 (representing 6.8% of total $2,382,314 expense).
Occupancy	$399,859 (representing 52% of total $769,108 expense).	$301,578 (representing 52% of total $580,068 expense).	$62,531 (representing 10.8% of total $580,068 expense).
Total of Internal Expenses	$14,240,687.		
Allocated Shared Expenses	$1,982,793 (representing 49% of total $4,042,629 expense).	$1,351,081 (representing 44% of total $3,060,734 expense).	$337,753 (representing 11% of total $3,060,734 expense).
Total of Allocated Shared Expenses	$3,671,627.		
Total External + Internal + Allocated Shared Expenses.	$22,589,805.		

In its suspension orders, the Commission solicited commenters' views on whether the Exchange has provided sufficient detail on the identity and nature of services provided by third parties. The Commission further solicited commenters' views on whether the Exchange has provided sufficient detail on the elements that go into connectivity and port costs, including how shared costs are allocated and attributed to connectivity and port expenses, to permit an independent review and assessment of the reasonableness of purported cost-based fees and the corresponding profit margin thereon. In response, the Exchange provides additional detail regarding the identity and nature of services provided by third parties, the elements that go into connectivity and port costs, and how expenses are allocated. The Exchange believes this additional detail is sufficient to support a finding that the proposed fees are consistent with the Exchange Act.

For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing 10Gb ULL connectivity and Full Service MEO Ports. The Exchange describes below the analysis conducted for each expense and the resources or determinations that were considered when determining the amount necessary to allocate to each expense. The Exchange notes that, without the specific external and internal expense items, the Exchange would not be able to provide access to its System Networks through 10Gb ULL connectivity and Full Service MEO Ports. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, were identified through a line-by-line cost analysis and determined to be integral to providing access to its System Networks through 10Gb ULL connectivity and Full Service MEO Ports for the reasons discussed below. Only a portion of all fees paid to such third parties are included in the third party expenses described herein, and, again, no expense amount is allocated twice. For example, the Exchange does not allocate its entire information technology and communication costs to providing access to its System Networks through 10Gb ULL connectivity and Full Service MEO Ports because it determined that a portion of those costs are attributable to other areas of the Exchange's operations, such as transaction services, market data, and other forms of connectivity offered by the Exchange. This may result in the Exchange under allocating an expense to provide access to its System Networks through 10Gb ULL connectivity and Full Service MEO Ports, and such expenses may actually be higher than what the Exchange allocated as part of this proposal.[50]

Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations, which resulted in revised percentage allocations in this filing as compared to prior versions of this proposed fee change that were previously withdrawn by the Exchange. The revised percentages are, among other things, the result of the shifting of internal resources in response to business objectives. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.[51]

The Exchange believes it is reasonable to consider the expense and revenue for 10Gb ULL connectivity and Full Service MEO Ports 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

[49] The Exchange does not believe it is appropriate to disclose the actual amount it pays to each individual third party provider as those fee arrangements are competitive or the Exchange is contractually prohibited from disclosing that number.

[50] The Exchange notes that expenses associated with its affiliates, MIAX Emerald and MIAX Pearl (the equities market), are accounted for separately and are not included within the scope of this filing.

[51] *See supra* notes 4 and 5.

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.

External Expense Allocations

For 2022, annual expenses relating to fees paid by the Exchange to third parties for products and services necessary to provide 10Gb ULL connectivity and Full Service MEO Ports are estimated to be $4,677,491. This includes a portion of the fees paid to: (1) A third party data center provider, including for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) a fiber connectivity provider for network services (fiber and bandwidth products and services) linking the Exchange's and its affiliates' office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) SFTI, which supports connectivity feeds for the entire U.S. options industry, and various other content and connectivity service providers, which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (4) hardware and software providers, which support the production environment in which Members and non-Members connect to the network to trade and receive market data.

Data Center Space and Operations Provider

The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties where the Exchange houses servers, switches and related equipment. Data center costs include an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs. The data center provider operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. Without the retention of a third party data center, the Exchange would not be able to operate its systems, provide a trading platform for market participants, and produce and distribute market data. The Exchange does not employ a separate fee to cover its data center expense and recoups that expense, in part, by charging for 10Gb ULL connectivity and Full Service MEO Ports.

The Exchange reviewed its data center footprint and space utilized, including its total rack space, cage usage, number of servers, switches, cabling within the data center, heating and cooling of physical space, storage space, and monitoring and divided its data center expenses among providing transaction services, market data, connectivity (10Gb ULL and 1Gb ULL separately), and ports based on space utilized by each area.[52] Based on this review, the Exchange and MIAX determined that 61% of the total applicable data center provider expense for each is applicable to providing 10Gb ULL connectivity and 10.8% for Full Service MEO Ports for MIAX Pearl Options. The Exchange reviewed space utilized to house rack space, cage usage, servers, switches, cabling, storage space, heating and cooling of physical space, and monitoring, and identified that a small portion of that footprint is dedicated to equipment used to support 10Gb ULL connectivity and Full Service MEO Ports.

The Exchange believes this allocation is reasonable because it represents the costs associated with housing the Exchange's equipment dedicated to supporting 10Gb ULL connectivity and Full Service MEO Ports. 10Gb ULL connectivity and Full Service MEO Ports are core means of access to the Exchange's network, providing several methods for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's data center expense is due to space utilized to provide and maintain connectivity and port access to the Exchange's System Networks, including providing cabling within the data center between market participants and the Exchange. The Exchange excluded from this allocation servers and space that are dedicated to market data. The Exchange also did not allocate the remainder of the data center expense because it pertains to space utilized by other areas of the Exchange's operations, such as 1Gb ULL connectivity, other types of ports, market data, and transaction services.

Fiber Connectivity Provider

The Exchange engages a third-party service provider that provides the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data center, and office locations in Princeton and Miami. Fiber connectivity is necessary for the Exchange to switch to its secondary data center in the case of an outage in its primary data center. Fiber connectivity also allows the Exchange's National Operations & Control Center (''NOCC'') and Security Operations Center (''SOC'') in Princeton to communicate with the Exchange's primary and secondary data centers. As such, all trade data, including the billions of messages each day, flow through this third party provider's infrastructure over the Exchange's network. Fiber connectivity is also necessary for personnel responsible for overseeing and providing customer service related to supporting 10Gb ULL connectivity and Full Service MEO Ports, receiving relevant data and being able to communicate between the Exchange's various locations and data centers. Without these services, the Exchange would not be able to operate and support the network and provide and maintain access services and System Networks associated with the 10Gb ULL connectivity and Full Service MEO Ports to its Members and their customers. Without the retention of a third party fiber connectivity provider, the Exchange would not be able to communicate between its data centers and office locations in a manner necessary to maintain and support 10Gb ULL connectivity and Full Service MEO Ports. Fiber connectivity is a necessary integral means to disseminate information, including data related to supporting 10Gb ULL connectivity and Full Service MEO Ports, from the Exchange's primary data center to other Exchange locations. It is necessary for Exchange employees located in various locations to be able to communicate and receive the necessary data to maintain and provide customer support related to 10Gb ULL connectivity and Full Service MEO Ports. The Exchange would not be able to operate and support the network and provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports without third party fiber connectivity. The Exchange does not employ a separate fee to cover its fiber connectivity expense and recoups that expense, in

[52] The Investors Exchange, Inc. (''IEX'') also allocated data center costs to produce market data based on space utilized. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945, at page 21949 (April 13, 2022) (SR–IEX–2022–02) (''IEX Market Data Fee Proposal'') (noting that ''[d]ata Center costs consist of the fees charged by the third-party data centers used by IEX and represent less than 10% the Exchange's total data center costs *based on space utilized*'' (*emphasis added*)).

part, by charging for 10Gb ULL connectivity and Full Service MEO Ports.

The Exchange reviewed it costs to retain fiber connectivity from a third party, including the ongoing costs to support fiber connectivity, ensuring adequate bandwidth and infrastructure maintenance to support exchange operations, and ongoing network monitoring and maintenance. Based on this review, the Exchange and MIAX determined that 61% of the total fiber connectivity expense for each was applicable to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 5.4% for Full Service MEO Ports for MIAX Pearl Options. The Exchange reviewed its total fiber connectivity expense and allocated it among transaction services, connectivity, ports, market data, and administrative operations, based on usage. The Exchange then further divided up its fiber connectivity costs related to connectivity and ports and identified the portion that is attributable to supporting 10Gb ULL connectivity and Full Service MEO Ports, also based on usage. This allocation is, therefore, based on the amount of bandwidth and fiber connectivity the Exchange calculated is utilized to support exchange operations, and ongoing network monitoring and maintenance that are necessary to provide 10Gb ULL connectivity and Full Service MEO Ports. The Exchange believes this allocation is reasonable because 10Gb ULL connectivity and Full Service MEO Ports are core means of access to the Exchange's network, providing several methods for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's fiber connectivity expense is due to providing and maintaining connectivity between the Exchange's System Networks, data centers, and office locations and is core to the daily operation of the Exchange. The Exchange also excluded from this allocation fiber connectivity usage related to other business lines, such as transaction services, market data, and other forms of connectivity offered by the Exchange, or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports.

Connectivity and Content Services Provided by SFTI and Other Providers

The Exchange relies on SFTI and various other connectivity and content service providers for connectivity and data feeds for the entire U.S. options industry, as well as content, connectivity, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity and Full Service MEO Ports. Specifically, the Exchange utilizes SFTI and other content service provider to connect to other national securities exchanges, the Options Price Reporting Authority (''OPRA''), and to receive market data from other exchanges and market data providers. SFTI is operated by the Intercontinental Exchange, the parent company of five registered exchanges, and has become integral to the U.S. markets. The Exchange understands SFTI provides services to most, if not all, of the other U.S. exchanges and other market participants. Connectivity and market data provided by SFTI and other service is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity and Full Service MEO Ports. Without services from SFTI and various other service providers, the Exchange would not be able to connect to other national securities exchanges, market data providers, or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its SFTI and content service provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity and Full Service MEO Ports.

The Exchange reviewed it costs to retain SFTI and other content service providers, including network monitoring and maintenance, remediation of connectivity related issues, and ongoing administrative activities related to connectivity management. Based on this review, the Exchange and MIAX determined that 73.6% of the total applicable SFTI and other service provider expense for each is allocated to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 4.4% for Full Service MEO Ports for MIAX Pearl Options. The Exchange reviewed its total SFTI and other service provider expense and allocated it among transaction services, connectivity, ports, other market data products, and administrative operations, based on usage. The Exchange then further divided up its SFTI and other service provider costs related to connectivity and ports and identified the portion that is attributable to supporting 10Gb ULL connectivity and Full Service MEO Ports, also based on usage. This allocation is, therefore, based on the amount of SFTI and other service provider resources utilized to support exchange operations, and ongoing network monitoring and maintenance that are necessary to provide 10Gb ULL connectivity and Full Service MEO Ports. SFTI and other content service providers are key vendors and necessary components in providing access to the Exchange. The primary service SFTI provides for the Exchange is connectivity to other national securities exchanges and their disaster recovery facilities and, therefore, a vast portion of this expense is allocated to providing access to the System Networks via 10Gb ULL connectivity and Full Service MEO Ports. Connectivity via SFTI is necessary for purposes of order routing and accessing disaster recovery facilities in the case of a system outage. Engaging SFTI and other like vendors provides purchasers of 10Gb ULL connectivity to other national securities exchanges for purposes of order routing and disaster recovery. The Exchange did not allocate a portion of this expense that relates to the receipt of market data from other national securities exchanges and OPRA. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining the System Networks or access to its System Networks via 10Gb ULL connectivity or Full Service MEO Ports, such as transaction services, market data, other forms of connectivity offered by the Exchange, or unrelated administrative services. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity and Full Service MEO Ports, and not any other service, as supported by its cost review.

Hardware and Software Providers

The Exchange relies on dozens of third-party hardware and software providers for equipment necessary to

operate its System Networks. This includes either the purchase or licensing of physical equipment, such as servers, switches, cabling, and devices needed by Exchange personnel to monitor servers and the health 10Gb ULL connectivity and Full Service MEO Ports. This consists of real-time monitoring of system performance, integrity, and latency of 10Gb ULL connectivity and Full Service MEO Ports. It also includes the Exchange purchasing or licensing software necessary for security monitoring, data analysis and Exchange operations. Hardware and software providers are necessary to maintain its System Networks and provide access to its System Networks via a 10Gb ULL connectivity and Full Service MEO Ports. Hardware and software equipment and licenses for that equipment are also necessary to operate and monitor physical assets necessary to offer physical connectivity to the Exchange. Hardware and software equipment and licenses are key to the operation of the Exchange and, without them, the Exchange would not be able to operate and support its System Networks and provide access to its Members and their customers. The Exchange does not employ a separate fee to cover its hardware and software expense and recoups that expense, in part, by charging for 10Gb ULL connectivity and Full Service MEO Ports.

The Exchange reviewed its hardware and software related costs, including software patch management, vulnerability management, administrative activities related to equipment and software management, professional services for selection, installation and configuration of equipment and software supporting exchange operations. The Exchange then divided those costs among transaction services, ports, connectivity, market data, and other Exchange operations based on whether all of that hardware or software is based on usage. The Exchange then reviewed the amount allocated to connectivity and ports generally and what portion of that hardware and software equipment or license is used to support 10Gb ULL connectivity and Full Service MEO Ports specifically. Based on this review, the Exchange and MIAX determined that 50% of the total applicable hardware and software expense for each is allocated to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 6.4% for Full Service MEO Ports for MIAX Pearl Options. These percentages reflect the amount of hardware and software equipment and licenses dedicated to support 10Gb ULL connectivity and Full Service MEO Ports.[53] Hardware and software equipment and licenses are key to the operation of the Exchange and its System Networks. Without them, the Exchange would not be able to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports. The Exchange only allocated the portion of this expense to the hardware and software that is related to 10Gb ULL connectivity and Full Service MEO Ports, such as operating servers and equipment necessary to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports. The Exchange, therefore, did not allocate portions of its hardware and software expense that related to other areas of the Exchange's business, such as hardware and software used for market data or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations, such as transaction services, market data, and other forms of connectivity offered by the Exchange, and is not directly relate to providing 10Gb ULL connectivity or Full Service MEO Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports, and not any other service, as supported by its cost review.

Internal Expense Allocations

For 2022, total combined internal annual expense relating to the Exchange and MIAX to provide and maintain their System Networks and access to their System Networks for 10Gb ULL connectivity, and for access via Full Service MEO Ports for MIAX Pearl Options, is estimated to be $14,240,687. This includes costs associated with: (1) Employee compensation and benefits for full-time employees that support the System Networks and access to System Networks via 10Gb ULL connectivity and Full Service MEO Ports, 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 as well as important system upgrades; (2) depreciation and amortization of hardware and software used to provide and maintain access services and System Networks associated with the 10Gb ULL connectivity and Full Service MEO Ports, 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 and maintain the System Networks and access to System Networks via 10Gb ULL connectivity and Full Service MEO Ports.

Employee Compensation and Benefits

Human personnel are key to exchange operations and supporting the Exchange's ongoing provision of 10Gb ULL connectivity and Full Service MEO Ports. The Exchange reviewed its employee compensation and benefits expense and the portion of that expense allocated to providing 10Gb ULL connectivity and Full Service MEO Ports. As part of this review, the Exchange considered employees whose functions include providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports and used a blended rate of compensation reflecting salary, stock and bonus compensation, bonuses, benefits, payroll taxes, and 401K matching contributions.[54]

In its suspension orders, the Commission asked the Exchange provide more detail about the methodology the Exchange used to determine how much of an employee's time is devoted to connectivity and port related activities. In considering the cost of personnel, the Exchange generally considered the time spent on various access service projects and initiatives through project management tracking tools and analysis of employee resource allocations, among its Technology Team in the following areas: Technical Operations, Software Engineering, Quality Assurance, and Infrastructure. The Exchange did not consider non-Technology Teams such as Market Operations, Project Management,

[53] The Exchange notes that IEX used a similar methodology to allocate hardware costs to market data. *See* IEX Market Data Fee Proposal, *supra* note 52 at page 21950 (noting that ''IEX only included hardware specifically dedicated to the market data feeds in calculating the costs of providing market data'').

[54] For purposes of this allocation, the Exchange did not consider expenses related to office space, supplies, or equipment use by employees who support 10Gb ULL connectivity and Full Service MEO Ports.

Regulatory, Legal, and Accounting/Finance.[55]

Based on this review, the Exchange and MIAX determined to allocate a combined $9,130,289 in combined employee compensation and benefits expense to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports. This is only a portion of the $25,717,996 total projected combined expense for employee compensation and benefits for MIAX and MIAX Pearl Options. Of that total, the Exchange and MIAX allocated approximately 27.5% of the total applicable employee compensation and benefits expense for each to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 19.2% for Full Service MEO Ports for MIAX Pearl Options. The Exchange and MIAX determined the cost allocations for employees who perform work in support of providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports to arrive at full time equivalents (''FTE'') of 12.0 FTEs for MIAX and 8.9 FTEs for MIAX Pearl Options across all the identified personnel related to 10Gb ULL connectivity, and 6.3 FTEs across all the identified personnel related to Full Service MEO Ports for MIAX Pearl Options. The Exchange then multiplied the FTE times a blended compensation rate for all relevant Exchange personnel to determine the personnel costs associated with providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports. Senior staff also reviewed these time allocations with department heads and team leaders to determine whether those allocations were appropriate. These employees are critical to the Exchange to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports. The Exchange determined the above allocation based on the personnel whose work focused on functions necessary to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports. The Exchange does not charge a separate fee regarding employees who support 10Gb ULL connectivity and Full Service MEO Ports and the Exchange seeks to recoup those expenses, in part, by charging for 10Gb ULL connectivity and Full Service MEO Ports.

The Exchange believes it is appropriate to include incentive compensation in the blended personnel compensation rate on the same basis as other personnel costs for in-scope employees because incentive compensation is a part of the total personnel costs associated with the Exchange's provision of 10Gb ULL connectivity and Full Service MEO Ports. Moreover, the Exchange notes that it has taken a conservative approach in determining which employees to include in its cost analysis, in terms of function and percent allocation, so that the included personnel costs are directly and closely tied to the costs of providing 10Gb ULL connectivity and Full Service MEO Ports. The FTE allocations represent just 36% of the Exchange's and MIAX's overall personnel costs. Consistent with the Exchange's conservative methodology to limit costs allocated to 10Gb ULL connectivity and Full Service MEO Ports, this approach includes only a de minimis personnel cost allocation for senior level executives and no allocation for members of the Exchange's board of directors. Accordingly, the Exchange believes that the allocated personnel expenses included are appropriately attributable to 10Gb ULL connectivity and Full Service MEO Ports.

Depreciation and Amortization

A key expense incurred by the Exchange relates to the depreciation and amortization of equipment that the Exchange procured to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports. The Exchange reviewed all of its physical assets and software, owned and leased, and determined whether each asset is related to providing and maintaining the 10Gb ULL connectivity and Full Service MEO Ports, and added up the depreciation of those assets. All physical assets and software, which includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost and depreciated or leased over periods ranging from three to five years. Based on the Exchange's experience, this depreciation period equals the typical life expectancy of those assets. In determining the amount of depreciation and amortization to apply to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports, the Exchange considered the depreciation of hardware and software that are key to the operation of the Exchange and its provision of 10Gb ULL connectivity and Full Service MEO Ports. This includes servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were previously purchased to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports. Without them, market participants would not be able to access the Exchange. The Exchange seeks to recoup a portion of its depreciation expense by charging for 10Gb ULL connectivity and Full Service MEO Ports.

Based on this review, the Exchange and MIAX determined to allocate a combined $4,346,430 in combined depreciation and amortization expense to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports. This is only a portion of the $6,517,608 total projected combined expense for depreciation and amortization for MIAX and MIAX Pearl Options. This allocation represents approximately 66% for MIAX and 61.3% for MIAX Pearl Options of the total applicable depreciation expenses to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 6.8% for Full Service MEO Ports for MIAX Pearl Options. For purposes of the allocation of these costs to 10Gb ULL connectivity and Full Service MEO Ports, the Exchange allocates the annual depreciation (*i.e.,* one-third or one-fifth of the initial asset value based on the typical life expectancy of those assets). One-third or one-fifth of the cost of each asset is included in the annual costs allocated to 10Gb ULL connectivity and Full Service MEO Ports. The Exchange only included assets specifically dedicated to 10Gb ULL connectivity and Full Service MEO Ports in calculating the costs of providing 10Gb ULL connectivity and Full Service MEO Ports. This means that physical assets used for such as transaction services, market data, other forms of connectivity offered by the Exchange, or other Exchange operations were excluded

[55] The Exchange notes that IEX used a similar methodology to allocate employee compensation related costs to market data. *See* IEX Market Data Fee Proposal, *supra* note 52 at page 29150 (noting that ''[f]or personnel costs, IEX calculated an allocation of employee time for employees whose functions include providing and maintaining IEX Data and/or the proprietary market data feeds used to transmit IEX Data, and used a blended rate of compensation reflecting salary, stock and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions'').

from the calculation.[56] The Exchange, therefore, did not allocate portions of depreciation expense that relates to other areas of the Exchange's business, such as the depreciation of hardware and software used for market data, unrelated administrative services, or other connectivity or ports offered by the Exchange. All of the expenses outlined in this proposed fee change refer to the operating expenses of the Exchange. In the suspension orders, the Commission asked for additional detail or explanation to ensure that no expense amount is allocated twice. The Exchange did not included any future capital expenditures within these costs ensuring that no cost is counted twice. Depreciation and amortization represent the expense of previously purchased hardware and internally developed software spread over the useful life of the assets. Due to the fact that the Exchange has only included operating expense and historical purchases, there is no double counting of expenses in the Exchange's cost estimates.

Occupancy

The Exchange rents and maintains multiple physical locations to house staff and equipment necessary to support access to System Networks via 10Gb ULL connectivity and Full Service MEO Ports. The Exchange's occupancy expense is not limited to the housing of personnel and includes locations used to store equipment necessary for Exchange operations. In determining the amount of its occupancy related expense, the Exchange considered actual physical space used to house employees whose functions include providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports. Similarly, the Exchange also considered the actual physical space used to house hardware and other equipment necessary to provide and maintain the 10Gb ULL connectivity and Full Service MEO Ports. The Exchange maintains staff that support 10Gb ULL connectivity and Full Service MEO Ports in various locations and needs to provide workplaces for that staff as well as space to house hardware and equipment necessary for those employees to perform those functions.[57] This equipment includes computers, servers, and accessories necessary to support the access to the System Networks via 10Gb ULL connectivity and Full Service MEO Ports. Based on this review, the Exchange and MIAX determined to allocate a combined $763,968 in occupancy expense to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports for MIAX Pearl Options. According to the Exchange's calculations, MIAX and MIAX Pearl Options each allocated approximately 52% of their total applicable occupancy expense to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 10.8% for Full Service MEO Ports for MIAX Pearl Options. This is only a portion of the $1,349,176 total projected combined expense for occupancy for MIAX and MIAX Pearl Options. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support 10Gb ULL connectivity and Full Service MEO Ports. The Exchange considered the rent paid for the Exchange's Princeton and Miami offices, as well as various related costs, such as physical security, property management fees, property taxes, and utilities at each of those locations. The Exchange did not include occupancy expenses related to housing employees and equipment related to other Exchange operations, such as transaction and administrative services.

Allocated Shared Expense

Finally, a limited portion of general shared expenses was allocated to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Full Service MEO Ports as without these general shared costs, the Exchange would not be able to operate in the manner that it does. The costs included in general shared expenses include recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. For 2022, the Exchange's and MIAX Pearl Option's combined general shared expense allocated to 10Gb ULL connectivity and Full Service MEO Ports for MIAX Pearl Options is estimated to be $3,671,627. This represents approximately 49% for MIAX and 44% for MIAX Pearl Options for 10Gb ULL connectivity, and 11% for MIAX Pearl Options for Full Service MEO Ports, of the $7,103,363 total projected combined general shared expense for MIAX and MIAX Pearl Options. The Exchange used the weighted average of the above allocations to determine the amount of general shared expenses to allocate to the Exchange. Next, based on additional management and expense analysis, these fees are allocated to the proposal.

Revenue and Estimated Profit Margin

The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: Transaction fees, access fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms.

To determine the Exchange's and MIAX's estimated revenue associated with 10Gb ULL connectivity and Full Service MEO Ports for MIAX Pearl Options, the Exchange and MIAX analyzed the number of subscribers currently utilizing 10Gb ULL connectivity (for both on the shared network) and Full Service MEO Ports (for MIAX Pearl Options) and used a recent monthly billing cycle representative of current monthly revenue. The Exchange also provided its baseline by analyzing March 2022, the monthly billing cycle prior to the proposed fees, and compared this to its expenses for that month. As discussed below, the Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its estimates for purposes of these calculations, given the uncertainty of such estimates due to the continually changing access needs of market participants and potential changes in internal and external expenses, as well as because the Exchange is committing to review this cost analysis for these fees on an annual basis going forward.

For March 2022, prior to the proposed fees, the Exchange and MIAX had a combined 173 10Gb ULL connections and MIAX Pearl Options had 15 Full Service MEO Ports (Bulk) and 4 Full Service MEO Ports (Single) purchased, for which the Exchange and MIAX charged a total of $1,787,712 (including charges for connections that were dropped or added mid-month, resulting in pro-rated charges). This resulted in a loss of $94,772 for that month (a margin

[56] The Exchange notes that IEX used a similar methodology to allocate hardware costs to market data. *See* IEX Market Data Fee Proposal at note 54, *supra* note 52 at page 21950 (noting that ''[h]ardware is depreciated on a straight-line three-year period, which in IEX's experience, is equal to the typical life expectancy of those assets. As noted above, one-third of the cost of each hardware asset is included in the annual costs allocated to market data. IEX only included hardware specifically dedicated to the market data feeds in calculating the costs of providing market data. This means that physical assets used for both order entry and market data were excluded from the calculation'').

[57] For the avoidance of doubt, the Exchange did not include within this cost any portion of its costs related to third party fiber connectivity used by Exchange staff in different office locations to communicate as part of their role in supporting 10Gb ULL connectivity and Full Service MEO Ports.

of −5.3%). For April 2022, the Exchange and MIAX anticipate that a combined 174 10Gb ULL connections and, for MIAX Pearl Options, 15 Full Service MEO Ports (Bulk) and 4 Full Service MEO Ports (Single) will be charged for (as of the date of this filing).[58] Assuming the Exchange and MIAX charge the proposed monthly rate of $12,000 per 10Gb ULL connection and the proposed rates for Full Service MEO Ports for MIAX Pearl Options, the Exchange and MIAX would generate revenue of $2,213,500 for April 2022 (not including potential pro-rated connection charges for mid-month connections) for 10Gb ULL connectivity for both exchanges and Full Service MEO Ports for MIAX Pearl Options combined. This would result in a profit of $331,016 ($2,213,500 minus $1,882,484) for that month (a 15% profit margin). As discussed above, the Exchange believes it is reasonable to consider the expense and revenue for 10Gb ULL connectivity and Full Service MEO Ports 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 Exchange believes that conducting the above analysis on a per month basis is reasonable as the revenue generated from access services subject to the proposed fee generally remains static from month to month. The Exchange also conducted the above analysis on a per month basis to comply with the Commission Staff's Guidance, which requires a baseline analysis to assist in determining whether the proposal generates a supra-competitive profit. The Exchange cautions that this profit margin may also fluctuate from month to month based on the uncertainty of predicting how many connections and ports may be purchased from month to month as Members and non-Members are free to add and drop connections and ports at any time based on their own business decisions.

The Exchange believes the proposed profit margin is reasonable and will not result in a ''supra-competitive'' profit. The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.''[59] Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2017.[60] The Exchange has operated at a net loss due to a number of factors, one of which is choosing to forgo revenue by offering certain products, such as connectivity, at lower rates than other options exchanges to attract order flow and encourage market participants to experience the high determinism, low latency, and resiliency of the Exchange's trading systems. The Exchange should not now be penalized for seeking to raise it fees to near market rates after offering such products as discounted prices. Therefore, the Exchange believes the proposed fees are reasonable because they are based on both relative costs to the Exchange to provide 10Gb ULL connectivity and Full Service MEO Ports, the extent to which the product drives the Exchange's overall costs and the relative value of the product, as well as the Exchange's objective to make access to its Systems broadly available to market participants. The Exchange also believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup the Exchange's costs of providing 10Gb ULL connectivity and Full Service MEO Ports.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent such revenue actually produces the revenue estimated. As a competitor in the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from 10Gb ULL connectivity and Full Service MEO Ports, the Exchange will have to be successful in retaining existing clients that wish to utilize 10Gb ULL connectivity and Full Service MEO Ports or obtaining new clients that will purchase such access. To the extent the Exchange is successful in encouraging new clients to utilize 10Gb ULL connectivity and Full Service MEO Ports, the Exchange does not believe it should be penalized for such success. The Exchange, like other exchanges, is, after all, a for-profit business. While the Exchange believes in transparency around costs and potential margins, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes this proposal demonstrates this fact.

Further, the proposed profit margin reflects the Exchange's efforts to control its costs. A profit margin should not be judged alone based on its size, but whether the ultimate fee reflects the value of the services provided and is in line with other exchanges. A profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling costs, but not excessive where an exchange is charging the same fee but has a lower profit margin due to higher costs.

The expected profit margin is reasonable because the Exchange offers a premium System Network, System Networks connectivity, and a highly deterministic trading environment. The Exchange is recognized as a leader in network monitoring, determinism, risk protections, and network stability. For example, the Exchange experiences approximately a 95% determinism rate, system throughput of approximately 10.8 million quotes per second and average round trip latency rate of approximately 30.76 microseconds for a single quote. The Exchange provides extreme performance and radical scalability designed to match the unique needs of trading differing asset class/market model combinations. Exchange systems offer two customer interfaces, FIX gateway for orders, and ultra-low latency interfaces and data feeds with best-in-class wire order determinism. The Exchange also offers automated continuous testing to ensure high reliability, advanced monitoring and systems security, and employs a software architecture that results in minimizing the demands on power, space, and cooling while allowing for rapid scalability, resiliency and fault isolation. The Exchange also provides latency equalized cross-connects in the primary data center ensures fair and cost efficient access to the Exchange's Systems. The Exchange, therefore, believes the anticipated profit margin is reasonable because it reflects the Exchange's cost controls and the quality of the Exchanges systems.

[58] The Exchange notes that the number of subscribers of 10Gb ULL connections and Full Service MEO Ports may change over time. For example, from June 2021 to April 2022, MIAX and MIAX Pearl Options had the following number of combined subscribers of 10Gb ULL connectivity per month: June (152); July (156); August (154); September (154); October (154); November (152); December (159); January (174); February (171); March (173); April (174). From June 2021 to April 2022, MIAX had the following number of Full Service MEO Ports utilized per month (Bulk and Single combined): June (20); July (20); August (19); September (19); October (19); November (19); December (19); January (19); February (19); March (19); April (19).

[59] *See supra* note 39.

[60] The Exchange has incurred a cumulative loss of $86 million since its inception in 2017 to 2020. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000461.pdf.*

Finally, the Exchange believes that the proposed fees are reasonable because they will not impose onerous audit requirements on subscribers, because there will be no need to substantiate the number of users of 10Gb ULL connectivity and Full Service MEO Ports or the manner in which it is being used.

Annual Review of Fees

In its suspension orders, the Commission asks whether exchanges should periodically reevaluate fees on an ongoing and periodic basis in order to assure that actual revenue aligns with a reasonable cost-plus model. As described above and as part of this proposed rule change, the Exchange is committing to conduct a one year review of the fees that are cost justified as part of this proposed rule change after the date of this proposal, and annually thereafter. The Exchange expects that it may propose to adjust fees at that time, either to increase fees in the event that revenues fail to reasonably cover costs at the estimated margin set forth below [sic], or to decrease fees in the event that revenue materially exceeds the Exchange's current projections. In the event that the Exchange determines to propose a fee change, updated cost estimates will be included in a rule filing proposing the fee change. The Exchange believes this approach will further increase transparency around market data costs and help to ensure that Exchange fees continue to be reasonably related to costs.

The Proposed Fees Are Reasonable When Compared to the Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other options exchanges' costs to provide connectivity and port access or their fee markup over those costs, and therefore cannot use other exchange's connectivity and port fees as benchmarks to determine a reasonable markup over the costs of providing such access. Nevertheless, the Exchange believes the other exchanges' 10Gb connectivity and port fees are useful examples of alternative approaches to providing and charging for access notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of connectivity and ports. To that end, the Exchange believes the proposed fees are reasonable because the proposed fees are similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with comparable market shares.

As described in the table below, the Exchange's proposed fees remain similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with similar market share. In the each of the below cases, the Exchange's proposed fees are still significantly lower than that of competing options exchanges with similar market share. Each of the market data rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
MIAX Pearl (as proposed) (equity options market share of 5.67% as of April 29, 2022 for the month of April) [61].	10Gb ULL connection	$12,000.
	Full Service MEO Port (Bulk)	Tier 1: $5,000 (or $208.33 per Matching Engine).
		Tier 2: $7,500 (or $312.50 per Matching Engine).
		Tier 3: $10,000 (or $416.66 per Matching Engine).
	Full Service MEO Port (Single).	Tier 1: $2,500 (or $104.16 per Matching Engine).
		Tier 2: $3,500 (or $145.83 per Matching Engine).
		Tier 3: $4,500 (or $187.50 per Matching Engine).
NASDAQ [62] (equity options market share of 8.47% as of April 29, 2022 for the month of April) [63].	10Gb Ultra fiber connection	$15,000.
	SQF Port	1–5 ports. $1,500.
		6–20 ports. $1,000.
		21 or more ports. $500.
ISE [64] (equity options market share of 5.48% as of April 29, 2022 for the month of April) [65].	10Gb Ultra fiber connection	$15,000.
	SQF Port	$1,100.
NYSE American [66] (equity options market share of 8.13% as of April 29, 2022 for the month of April) [67].	10Gb LX LCN connection	$22,000.
	Order/Quote Entry Port	Ports 1–40. $450.
		Ports 41 and greater. $150.
GEMX [68] (equity options market share of 2.36% as of April 29, 2022 for the month of April) [69].	10Gb Ultra connection	$15,000.
	SQF Port	$1,250

The Proposed Pricing Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that the proposed fees are reasonable, fair, equitable, and not unfairly discriminatory because they are designed to align fees with services provided and will apply equally to all subscribers.

10Gb ULL Connectivity

The Exchange believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory because, for one 10Gb ULL connection, the Exchange provides each Member or non-Member access to all twelve (12) matching engines on MIAX Pearl and a vast majority choose to connect to all twelve (12) matching engines. The Exchange believes that

[61] *See supra* note 23.
[62] *See supra* note 24.
[63] *See supra* note 23.
[64] *See supra* note 26.
[65] *See supra* note 23.
[66] *See supra* note 28.
[67] *See supra* note 23.
[68] *See supra* note 30.
[69] *See supra* note 23.

other exchanges require firms to connect to multiple matching engines.[70]

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity and port alternatives, as the users of 10Gb ULL connections consume the more bandwidth and network resources than users of 1Gb ULL connection. Specifically, the Exchange notes that 10Gb ULL connection users account for approximately more than 99% of message traffic over the network, while the users of the 1Gb ULL 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 with the network ability to support access to several distinct options markets and the capacity to handle approximately 38 million quote messages per second. On an average day, the Exchange and MIAX handle over approximately 8,304,500,000 billion total messages. Of that total, users of the 10Gb ULL connections generate approximately 8.3 billion messages, and users of the 1Gb connections generate approximately 4.5 million messages. 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. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the Exchange Act.[71] Thus, as the number of messages an entity increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. 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 market participants' benefit.

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 91.95% of the volume on the Exchange. This overall volume percentage (91.95% of total Exchange volume) is in line with the amount of network connectivity revenue collected from 10Gb ULL purchasers (98% 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 98% of the total network connectivity revenue collected by the Exchange from all connectivity alternatives; and Members and non-Members that purchased 1Gb and 10Gb connections accounted for approximately 2% of the revenue collected by the Exchange from all connectivity alternatives.

Full Service MEO Ports

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity alternatives, as the Members that are frequently in the highest Tier for Full Service MEO Ports consume the most bandwidth and resources of the network. Specifically, like above for the 10Gb ULL connectivity, the Exchange notes that the Market Makers who reach the highest tier for Full Service MEO Ports (Bulk) account for approximately greater than 84% of average daily volume (''ADV'') on the Exchange, while Market Makers that are typically in the lowest Tier for Full Service MEO Ports, account for approximately less than 14% of ADV on the Exchange. The remaining 1% if accounted for by Market Makers who are frequently in the middle Tier for Full Service MEO Ports (Bulk), which is usually one firm. 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. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the Exchange Act.[72] Thus, as the number of connections a Market Maker has increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. The Exchange sought to design the proposed tiered-pricing structure to set the amount of the fees to relate to the number of connections a firm purchases. The more connections purchased by a Market Maker likely results in greater expenditure of Exchange resources and increased cost to the Exchange. The Exchange further believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory because, for the flat fee, the Exchange provides each Member two (2) Full Service MEO Ports for each matching engine to which that Member is connected. Unlike other options exchanges that provide similar port functionality and charge fees on a per port basis,[73] the Exchange offers Full Service MEO Ports as a package and provides Members with the option to receive up to two Full Service MEO Ports per matching engine to which it connects. The Exchange currently has twelve (12) matching engines, which means Members may receive up to twenty-four (24) Full Service MEO Ports for a single monthly fee, that can vary based on certain volume percentages. The Exchange currently assesses Members a fee of $5,000 per month in the highest Full Service MEO Port—Bulk Tier, regardless of the number of Full Service MEO Ports allocated to the Member. Assuming a Member connects to all twelve (12) matching engines during a month, with two Full Service

[70] *See* Specialized Quote Interface Specification, Nasdaq PHLX, Nasdaq Options Market, Nasdaq BX Options, Version 6.5a, Section 2, Architecture (revised August 16, 2019), *available at http://www.nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/SQF6.5a-2019-Aug.pdf.* The Exchange notes that it is unclear whether the NASDAQ exchanges include connectivity to each matching engine for the single fee or charge per connection, per matching engine. *See also* NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020). The Exchange notes that NYSE provides a link to an Excel file detailing the number of matching engines per options exchange, with Arca and Amex having 19 and 17 matching engines, respectively.

[71] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[72] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[73] *See supra* notes 24, 26, 28, and 30.

MEO Ports per matching engine, this results in a cost of $208.33 per Full Service MEO Port—Bulk ($5,000 divided by 24) for the month. This fee has been unchanged since the Exchange adopted Full Service MEO Port fees in 2018.[74] The Exchange now proposes to increase the Full Service MEO Port fees, with the highest Tier fee for a Full Service MEO Port—Bulk of $10,000 per month. Members will continue to receive two (2) Full Service MEO Ports to each matching engine to which they are connected for the single flat monthly fee. Assuming a Member connects to all twelve (12) matching engines during the month, and achieves the highest Tier for that month, with two Full Service MEO Ports—Bulk per matching engine, this would result in a cost of $416.67 per Full Service MEO Port ($10,000 divided by 24).

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.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing 10Gb ULL connectivity and Full Service MEO Ports at below market rates to market participants since the Exchange launched operations. As described above, the Exchange has operated at a cumulative net annual loss since it launched operations in 2017 [75] due to providing a low cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very marginal cost, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low cost exchange alternative to the options industry, which resulted in lower initial revenues. Examples of this are 10Gb ULL connectivity and Full Service MEO Ports, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Further, the Exchange does not believe that the proposed fee increase for the 10Gb ULL connection 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. As is the case with the current proposed flat fee, the proposed fee would apply uniformly to all market participants regardless of the number of connections they choose to purchase. The proposed fee does not favor certain categories of market participants in a manner that would impose an undue burden on competition.

Inter-Market Competition

The Exchange also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, options market participants are not forced to connect to all options exchanges. There is no reason to believe that our proposed price increase will harm another exchange's ability to compete. There are other options markets of which market participants may connect to trade options. There is also a possible range of alternative strategies, including routing to the exchange through another participant or market center or accessing the Exchange indirectly. Market participants are free to choose which exchange or reseller to use to satisfy their business needs. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange responded to the comment letters submitted on prior versions of these proposed fee changes.[76]

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[77] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[78] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[79] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [80]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities;[81] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;[82] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[83]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposed fees are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring,

[74] *See supra* note 6.

[75] *See supra* note 60.

[76] *See, e.g.,* SR–PEARL–2022–03, SR–PEARL–2022–04, SR–PEARL–2022–11.

[77] 15 U.S.C. 78s(b)(3)(C).

[78] 15 U.S.C. 78s(b)(1).

[79] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[80] *See Id.*

[81] 15 U.S.C. 78f(b)(4).

[82] 15 U.S.C. 78f(b)(5).

[83] 15 U.S.C. 78f(b)(8).

among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not be designed to permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[84]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[85]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)[86] and 19(b)(2)(B)[87] of the Act to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[88] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Exchange has sufficiently demonstrated how the proposed rule change is consistent with Sections 6(b)(4),[89] 6(b)(5),[90] and 6(b)(8)[91] of the Act. Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. *Cost Estimates and Allocation.* The Exchange states that it is not asserting that the proposed fees are constrained by competitive forces.[92] Rather, the Exchange states that its proposed fees are based on a ''cost-plus model,'' employing a ''conservative approach,'' and that the expenses are ''directly related'' to 10Gb ULL connectivity and Full Service MEO Ports, and not any other product or service offered by the Exchange.[93] In explaining its costs, should the Exchange identify more specifically which, if any, of its costs are incurred solely to provide 10Gb ULL connectivity and solely to provide Full Service MEO Ports? Regarding the allocations provided by the Exchange as described in greater detail above, do commenters believe that the Exchange provided sufficient detail about how it determined these allocations and why they are reasonable?[94] Why or why not? Do commenters believe that the Exchange provided sufficient context to permit an independent review and assessment of the reasonableness of the allocations? Do commenters believe that the Exchange provided sufficient detail or explanation to support its claim that ''no expense amount is allocated twice,''[95] whether among the sub-categories of expenses in this filing, across the Exchange's fee filings for other products or services, or over time?

2. *Revenue Estimates and Profit Margin Range.* The Exchange uses a single monthly revenue figure (April 2022) as the basis for calculating its projected combined profit margin of 15%.[96] The Exchange argues that projecting revenues on a per month basis is reasonable ''as the revenue generated from access services subject to the proposed fee generally remains static from month to month.''[97] Yet the Exchange also acknowledges that ''profit margin may also fluctuate from month to month based on the uncertainty of predicting how many connections and ports may be purchased from month to month as Members and non-Members are free to add and drop connections and ports at any time based on their own business decisions.''[98] Do commenters believe a single month provides a reasonable basis for a revenue projection? If not, why not? Should the Exchange provide a range of profit margins that it believes are reasonably possible, and the reasons therefor? The Exchange also provided its baseline by analyzing March 2022.[99] Do commenters believe that March 2022 is an appropriate month for a baseline? What are commenters' views on the Exchange providing a combined profit margin for both 10Gb ULL connectivity and Full Service MEO Ports, rather than separate margins for each?

3. *Reasonableness.* The Exchange states that its proposed fees are ''reasonable because they will permit recovery of the Exchange's costs in providing access services to supply 10Gb ULL connectivity and Full Service MEO Ports and will not result in the Exchange generating a supra-competitive profit.''[100] The Exchange offers several justifications for why its estimated profit margin (which is blended and not discussed separately for each service) is not a supra-competitive profit, including: (a) When it launched operations in 2017, it chose

[84] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[85] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[86] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[87] 15 U.S.C. 78s(b)(2)(B).

[88] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[89] 15 U.S.C. 78f(b)(4).

[90] 15 U.S.C. 78f(b)(5).

[91] 15 U.S.C. 78f(b)(8).

[92] *See supra* Section II.A.2.

[93] *See id.*

[94] *See id.*

[95] *See id.*

[96] *See id.*

[97] *See id.*

[98] *See id.*

[99] *See id.*

[100] *See id.*

to forgo revenue by offering certain products at lower rates than other options exchanges to attract order flow; (b) the Exchange has been successful in controlling its costs; (c) a profit margin should not be judged alone based on its size, but on whether the ultimate fee reflects the value of the services provided, and (d) the Exchange's proposed fees remain similar to or less than fees charged for access provided by other options exchanges with similar market share. Do commenters agree that these factors are relevant to assessment of whether the fees are reasonable for each service? Should such an assessment include consideration of any factors other than costs; and if so, what factors should be considered, and why?

4. *Periodic Reevaluation.* The Exchange has stated that it will conduct a review of the cost-based fees subject to this proposal one year after the date of the proposal, and annually thereafter.[101] In light of the impact that the number of connections and ports purchased has on profit margins, and the potential for costs to decrease (or increase) over time, what are commenters' views on the need for exchanges to commit to reevaluate, on an ongoing and periodic basis, their cost-based fees to ensure that the fees stay in line with their stated profitability projections and do not become unreasonable over time, for example, by failing to adjust for efficiency gains, cost increases or decreases, and changes in amounts purchased? How formal should that process be, how often should that reevaluation occur, and what metrics and thresholds should be considered? How soon after a new fee change is implemented should an exchange assess whether its revenue and/or cost estimates were accurate and at what threshold should an exchange commit to file a fee change if its estimates were inaccurate?

5. *Tiered Structure for Full Service MEO Ports Fees.* The Exchange states that proposed tiered-pricing structure is reasonable, equitably allocated, and not unfairly discriminatory because for a flat fee the Exchange provides each Member two Full Service MEO Ports for each matching engine to which the Member is connected, and further, it is the model adopted by the Exchange when it launched operations for its Full Service MEO Port fees.[102] What are commenters' views on the adequacy of the information the Exchange provides regarding the proposed differentials in fees? Do commenters believe that the proposed price differences are supported by the Exchange's assertions that it set the level of each proposed new fee in a manner that it equitable and not unfairly discriminatory?

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [103] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[104] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[105] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.[106]

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, any potential comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[107]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by June 7, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 21, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–PEARL–2022–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–PEARL–2022–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of

[101] *See id.*

[102] *See id.*

[103] 17 CFR 201.700(b)(3).

[104] *See id.*

[105] *See id.*

[106] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 446–47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

[107] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–PEARL–2022–18 and should be submitted on or before June 7, 2022. Rebuttal comments should be submitted by June 21, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[108] that File No. SR–PEARL–2022–18 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[109]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10514 Filed 5–16–22; 8:45 am]

BILLING CODE 8011–01–P

[108] 15 U.S.C. 78s(b)(3)(C).

[109] 17 CFR 200.30–3(a)(12), (57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94895; No. SR–NYSEArca-2022–26]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

May 11, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 29, 2022, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') regarding the Customer Penny Posting Tiers. The Exchange proposes to implement the fee change effective May 2, 2022. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to modify the Customer Penny Posting Credit Tiers.

Currently, the Fee Schedule provides that OTP Holders and OTP Firms (collectively, ''OTP Holders'') can qualify for tiered credits applied to electronic executions of Customer posted interest in Penny issues by meeting specified increasing volume levels in Customer Penny Posting Credit Tiers 1 through 6.[4] Currently, an OTP Holder that achieves 0.10% of TCADV from Customer posted interest in all issues will qualify for Customer Penny Posting Credit Tier 1 (''Tier 1'') and earn a credit of $0.27 per contract applied to electronic executions of Customer posted interest in Penny issues.

The Exchange now proposes to modify the qualification basis for Tier 1 and increase the credit offered to OTP Holders that achieve Tier 1. Specifically, the Exchange proposes that an OTP Holder would qualify for Tier 1 by executing at least 0.20% of TCADV from Customer posted interest, plus executed ADV of 0.30% of U.S. equity market share posted and executed on the NYSE Arca Equity Market,[5] and such qualifying OTP Holder would earn a $0.36 per contract credit applied to electronic executions of Customer posted interest in Penny issues.

The Exchange notes that the credit currently offered in Tier 1 has not sufficiently encouraged OTP Holders to increase their Customer posting interest. Thus, although the proposed modifications to the qualifying criteria for Tier 1 would increase the volume requirement and add a cross asset activity component, the Exchange believes that the proposed change would encourage OTP Holders to execute Customer posted interest on the Exchange and also incent OTP Holders to use the Exchange as a primary destination for both options and equity order flow in order to earn the significantly increased credit that would be available in Tier 1.

The Exchange proposes to implement the rule change on May 2, 2022.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [8]

There are currently 16 registered options exchanges competing for order

[4] *See* Fee Schedule, NYSE Arca Options: Trade–Related Charges for Standard Options, Customer Penny Posting Credit Tiers.

[5] For purposes of this filing, activity in the NYSE Arca Equity Market is referred to as ''cross asset activity.''

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[9] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in March 2022, the Exchange had less than 14% market share of executed volume of multiply-listed equity & ETF options trades.[10]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

While the Exchange cannot predict with certainty whether any OTP Holders would seek to qualify for Tier 1, as modified, the Exchange believes that the new qualifying criteria for Tier 1 are attainable and that the increased credit that OTP Holders would earn in Tier 1 would encourage OTP Holders to increase both Customer posted volume on the Exchange and their activity on the NYSE Arca Equity Market. The Exchange further believes that modifying the qualification basis for Tier 1 to include both a Customer posted interest volume requirement and a cross asset activity component would incent OTP Holders to direct more Customer options order flow and equity order flow to the Exchange, which would bring increased liquidity and order flow for the benefit of all market participants.

Finally, to the extent the proposed change continues to attract greater volume and liquidity to the Exchange, and, in particular, encourages OTP Holders to increase Customer volume and cross asset activity to qualify for the increased credit available in Tier 1, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors.

The Exchange's fees are constrained by intermarket competition, as OTP Holders may direct their order flow to any of the 16 options exchanges, including an exchange with a similarly structured customer posting credit program.[11] Thus, OTP Holders have a choice of where they direct their order flow, including their Customer posting interest and equity posted interest. The proposed rule change is designed to incent OTP Holders to direct liquidity to the Exchange and, in particular, to increase their Customer posting interest and cross asset activity, thereby promoting market depth, price discovery and improvement, and enhanced order execution opportunities for market participants.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange, and OTP Holders can opt to try to qualify for the credit or not. The proposal is designed to incent OTP Holders to aggregate Customer posting interest at the Exchange as a primary execution venue and to attract more posting interest on the NYSE Arca Equity Market. To the extent that these purposes are achieved, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution on both options and equities. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes the proposed rule change is not unfairly discriminatory because the credit offered in Tier 1, as modified, would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposal is based on the amount and type of business transacted on the Exchange, and OTP Holders are not obligated to try to achieve the enhanced qualifications for Tier 1, nor are they obligated to execute Customer posted interest or cross asset activity. Rather, the proposal is designed to encourage OTP Holders to utilize the Exchange as a primary trading venue for Customer posted interest (if they have not done so previously) and to increase cross asset activity, and all OTP Holders that meet the qualifications for Tier 1 would be eligible for the corresponding credit on electronic executions of Customer posted interest in Penny issues. To the extent that the proposed change attracts more Customer interest, including posted interest, to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

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 foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change

[9] The 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/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[10] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in equity-based options increased from 10.16% for the month of March 2021 to 13.57% for the month of March 2022.

[11] *See* Cboe BZX Options Exchange Fee Schedule, *available at: https://www.cboe.com/us/options/membership/fee_schedule/bzx/* (offering similarly structured credits on customer volume in Penny issues, based on qualifying volume).

furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [12]

Intramarket Competition. The proposed change is designed to attract additional order flow (particularly Customer posted interest and cross asset activity) to the Exchange. The Exchange believes that the proposed modification to Tier 1 would incent OTP Holders to direct their Customer order flow and cross asset activity to the Exchange. Greater liquidity benefits all market participants on the Exchange, and increased Customer order flow and posted equity order flow would increase opportunities for execution of other trading interest. The proposed modification to Tier 1 would be available to all similarly-situated market participants that execute Customer posted interest, and, as such, the Exchange does not believe that the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[13] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in March 2022, the Exchange had less than 14% market share of executed volume of multiply-listed equity & ETF options trades.[14]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to incent OTP Holders to direct trading interest (particularly Customer posted interest and cross asset activity) to the Exchange, which would provide liquidity and attract order flow to the Exchange. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange also believes that the proposed change could promote competition between the Exchange and other execution venues, including an exchange that currently offers similarly structured customer posting credits,[15] by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2022–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2022–26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2022–26, and should be submitted on or before June 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10515 Filed 5–16–22; 8:45 am]

BILLING CODE 8011–01–P

[12] *See* Reg NMS Adopting Release, *supra* note 8, at 37499.

[13] *See* note 9, *supra.*

[14] Based on OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in equity-based options increased from 10.16% for the month of March 2021 to 13.57% for the month of March 2022.

[15] *See* note 11, *supra.*

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94893; File No. SR–MIAX–2022–19]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing of a Proposed Rule Change To Establish Fees for the Exchange's cToM Market Data Product; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

May 11, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 2022, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Item II below, which Item has been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

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 Options Fee Schedule (the ''Fee Schedule'') to establish fees for the market data product known as MIAX Complex Top of Market (''cToM''). The fees became operative on April 29, 2022. The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Description of 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 [sic] 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 previously adopted rules governing the trading of Complex Orders[5] on the MIAX System[6] in 2016.[7] At that time, the Exchange also adopted the market data product cToM and expressly waived fees for cToM to incentivize market participants to subscribe.[8] The Exchange provided cToM free of charge for nearly five years and absorbed all costs associated with producing the cToM data product. As discussed more fully below, the Exchange recently calculated its annual aggregate costs for providing cToM to subscribers to be $299,228, or $24,936 per month. Because the Exchange has offered cToM free of charge, the Exchange has borne 100% of the costs for the compilation and dissemination of cToM to subscribers. The Exchange now proposes to amend Section 6)a) of the Fee Schedule to establish fees for the cToM data product in order to recoup a portion, but not all, of these ongoing costs.

Background

In summary, cToM provides subscribers with the same information as the MIAX Top of Market (''ToM'') data product as it relates to the Strategy Book,[9] *i.e.,* the Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable order and quoting interest in the complex strategy on the Exchange. However, cToM provides subscribers with the following additional information that is not included in ToM: (i) The identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information; and (iii) the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). cToM is therefore a distinct market data product from ToM in that it includes additional information that is not available to subscribers that receive only the ToM data feed. ToM subscribers are not required to subscribe to cToM, and cToM subscribers are not required to subscribe to ToM.[10]

Proposal

The Exchange now proposes to amend Section 6)a) of the Fee Schedule to charge monthly fees to Distributors[11] of cToM. Specifically, the Exchange proposes to assess Internal Distributors $1,250 per month and External Distributors $1,750 per month for the cToM data feed.[12] The proposed fees are identical to the fees that the Exchange, and its affiliate, MIAX Emerald, LLC (''MIAX Emerald''), currently charge for their ToM data products, both of which were previously published by the Commission and remain in effect today.[13] The Exchange does not propose to adopt redistribution fees for the cToM data feed. However, the recipient of the cToM data feed would be required to become a data subscriber and would be subject to the applicable fees. The Exchange also does not propose to charge any additional fees based on a subscriber's use of the cToM data feed, *e.g.,* displayed versus non-displayed use, and does not propose to impose any individual per user fees.

As it does today for ToM, the Exchange proposes to assess cToM fees on Internal and External Distributors in each month the Distributor is credentialed to use cToM in the production environment. Also, as the Exchange does today for ToM, market data fees for cToM will be reduced for new Distributors for the first month during which they subscribe to cToM, based on the number of trading days

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Exchange Rule 518(a)(5) for the definition of Complex Orders.

[6] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[7] *See* Securities Exchange Act Release No. 79072 (October 7, 2016), 81 FR 71131 (October 14, 2016) (SR–MIAX–2016–26) (Order Approving a Proposed Rule Change to Adopt New Rules to Govern the Trading of Complex Orders).

[8] *See* Securities Exchange Act Release No. 79146 (October 24, 2016), 81 FR 75171 (October 28, 2016) (SR–MIAX–2016–36) (providing a complete description of the cToM data feed).

[9] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[10] *See supra* note 8.

[11] A ''Distributor'' of MIAX Emerald data is any entity that receives a feed or file of data either directly from MIAX Emerald or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All Distributors are required to execute a MIAX Emerald Distributor Agreement. *See* Section 6)a) of the Fee Schedule.

[12] The Exchange also proposes to make a minor related change to remove ''(as applicable)'' from the explanatory paragraph in Section 6(a) as it will not change fees for both the ToM and cToM data feeds.

[13] *See* Securities Exchange Act Release Nos. 91145 (February 17, 2021), 86 FR 11033 (February 23, 2021) (SR–EMERALD–2021–05); 73942 (December 24, 2014), 80 FR 71 (January 2, 2015) (SR–MIAX–2014–66).

that have been held during the month prior to the date on which that subscriber has been credentialed to use cToM in the production environment. Such new Distributors will be assessed a pro-rata percentage of the fees listed in the table in Section 6)a) of the Fee Schedule, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been credentialed to use cToM in the production environment, divided by the total number of trading days in the affected calendar month.

The Exchange believes that other exchanges' fees for complex market data are useful examples and provides the below table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar complex market data. As shown by the below table, the Exchange's proposed fees for cToM are similar to or less than fees charged for similar data products provided by other options exchanges.

Exchange	Monthly fee
MIAX (as proposed)	$1,250—Internal Distributor, $1,750—External Distributor.
NYSE American, LLC ("Amex") [14]	$1,500—Access Fee, $1,000—Redistribution Fee (this fee is in addition to the Access Fee resulting in a $2,500 monthly fee for external distribution).
NYSE Arca, Inc. ("Arca") [15]	$1,500—Access Fee, $1,000—Redistribution Fee (this fee is in addition to the Access Fee resulting in a $2,500 monthly fee for external distribution).
NASDAQ PHLX LLC ("PHLX") [16]	$3,000—Internal Distributor, $3,500—External Distributor.

TheExchange also proposes to amend the paragraph below the table of fees for ToM and cToM in Section 6)a) of the Fee Schedule to make a minor, non-substantive correction by deleting the phrase ''(as applicable)'' in the first sentence following the table of fees for ToM and cToM. The purpose of this proposed change is to remove unnecessary text from the Fee Schedule.

cToM Content Is Available From Alternative Sources

cToM is also not the exclusive source for Complex Order information from the Exchange and market participants may choose to subscribe to the Exchange's other data products to receive such information. It is a business decision of market participants whether to subscribe to the cToM data product or not. Market participants that choose not to subscribe to cToM can derive much, if not all, of the same information provided in the cToM feed from other Exchange sources, including, for example, the MIAX Order Feed (''MOR'').[17] The following cToM information is provided to subscribers of MOR: The Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable order and quoting interest in the complex strategy on the Exchange; the identification of the complex strategies currently trading on the Exchange; and the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). In addition to the cToM information contained in MOR, complex strategy last sale information can be derived from the Exchange's ToM data feed. Specifically, market participants may deduce that last sale information for multiple trades in related options series that are disseminated via the ToM data feed with the same timestamp are likely part of a Complex Order transaction and last sale.

Implementation

The proposed rule change will be effective May 2, 2022. The Exchange initially filed this proposal on June 30, 2021 with the proposed fees effective beginning July 1, 2021.[18] Between August 2021 and February 2022, the Exchange withdrew and refiled the proposed rule change, each time to meaningfully attempt to provide additional justification for the proposed fee changes, provide enhanced details regarding the Exchange's cost methodology, and address questions contained in the Commission's suspension order.[19] No comment letters were submitted on any filings made to date regarding the proposed cToM fees. The Commission again suspended the proposed fees on February 15, 2022.[20] The Exchange then provided the cToM data feed free of charge for the month of March 2022 and absorbed all associated costs.

On March 30, 2022, the Exchange withdrew the proposed rule change that was previously suspended by the Commission on February 15, 2022. After providing the cToM data product free of charge for the month of March 2022, on April 1, 2022, the Exchange submitted a revised proposal for immediate effectiveness. This revised proposal provided additional details regarding the Exchange's cost methodology, revenue projections, and responded to various questions and requests for information contained in the Commission's suspension orders. The Exchange withdrew that revised proposal and submitted a further revised filing on April 29, 2022. The newest revised filing builds upon the additional details regarding the Exchange's cost methodology and revenue projections, as well as the Exchange's responses to various questions and requests for information contained in the Commission's suspension orders.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with Section 6(b) of the Act [21] in general, and furthers the objectives of Section 6(b)(4)

[14] *See* NYSE American Options Proprietary Market Data Fees, American Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Market_Data_Fee_Schedule.pdf.*

[15] *See* NYSE Arca Options Proprietary Market Data Fees, Arca Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Options_Proprietary_Data_Fee_Schedule.pdf.*

[16] *See* PHLX Price List—U.S. Derivatives Data, PHLX Orders Fees, at *http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#PHLX.*

[17] *See* MIAX website, Market Data & Offerings, at *https://www.miaxoptions.com/market-data-offerings* (last visited April 1, 2022). In general, MOR provides real-time ulta-low latency updates on the following information: New Simple Orders added to the MIAX Order Book; updates to Simple Orders resting on the MIAX Order Book; new Complex Orders added to the Strategy Book (*i.e.,* the book of Complex Orders); updates to Complex Orders resting on the Strategy Book; MIAX listed series updates; MIAX Complex Strategy definitions; the state of the MIAX System; and MIAX's underlying trading state.

[18] *See* Securities Exchange Act Release No. 92359 (July 9, 2021), 86 FR 37393 (July 15, 2021) (SR–MIAX–2021–28).

[19] *See* Securities Exchange Act Release Nos. 92789 (August 27, 2021), 86 FR 49364 (September 2, 2021) (SR–MIAX–2021–28, SR–EMERALD–2021–21) (''Suspension Order 1''); 93426 (October 26, 2021), 86 FR 60314 (November 1, 2021) (SR–MIAX–2021–50); 93808 (December 17, 2021), 86 FR 73011 (December 23, 2021) (SR–MIAX–2021–62).

[20] *See* Securities Exchange Act Release No. 94262 (February 15, 2022), 87 FR 9733 (February 22, 2022) (SR–MIAX–2022–10) (''Suspension Order 2'').

[21] 15 U.S.C. 78f(b).

of the Act [22] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposed fees further the objectives of Section 6(b)(5) of the Act [23] in that they are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes as set forth in recent Commission and Commission Staff guidance. On March 29, 2019, the Commission issued an Order disapproving a proposed fee change by the BOX Market LLC Options Facility to establish connectivity fees for its BOX Network (the ''BOX Order'').[24] On May 21, 2019, the Commission Staff issued guidance ''to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act.'' [25] Based on both the BOX Order and the Guidance, the Exchange believes that the proposed fees are consistent with the Act because they are: (i) Reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable and will not result in excessive pricing or supra-competitive profit; and (iv) identical to the prices the Exchange currently charges for its ToM data product and the prices the Exchange's affiliate, MIAX Emerald, charges for its ToM product, both of which were previously published by the Commission and remain in effect today.[26]

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, cToM further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of cToM. Particularly, cToM provides subscribers with the same information as ToM, but includes the following additional information: (i) The identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information; and (iii) the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). The Exchange believes cToM provides a valuable tool that subscribers can use to gain substantial insight into the trading activity in Complex Orders, but also emphasizes such data is not necessary for trading. Moreover, other exchanges offer similar data products.[27]

The Proposed Fees Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants.

In the Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [28] The Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [29] In the Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supra-competitive profit, specific information, including quantitative information, should be provided to support that argument.'' [30] The Exchange does not assert that the proposed fees are constrained by competitive forces. Rather, the Exchange asserts that the proposed fees are reasonable because they will permit recovery of the Exchange's costs in producing and disseminating cToM data and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [31] The Commission Staff further states in the Guidance that ''the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.'' [32] The Exchange provides this analysis below.

The proposed fees are based on a cost-plus model. The Exchange believes that it is important to demonstrate that the proposed fees are based on its costs and reasonable business needs and believes the proposed fees will allow the Exchange to begin to offset expenses. However, as discussed more fully below, such fees may also result in the Exchange recouping less than, or more than, all of its costs of providing the cToM data feed because of the uncertainty of forecasting subscriber decision making with respect to firms' market data needs. The Exchange believes that the proposed fees will not result in excessive pricing or supra-competitive profit based on the total expenses the Exchange incurs versus the total revenue the Exchange projects to collect, and therefore meets the standards in the Act as interpreted by the Commission and the Commission Staff in the BOX Order and the Guidance.

The suspension orders sought additional information and comments on various aspects of the prior proposed fee changes. In many respects, the Commission's questions about the prior proposed fee changes raise broader questions around the factors the Commission should consider and the type of data and analysis an exchange should provide in considering whether

[22] 15 U.S.C. 78f(b)(4).

[23] 15 U.S.C. 78f(b)(5).

[24] *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) (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).

[25] *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'').

[26] *See supra* note 13.

[27] *See supra* notes 14 through 16.

[28] *See* Guidance, *supra* note 25.

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

market data, port fees, or connectivity fees are fair and reasonable under a cost-based methodology. The suspension orders also sought more specific information regarding the allocation of third-party expenses, such as the overall estimated cost for each category of external expenses or at minimum the total applicable third-party expenses and percentage allocation or statements regarding the Exchange's overall estimated costs for the internal expense categories and general shared expenses figure. The Exchange added this additional information below.

In this filing, the Exchange offers a conceptual framework for further considering the Commission's questions that draws on the Exchange's own experience over several years of analyzing its own costs. The elements of that framework are as follows:

First, the Exchange created a flat, simple fee structure that imposes a single monthly fee for Internal Distributors and External Distributors, without added fees based on the way the data is used or individual per user fees. The Exchange believes this relatively simple, flat fee structure is transparent and easy for users to apply, and this difference also helps show that it meets the objectives of the Act.

The Exchange then conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the cToM data feed. That methodology does not allow for ''double-counting'' of the same costs for different classes of exchange products—for example transaction services, other market data products, physical connectivity, ''logical'' port connections or regulatory resources.

The Exchange then sought to narrowly allocate specific costs to the market data products to which the proposed fees would apply. In this filing, the Exchange provided more detail about how that allocation was determined and included information about tangential cost items that were not included. In determining what portion (or percentage) to allocate to producing and disseminating the cToM data feed, each Exchange department head, in coordination with other Exchange personnel, determined the expenses that support producing and distributing the cToM data feed. This included numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders. The analysis also included each department head meeting with the divisions of teams within each department to determine the amount of time and resources allocated by employees within each division towards producing and distributing the cToM data feed. The Exchange reviewed each individual expense to determine if such expense was related to producing and disseminating the cToM data feed. Once the expenses were identified, the Exchange department heads, with the assistance of the Exchange's internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports producing and disseminating the cToM data feed. The sum of all such portions of expenses represents the total cost to the Exchange to produce and disseminate the cToM data feed. For the avoidance of doubt, no expense amount is allocated twice. Specifically, no expense amount is allocated to more than one expense category within this filing and no expense amount that is allocated as a cost to produce and disseminate the cToM data feed in this filing has been or will be allocated as a cost to provide any other exchange product or service in any other fee filing. In the suspension orders, the Commission questioned whether further explanation of the Exchange's cost analysis was necessary. The Exchange provides further details concerning its cost analysis in response to this question.

The Exchange believes exchanges, like all businesses, should be provided flexibility when developing and applying a methodology to allocate costs and resources they deem necessary to operate their business, including providing market data and access services. The Exchange notes that costs and resource allocations may vary from business to business and, likewise, costs and resource allocations may differ from exchange to exchange when it comes to providing market data and access services. It is a business decision that must be evaluated by each exchange as to how to allocate internal resources and what costs to incur internally or via third parties that it may deem necessary to support its business and its provision of market data and access services to market participants.

Finally, the Exchange acknowledges that it is difficult to predict how much revenue the Exchange will receive from the proposed fees with precision. The analysis conducted by the Exchange is designed to make a fair and reasonable assessment of costs and resources allocated to support the production and dissemination of the cToM data feed associated with the proposed fees. The Exchange further acknowledges that this assessment can only capture a moment in time and that costs and resource allocations may change. That is why the Exchange historically, and on an ongoing basis, reviews its costs and resource allocations to ensure it appropriately allocates resources to properly provide services to the Exchange's constituents. As part of this proposed rule change, and as described further below, the Exchange is committing to conduct an annual cost review with respect to fees that are cost justified in this proposed rule change beginning one year from the date of this proposal, and annually thereafter. The Exchange expects that it may propose to adjust fees at that time, either to increase fees in the event that revenues fail to reasonably cover costs at the estimated margin set forth below, or to decrease fees in the event that revenue materially exceeds the Exchange's current projections. In the event that the Exchange determines to propose a fee change, updated cost estimates will be included in a rule filing proposing the fee change.

The Exchange believes applying this framework to the proposed fees shows that they are consistent with the requirements of the Act, leaving aside that the proposed fees are relatively similar to, or less than, fees charged by other exchanges for similar market data products.

Exchange Costs and Cost Methodology

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully support the production and dissemination of the cToM data feed. As described below, 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.[33] The Exchange believes the proposed fees are a reasonable attempt to offset a portion of those costs associated with producing and disseminating the cToM data feed.

[33] Both fixed and variable expenses have significant impact on the Exchange's overall costs to provide the cToM data feed. For example, to accommodate new Members, the Exchange may need to purchase additional hardware to support those Members and provide the cToM data feed. Further, as the total number of Members increases, the Exchange 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 the Exchange and its affiliates to provide access to its Members is not fixed.

The Exchange estimated its total annual expense to provide the cToM data feed based on the following general expense categories: (1) External expenses, which include fees paid to third parties for certain products and services; (2) internal expenses relating to the internal costs to produce and disseminate the cToM data feed; and (3) general shared expenses.[34] The below table details each of these individual external and internal annual costs considered by the Exchange to be directly related to offering cToM to subscribers, and not any other product or service offered by the Exchange. The below table also details the general shared expense allocated to this proposal. Each of these expenses are discussed in more detail further below.

For 2022, the total annual expense for producing and disseminating the cToM data feed is estimated to be $299,228, or $24,936 per month. The Exchange utilized its estimated 2022 revenue and costs, which utilize the same methodology set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[35]

External expenses	
Category	Percentage of total expense amount allocated
Data Center Provider	0.20%.
Fiber Connectivity Provider	0.20%.
Hardware and Software Providers	0.20%.
Total of External Expenses	$5,380.[36]
Internal expenses	
Category	Expense amount allocated
Employee Compensation	$270,825 (representing 1.8% of total $14,957,861 expense).
Depreciation and Amortization	$3,830 (representing 0.09% of total $4,135,294 expense).
Occupancy	$13,925 (representing 1.8% of total $769,108 expense).
Total of Internal Expenses	$288,580.
Total Allocated Shared Expenses	$5,268 (representing 0.13% of total $4,042,629 expense).
Total External + Internal + Allocated Shared Expenses	$299,228.

In its suspension orders, the Commission solicited commenters' views on whether the Exchange has provided sufficient detail on the identity and nature of services provided by third parties. The Commission further solicited commenters' views on whether the Exchange has provided sufficient detail on the elements that go into producing and distributing the cToM data feed, including how shared costs are allocated and attributed to the cToM data feed, to permit an independent review and assessment of the reasonableness of purported cost-based fees and the corresponding profit margin thereon. In response, the Exchange provides additional detail regarding the identity and nature of services provided by third parties, the elements that go into producing and distributing the cToM data feed, and how expenses are allocated. The Exchange believes this additional detail is sufficient to support a finding that the proposed fees are consistent with the Exchange Act.

The Exchange notes that it only has a single source of revenue, distribution fees, to recover those costs associated with providing and disseminating the cToM data feed. For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing the cToM data feed. The Exchange describes below the analysis conducted for each expense and the resources or determinations that were considered when determining the amount necessary to allocate to each expense. The Exchange notes that, without the specific third party and internal expense items, the Exchange would not be able to provide and distribute cToM data feed. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, were identified through a line-by-line cost analysis and determined to be integral to providing and distributing the cToM data feed for the reasons discussed below. Only a portion of all fees paid to such third parties are included in the third party expenses described herein, and, again, no expense amount is allocated twice. For example, the Exchange does not allocate its entire information technology and communication costs to providing and distributing the cToM data feed because it determined that a portion of those costs are attributable to other areas of the Exchange's operations, such as ports and transaction services, as well as other market data products provided by the Exchange. This may result in the Exchange under allocating an expense to provide the cToM data feed, and such

[34] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to adjustments to internal resource allocations and different system architecture of the Exchange as compared to its affiliates.

[35] 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. 87875 (December 31, 2019), 85 FR 770 (January 7, 2020) (SR–MIAX–2019–51). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2022 Form 1 Amendment, which will be filed in 2023. In its suspension orders, the Commission also asked should the Exchange use cost projections or actual costs estimated for 2021 in a filing made in 2022, or make cost projections for 2022. The Exchange utilized expenses from its most recent audited financial statement as those numbers are more reliable than more recent unaudited numbers, which may be subject to change.

[36] The Exchange does not believe it is appropriate to disclose the actual amount it pays to each individual third party provider as those fee arrangements are competitive or the Exchange is contractually prohibited from disclosing that amount.

expenses may actually be higher than what the Exchange allocated as part of this proposal.[37]

Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations, which resulted in revised percentage allocations in this filing as compared to prior versions of this proposed fee change that were previously withdrawn by the Exchange. The revised percentages are, among other things, the result of the shifting of internal resources in response to business objectives. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

External Expense Allocations

For 2022, annual expenses relating to fees paid by the Exchange to third parties for products and services necessary to provide the cToM data feed are estimated to be $5,380.[38] This includes a portion of the fees paid to: (1) A third party data center provider, including for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) a fiber connectivity provider for network services (fiber and bandwidth products and services) linking the Exchange's and its affiliates' office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; and (3) hardware and software providers, which support the production environment in which Members and non-Members connect to the network to receive market data.[39]

Data Center Space and Operations Provider

The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties where the Exchange houses servers, switches and related equipment. Data center costs include an allocation of the costs the Exchange incurs to provide and distribute market data in the third party data centers where it maintains its equipment as well as related costs described below. The data center provider operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. Without the retention of a third party data center, the Exchange would not be able to operate its systems, provide a trading platform for market participants, and produce and distribute market data. The Exchange does not employ a separate fee to cover its data center expense and recoups that expense, in part, by charging for the cToM data feed.

The Exchange reviewed its data center footprint and space utilized, including its total rack space, cage usage, number of servers, switches, cabling within the data center, heating and cooling of physical space, storage space, and monitoring and divided its data center expenses among providing transaction services, market data, and connectivity based on space utilized by each area.[40] Based on this review, the Exchange determined that 0.20% of the total applicable data center provider expense is applicable to providing the cToM data feed. The Exchange reviewed space utilized to house rack space, cage usage, servers, switches, cabling, storage space, heating and cooling of physical space, and monitoring, and identified that a small portion of that footprint is dedicated to equipment used to produce and distribute the cToM data feed.

The Exchange believes this allocation is reasonable because it represents the costs associated with housing the Exchange's equipment dedicated to processing and disseminating the cToM data feed. The Exchange excluded from this allocation portion of the Exchange's data center expense that is due to space utilized to provide and maintain connectivity to the Exchange's System Networks, including providing cabling within the data center between market participants and the Exchange. The Exchange also did not allocate the remainder of the data center expense because it pertains to space utilized by other areas of the Exchange's operations, such as connectivity, ports and transaction services, as well as other market data products provided by the Exchange.

Fiber Connectivity Provider

The Exchange engages a third party service provider that provides the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data center, and office locations in Princeton and Miami. Fiber connectivity is necessary for the Exchange to switch to its secondary data center in the case of an outage in its primary data center. Fiber connectivity also allows the Exchange's National Operations & Control Center (''NOCC'') and Security Operations Center (''SOC'') in Princeton to communicate with the Exchange's primary and secondary data centers. As such, all trade data, including the billions of messages each day, flow through this third party provider's infrastructure over the Exchange's network. Fiber connectivity is also necessary for personnel responsible for overseeing and providing customer service related to producing and distributing the cToM data feed, receiving relevant data and being able to communicate between the Exchange's various locations and data centers. Without the retention of a third party fiber connectivity provider, they Exchange would not be able to communicate between its data centers and office locations in a manner necessary to maintain and support the cToM data feed. Fiber connectivity is a necessary integral means to disseminate information, including data related to producing and distributing the cToM data feed, from the Exchange's primary data center to other Exchange locations. It is necessary for Exchange employees located in various locations to be able to communicate and receive the necessary data to maintain and provide customer support related to the cToM data feed. The Exchange would not be able to operate and support the network and produce and distribute the cToM data feed without third party fiber connectivity. The Exchange does not employ a separate fee to cover its fiber connectivity expense and recoups that expense, in part, by charging for cToM data feed.

[37] The Exchange notes that expenses associated with its affiliates, MIAX Emerald and MIAX Pearl (the options and equities markets), are accounted for separately and are not included within the scope of this filing.

[38] *See supra* note 36.

[39] *Id.* The Exchange did not allocate any expense associated with the proposed fees towards the Securities Financial Transaction Infrastructure (''SFTI'') and various other service providers' because the Exchange's architecture takes advantage of an advance in design to eliminate the need for a market data distribution gateway layer. The computation and dissemination via an API is done solely within the match engine environment and is then delivered via the Member and non-Member connectivity infrastructure. This architecture delivers a market data system that is more efficient both in cost and performance. Accordingly, the Exchange determined not to allocate any expense associated with SFTI and various other service providers.

[40] The Investors Exchange, Inc. (''IEX'') also allocated data center costs to produce market data based on space utilized. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945, at page 21949 (April 13, 2022) (SR–IEX–2022–02) (''IEX Market Data Fee Proposal'') (noting that ''[d]ata Center costs consist of the fees charged by the third-party data centers used by IEX and represent less than 10% the Exchange's total data center costs *based on space utilized*'' (*emphasis added*)).

The Exchange reviewed it costs to retain fiber connectivity from a third party, including the ongoing costs to support fiber connectivity, ensuring adequate bandwidth and infrastructure maintenance to support exchange operations, and ongoing network monitoring and maintenance and determined that 0.20% of the total fiber connectivity expense was applicable to producing and distributing the cToM data feed. The Exchange reviewed its total fiber connectivity expense and allocated it among transaction services, connectivity, ports, other market data products, and administrative operations based on usage. The Exchange then further divided up its fiber connectivity costs related to market data and identified the portion that is attributable to producing and maintaining the cToM data feed, also based on usage. This allocation is, therefore, based on the amount of bandwidth and fiber connectivity the Exchange calculated is utilized to support exchange operations, and ongoing network monitoring and maintenance that are necessary to produce and maintain the cToM data feed. The Exchange believes this allocation is reasonable because it reflects the portion of the fiber connectivity expense that relates to producing and distributing the cToM data feed. The Exchange excluded a large portion of the Exchange's fiber connectivity expense that is due to providing and maintaining connectivity between the Exchange's System Networks, data centers, and office locations and is core to the daily operation of the Exchange. The Exchange also excluded from this allocation fiber connectivity usage related to system connectivity or other business lines, such as transaction services and other market data products offered by the Exchange, or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing the cToM data feed. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to produce and distribute the cToM data feed.

Hardware and Software Providers

The Exchange relies on dozens of third party hardware and software providers for equipment necessary to produce and disseminate the cToM data feed. This includes either the purchase or licensing of physical equipment, such as servers, switches, cabling, and devices needed by Exchange personnel to monitor servers and the health of market data products, including the cToM data feed. This consists of real-time monitoring of system performance, integrity, and latency of market data products. It also includes the Exchange purchasing or licensing software necessary for security monitoring, data analysis and Exchange operations. Hardware and software providers are necessary to produce and distribute the cToM data feed. Hardware and software equipment and licenses for that equipment are also necessary to operate and monitor physical assets necessary to produce and distribute the cToM data feed. Hardware and software equipment and licenses are key to the operation of the Exchange and without them the Exchange would not be able to produce and distribute the cToM data feed. The Exchange does not employ a separate fee to cover its hardware and software expense and recoups that expense, in part, by charging for cToM data feed dissemination.

The Exchange reviewed its hardware and software related costs, including software patch management, vulnerability management, administrative activities related to equipment and software management, professional services for selection, installation and configuration of equipment and software supporting exchange operations. The Exchange then divided those costs among transaction services, ports, connectivity, other market data products, and other Exchange operations based on whether all of that hardware or software is based on usage. The Exchange then reviewed the amount allocated to producing and distributing market data generally and what portion of that hardware and software equipment or license is used to support the cToM data feed specifically. Based on this review, the Exchange determined that 0.20% of the total applicable hardware and software expense is allocated to producing and distributing the cToM data feed. This percentage reflects the amount of hardware and software equipment and licenses dedicated to produce and maintain the cToM data feed.[41] Hardware and software equipment and licenses are key to the operation of the Exchange and production and distribution of market data. Without them, the Exchange would not be able to develop, and market participants would not be able to purchase, the cToM data feed. The Exchange only allocated the portion of this expense to the hardware and software that is related to the cToM data feed, such as operating servers and equipment necessary to produce and distribute the cToM data feed. The Exchange, therefore, did not allocate portions of its hardware and software expense that related to other areas of the Exchange's business, such as hardware and software used for connectivity or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations, such as ports or transaction services, as well as other market data products provided by the Exchange, and is not directly related to producing and disseminating the cToM data feed. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to produce and disseminate the cToM data feed, and not any other service, as supported by its cost review.

Internal Expense Allocations

For 2022, total internal annual expense relating to the Exchange producing and distributing the cToM data feed is estimated to be $288,580. This includes costs associated with: (1) Employee compensation and benefits for full-time employees that support market data, 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 as well as important system upgrades; (2) depreciation and amortization of hardware and software used to produce and distribute the cToM data feed, 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 support the cToM data feed.

Employee Compensation and Benefits

Human personnel are key to exchange operations and supporting the Exchange's ongoing provision of the cToM data feed. The Exchange reviewed its employee compensation and benefits expense and the portion of that expense allocated to providing the cToM data feed. As part of this review, the Exchange considered employees whose functions include providing and maintaining the cToM data feed and used a blended rate of compensation reflecting salary, stock and bonus compensation, bonuses, benefits,

[41] The Exchange notes that IEX used a similar methodology to allocate hardware costs to market data. *See* IEX Market Data Fee Proposal, *id.* at page 21950 (noting that ''IEX only included hardware specifically dedicated to the market data feeds in calculating the costs of providing market data'').

payroll taxes, and 401K matching contributions.[42]

In its suspension orders, the Commission asked the Exchange provide more detail about the methodology the Exchange used to determine how much of an employee's time is devoted to market data related activities. In considering the cost of personnel, the Exchange generally considered the time spent on various market data projects and initiatives through project management tracking tools and analysis of employee resource allocations, among its Technology Team in the following areas: Technical Operations, Software Engineering, Quality Assurance, and Infrastructure. The Exchange did not consider non-Technology Teams such as Market Operations, Project Management, Regulatory, Legal, and Accounting/Finance.[43]

Based on this review, the Exchange determined to allocate $270,825 in employee compensation and benefits expense to producing and distributing the cToM data feed. This represents approximately 1.8% of the $14,957,861 total projected expense for employee compensation and benefits. The Exchange determined the cost allocation for employees who perform work in support of producing and distributing the cToM data feed to arrive at a full time equivalent (''FTE'') of 0.8 FTEs across all the identified personnel. The Exchange then multiplied the FTE times a blended compensation rate for all relevant Exchange personnel to determine the personnel costs associated with producing and distributing the cToM data feed. Senior staff also reviewed these time allocations with department heads and team leaders to determine whether those allocations were appropriate. These employees are critical to the Exchange to producing and distributing the cToM data feed. The Exchange determined the above allocation based on the personnel whose work focused on functions necessary to producing and distributing the cToM data feed. The Exchange does not charge a separate fee for employees who support the cToM data feed and the Exchange seeks to recoup that expense, in part, by charging for the cToM data feed.

The Exchange believes it is appropriate to include incentive compensation in the blended personnel compensation rate on the same basis as other personnel costs for in-scope employees because incentive compensation is a part of the total personnel costs associated with the Exchange's costs to provide the cToM data feed. Moreover, the Exchange notes that it has taken a conservative approach in determining which employees to include in its cost analysis, in terms of function and percent allocation, so that the included personnel costs are directly and closely tied to the costs of providing the cToM data feed. The FTE allocation represents just 1.8% of the Exchange's overall personnel costs. Consistent with the Exchange's conservative methodology to limit costs allocated to producing and disseminating the cToM data feed, this approach includes only a de minimis personnel cost allocation for senior level executives and no allocation for members of the Exchange's board of directors. Accordingly, the Exchange believes that the allocated personnel expenses included are appropriately attributable to producing and disseminating the cToM data feed.

Depreciation and Amortization

A key expense incurred by the Exchange relates to the depreciation and amortization of equipment that the Exchange procured to produce and distribute the cToM data feed. The Exchange reviewed all of its physical assets and software, owned and leased, and determined whether each asset is related to providing and maintaining the cToM data feeds, and added up the depreciation of those assets. All physical assets and software, which includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost and depreciated or leased over periods ranging from three to five years. Based on the Exchange's experience, this depreciation period equals the typical life expectancy of those assets. In determining the amount of depreciation and amortization to apply to providing the cToM data feeds, the Exchange considered the depreciation of hardware and software that are key to its provision of the cToM data feeds. This includes servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were previously purchased to produce and distribute the cToM data feed. Without them, market participants would not be able to receive the cToM data feed. The Exchange seeks to recoup a portion of its depreciation expense by charging for the cToM data feed.

Based on this review, the Exchange determined to allocate $3,830 in depreciation and amortization expense to producing and distributing the cToM data feed. This is only 0.09% of the $4,135,294 total projected expense for depreciation and amortization. For purposes of the allocation of these costs to the cToM data feed, the Exchange allocates the annual depreciation (*i.e.,* one-third or one-fifth of the initial asset value based on the typical life expectancy of those assets). One-third or one-fifth of the cost of each asset is included in the annual costs allocated to the cToM data feed. The Exchange only included assets specifically dedicated to the cToM data feed in calculating the costs of providing the cToM data feed. This means that physical assets used for transaction services, other market data products, or other Exchange operations were excluded from the calculation.[44] The Exchange, therefore, did not allocate portions of depreciation expense that relates to other areas of the Exchange's business, such as the depreciation of hardware and software used for connectivity, unrelated administrative services, or other market data products provided by the Exchange. All of the expenses outlined in this proposed fee change refer to the operating expenses of the Exchange. In the suspension orders, the Commission asked for additional detail or explanation to ensure that no expense amount is allocated twice. The Exchange did not included any future capital expenditures within these costs ensuring that no cost is counted twice. Depreciation and amortization represent the expense of previously purchased hardware and internally developed software spread over the useful life of the assets. Due to the fact that the Exchange has only included operating expense and historical purchases, there

[42] For purposes of this allocation, the Exchange did not consider expenses related to office space, supplies, or equipment use by employees who support cToM data feed.

[43] The Exchange notes that IEX used a similar methodology to allocate employee compensation related costs to market data. *See* IEX Market Data Fee Proposal, *supra* note 41 at page 29150 (noting that ''[f]or personnel costs, IEX calculated an allocation of employee time for employees whose functions include providing and maintaining IEX Data and/or the proprietary market data feeds used to transmit IEX Data, and used a blended rate of compensation reflecting salary, stock and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions'').

[44] The Exchange notes that IEX used a similar methodology to allocate hardware costs to market data. *See* IEX Market Data Fee Proposal at note 54, *supra* note 41 at page 21950 (noting that ''[h]ardware is depreciated on a straight-line three-year period, which in IEX's experience, is equal to the typical life expectancy of those assets. As noted above, one-third of the cost of each hardware asset is included in the annual costs allocated to market data. IEX only included hardware specifically dedicated to the market data feeds in calculating the costs of providing market data. This means that physical assets used for both order entry and market data were excluded from the calculation'').

is no double counting of expenses in the Exchange's cost estimates.

Occupancy

The Exchange rents and maintains multiple physical locations to house staff and equipment necessary to support the production and dissemination of the cToM data feed. The Exchange's occupancy expense is not limited to the housing of personnel and includes locations used to store equipment necessary for Exchange operations. In determining the amount of its occupancy related expense, the Exchange considered actual physical space used to house employees whose functions include producing and distributing the cToM data feed. Similarly, the Exchange also considered the actual physical space used to house hardware and other equipment necessary to provide and maintain the cToM data feed. The Exchange maintains staff that support producing and distributing the cToM data feed in various locations and needs to provide workplaces for that staff as well as space to house hardware and equipment necessary for those employees to perform those functions.[45] This equipment includes computers, servers, and accessories necessary to support producing and distributing cToM data feed. Based on this review, the Exchange determined to allocate $13,925 of its occupancy expense to producing and distributing the cToM data feed. According to the Exchange's calculations, it allocated approximately 1.8% of the total applicable occupancy expense to producing and distributing the cToM data feeds. This is only a portion of the $769,108 total projected expense for occupancy. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the cToM data feed. The Exchange considered the rent paid for the Exchange's Princeton and Miami offices, as well as various related costs, such as physical security, property management fees, property taxes, and utilities at each of those locations. The Exchange did not include occupancy expenses related to housing employees and equipment related to other Exchange operations, such as transaction and administrative services.

Allocated Shared Expense

Finally, a limited portion of general shared expenses was allocated to the cToM data feed costs, as without these general shared costs, the Exchange would not be able to operate in the manner that it does and produce and distribute the cToM data feed. The costs included in general shared expenses include recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. For 2022, the Exchange's general shared expense allocated to the cToM data feed is estimated to be $5,268. This represents approximately 0.13% of the $4,042,629 total projected general shared combined expense. The Exchange used the weighted average of the above allocations to determine the amount of general shared expenses to allocate to the Exchange. Next, based on additional management and expense analysis, these fees are allocated to the proposal.

Revenue and Estimated Profit Margin

The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: Transaction fees, access fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms.

To determine the Exchange's estimated revenue associated with the cToM data feed, the Exchange analyzed the number of Members and non-Members currently receiving the cToM data feed and used a recent monthly billing cycle representative of current monthly revenue. The Exchange also provided its baseline by analyzing March 2022, the monthly billing cycle prior to the proposed cToM data fee, and compared this to its expenses for that month. As discussed below, the Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its estimates for purposes of these calculations, given the uncertainty of such estimates due to the continually changing access needs of market participants and potential changes in internal and third party expenses.

For the month of March 2022, prior to the effectiveness of the proposed cToM fees, the Exchange had 13 cToM data feed subscribers, for which the Exchange charged $0. This resulted in a loss of $24,936 for that month. For April 2022, the Exchange anticipates that it will have 13 cToM data feed subscribers.[46] Assuming the Exchange charges the proposed fees for Distributors, the Exchange would generate revenue of $16,250 for April 2022. This would result in a loss of $8,686 ($16,250 minus $24,936) for the month of April (a negative 53% margin from March 2022 to April 2022).

The Exchange believes that conducting the above analysis on a per month basis is reasonable as the revenue generated from the cToM data feed generally remains static from month to month. The Exchange also conducted the above analysis on a per month basis to comply with the Commission Staff's Guidance, which requires a baseline analysis to assist in determining whether the proposal generates a supra-competitive profit. The Exchange cautions that this margin may also fluctuate from month to month based on the uncertainty of predicting how many subscribers may purchase cToM data feed subscriptions from month to month as Members and non-Members are free to add and drop subscriptions at any time based on their own business decisions.

The Exchange believes the proposed margin is reasonable and will not result in a ''supra-competitive'' profit. The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.''[47] Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2008.[48] The Exchange has operated at a net loss due to a number of factors, one of which is choosing to forgo revenue by offering certain products, such as the cToM data feed, for free, as well as other products at lower rates, than other options exchanges to attract order flow and encourage market participants to experience the high determinism, low latency, and resiliency of the Exchange's trading systems. The Exchange previously provided the cToM data feed free of charge and absorbed all costs

[45] For the avoidance of doubt, the Exchange did not include within this cost any portion of its costs related to third party fiber connectivity used by Exchange staff in different office locations to communicate as part of their role in supporting the cToM data feed.

[46] The Exchange notes that the number of cToM subscribers may change over time. Beginning with June 2021, the month prior to the original fee change to adopt cToM data fees, the Exchange had the following number of subscribers each month: June (15 subscribers); July (13 subscribers); August (14 subscribers); September (17 subscribers); October (13 subscribers); November (13 subscribers); December (13 subscribers); January (13 subscribers); February (13 subscribers); March (13 subscribers); and April (13 subscribers).

[47] *See* Guidance, *supra* note 25.

[48] The Exchange has incurred a cumulative loss of $175 million since its inception in 2008 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000460.pdf.*

associated with providing the cToM data feed to market participants. In this proposal, the Exchange would continue to offer the cToM data feed for a fee that still falls short of covering the Exchange's expenses. The Exchange is not generating a profit, and therefore, cannot be deemed to be generating a ''supra-competitive'' profit by now charging for the cToM data feed. The Exchange should not now be penalized for seeking to adopt fees to at least cover a portion of its costs after offering the cToM data feed free of charge. Therefore, the Exchange believes the proposed fees are reasonable because they are based on both relative costs to the Exchange to generate and disseminate cToM, the extent to which the product drives the Exchange's overall costs and the relative value of the product, as well as the Exchange's objective to make cToM broadly available to market participants. The Exchange also believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup some of the Exchange's annual costs of providing the cToM data feed.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent such revenue actually produces the revenue estimated. As an innovator in the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from the cToM data feed, the Exchange will have to be successful in retaining existing clients that wish to receive the cToM data feed or obtaining new clients that will purchase such data. To the extent the Exchange is successful in encouraging new clients to receive the cToM data feed, the Exchange does not believe it should be penalized for such success. The Exchange, like other exchanges, is, after all, a for-profit business. While the Exchange believes in transparency around costs and potential margins, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes this proposal demonstrates this fact.

Finally, the Exchange believes that the proposed fees are reasonable because they will not impose onerous audit requirements on subscribers, because there will be no need to substantiate the number of users of cToM or the manner in which it is being used, but rather only whether it is being redistributed internally or to external third parties.

Annual Review of Fees

In its suspension orders, the Commission asks whether exchanges should periodically reevaluate fees on an ongoing and periodic basis in order to assure that actual revenue aligns with a reasonable cost-plus model. As described above and as part of this proposed rule change, the Exchange is committing to conduct a one year review of the fees that are cost justified as part of this proposed rule change after the date of this proposal, and annually thereafter. The Exchange expects that it may propose to adjust fees at that time, either to increase fees in the event that revenues fail to reasonably cover costs at the estimated margin set forth above, or to decrease fees in the event that revenue materially exceeds the Exchange's current projections. In the event that the Exchange determines to propose a fee change, updated cost estimates will be included in a rule filing proposing the fee change. The Exchange believes this approach will further increase transparency around market data costs and help to ensure that Exchange fees continue to be reasonably related to costs.

The Proposed Fees Are Reasonable When Compared to the Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other options exchanges' costs to provide market data or their fee markup over those costs, and therefore cannot use other exchange's market data fees as a benchmark to determine a reasonable markup over the costs of providing market data. Nevertheless, the Exchange believes the other exchanges' complex market data fees are useful examples of alternative approaches to providing and charging for complex market data notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of complex market data. To that end, the Exchange believes the proposed cToM data fees are reasonable because the proposed fees are similar to, or less than fees charged for complex market data provided by other options exchanges with comparable market shares.

As described in the below table, the Exchange's proposed fees remain less than fees charged for similar market data products provided by other options exchanges with similar market share. Each of the market data rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

Exchange	Monthly fee
MIAX (as proposed)	$1,250—Internal Distributor, $1,750—External Distributor.
Amex [49]	$1,500—Access Fee, $1,000—Redistribution Fee (this fee is in addition to the Access Fee resulting in a $2,500 monthly fee for external distribution).
Arca [50]	$1,500—Access Fee, $1,000—Redistribution Fee (this fee is in addition to the Access Fee resulting in a $2,500 monthly fee for external distribution).
PHLX [51]	$3,000—Internal Distributor, $3,500—External Distributor.

[49] *See* NYSE American Options Proprietary Market Data Fees, American Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Market_Data_Fee_Schedule.pdf.*

[50] *See* NYSE Arca Options Proprietary Market Data Fees, Arca Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Options_Proprietary_Data_Fee_Schedule.pdf.*

[51] *See* PHLX Price List—U.S. Derivatives Data, PHLX Orders Fees, at *http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#PHLX.*

The Proposed Pricing Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that the proposed fees are reasonable, fair, and equitable, and not unfairly discriminatory because they are designed to align fees with services provided and will apply equally to all subscribers. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess Internal Distributors fees that are less than the fees assessed for External Distributors for subscriptions to the cToM data feed because Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights. All Members and non-Members that determine to receive any market data feed of the Exchange (or its affiliates, MIAX Pearl and MIAX Emerald), must first execute, among other things, the MIAX Exchange Group Exchange Data Agreement (the ''Exchange Data Agreement'').[52] Pursuant to the Exchange Data Agreement, Internal Distributors are restricted to the ''internal use'' of any market data they receive. This means that Internal Distributors may only distribute the Exchange's market data to the recipient's officers and employees and its affiliates.[53] External Distributors may distribute the Exchange's market data to persons who are not officers, employees or affiliates of the External Distributor,[54] and may charge their own fees for the redistribution of such market data. External Distributors may monetize their receipt of the cToM data feed by charging their customers fees for receipt of the Exchange's cToM data. Internal Distributors do not have the same ability to monetize the Exchange's cToM data feed. Accordingly, the Exchange believes it is fair, reasonable and not unfairly discriminatory to assess External Distributors a higher fee for the Exchange's cToM data feed as External Distributors have greater usage rights to commercialize such market data and can adjust their own fee structures if necessary.

The Exchange also utilizes more resources to support External Distributors versus Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of Exchange staff. For example, External Distributors have monthly reporting requirements under the Exchange's Market Data Policies.[55] Exchange staff must then, in turn, process and review information reported by External Distributors to ensure the External Distributors are redistributing cToM data in compliance with the Exchange's Market Data Agreement and Policies.

The Exchange believes the proposed cToM fees are equitable and not unfairly discriminatory because the fee level results in a reasonable and equitable allocation of fees amongst subscribers for similar services, depending on whether the subscriber is an Internal or External Distributor. Moreover, the decision as to whether or not to purchase market data is entirely optional to all market participants. Potential purchasers are not required to purchase the market data, and the Exchange is not required to make the market data available. Purchasers may request the data at any time or may decline to purchase such data. The allocation of fees among users is fair and reasonable because, if market participants determine not to subscribe to the data feed, firms can discontinue their use of the cToM data.

The Exchange further believes that the proposed fees are reasonable, fair, and equitable, and non-discriminatory because they will apply to all subscribers in the same manner based on whether the data is used for internal purposes or distributed to third parties. All similarly situated market participants are subject to the same fees. The fees also do not depend on any distinctions between or among Members, customers, broker-dealers, or any other entity, because they are solely determined by the individual market participant based on its business needs. The Exchange also notes that the proposed monthly cToM fees for Internal and External Distributors are the same prices that the Exchange charges for its ToM data product.

Finally, the Exchange believes that the proposed fees are consistent with Section 11A of the Exchange Act in that it is designed to facilitate the economically efficient execution of securities transactions, fair competition among brokers and dealers, exchange markets and markets other than exchange markets, and the practicability of brokers executing investors' orders in the best market. Specifically, the proposed low cost-based fee will enable a broad range of market participants to receive the cToM data feed, thereby facilitating the economically efficient execution of securities transactions on the Exchange, fair competition between and among such Members, and the practicability of Members that are brokers executing investors' orders on the Exchange when it is the best market.

For the foregoing reasons, the Exchange believes that the proposed fee is reasonable, equitably allocated, and not unfairly discriminatory.

* * * * *

The Exchange believes the proposed change to delete certain text from Section 6)a) of the Fee Schedule promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because the proposed change is a non-substantive edit to the Fee Schedule to remove unnecessary text. The Exchange believes that this proposed change will provide greater clarity to Members and the public regarding the Exchange's Fee Schedule and that it is in the public interest for the Fee Schedule to be accurate and concise so as to eliminate the potential for confusion.

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.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing cToM to market participants. As described above, the Exchange has operated at a cumulative net annual loss since it launched operations in 2008[56] due to providing a low cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very marginal cost, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any

[52] *See* Exchange Data Agreement, available at *https://miaxweb2.pairsite.com/sites/default/files/page-files/MIAX_Exchange_Group_Data_Agreement_09032020.pdf.*

[53] *See id.*

[54] *See id.*

[55] Section 6 of the Exchange's Market Data Policies, *available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Exchange_Group_Market_Data_Policies_07202021.pdf.*

[56] *See supra* note 48.

fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low cost exchange alternative to the options industry which resulted in lower initial revenues. An example of this is cToM, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Since the Exchange initially adopted the cToM data product in 2016, all Exchange Members and non-Members have had the ability to receive the Exchange's cToM data free of charge for the past six years. Since then, the Exchange has spent time and resources building out additional features for Complex Order functionality in its System to provide better trading strategies and risk protections for market participants in order to better compete with other exchanges' complex functionality and similar data products focused on complex orders.[57] The Exchange now seeks to recoup its costs for providing cToM to market participants and believes the proposed fees will not result in excessive pricing or supra-competitive profit.

Inter-Market Competition

The Exchange also does not believe the proposed fees would cause any unnecessary or in appropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. There is no reason to believe that the newly proposed fees to receive the cToM data feed would impair other exchange's ability to compete or cause any unnecessary or inappropriate burden on inter-market competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that purchase cToM. The proposed fees are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

The Exchange does not believe that the proposed rule change to make a minor, non-substantive edit to Section 6)a) of the Fee Schedule by deleting unnecessary text will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This proposed rule change is not being made for competitive reasons, but rather is designed to remedy a minor non-substantive issue and will provide added clarity to the Fee Schedule. The Exchange believes that it is in the public interest for the Fee Schedule to be accurate and concise so as to eliminate the potential for confusion on the part of market participants. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency regarding the Exchange's Fee Schedule.

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. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[58] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[59] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[60] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [61]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities;[62] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;[63] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[64]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposed fees for the cToM market data feed are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[65]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[66]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C)[67] and 19(b)(2)(B) of the Act[68] to determine whether the proposed rule change should be approved or disapproved. Institution of

[57] *See supra* notes 14 through 16.

[58] 15 U.S.C. 78s(b)(3)(C).

[59] 15 U.S.C. 78s(b)(1).

[60] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[61] *Id.*

[62] 15 U.S.C. 78f(b)(4).

[63] 15 U.S.C. 78f(b)(5).

[64] 15 U.S.C. 78f(b)(8).

[65] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[66] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[67] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[68] 15 U.S.C. 78s(b)(2)(B).

such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[69] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Exchange has sufficiently demonstrated how the proposed rule change is consistent with Sections 6(b)(4),[70] 6(b)(5),[71] and 6(b)(8)[72] of the Act. Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth above, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. *Cost Estimates and Allocation.* The Exchange states that it is not asserting that the proposed fees are constrained by competitive forces, but rather sets forth a ''cost-plus model,'' employing a ''conservative approach,'' that the expenses are ''directly related'' to cToM data, and not any other product or service offered by the Exchange, and states that the proposed fees are ''reasonable because they will permit recovery of the Exchange's costs in providing cToM data and will not result in the Exchange generating a supra-competitive profit.''[73] In explaining its costs, should the Exchange identify more specifically which, if any, of its costs are incurred solely to provide cToM data? Regarding the allocations provided by the Exchange as described in greater detail above, do commenters believe that the Exchange provided sufficient detail about how it determined these allocations and why they are reasonable? Why or why not? Do commenters believe that the Exchange provided sufficient context to permit an independent review and assessment of the reasonableness of the cost allocations? Do commenters believe that the Exchange provided sufficient detail or explanation to support its claim that ''no expense amount is allocated twice,''[74] whether *among* the sub-categories of expenses in this filing, *across* the Exchange's fee filings for other products or services, or *over time*?

2. *Revenue Estimates and Profit Margin Range.* The Exchange provides a single monthly revenue figure as the basis for calculating its anticipated profit margin. Do commenters believe this is reasonable? If not, why not? The profit margin is also dependent on the accuracy of the cost projections which, if inflated (intentionally or unintentionally), may render the projected profit margin meaningless. The Exchange acknowledges that this margin may fluctuate from month to month as Members and non-Members add and drop subscriptions,[75] and that costs may increase. The Exchange does not account for the possibility of cost decreases, however. What are commenters' views on the extent to which actual costs (or revenues) deviate from projected costs (or revenues)? Do commenters believe that the Exchange's methodology for estimating the profit margin is reasonable? Should the Exchange provide a range of profit margins that it believes are reasonably possible, and the reasons therefor?

3. *Reasonableness.* The Exchange states that the proposed fees are reasonable because the Exchange is operating at a negative margin for this product. Further, the Exchange states that it chose to initially provide the cToM data product for free and to forego revenue that they otherwise could have generated from assessing any fees.[76] What are commenters' views regarding what factors should be considered in determining what constitutes a reasonable fee for the cToM market data product? Do commenters believe it relevant to an assessment of reasonableness that, according to the Exchange, the Exchange's proposed fees are similar to or lower than fees charged by competing options exchanges with similar market share? Should an assessment of reasonableness include consideration of factors other than costs; and if so, what factors should be considered, and why?

4. *Periodic Reevaluation.* The Exchange has stated that it will conduct a one-year review of the cost-based fees subject to this proposal after the date of the proposal, and annually thereafter. In light of the impact that the number of subscriptions has on profit margins, and the potential for costs to decrease (or increase) over time, what are commenters' views on the need for exchanges to commit to reevaluate, on an ongoing and periodic basis, their cost-based data fees to ensure that the fees stay in line with their stated profitability projections and do not become unreasonable over time, for example, by failing to adjust for efficiency gains, cost increases or decreases, and changes in subscribers? How formal should that process be, how often should that reevaluation occur, and what metrics and thresholds should be considered? How soon after a new data fee change is implemented should an exchange assess whether its revenue and/or cost estimates were accurate and at what threshold should an exchange commit to file a fee change if its estimates were inaccurate?

5. *Fees for Internal Distributors versus External Distributors.* The Exchange argues that it is reasonable, equitable, and not unfairly discriminatory to assess Internal Distributors fees that are lower than the fees assessed for External Distributors for subscriptions to the cToM data feed ($1,250 per month for Internal Distributors versus $1,750 per month for External Distributors), since Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights, including rights to commercialize such market data.[77] In addition, the Exchange states that it ''utilizes more resources'' to support External Distributors as compared to Internal Distributors, as External

[69] *Id.*

[70] 15 U.S.C. 78f(b)(4).

[71] 15 U.S.C. 78f(b)(5).

[72] 15 U.S.C. 78f(b)(8).

[73] *See supra* Section II.A.2.

[74] *See id.*

[75] *See id.*

[76] *See id.*

[77] *See id.*

Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring ''additional time and effort'' of the Exchange's staff.[78] What are commenters' views on the adequacy of the information the Exchange provides regarding the differential between the Internal Distributor and External Distributor fees? Do commenters believe that the fees for Internal Distributors and External Distributors, as well as the fee differences between Distributors, are supported by the Exchange's assertions that it sets the differentiated pricing structure in a manner that is equitable and not unfairly discriminatory? Do commenters believe that the Exchange should demonstrate how the proposed Distributor fee levels correlate with different costs to better substantiate how the Exchange ''utilizes more resources'' to support External Distributors versus Internal Distributors and permit an assessment of the Exchange's statement that ''External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of Exchange staff''?[79]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.''[80] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[81] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[82] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.[83]

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, any potential comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

V. Request for Written Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above, as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[84]

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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–MIAX–2022–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2022–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2022–19 and should be submitted on or before June 7, 2022. Rebuttal comments should be submitted by June 21, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[85] that File Number SR–MIAX–2022–19 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[86]

J. Matthew DeLesDernier,

Assistant Secretary.

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[78] *See id.*

[79] *See id.*

[80] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[81] *See id.*

[82] *See id.*

[83] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 446–47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

[84] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[85] 15 U.S.C. 78s(b)(3)(C).

[86] 17 CFR 200.30–3(a)(12), (57), and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94889; File No. SR–EMERALD–2022–19]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing of a Proposed Rule Change To Amend Its Fee Schedule To Increase Certain Connectivity Fees and Adopt a Tiered-Pricing Structure for Additional Limited Service MIAX Emerald Express Interface Ports; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

May 11, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

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 Options Fee Schedule (the ''Fee Schedule'') to amend certain connectivity and port fees.

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 [sic] 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 Fee Schedule to increase the fees for a 10 gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection and adopt a tiered-pricing structure for Limited Service MIAX Emerald Express Interface (''MEI'') Ports [3] available to Market Makers.[4] The Exchange last increased the fees for both 10Gb ULL fiber connections and Limited Service MEI Ports beginning with a series of filings on October 1, 2020 (with the final filing made on March 24, 2021).[5] Prior to that fee change, the Exchange provided Limited Service MEI Ports for $50 per port, after the first two Limited Service MEI Ports that are provided free of charge, and the Exchange incurred all the costs associated to provide those first two Limited Service MEI Ports since it commenced operations in March 2019. The Exchange then increased the fee by $50 to a modest $100 fee per Limited Service MEI Port and increased the fee for 10Gb ULL fiber connections from $6,000 to $10,000 per month.

Also, in that fee change, the Exchange adopted fees for providing five different types of ports for the first time. These ports were FIX Ports, MEI Ports, Clearing Trade Drop Ports, FIX Drop Copy Ports, and Purge Ports.[6] Again, the Exchange absorbed all costs associated with providing these ports since its launch in March 2019. As explained in that filing, expenditures, as well as research and development (''R&D'') in numerous areas resulted in a material increase in expense to the Exchange and were the primary drivers for that proposed fee change. In that filing, the Exchange allocated a total of $9.3 million in expenses to providing 10Gb ULL fiber connectivity, additional Limited Service MEI Ports, FIX Ports, MEI Ports, Clearing Trade Drop Ports, FIX Drop Copy Ports, and Purge Ports.[7]

Since the time of that filing, the Exchange experienced an increase in expenses, particularly regarding internal expenses. For example, from October 2020 to March 2022 expenses related to employee compensation increased from $9,354,900 to $9,900,032 and occupancy expense increased from $473,323 to $538,916. In addition, from October 2020 to March 2022, the Exchange's third party related expense increased as well. In October 2020, the exchange allocated $1,932,519 of its third party expenses to providing the following seven types of connectivity and access: 10Gb ULL fiber connectivity, additional Limited Service MEI Ports, FIX Ports, MEI Ports, Clearing Trade Drop Ports, FIX Drop Copy Ports, and Purge Ports. As described more fully below, the Exchange is now allocating $2,011,286 of its third party expense to the following two types of connectivity and access: 10Gb ULL connectivity and Limited Service MEI Ports, which represents only a portion of its total third party expense of $3,108,431. As discussed more fully below, the Exchange recently calculated its annual aggregate costs for providing 10Gb ULL connectivity and Limited Service MEI Ports to be $10,483,343, or $873,612 per month. The Exchange now proposes to amend the Fee Schedule to amend the fees for 10Gb ULL connectivity and Limited Service MEI Port in order to recoup these ongoing costs and as a result of the increase in expenses described above.

First, the Exchange proposes to amend the Fee Schedule to increase the fees for Members [8] and non-Members to access the Exchange's System Networks [9] via a 10Gb ULL fiber connection. Specifically, the Exchange proposes to amend Sections (5)(a)–(b) of the Fee Schedule to increase the 10Gb ULL connectivity fee for Members and non-Members from $10,000 per month to $12,000 per month (''10Gb ULL Fee''). Prior to the proposed fee change, the Exchange assessed Members and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The MIAX Emerald Express Interface (''MEI'') is a connection to the MIAX Emerald System that enables Market Makers to submit simple and complex electronic quotes to MIAX Emerald. *See* the Definitions Section of the Fee Schedule.

[4] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[5] *See* Securities Exchange Act Release Nos. 91460 (April 1, 2021), 86 FR 18349 (April 8, 2021) (SR–EMERALD–2021–11); 90184 (October 14, 2020), 85 FR 66636 (October 20, 2020) (SR–EMERALD–2020–12); 90600 (December 8, 2020), 85 FR 80831 (December 14, 2020) (SR–EMERALD–2020–17); 91032 (February 1, 2021), 86 FR 8428 (February 5, 2021) (SR–EMERALD–2021–02); *and* 91200 (February 24, 2021), 86 FR 12221 (March 2, 2021) (SR–EMERALD–2021–07).

[6] *See id.* for a description of each of these ports.

[7] *See supra* note 5.

[8] 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.

[9] The Exchange's System Networks consist of the Exchange's extranet, internal network, and external network.

non-Members a flat monthly fee of $10,000 per 10Gb ULL connection for access to the Exchange's primary and secondary facilities.[10]

The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the primary and secondary facilities in any month the Member or non-Member is credentialed to use any of the Exchange APIs or market data feeds in the production environment. The Exchange proposes to pro-rate the fees when a Member or non-Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the Member or non-Member has been credentialed to utilize any of the Exchange APIs or market data feeds in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate. The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the disaster recovery facility in each month during which the Member or non-Member has established connectivity with the disaster recovery facility.

Second, the Exchange proposes to amend Section (5)(d) of the Fee Schedule to adopt a tiered-pricing structure for Limited Service MEI Ports available to Market Makers. The Exchange allocates two (2) Full Service MEI Ports [11] and two (2) Limited Service MEI Ports [12] per matching engine [13] to which each Market Maker connects. Market Makers may also request additional Limited Service MEI Ports for each matching engine to which they connect. The Full Service MEI Ports and Limited Service MEI Ports all include access to the Exchange's primary and secondary data centers and its disaster recovery center. Market Makers may request additional Limited Service MEI Ports above the first two that are included for free for each matching engine. Prior to the proposed fee change, Market Makers were assessed a $100 monthly fee for each Limited Service MEI Port for each matching engine above the first two Limited Service MEI Ports that are included for free.

The Exchange now proposes to move from a flat monthly fee per Limited Service MEI Port for each matching engine to a tiered-pricing structure for Limited Service MEI Ports for each matching engine under which the monthly fee would vary depending on the number of Limited Service MEI Ports each Market Maker elects to purchase. Specifically, the Exchange will continue to provide the first and second Limited Service MEI Ports for each matching engine free of charge. For Limited Service MEI Ports, the Exchange proposes to adopt the following tiered-pricing structure: (i) The third and fourth Limited Service MEI Ports for each matching engine will increase from the current flat monthly fee of $100 to $200 per port; (ii) the fifth and sixth Limited Service MEI Ports for each matching engine will increase from the current flat monthly fee of $100 to $300 per port; and (iii) the seventh or more Limited Service MEI Ports will increase from the current monthly flat fee of $100 to $400 per port.[14] The Exchange believes a tiered-pricing structure will encourage Market Makers to be more efficient when determining how to connect to the Exchange. This should also enable the Exchange to better monitor and provide access to the Exchange's network to ensure sufficient capacity and headroom in the System [15] in accordance with its fair access requirements under Section 6(b)(5) of the Act.[16]

The Exchange believes that other exchanges' connectivity and port fees are useful examples and provides the following table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar connectivity and port access. As shown by the below table, the Exchange's proposed fees are similar to or less than fees charged for similar access to other options exchanges.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
MIAX Emerald (as proposed) (equity options market share of 4.49% as of April 12, 2022 for the month of April) [17].	10Gb ULL connection	$12,000.
	Limited Service MEI Port	1–2 ports. FREE (not changed in this proposal).
		3–4 ports. $200.
		5–6 ports. $300.
		7 or more ports. $400.
The NASDAQ Stock Market LLC ("NASDAQ") [18] (equity options market share of 8.31% as of April 12, 2022 for the month of April) [19].	10Gb Ultra fiber connection	$15,000.

[10] The Exchange notes that it employed a tiered pricing structure for 10Gb ULL connectivity from August 2021 through March 2022 (except for certain months where the Exchange's 10Gb ULL connectivity fee was rolled-back to $10,000 per month). *See infra* notes 26 to 28.

[11] "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. *See* the Definitions Section of the Fee Schedule.

[12] "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.

[13] "Matching Engine" means a part of the MIAX Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may 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.

[14] As noted in the Fee Schedule, Market Makers will continue to be limited to fourteen Limited Service MEI Ports per Matching Engine. The Exchange also proposes to make a ministerial clarifying change to remove the defined term "Additional Limited Service MEI Ports" as a result of moving to a tiered pricing structure where the first two Limited Service MEI Ports continue to be provided free of charge. The Exchange proposes to make a related change to add the term "Limited Service MEI Ports" after the word "fourteen" in the Fee Schedule.

[15] The term "System" means the automated trading system used by the Exchange for the trading of securities. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[16] *See* 15 U.S.C. 78f(b). The Exchange may offer access on terms that are not unfairly discriminatory among its Members, and ensure sufficient capacity and headroom in the System. The Exchange monitors the System's performance and makes adjustments to its System based on market conditions and Member demand.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
	SQF Port	1–5 ports. $1,500. 6–20 ports. $1,000. 21 or more ports. $500.
Nasdaq ISE LLC (''ISE'')[20] (equity options market share of 5.28% as of April 12, 2022 for the month of April)[21].	10Gb Ultra fiber connection SQF Port	$15,000. $1,100.
NYSE American LLC (''NYSE American'')[22] (equity options market share of 7.86% as of April 12, 2022 for the month of April)[23].	10Gb LX LCN connection Order/Quote Entry Port	$22,000. Ports 1–40. $450. Ports 41 and greater. $150.
Nasdaq GEMX, LLC (''GEMX'')[24] (equity options market share of 2.31% as of April 12, 2022 for the month of April)[25].	10Gb Ultra connection SQF Port	$15,000. $1,250.

Implementation and Procedural History

The proposed rule change will be effective May 2, 2022. The Exchange initially filed proposals to adopt tiered-pricing structures for the 10Gb ULL connections and Limited Service MEI Ports, with the proposed fees being effective beginning August 1, 2021. Between August 2021 and February 2022, the Exchange withdrew and refiled the proposed rule changes, each time to meaningfully attempt to provide additional justification for the proposed fee changes, provide enhanced details regarding the Exchange's cost methodology, and address questions contained in the Commission's suspension orders. The Exchange received six comment letters from three separate commenters on the filings.[26] This revised proposal provided additional details regarding the Exchange's cost methodology, revenue projections, and responded to various questions and requests for information contained in the Commission's suspension orders.[27] On April 1, 2022, the Exchange submitted revised proposals (separate filings for 10Gb ULL connectivity and Limited Service MEI Ports) to provide additional clarity regarding the Exchange's cost justifications and those proposals were subsequently suspended by the Commission.[28] The Exchange withdrew those proposals and submitted this revised filing on May 2, 2022. This newest revised filing builds upon the additional details regarding the Exchange's cost methodology and revenue projections, and includes the Exchange's responses to various questions and requests for information contained in the Commission's suspension orders.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with Section 6(b) of the Act[29] in general, and furthers the objectives of Section 6(b)(4) of the Act[30] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposed fees further the objectives of Section 6(b)(5) of the Act[31] in that they are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes as set forth in recent Commission and Commission Staff guidance. On March 29, 2019, the Commission issued an Order disapproving a proposed fee change by the BOX Market LLC Options Facility to establish connectivity fees for its BOX Network (the ''BOX Order'').[32] On May 21, 2019, the Commission Staff issued guidance ''to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act.''[33] Based on both the BOX Order and the Guidance, the Exchange believes that the proposed fees are consistent with the Act because they are: (i) Reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; and (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable and will not result in excessive pricing or supra-competitive profit.

[17] *See* ''The market at a glance,'' *available at https://www.miaxoptions.com/* (last visited April 12, 2022).

[18] *See* NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services *and* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.

[19] *See supra* note 17.

[20] *See* ISE Pricing Schedule, Options 7, Section 7, Connectivity Fees *and* ISE Rules, General 8: Connectivity.

[21] *See supra* note 17.

[22] *See* NYSE American Options Fee Schedule, Section V.A. Port Fees *and* Section V.B. Co-Location Fees.

[23] *See supra* note 17.

[24] *See* GEMX Pricing Schedule, Options 7, Section 6, Connectivity Fees *and* GEMX Rules, General 8: Connectivity.

[25] *See supra* note 17.

[26] *See* letters from Richard J. McDonald, Susquehanna International Group, LLC (''SIG''), to Vanessa Countryman, Secretary, Commission, dated September 7, 2021, October 1, 2021, October 26, 2021, and March 15, 2022 (''SIG Letters''). *See also* letter from Tyler Gellasch, Executive Director, Healthy Markets Association (''HMA''), to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021 (''HMA Letter''); *and* letter from Ellen Green, Managing Director, Equity and Options Market Structure, Securities Industry and Financial Markets Association (''SIFMA''), to Vanessa Countryman, Secretary, Commission, dated November 26, 2021 (''SIFMA Letter'').

[27] *See* Securities Exchange Act Release Nos. 93644 (November 22, 2021), 86 FR 67750 (November 29, 2021) (SR–EMERALD–2021–29); 94089 (January 27, 2022); 87 FR 5910 (February 2, 2022) (SR–EMERALD–2021–42); 94257 (February 15, 2022), 87 FR 9678 (February 22, 2022) (SR–EMERALD–2022–04); 93640 (November 22, 2021), 86 FR 67745 (November 29, 2021) (SR–EMERALD–2021–31); 94087 (January 27, 2022), 87 FR 5918 (February 2, 2022) (SR–EMERALD–2021–43); *and* 94260 (February 15, 2022), 87 FR 9695 (February 22, 2022) (SR–EMERALD–2022–05).

[28] *See* Securities Exchange Act Release Nos. 94717 (April 14, 2022), 87 FR 23648 (April 20, 2022) (SR–EMERALD–2022–13); *and* 94718 (April 14, 2022), 87 FR 23633 (April 20, 2022) (SR–EMERALD–2022–15).

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(4).

[31] 15 U.S.C. 78f(b)(5).

[32] *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) (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).

[33] *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'').

The Proposed Fees Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [34] The Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [35] In the Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supra-competitive profit, specific information, including quantitative information, should be provided to support that argument.'' [36] The Exchange does not assert that the proposed fees are constrained by competitive forces. Rather, the Exchange asserts that the proposed fees are reasonable because they will permit recovery of the Exchange's costs in providing access services to supply 10Gb ULL connectivity and Limited Service MEI Ports and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [37] The Commission Staff further states in the Guidance that ''the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.'' [38] The Exchange provides this analysis below.

The proposed fees are based on a cost-plus model. The Exchange believes that it is important to demonstrate that the proposed fees are based on its costs and reasonable business needs and believes the proposed fees will allow the Exchange to begin to offset expenses. However, as discussed more fully below, such fees may also result in the Exchange recouping less than, or more than, all of its costs of providing 10Gb ULL connectivity and Limited Service MEI Ports because of the uncertainty of forecasting subscriber decision making with respect to firms' access needs. The Exchange believes that the proposed fees will not result in excessive pricing or supra-competitive profit based on the total expenses the Exchange incurs versus the total revenue the Exchange projects to collect, and therefore meets the standards in the Act as interpreted by the Commission and the Commission Staff in the BOX Order and the Guidance.

The suspension orders sought additional information and comments on various aspects of the prior proposed fee changes. In many respects, the Commission's questions about the prior proposed fee changes raise broader questions around the factors the Commission should consider and the type of data and analysis an exchange should provide in considering whether market data, port fees, or connectivity fees are fair and reasonable under a cost-based methodology. The suspension orders also sought more specific information regarding the allocation of third-party expenses, such as the overall estimated cost for each category of external expenses or at minimum the total applicable third-party expenses and percentage allocation or statements regarding the Exchange's overall estimated costs for the internal expense categories and general shared expenses figure. The Exchange added this additional information below.

In this filing, the Exchange offers a conceptual framework for further considering the Commission's questions that draws on the Exchange's own experience over several years of analyzing its own costs. The elements of that framework are as follows:

First, the Exchange proposes a flat, simple 10Gb ULL Fee that imposes a single monthly fee for Members and non-Members. The Exchange believes this relatively simple, flat fee structure is transparent and easy for users to apply, and also helps show that it meets the objectives of the Act. The Exchange also proposes a tiered-pricing structure for its Limited Service MEI Ports that continues to provide the first and second Limited Service MEI Ports free of charge for each matching engine. The Exchange believes the proposed tiered-pricing structure for Limited Service MEI Ports is also transparent and easy for users to apply, and is a common pricing method used by other options exchanges when charging for port connectivity.[39]

The Exchange then conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to providing 10Gb ULL connectivity and Limited Service MEI Ports. That methodology does not allow for ''double-counting'' of the same costs for different classes of exchange products—for example transaction services, market data, physical connectivity, ''logical'' port connections or regulatory resources. As a result of this review, the Exchange determined that it experienced an increase in costs since October 2020 as set forth above and determined to propose to increase select connectivity fees as described herein to attempt to recoup this increased expense.

The Exchange then sought to narrowly allocate specific costs to 10Gb ULL connectivity and Limited Service MEI Ports to which the proposed fees would apply. In this filing, the Exchange provided more detail about how that allocation was determined and included information about tangential cost items that were not included. In determining what portion (or percentage) to allocate to access services, each Exchange department head, in coordination with other Exchange personnel, determined the expenses that support access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. This included numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders. The analysis also included each department head meeting with the divisions of teams within each department to determine the amount of time and resources allocated by employees within each division towards the access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange reviewed each

[34] *See id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *See supra* notes 18 and 22.

individual expense to determine if such expense was related to 10Gb ULL connectivity and Limited Service MEI Ports. Once the expenses were identified, the Exchange department heads, with the assistance of the Exchange's internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing access services and the System Networks. The sum of all such portions of expenses represents the total cost to the Exchange to provide access services associated with 10Gb ULL connectivity and Limited Service MEI Ports. For the avoidance of doubt, no expense amount is allocated twice. Specifically, no expense amount is allocated to more than one expense category within this filing and no expense amount that is allocated as a cost to provide and maintain access to the 10Gb ULL connectivity and Limited Service MEI Ports in this filing have been or will be allocated as a cost to provide any other exchange product or service in any other fee filing. In the suspension orders, the Commission questioned whether further explanation of the Exchange's cost analysis was necessary. The Exchange provides further details concerning its cost analysis in response to this question.

The Exchange believes exchanges, like all businesses, should be provided flexibility when developing and applying a methodology to allocate costs and resources they deem necessary to operate their business, including providing market data and access services. The Exchange notes that costs and resource allocations may vary from business to business and, likewise, costs and resource allocations may differ from exchange to exchange when it comes to providing market data and access services. It is a business decision that must be evaluated by each exchange as to how to allocate internal resources and what costs to incur internally or via third parties that it may deem necessary to support its business and its provision of market data and access services to market participants.

Finally, the Exchange acknowledges that it is difficult to predict how much revenue the Exchange will receive from the proposed fees with precision. The analysis conducted by the Exchange is designed to make a fair and reasonable assessment of costs and resources allocated to support the provision of access services associated with the proposed fees. The Exchange further acknowledges that this assessment can only capture a moment in time and that costs and resource allocations may change. That is why the Exchange historically, and on an ongoing basis, reviews its costs and resource allocations to ensure it appropriately allocates resources to properly provide services to the Exchange's constituents. As part of this proposed rule change, and as described further below, the Exchange is committing to conduct an annual cost review with respect to fees that are cost justified in this proposed rule change beginning one year from the date of this proposal, and annually thereafter. The Exchange expects that it may propose to adjust fees at that time, either to increase fees in the event that revenues fail to reasonably cover costs at the estimated margin set forth below, or to decrease fees in the event that revenue materially exceeds the Exchange's current projections. In the event that the Exchange determines to propose a fee change, updated cost estimates will be included in a rule filing proposing the fee change.

The Exchange believes applying this framework to the proposed fees shows that they are consistent with the requirements of the Act, leaving aside that the proposed fees are relatively similar to fees charged by other exchanges for connectivity and port access.

Exchange Costs and Cost Methodology

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully support access to the Exchange via connectivity and ports. As described below, 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. Both fixed and variable expenses have significant impact on the Exchange's overall costs to provide 10Gb ULL connectivity and Limited Service MEI Ports. For example, to accommodate new Members, the Exchange may need to purchase additional hardware to support those Members and provide access through 10Gb ULL connectivity and Limited Service MEI Ports.[40] Further, as the total number of Members increases, the Exchange 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 the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the proposed fees are a reasonable attempt to offset those costs associated with providing access to and maintaining its System Networks' infrastructure.

The Exchange estimated its total annual expense to provide 10Gb ULL connectivity and Limited Service MEI Ports based on the following general expense categories: (1) External expenses, which include fees paid to third parties for certain products and services; (2) internal expenses relating to the internal costs to provide the services associated with 10Gb ULL connectivity and Limited Service MEI Ports; and (3) general shared expenses.[41] The below table details each of these individual external and internal annual costs considered by the Exchange to be directly related to offering 10Gb ULL connectivity and Limited Service MEI Ports, and not any other product or service offered by the Exchange. The below table also details the general shared expense allocated to this proposal. Each of these expenses are discussed in more detail further below.

For 2022, the total annual expense for providing the access services associated with providing 10Gb ULL connectivity and Limited Service MEI Ports is estimated to be $10,483,343, or $873,612 per month. The Exchange utilized its estimated 2022 revenue and costs, which utilize the same methodology set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[42]

[40] The Exchange is not considering future costs associated with accommodating new 10Gb ULL connectivity and Limited Service MEI Ports subscriptions.

[41] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

[42] 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-party expense described in this filing is attributed to the same line item for the Exchange's 2022 Form 1 Amendment, which will be filed in 2023. In its suspension orders, the Commission also asked should the Exchange use cost projections or actual costs estimated for 2021 in a filing made in 2022, or make cost projections for 2022. The Exchange utilized expenses from its most recent audited financial statement as those numbers are more reliable than more recent unaudited numbers, which may be subject to change.

External expenses		
Category	Percentage of total expense amount allocated	
	10Gb ULL connectivity	Limited service MEI ports
Data Center Provider	62%	2.4%.
Fiber Connectivity Provider	62%	1.9%.
Security Financial Transaction Infrastructure (''SFTI''), and Other Connectivity and Content Service Providers.	89%	2.4%.
Hardware and Software Providers	51%	1.5%.
Total of External Expenses	$2,011,286.[43]	
Internal expenses		
Category	Expense amount allocated	
	10Gb ULL connectivity	Limited service MEI ports
Employee Compensation	$3,259,251 (representing 33% of total $9,900,032 expense).	$916,303 (representing 9.3% of total $9,900,032 expense).
Depreciation and Amortization	$2,164,610 (representing 64.3% of total $3,363,841 expense).	$81,932 (representing 2.4% of total $3,363,841 expense).
Occupancy	$284,947 (representing 53% of total $538,916 expense).	$10,501 (representing 1.9% of total $538,916 expense).
Total of Internal Expenses	$6,717,544.	
Total Allocated Shared Expenses	$1,754,513 (representing 61% of total $2,872,232 expense).	
Total External + Internal + Allocated Shared Expenses	$10,483,343.	

In its suspension orders, the Commission solicited commenters' views on whether the Exchange has provided sufficient detail on the identity and nature of services provided by third parties. The Commission further solicited commenters' views on whether the Exchange has provided sufficient detail on the elements that go into connectivity and port costs, including how shared costs are allocated and attributed to connectivity and port expenses, to permit an independent review and assessment of the reasonableness of purported cost-based fees and the corresponding profit margin thereon. In response, the Exchange provides additional detail regarding the identity and nature of services provided by third parties, the elements that go into connectivity and port costs, and how expenses are allocated. The Exchange believes this additional detail is sufficient to support a finding that the proposed fees are consistent with the Exchange Act.

For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange describes below the analysis conducted for each expense and the resources or determinations that were considered when determining the amount necessary to allocate to each expense. The Exchange notes that, without the specific external and internal expense items, the Exchange would not be able to provide access to its System Networks through 10Gb ULL connectivity and Limited Service MEI Ports. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, were identified through a line-by-line cost analysis and determined to be integral to providing access to its System Networks through 10Gb ULL connectivity and Limited Service MEI Ports for the reasons discussed below. Only a portion of all fees paid to such third parties are included in the third party expenses described herein, and, again, no expense amount is allocated twice. For example, the Exchange does not allocate its entire information technology and communication costs to providing access to its System Networks through 10Gb ULL connectivity and Limited Service MEI Ports because it determined that a portion of those costs are attributable to other areas of the Exchange's operations, such as transaction services, market data, and other forms of connectivity offered by the Exchange. This may result in the Exchange under allocating an expense to provide access to its System Networks through 10Gb ULL connectivity and Limited Service MEI Ports, and such expenses may actually be higher than what the Exchange allocated as part of this proposal.[44]

Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations, which resulted in revised percentage allocations in this filing as compared to prior versions of this proposed fee change that were previously withdrawn by the Exchange. The revised percentages are, among other things, the result of the shifting of internal resources in response to business objectives. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.[45]

[43] The Exchange does not believe it is appropriate to disclose the actual amount it pays to each individual third party provider as those fee arrangements are competitive or the Exchange is contractually prohibited from disclosing that number.

[44] The Exchange notes that expenses associated with its affiliates, MIAX and MIAX Pearl (the options and equities markets), are accounted for separately and are not included within the scope of this filing.

[45] The Exchange notes that the expense allocations differ from the Exchange's filing earlier in 2021, SR–EMERALD–2021–11, because that prior filing pertained to several different access fees, which the Exchange had not been charging for since the Exchange launched operations in March 2019. *See* Securities Exchange Act Release No. 91460

Continued

The Exchange believes it is reasonable to consider the expense and revenue for 10Gb ULL connectivity and Limited Service MEI Ports 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.

External Expense Allocations

For 2022, annual expenses relating to fees paid by the Exchange to third parties for products and services necessary to provide 10Gb ULL connectivity and Limited Service MEI Ports are estimated to be $2,011,286.[46] This includes a portion of the fees paid to: (1) A third party data center provider, including for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) a fiber connectivity provider for network services (fiber and bandwidth products and services) linking the Exchange's and its affiliates' office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) SFTI, which supports connectivity feeds for the entire U.S. options industry and various other content and connectivity service providers, which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (4) hardware and software providers, which support the production environment in which Members and non-Members connect to the network to trade and receive market data.[47]

Data Center Space and Operations Provider

The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties where the Exchange houses servers, switches and related equipment. Data center costs include an allocation of the costs the Exchange incurs to provide physical connectivity in the third party data centers where it maintains its equipment as well as related costs. The data center provider operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. Without the retention of a third party data center, the Exchange would not be able to operate its systems, provide a trading platform for market participants, and produce and distribute market data. The Exchange does not employ a separate fee to cover its data center expense and recoups that expense, in part, by charging for 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange reviewed its data center footprint and space utilized, including its total rack space, cage usage, number of servers, switches, cabling within the data center, heating and cooling of physical space, storage space, and monitoring and divided its data center expenses among providing transaction services, market data, connectivity (10Gb ULL and 1Gb ULL separately), and ports based on space utilized by each area.[48] Based on this review, the Exchange determined that 62% of the total applicable data center provider expense is applicable to providing 10Gb ULL connectivity and 2.4% Limited Service MEI Ports. The Exchange reviewed space utilized to house rack space, cage usage, servers, switches, cabling, storage space, heating and cooling of physical space, and monitoring, and identified that a small portion of that footprint is dedicated to equipment used to support 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange believes this allocation is reasonable because it represents the costs associated with housing the Exchange's equipment dedicated to supporting 10Gb ULL connectivity and Limited Service MEI Ports. 10Gb ULL connectivity and Limited Service MEI Ports are core means of access to the Exchange's network, providing several methods for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's data center expense is due to space utilized to provide and maintain connectivity and port access to the Exchange's System Networks, including providing cabling within the data center between market participants and the Exchange. The Exchange excluded from this allocation servers and space that are dedicated to market data. The Exchange also did not allocate the remainder of the data center expense because it pertains to space utilized by other areas of the Exchange's operations, such as 1Gb ULL connectivity, other types of ports, market data, and transaction services.

Fiber Connectivity Provider

The Exchange engages a third party service provider that provides the internet, fiber and bandwidth connections between the Exchange's System Networks, primary and secondary data centers, and office locations in Princeton and Miami. Fiber connectivity is necessary for the Exchange to switch to its secondary data center in the case of an outage in its primary data center. Fiber connectivity also allows the Exchange's National Operations & Control Center (''NOCC'') and Security Operations Center (''SOC'') in Princeton to communicate with the Exchange's primary and secondary data centers. As such, all trade data, including the billions of messages each day, flow through this third party provider's infrastructure over the Exchange's network. Fiber connectivity is also necessary for personnel responsible for overseeing and providing customer service related to supporting 10Gb ULL connectivity and Limited Service MEI Ports, receiving relevant data and being able to communicate between the Exchange's various locations and data centers. Without these services, the Exchange would not be able to operate and support the network and provide and maintain access services and System Networks associated with the 10Gb ULL connectivity and Limited Service MEI Ports to its Members and their customers. Without the retention of a third party fiber connectivity provider, the Exchange would not be able to

(April 2, 2021), 86 FR 18349 (April 8, 2021) (SR–EMERALD–2021–11) (adopting fees for FIX Ports, MEI Ports, Purge Ports, Clearing Trade Drop Ports, and FIX Drop Copy Ports, all of which had been free for market participants for over two years since inception).

[46] *See supra* note 43.

[47] *Id.*

[48] The Investors Exchange, Inc. (''IEX'') also allocated data center costs to produce market data based on space utilized. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945, at page 21949 (April 13, 2022) (SR–IEX–2022–02) (''IEX Market Data Fee Proposal'') (noting that ''[d]ata Center costs consist of the fees charged by the third-party data centers used by IEX and represent less than 10% the Exchange's total data center costs *based on space utilized*'' (*emphasis added*)).

communicate between its data centers and office locations in a manner necessary to maintain and support 10Gb ULL connectivity and Limited Service MEI Ports. Fiber connectivity is a necessary integral means to disseminate information, including data related to supporting 10Gb ULL connectivity and Limited Service MEI Ports, from the Exchange's primary data center to other Exchange locations. It is necessary for Exchange employees located in various locations to be able to communicate and receive the necessary data to maintain and provide customer support related to 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange would not be able to operate and support the network and provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports without third party fiber connectivity. The Exchange does not employ a separate fee to cover its fiber connectivity expense and recoups that expense, in part, by charging for 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange reviewed it costs to retain fiber connectivity from a third party, including the ongoing costs to support fiber connectivity, ensuring adequate bandwidth and infrastructure maintenance to support exchange operations, and ongoing network monitoring and maintenance. Based on this review, the Exchange determined that 62% of the total fiber connectivity expense was applicable to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 1.9% to Limited Service MEI Ports. The Exchange reviewed its total fiber connectivity expense and allocated it among transaction services, connectivity, ports, market data, and administrative operations, based on usage. The Exchange then further divided up its fiber connectivity costs related to connectivity and ports and identified the portion that is attributable to supporting 10Gb ULL connectivity and Limited Service MEI Ports, also based on usage. This allocation is, therefore, based on the amount of bandwidth and fiber connectivity the Exchange calculated is utilized to support exchange operations, and ongoing network monitoring and maintenance that are necessary to provide 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange believes this allocation is reasonable because 10Gb ULL connectivity and Limited Service MEI Ports are core means of access to the Exchange's network, providing several methods for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's fiber connectivity expense is due to providing and maintaining connectivity between the Exchange's System Networks, data centers, and office locations and is core to the daily operation of the Exchange. The Exchange also excluded from this allocation fiber connectivity usage related to other business lines, such as transaction services, market data, and other forms of connectivity offered by the Exchange, or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports.

Connectivity and Content Services Provided by SFTI and Other Providers

The Exchange relies on SFTI and various other connectivity and content service providers for connectivity and data feeds for the entire U.S. options industry, as well as content, connectivity, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity and Limited Service MEI Ports. Specifically, the Exchange utilizes SFTI and other content service provider to connect to other national securities exchanges, the Options Price Reporting Authority (''OPRA''), and to receive market data from other exchanges and market data providers. SFTI is operated by the Intercontinental Exchange, the parent company of five registered exchanges, and has become integral to the U.S. markets. The Exchange understands SFTI provides services to most, if not all, of the other U.S. exchanges and other market participants. Connectivity and market data provided by SFTI and other service is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity and Limited Service MEI Ports. Without services from SFTI and various other service providers, the Exchange would not be able to connect to other national securities exchanges, market data providers, or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its SFTI and content service provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange reviewed it costs to retain SFTI and other content service providers, including network monitoring and maintenance, remediation of connectivity related issues, and ongoing administrative activities related to connectivity management. Based on this review, the Exchange determined that 89% of the total applicable SFTI and other service provider expense is allocated to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 2.4% to Limited Service MEI Ports. The Exchange reviewed its total SFTI and other service provider expense and allocated it among transaction services, connectivity, ports, other market data products, and administrative operations, based on usage. The Exchange then further divided up its SFTI and other service provider costs related to connectivity and ports and identified the portion that is attributable to supporting 10Gb ULL connectivity and Limited Service MEI Ports, also based on usage. This allocation is, therefore, based on the amount of SFTI and other service provider resources utilized to support exchange operations, and ongoing network monitoring and maintenance that are necessary to provide 10Gb ULL connectivity and Limited Service MEI Ports. SFTI and other content service providers are key vendors and necessary components in providing access to the Exchange. The primary service SFTI provides for the Exchange is connectivity to other national securities exchanges and their disaster recovery facilities and, therefore, a vast portion of this expense is allocated to providing access to the System Networks via 10Gb ULL connectivity and Limited Service MEI Ports. Connectivity via SFTI is necessary for purposes of order routing and accessing disaster recovery facilities in the case of a system outage. Engaging SFTI and other like vendors provides purchasers of 10Gb ULL connectivity to other national securities exchanges for purposes of order routing and disaster recovery. The Exchange did not allocate a portion of this expense that relates to the receipt of market data from other national securities exchanges and

OPRA. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining the System Networks or access to its System Networks via 10Gb ULL connectivity or Limited Service MEI Ports, such as transaction services, market data, other forms of connectivity offered by the Exchange, or unrelated administrative services. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity and Limited Service MEI Ports, and not any other service, as supported by its cost review.

Hardware and Software Providers

The Exchange relies on dozens of third party hardware and software providers for equipment necessary to operate its System Networks. This includes either the purchase or licensing of physical equipment, such as servers, switches, cabling, and devices needed by Exchange personnel to monitor servers and the health 10Gb ULL connectivity and Limited Service MEI Ports. This consists of real-time monitoring of system performance, integrity, and latency of 10Gb ULL connectivity and Limited Service MEI Ports. It also includes the Exchange purchasing or licensing software necessary for security monitoring, data analysis and Exchange operations. Hardware and software providers are necessary to maintain its System Networks and provide access to its System Networks via a 10Gb ULL connectivity and Limited Service MEI Ports. Hardware and software equipment and licenses for that equipment are also necessary to operate and monitor physical assets necessary to offer physical connectivity to the Exchange. Hardware and software equipment and licenses are key to the operation of the Exchange and, without them, the Exchange would not be able to operate and support its System Networks and provide access to its Members and their customers. The Exchange does not employ a separate fee to cover its hardware and software expense and recoups that expense, in part, by charging for 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange reviewed its hardware and software related costs, including software patch management, vulnerability management, administrative activities related to equipment and software management, professional services for selection, installation and configuration of equipment and software supporting exchange operations. The Exchange then divided those costs among transaction services, ports, connectivity, market data, and other Exchange operations based on whether all of that hardware or software is based on usage. The Exchange then reviewed the amount allocated to connectivity and ports generally and what portion of that hardware and software equipment or license is used to support 10Gb ULL connectivity and Limited Service MEI Ports specifically. Based on this review, the Exchange determined that 51% of the total applicable hardware and software expense is allocated to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 1.5% to Limited Service MEI Ports. These percentages reflect the amount of hardware and software equipment and licenses dedicated to support 10Gb ULL connectivity and Limited Service MEI Ports.[49] Hardware and software equipment and licenses are key to the operation of the Exchange and its System Networks. Without them, the Exchange would not be able to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange only allocated the portion of this expense to the hardware and software that is related to 10Gb ULL connectivity and Limited Service MEI Ports, such as operating servers and equipment necessary to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange, therefore, did not allocate portions of its hardware and software expense that related to other areas of the Exchange's business, such as hardware and software used for market data or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations, such as transaction services, market data, and other forms of connectivity offered by the Exchange, and is not directly relate to providing 10Gb ULL connectivity or Limited Service MEI Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports, and not any other service, as supported by its cost review.

Internal Expense Allocations

For 2022, total internal annual expenses relating to the Exchange providing and maintaining its System Networks and access to its System Networks for 10Gb ULL connectivity and Limited Service MEI Ports is estimated to be $6,717,544. This includes costs associated with: (1) Employee compensation and benefits for full-time employees that support the System Networks and access to System Networks via 10Gb ULL connectivity and Limited Service MEI Ports, 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 as well as important system upgrades; (2) depreciation and amortization of hardware and software used to provide and maintain access services and System Networks associated with the 10Gb ULL connectivity and Limited Service MEI Ports, 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 and maintain the System Networks and access to System Networks via 10Gb ULL connectivity and Limited Service MEI Ports.

Employee Compensation and Benefits

Human personnel are key to exchange operations and supporting the Exchange's ongoing provision of 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange reviewed its employee compensation and benefits expense and the portion of that expense allocated to providing 10Gb ULL connectivity and Limited Service MEI Ports. As part of this review, the Exchange considered employees whose functions include providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports and used a blended rate of compensation reflecting salary, stock and bonus compensation, bonuses, benefits, payroll taxes, and 401K matching contributions.[50]

[49] The Exchange notes that IEX used a similar methodology to allocate hardware costs to market data. *See supra* note 48, IEX Market Data Fee Proposal, at page 21950 (noting that ''IEX only included hardware specifically dedicated to the market data feeds in calculating the costs of providing market data'').

[50] For purposes of this allocation, the Exchange did not consider expenses related to office space, supplies, or equipment use by employees who support 10Gb ULL connectivity and Limited Service MEI Ports.

In its suspension orders, the Commission asked the Exchange provide more detail about the methodology the Exchange used to determine how much of an employee's time is devoted to connectivity and port related activities. In considering the cost of personnel, the Exchange generally considered the time spent on various access service projects and initiatives through project management tracking tools and analysis of employee resource allocations, among its Technology Team in the following areas: Technical Operations, Software Engineering, Quality Assurance, and Infrastructure. The Exchange did not consider non-Technology Teams such as Market Operations, Project Management, Regulatory, Legal, and Accounting/Finance.[51]

Based on this review, the Exchange determined to allocate $4,175,554 in combined employee compensation and benefits expense to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. This is only a portion of the $9,900,032 total projected expense for employee compensation and benefits. Of that total, the Exchange allocated approximately 33% of the total applicable employee compensation and benefits expense to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 9.3% to Limited Service MEI Ports. The Exchange determined the cost allocation for employees who perform work in support of providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports to arrive at full time equivalents (''FTE'') of 9.9 FTEs across all the identified personnel related to 10Gb ULL connectivity and 2.8 FTEs across all the identified personnel related to Limited Service MEI Ports. The Exchange then multiplied the FTE times a blended compensation rate for all relevant Exchange personnel to determine the personnel costs associated with providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. Senior staff also reviewed these time allocations with department heads and team leaders to determine whether those allocations were appropriate. These employees are critical to the Exchange to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange determined the above allocation based on the personnel whose work focused on functions necessary to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange does not charge a separate fee regarding employees who support 10Gb ULL connectivity and Limited Service MEI Ports and the Exchange seeks to recoup those expenses, in part, by charging for 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange believes it is appropriate to include incentive compensation in the blended personnel compensation rate on the same basis as other personnel costs for in-scope employees because incentive compensation is a part of the total personnel costs associated with the Exchange's provision of 10Gb ULL connectivity and Limited Service MEI Ports. Moreover, the Exchange notes that it has taken a conservative approach in determining which employees to include in its cost analysis, in terms of function and percent allocation, so that the included personnel costs are directly and closely tied to the costs of providing 10Gb ULL connectivity and Limited Service MEI Ports. The FTE allocation represents just 42.2% of the Exchange's overall personnel costs. Consistent with the Exchange's conservative methodology to limit costs allocated to 10Gb ULL connectivity and Limited Service MEI Ports, this approach includes only a de minimis personnel cost allocation for senior level executives and no allocation for members of the Exchange's board of directors. Accordingly, the Exchange believes that the allocated personnel expenses included are appropriately attributable to 10Gb ULL connectivity and Limited Service MEI Ports.

Depreciation and Amortization

A key expense incurred by the Exchange relates to the depreciation and amortization of equipment that the Exchange procured to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange reviewed all of its physical assets and software, owned and leased, and determined whether each asset is related to providing and maintaining the 10Gb ULL connectivity and Limited Service MEI Ports, and added up the depreciation of those assets. All physical assets and software, which includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost and depreciated or leased over periods ranging from three to five years. Based on the Exchange's experience, this depreciation period equals the typical life expectancy of those assets. In determining the amount of depreciation and amortization to apply to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange considered the depreciation of hardware and software that are key to the operation of the Exchange and its provision of 10Gb ULL connectivity and Limited Service MEI Ports. This includes servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were previously purchased to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. Without them, market participants would not be able to access the Exchange. The Exchange seeks to recoup a portion of its depreciation expense by charging for 10Gb ULL connectivity and Limited Service MEI Ports.

Based on this review, the Exchange determined to allocate $2,246,542 in combined depreciation and amortization expense to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. This is only a portion of the $3,363,841 total projected expense for depreciation and amortization. This allocation represents approximately 64.3% of the total applicable depreciation expense to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 2.4% to Limited Service MEI Ports. For purposes of the allocation of these costs to 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange allocates the annual depreciation (*i.e.,* one-third or one-fifth of the initial asset value based on the typical life expectancy of those assets). One-third or one-fifth of the cost of each asset is included in the annual costs allocated to 10Gb ULL connectivity and Limited Service MEI Ports. The

[51] The Exchange notes that IEX used a similar methodology to allocate employee compensation related costs to market data. *See supra* note 48, IEX Market Data Fee Proposal, at page 29150 (noting that ''[f]or personnel costs, IEX calculated an allocation of employee time for employees whose functions include providing and maintaining IEX Data and/or the proprietary market data feeds used to transmit IEX Data, and used a blended rate of compensation reflecting salary, stock and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions'').

Exchange only included assets specifically dedicated to 10Gb ULL connectivity and Limited Service MEI Ports in calculating the costs of providing 10Gb ULL connectivity and Limited Service MEI Ports. This means that physical assets used for such as transaction services, market data, other forms of connectivity offered by the Exchange, or other Exchange operations were excluded from the calculation.[52] The Exchange, therefore, did not allocate portions of depreciation expense that relates to other areas of the Exchange's business, such as the depreciation of hardware and software used for market data, unrelated administrative services, or other connectivity or ports offered by the Exchange. All of the expenses outlined in this proposed fee change refer to the operating expenses of the Exchange. In the suspension orders, the Commission asked for additional detail or explanation to ensure that no expense amount is allocated twice. The Exchange did not included any future capital expenditures within these costs ensuring that no cost is counted twice. Depreciation and amortization represent the expense of previously purchased hardware and internally developed software spread over the useful life of the assets. Due to the fact that the Exchange has only included operating expense and historical purchases, there is no double counting of expenses in the Exchange's cost estimates.

Occupancy

The Exchange rents and maintains multiple physical locations to house staff and equipment necessary to support access to System Networks via 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange's occupancy expense is not limited to the housing of personnel and includes locations used to store equipment necessary for Exchange operations. In determining the amount of its occupancy related expense, the Exchange considered actual physical space used to house employees whose functions include providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. Similarly, the Exchange also considered the actual physical space used to house hardware and other equipment necessary to provide and maintain the 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange maintains staff that support 10Gb ULL connectivity and Limited Service MEI Ports in various locations and needs to provide workplaces for that staff as well as space to house hardware and equipment necessary for those employees to perform those functions.[53] This equipment includes computers, servers, and accessories necessary to support the access to the System Networks via 10Gb ULL connectivity and Limited Service MEI Ports. Based on this review, the Exchange determined to allocate $295,448 of its combined occupancy expense to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. According to the Exchange's calculations, it allocated approximately 53% of the total applicable occupancy expense to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 1.93% to Limited Service MEI Ports. This is only a portion of the $538,916 total projected expense for occupancy. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange considered the rent paid for the Exchange's Princeton and Miami offices, as well as various related costs, such as physical security, property management fees, property taxes, and utilities at each of those locations. The Exchange did not include occupancy expenses related to housing employees and equipment related to other Exchange operations, such as transaction and administrative services.

Allocated Shared Expense

Finally, a limited portion of general shared expenses was allocated to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports as without these general shared costs, the Exchange would not be able to operate in the manner that it does. The costs included in general shared expenses include recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. For 2022, the Exchange's general shared combined expense allocated to 10Gb ULL connectivity and Limited Service MEI Ports is estimated to be $1,754,513. This represents approximately 61% of the $2,872,232 total projected general shared combined expense. The Exchange used the weighted average of the above allocations to determine the amount of general shared expenses to allocate to the Exchange. Next, based on additional management and expense analysis, these fees are allocated to the proposal.

Revenue and Estimated Profit Margin

The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: transaction fees, access fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms.

To determine the Exchange's estimated revenue associated with 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange analyzed the number of Members and non-Members currently utilizing 10Gb ULL connectivity and Limited Service MEI Ports and used a recent monthly billing cycle representative of current monthly revenue. The Exchange also provided its baseline by analyzing March 2022, the monthly billing cycle prior to the proposed fees, and compared this to its expenses for that month. As discussed below, the Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its estimates for purposes of these calculations, given the uncertainty of such estimates due to the continually changing access needs of market participants and potential changes in internal and external expenses, as well as because the Exchange is committing to review this cost analysis for these fees on an annual basis going forward.

For March 2022, prior to the proposed fees, the Exchange had 102 10Gb ULL connections and 877 Limited Service MEI Ports purchased, for which the Exchange charged a total of $1,045,839 (including charges for connections that were dropped or added mid-month, resulting in pro-rated charges). This resulted in a profit of $172,227 for that

[52] The Exchange notes that IEX used a similar methodology to allocate hardware costs to market data. *See supra* note 48, IEX Market Data Fee Proposal at note 54, at page 21950 (noting that ''[h]ardware is depreciated on a straight-line three-year period, which in IEX's experience, is equal to the typical life expectancy of those assets. As noted above, one-third of the cost of each hardware asset is included in the annual costs allocated to market data. IEX only included hardware specifically dedicated to the market data feeds in calculating the costs of providing market data. This means that physical assets used for both order entry and market data were excluded from the calculation'').

[53] For the avoidance of doubt, the Exchange did not include within this cost any portion of its costs related to third party fiber connectivity used by Exchange staff in different office locations to communicate as part of their role in supporting 10Gb ULL connectivity and Limited Service MEI Ports.

month (a profit margin of 16%). For April 2022, the Exchange anticipates that 98 10Gb ULL connections and 841 Limited Service MEI Ports will be charged for (as of the date of this filing).[54] Assuming the Exchange charges its proposed monthly rate of $12,000 per 10Gb ULL fiber connection and the proposed tiered-pricing rates for Limited Service MEI Ports, the Exchange would generate revenue of $1,374,100 for April 2022 (not including potential pro-rated connection charges for mid-month connections) for 10Gb ULL connectivity and Limited Service MEI Port fees combined. This would result in a profit of $500,488 ($1,374,100 minus $873,612) for April (a 36.4% profit margin). As discussed above, the Exchange believes it is reasonable to consider the expense and revenue for 10Gb ULL connectivity and Limited Service MEI Ports 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 Exchange believes that conducting the above analysis on a per month basis is reasonable as the revenue generated from access services subject to the proposed fee generally remains static from month to month. The Exchange also conducted the above analysis on a per month basis to comply with the Commission Staff's Guidance, which requires a baseline analysis to assist in determining whether the proposal generates a supra-competitive profit. The Exchange cautions that this profit margin may also fluctuate from month to month based on the uncertainty of predicting how many connections and ports may be purchased from month to month as Members and non-Members are free to add and drop connections and ports at any time based on their own business decisions.

The Exchange believes the proposed profit margin is reasonable and will not result in a ''supra-competitive'' profit. The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.''[55] Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2019.[56] The Exchange has operated at a net loss due to a number of factors, one of which is choosing to forgo revenue by offering certain products, such as connectivity, at lower rates than other options exchanges to attract order flow and encourage market participants to experience the high determinism, low latency, and resiliency of the Exchange's trading systems. The Exchange should not now be penalized for seeking to raise it fees to near market rates after offering such products as discounted prices. Therefore, the Exchange believes the proposed fees are reasonable because they are based on both relative costs to the Exchange to provide 10Gb ULL connectivity and Limited Service MEI Ports, the extent to which the product drives the Exchange's overall costs and the relative value of the product, as well as the Exchange's objective to make access to its Systems broadly available to market participants. The Exchange also believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup the Exchange's costs of providing 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent such revenue actually produces the revenue estimated. As a generally new entrant to the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange will have to be successful in retaining existing clients that wish to utilize 10Gb ULL connectivity and Limited Service MEI Ports or obtaining new clients that will purchase such access. To the extent the Exchange is successful in encouraging new clients to utilize 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange does not believe it should be penalized for such success. The Exchange, like other exchanges, is, after all, a for-profit business. While the Exchange believes in transparency around costs and potential margins, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes this proposal demonstrates this fact.

Further, the proposed profit margin reflects the Exchange's efforts to control its costs. A profit margin should not be judged alone based on its size, but whether the ultimate fee reflects the value of the services provided and is in line with other exchanges. A profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling costs, but not excessive where an exchange is charging the same fee but has a lower profit margin due to higher costs.

The expected profit margin is reasonable because the Exchange offers a premium System Network, System Networks connectivity, and a highly deterministic trading environment. The Exchange is recognized as a leader in network monitoring, determinism, risk protections, and network stability. For example, the Exchange experiences approximately a 95% determinism rate, system throughput of approximately 18 million quotes and average round trip latency rate of approximately 18 microseconds for a single quote. The Exchange provides extreme performance and radical scalability designed to match the unique needs of trading differing asset class/market model combinations. The Exchange's systems offer two customer interfaces, FIX gateway for orders, and ultra-low latency MEI interface and data feeds with best-in-class wire order determinism. The Exchange also offers automated continuous testing to ensure high reliability, advanced monitoring and systems security, and employs a software architecture that results in minimizing the demands on power, space, and cooling while allowing for rapid scalability, resiliency and fault isolation. The Exchange also provides latency equalized cross-connects in the primary data center ensures fair and cost efficient access to the Exchange's Systems. The Exchange, therefore, believes the anticipated profit margin is reasonable because it reflects the Exchange's cost controls and the quality of the Exchange's systems.

Finally, the Exchange believes that the proposed fees are reasonable because they will not impose onerous audit requirements on subscribers,

[54] The Exchange notes that the number of subscribers of 10Gb ULL connections and Limited Service MEI Ports may change over time. For example, from June 2021 to April 2022, the Exchange had the following number of subscribers of 10Gb ULL connectivity per month: June (97); July (98); August (104); September (97); October (100); November (102); December (104); January (98); February (100); March (102); April (98). From June 2021 to April 2022, the Exchange had the following number of Limited Service MEI Ports utilized per month: June (601); July (625); August (825); September (828); October (864); November (840); December (840); January (864); February (850); March (877); April (841).

[55] *See supra* note 33.

[56] The Exchange has incurred a cumulative loss of $22 million since its inception in 2019 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at https://sec.report/Document/9999999997-21-004557/.*

because there will be no need to substantiate the number of users of 10Gb ULL connectivity and Limited Service MEI Ports or the manner in which it is being used.

Annual Review of Fees

In its suspension orders, the Commission asks whether exchanges should periodically reevaluate fees on an ongoing and periodic basis in order to assure that actual revenue aligns with a reasonable cost-plus model. As described above and as part of this proposed rule change, the Exchange is committing to conduct a one year review of the fees that are cost justified as part of this proposed rule change after the date of this proposal, and annually thereafter. The Exchange expects that it may propose to adjust fees at that time, either to increase fees in the event that revenues fail to reasonably cover costs at the estimated margin set forth below [sic], or to decrease fees in the event that revenue materially exceeds the Exchange's current projections. In the event that the Exchange determines to propose a fee change, updated cost estimates will be included in a rule filing proposing the fee change. The Exchange believes this approach will further increase transparency around market data costs and help to ensure that Exchange fees continue to be reasonably related to costs.

The Proposed Fees Are Reasonable When Compared to the Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other options exchanges' costs to provide connectivity and port access or their fee markup over those costs, and therefore cannot use other exchange's connectivity and port fees as benchmarks to determine a reasonable markup over the costs of providing such access. Nevertheless, the Exchange believes the other exchanges' 10Gb connectivity and port fees are useful examples of alternative approaches to providing and charging for access notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of connectivity and ports. To that end, the Exchange believes the proposed fees are reasonable because the proposed fees are similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with comparable market shares.

As described in the table below, the Exchange's proposed fees remain similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with similar market share. In the each of the below cases, the Exchange's proposed fees are still significantly lower than that of competing options exchanges with similar market share. Each of the market data rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
MIAX Emerald (as proposed) (equity options market share of 4.49% as of April 12, 2022 for the month of April) [57].	10Gb ULL connection	$12,000.
	Limited Service MEI Port	1–2 ports. FREE (not changed in this proposal).
		3–4 ports. $200.
		5–6 ports. $300.
		7 or more ports. $400.
NASDAQ [58] (equity options market share of 8.31% as of April 12, 2022 for the month of April) [59].	10Gb Ultra fiber connection	$15,000.
	SQF Port	1–5 ports. $1,500.
		6–20 ports. $1,000.
		21 or more ports. $500.
ISE [60] (equity options market share of 5.28% as of April 12, 2022 for the month of April) [61].	10Gb Ultra fiber connection	$15,000.
	SQF Port	$1,100.
NYSE American [62] (equity options market share of 7.86% as of April 12, 2022 for the month of April) [63].	10Gb LX LCN connection	$22,000.
	Order/Quote Entry Port	Ports 1–40. $450.
		Ports 41 and greater. $150.
GEMX [64] (equity options market share of 2.31% as of April 12, 2022 for the month of April) [65].	10Gb Ultra connection	$15,000.
	SQF Port	$1,250.

The Proposed Pricing Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that the proposed fees are reasonable, fair, equitable, and not unfairly discriminatory because they are designed to align fees with services provided and will apply equally to all subscribers.

10Gb ULL Connectivity

The Exchange believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory because, for one 10Gb ULL connection, the Exchange provides each Member or non-Member access to all twelve (12) matching engines on MIAX Emerald and a vast majority choose to connect to all twelve (12) matching engines. The Exchange believes that other exchanges require firms to connect to multiple matching engines.[66] For the foregoing reasons, the Exchange believes that the proposed fees are reasonable, equitably allocated, and not unfairly discriminatory.

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity and port alternatives, as the users of 10Gb ULL connections consume the more bandwidth and network resources than users of 1Gb ULL connection.

[57] *See supra* note 17.
[58] *See supra* note 18.
[59] *See supra* note 17.
[60] *See supra* note 20.
[61] *See supra* note 17.
[62] *See supra* note 22.
[63] *See supra* note 17.
[64] *See supra* note 24.
[65] *See supra* note 17.

[66] *See* Specialized Quote Interface Specification, Nasdaq PHLX, Nasdaq Options Market, Nasdaq BX Options, Version 6.5a, Section 2, Architecture (revised August 16, 2019), *available at http://www.nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/SQF6.5a-2019-Aug.pdf.* The Exchange notes that it is unclear whether the NASDAQ exchanges include connectivity to each matching engine for the single fee or charge per connection, per matching engine. *See also* NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020). The Exchange notes that NYSE provides a link to an Excel file detailing the number of matching engines per options exchange, with Arca and Amex having 19 and 17 matching engines, respectively.

Specifically, the Exchange notes that 10Gb ULL connection users account for approximately more than 99% of message traffic over the network, while the users of the 1Gb ULL 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. 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. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the Exchange Act.[67] Thus, as the number of messages an entity increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. 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 market participants' benefit.

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 95.8% of the volume on the Exchange. This overall volume percentage (95.8% of total Exchange volume) is in line with the amount of network connectivity revenue collected from 10Gb ULL purchasers (99.8% 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 99.8% 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 0.2% of the revenue collected by the Exchange from all connectivity alternatives.

Limited Service MEI Ports

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity alternatives, as the users of the Limited Service MEI Ports consume the most bandwidth and resources of the network. Specifically, like above for the 10Gb ULL connectivity, the Exchange notes that the Market Makers who take the maximum amount of Limited Service MEI Ports account for approximately greater than 99% of message traffic over the network, while Market Makers with fewer Limited Service MEI Ports account for approximately less than 1% of message traffic over the network. In the Exchange's experience, Market Makers who only utilize the two free Limited Service MEI Ports do not have a business need for the high performance network solutions required by Market Makers who take the maximum amount of Limited Service MEI Ports. 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 7.5 billion total quotes. Of that total, Market Makers with the maximum amount of Limited Service MEI Ports generate approximately 5 billion messages, and Market Makers who utilize the two free Limited Service MEI Ports generate approximately 1.8 billion messages. Specifically, Market Makers who utilize only one to two Limited Service MEI ports for free submitted an average of 375,821,358 quotes per day for the month of April 2022. Also for April 2022, Market Makers who utilized three to four Limited Service MEI ports submitted an average of 533,527,402 quotes per day and Market Makers who utilized seven or more Limited Service MEI ports submitted an average of 1,056,292,513 quotes per day.[68]

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. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the Exchange Act.[69] Thus, as the number of connections a Market Maker has increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. The Exchange sought to design the proposed tiered-pricing structure to set the amount of the fees to relate to the number of connections a firm purchases. The more connections purchased by a Market Maker likely results in greater expenditure of Exchange resources and increased cost to the Exchange. With this in mind, the Exchange proposes no fee or lower fees for those Market Makers who receive fewer Limited Service MEI Ports since those Market Makers generally tend to send the least amount of orders and messages over those connections. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that Market Makers who take the most Limited Service MEI Ports 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 those Market Makers.

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

[67] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[68] The Exchange notes that no firm utilized five to six Limited Service Ports in April 2022.

[69] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing 10Gb ULL connectivity and Limited Service MEI Ports at below market rates to market participants since the Exchange launched operations. As described above, the Exchange has operated at a cumulative net annual loss since it launched operations in 2019 [70] due to providing a low cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very marginal cost, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low cost exchange alternative to the options industry, which resulted in lower initial revenues. Examples of this are 10Gb ULL connectivity and Limited Service MEI Ports, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Further, the Exchange does not believe that the proposed fee increase for the 10Gb ULL connection 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. As is the case with the current proposed flat fee, the proposed fee would apply uniformly to all market participants regardless of the number of connections they choose to purchase. The proposed fee does not favor certain categories of market participants in a manner that would impose an undue burden on competition.

Inter-Market Competition

The Exchange also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, options market participants are not forced to connect to all options exchanges. There is no reason to believe that our proposed price increase will harm another exchange's ability to compete. There are other options markets of which market participants may connect to trade options. There is also a possible range of alternative strategies, including routing to the exchange through another participant or market center or accessing the Exchange indirectly. Market participants are free to choose which exchange or reseller to use to satisfy their business needs. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[71] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[72] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[73] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [74]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [75] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [76] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[77]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposed fees are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[78]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[79]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections

[70] *See supra* note 56.

[71] 15 U.S.C. 78s(b)(3)(C).

[72] 15 U.S.C. 78s(b)(1).

[73] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[74] *See id.*

[75] 15 U.S.C. 78f(b)(4).

[76] 15 U.S.C. 78f(b)(5).

[77] 15 U.S.C. 78f(b)(8).

[78] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[79] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

19(b)(3)(C)[80] and 19(b)(2)(B)[81] of the Act to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[82] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Exchange has sufficiently demonstrated how the proposed rule change is consistent with Sections 6(b)(4),[83] 6(b)(5),[84] and 6(b)(8)[85] of the Act. Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. *Cost Estimates and Allocation.* The Exchange states that it is not asserting that the proposed fees are constrained by competitive forces.[86] Rather, the Exchange states that its proposed fees are based on a ''cost-plus model,'' employing a ''conservative approach,'' and that the expenses are ''directly related'' to 10Gb ULL connectivity and Limited Service MEI Ports, and not any other product or service offered by the Exchange.[87] In explaining its costs, should the Exchange identify more specifically which, if any, of its costs are incurred solely to provide 10Gb ULL connectivity and solely to provide Limited Service MEI Ports? Regarding the allocations provided by the Exchange as described in greater detail above, do commenters believe that the Exchange provided sufficient detail about how it determined these allocations and why they are reasonable?[88] Why or why not? Do commenters believe that the Exchange provided sufficient context to permit an independent review and assessment of the reasonableness of the allocations? Do commenters believe that the Exchange provided sufficient detail or explanation to support its claim that ''no expense amount is allocated twice,''[89] whether among the sub-categories of expenses in this filing, across the Exchange's fee filings for other products or services, or over time?

2. *Revenue Estimates and Profit Margin Range.* The Exchange uses a single monthly revenue figure (April 2022) as the basis for calculating its projected combined profit margin of 36.4%.[90] The Exchange argues that projecting revenues on a per month basis is reasonable ''as the revenue generated from access services subject to the proposed fee generally remains static from month to month.''[91] Yet the Exchange also acknowledges that ''profit margin may also fluctuate from month to month based on the uncertainty of predicting how many connections and ports may be purchased from month to month as Members and non-Members are free to add and drop connections and ports at any time based on their own business decisions.''[92] Do commenters believe a single month provides a reasonable basis for a revenue projection? If not, why not? Should the Exchange provide a range of profit margins that it believes are reasonably possible, and the reasons therefor? The Exchange also provided its baseline by analyzing March 2022.[93] Do commenters believe that March 2022 is an appropriate month for a baseline? What are commenters' views on the Exchange providing a combined profit margin for both 10Gb ULL connectivity and Limited Service MEI Ports, rather than separate margins for each?

3. *Reasonableness.* The Exchange states that its proposed fees are ''reasonable because they will permit recovery of the Exchange's costs in providing access services to supply 10Gb ULL connectivity and Limited Service MEI Ports and will not result in the Exchange generating a supra-competitive profit.''[94] The Exchange offers several justifications for why its estimated profit margin (which is blended and not discussed separately for each service) is not a supra-competitive profit, including: (a) When it launched operations in 2019, it chose to forgo revenue by offering certain products at lower rates than other options exchanges to attract order flow; (b) the Exchange has been successful in controlling its costs; (c) a profit margin should not be judged alone based on its size, but on whether the ultimate fee reflects the value of the services provided, and (d) the Exchange's proposed fees remain similar to or less than fees charged for access provided by other options exchanges with similar market share. Do commenters agree that these factors are relevant to assessment of whether the fees are reasonable for each service? Should such an assessment include consideration of any factors other than costs; and if so, what factors should be considered, and why?

4. *Periodic Reevaluation.* The Exchange has stated that it will conduct a review of the cost-based fees subject to this proposal one year after the date of the proposal, and annually thereafter.[95] In light of the impact that the number of connections and ports purchased has on profit margins, and

[80] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[81] 15 U.S.C. 78s(b)(2)(B).

[82] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[83] 15 U.S.C. 78f(b)(4).

[84] 15 U.S.C. 78f(b)(5).

[85] 15 U.S.C. 78f(b)(8).

[86] *See supra* Section II.A.2.

[87] *See id.*

[88] *See id.*

[89] *See id.*

[90] *See id.*

[91] *See id.*

[92] *See id.*

[93] *See id.*

[94] *See id.*

[95] *See id.*

the potential for costs to decrease (or increase) over time, what are commenters' views on the need for exchanges to commit to reevaluate, on an ongoing and periodic basis, their cost-based fees to ensure that the fees stay in line with their stated profitability projections and do not become unreasonable over time, for example, by failing to adjust for efficiency gains, cost increases or decreases, and changes in amounts purchased? How formal should that process be, how often should that reevaluation occur, and what metrics and thresholds should be considered? How soon after a new fee change is implemented should an exchange assess whether its revenue and/or cost estimates were accurate and at what threshold should an exchange commit to file a fee change if its estimates were inaccurate?

5. *Tiered Structure for Additional Limited Service MEI Ports.* The Exchange states that the proposed tiered fee structure is equitably allocated among users of the network connectivity alternatives, because users of Limited Service MEI Ports ''consume the most bandwidth and resources of the network.'' [96] The Exchange states that users of the ''maximum amount of Limited Service MEI Ports'' account for approximately greater than 99% of message traffic over the network, while users of ''fewer Limited Service MEI Ports'' account for approximately less than 1% of message traffic over the network.[97] Specifically, the Exchange states that Market Makers who utilize 1–2, 3–4, or 7 or more Limited Service MEI ports submit an average of 375,821,358 quotes per day, 533,527,402 quotes per day, and 1,056,292,513 quotes per day, respectively, for the month of April 2022.[98] According to the Exchange, 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.[99] Given this difference in network utilization rate, the Exchange believes that its tiered structure is reasonable, equitable, and not unfairly discriminatory.[100] Do commenters believe that the fees for each tier (including the intermediary tiers), as well as the fee differences between the tiers, are supported by the Exchange's assertions? If not, is there an alternative basis on which increased demand by a market-making firm on the Exchange's resources would justify a tiered fee structure for additional Limited Service MEI Ports?

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [101] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[102] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[103] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.[104]

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, any potential comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[105]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by June 7, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 21, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–EMERALD–2022–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–EMERALD–2022–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

[96] *See id.*

[97] *See id.*

[98] *See id.*

[99] *See id.*

[100] *See id.*

[101] 17 CFR 201.700(b)(3).

[102] *See id.*

[103] *See id.*

[104] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 446–47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

[105] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–EMERALD–2022–19 and should be submitted on or before June 7, 2022. Rebuttal comments should be submitted by June 21, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[106] that File No. SR–EMERALD–2022–19 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[107]

J. Matthew DeLesDernier,

Assistant Secretary.

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[106] 15 U.S.C. 78s(b)(3)(C).

[107] 17 CFR 200.30–3(a)(12), (57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94890; File No. SR–MIAX–2022–20]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing of a Proposed Rule Change To Amend Its Fee Schedule To Increase Certain Connectivity Fees and Adopt a Tiered-Pricing Structure for Additional Limited Service MIAX Express Interface Ports; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

May 11, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2022, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to amend certain connectivity and port fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* 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 [sic] 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 Fee Schedule to increase the fees for a 10 gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection and adopt a tiered-pricing structure for Limited Service MIAX Express Interface (''MEI'') Ports [3] available to Market Makers.[4] The Exchange last increased the fees for its 10Gb ULL fiber connections in a filing that became effective beginning January 1, 2021 (subsequently withdrawn and refiled one time).[5] In that fee change, the Exchange increased the fee for 10Gb ULL fiber connections from $9,300 to $10,000 per month.

Also, in connection with that fee change, the Exchange's affiliate, MIAX PEARL, LLC (''MIAX Pearl Options''), increased its 10Gb ULL connectivity fee to $10,000 per month.[6] The Exchange and MIAX Pearl Options shared a combined cost analysis in those filings. In those filings, the Exchange and MIAX Pearl Options allocated a combined total of $17.9 million in expenses to providing 10Gb ULL fiber connectivity.

Since the time of that filing, the Exchange and MIAX Pearl Options have experienced an increase in expenses, particularly regarding internal expenses. For example, from January 2021 to March 2022 expenses related to employee compensation for 10Gb ULL connectivity increased from a combined $6,892,689 to $7,063,801 and occupancy increased from $560,408 to $701,437. In addition, from January 2021 to March 2022, the Exchange's third party related expense increased as well. In January 2021, the Exchange and MIAX Pearl Options allocated a combined $4,079,910 of their shared third party expenses to providing the 10Gb ULL fiber connectivity. As described more fully below, the Exchange and MIAX Pearl Options are now allocating $4,382,307 of their shared third party expense to 10Gb ULL fiber connectivity, which represents only a portion of the total combined third party expense of $7,575,888. As discussed more fully below, the Exchange and MIAX Pearl Options recently calculated the combined annual aggregate costs for providing 10Gb ULL connectivity, plus the cost of providing Limited Service MEI Ports (on MIAX only) to be $21,407,728, or $1,783,977 per month. The Exchange now proposes to amend the Fee Schedule to amend the fees for 10Gb ULL connectivity to recoup these ongoing costs and as a result of the increase in expenses described above.[7]

The same is true for its proposal to amend its fees for Limited Service MEI Ports. Beginning with a series of filings first filed on April 9, 2021 (with the final filing made May 10, 2021), the Exchange removed the cap on the number of additional Limited Service MEI Ports available to Market Makers from the Fee Schedule.[8] In that filing, the Exchange sought only to remove the cap on the number of Limited Service MEI Ports a Market Maker may purchase from its Fee Schedule. Although the Exchange did not modify the fees for

[3] MIAX Express Interface is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX. *See* Fee Schedule, note 26.

[4] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* Exchange Rule 100.

[5] *See* Securities Exchange Act Release No. 90980 (January 25, 2021), 86 FR 7602 (January 29, 2021) (SR–MIAX–2021–02).

[6] *See* Securities Exchange Act Release No. 90981 (January 25, 2021), 86 FR 7582 (January 29, 2021) (SR–PEARL–2021–01).

[7] The Exchange notes that MIAX Pearl Options will make a similar filing to increase its 10Gb ULL connectivity fees.

[8] *See* Securities Exchange Act Release No. 91857 (May 12, 2021), 86 FR 26973 (May 18, 2021) (SR–MIAX–2021–19).

Limited Service MEI Ports in that filing, the Exchange did provide a cost analysis showing the cost to the Exchange to add two Limited Service MEI Ports to its System. That filing contained lower allocation percentages and allocated expenses than included herein because that cost analysis focused solely on the providing two Limited Service MEI Ports and not all Limit Service MEI Ports generally as is the case in this proposed fee change. Since the time of that April 2021 filing, the Exchange's expenses have increased, leading to the increased fees for Limited Service MEI Ports proposed herein. For example, in April 2021, the Exchange set forth a total internal expense of $14,957,861 as part of its cost analysis to provide two additional Limited Service MEI Ports. As described below, the Exchange's total internal expenses have increased since April 2021 and are now $19,862,263, of which the Exchange is now allocating $1,281,113 of to providing Limited Service MEI Ports generally.

First, the Exchange proposes to amend the Fee Schedule to increase the fees for Members [9] and non-Members to access the Exchange's System Networks [10] via a 10Gb ULL fiber connection. Specifically, the Exchange proposes to amend Sections 5)a)–b) of the Fee Schedule to increase the 10Gb ULL connectivity fee for Members and non-Members from $10,000 per month to $12,000 per month (''10Gb ULL Fee''). Prior to the proposed fee change, the Exchange assessed Members and non-Members a flat monthly fee of $10,000 per 10Gb ULL connection for access to the Exchange's primary and secondary facilities.[11]

The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the primary and secondary facilities in any month the Member or non-Member is credentialed to use any of the Exchange APIs or market data feeds in the production environment. The Exchange proposes to pro-rate the fees when a Member or non-Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the Member or non-Member has been credentialed to utilize any of the Exchange APIs or market data feeds in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate. The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the disaster recovery facility in each month during which the Member or non-Member has established connectivity with the disaster recovery facility.

The Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of both the Exchange and its affiliate, MIAX Pearl Options, via a single, shared connection. Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and MIAX Pearl Options via a single, shared connection will continue to only be assessed one monthly connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

Second, the Exchange proposes to amend Section 5)d) of the Fee Schedule to adopt a tiered-pricing structure for Limited Service MEI Ports available to Market Makers. The Exchange allocates two (2) Full Service MEI Ports [12] and two (2) Limited Service MEI Ports [13] per matching engine [14] to which each Market Maker connects. Market Makers may also request additional Limited Service MEI Ports for each matching engine to which they connect. The Full Service MEI Ports and Limited Service MEI Ports all include access to the Exchange's primary and secondary data centers and its disaster recovery center. Market Makers may request additional Limited Service MEI Ports. Prior to the proposed fee change, Market Makers were assessed a $100 monthly fee for each Limited Service MEI Port for each matching engine above the first two Limited Service MEI Ports that are included for free. This fee was unchanged since 2016.[15] The Exchange now proposes to move from a flat monthly fee per Limited Service MEI Port for each matching engine to a tiered-pricing structure for Limited Service MEI Ports for each matching engine under which the monthly fee would vary depending on the number of Limited Service MEI Ports each Market Maker elects to purchase. Specifically, the Exchange will continue to provide the first and second Limited Service MEI Ports for each matching engine free of charge. For Limited Service MEI Ports, the Exchange proposes to adopt the following tiered-pricing structure: (i) The third and fourth Limited Service MEI Ports for each matching engine will increase from the current flat monthly fee of $100 to $150 per port; (ii) the fifth and sixth Limited Service MEI Ports for each matching engine will increase from the current flat monthly fee of $100 to $200 per port; and (iii) the seventh or more Limited Service MEI Ports will increase from the current monthly flat fee of $100 to $250 per port. The Exchange believes a tiered-pricing structure will encourage Market Makers to be more efficient when determining how to connect to the Exchange. This should also enable the Exchange to better monitor and provide access to the Exchange's network to ensure sufficient capacity and headroom in the System [16] in accordance with its fair access requirements under Section 6(b)(5) of the Act.[17]

The Exchange believes that other exchanges' connectivity and port fees

[9] 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.

[10] The Exchange's System Networks consist of the Exchange's extranet, internal network, and external network.

[11] The Exchange notes that it employed a tiered pricing structure for 10Gb ULL connectivity from August 2021 through March 2022. *See infra* notes 27–29.

[12] Full Service MEI Ports provide Market Makers with the ability to send Market Maker quotes, eQuotes, and quote purge messages to the MIAX 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. *See* Fee Schedule, Section 5)d)ii), note 27.

[13] Limited Service MEI Ports provide Market Makers with the ability to send eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX 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* Fee Schedule, Section 5)d)ii), note 28.

[14] A ''matching engine'' is a part of the MIAX 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* Fee Schedule, Section 5)d)ii), note 29.

[15] *See* Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR–MIAX–2016–47).

[16] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[17] *See* 15 U.S.C. 78f(b). The Exchange may offer access on terms that are not unfairly discriminatory among its Members, and ensure sufficient capacity and headroom in the System. The Exchange monitors the System's performance and makes adjustments to its System based on market conditions and Member demand.

are useful examples and provides the following table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar connectivity and port access. As shown by the below table, the Exchange's proposed fees are similar to or less than fees charged for similar access to other options exchanges.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
MIAX (as proposed) (equity options market share of 5.67% as of April 29, 2022 for the month of April) [18].	10Gb ULL connection	$12,000.
	Limited Service MEI Port	1–2 ports. FREE (not changed in this proposal). 3–4 ports. $150. 5–6 ports. $200. 7 or more ports. $250.
The NASDAQ Stock Market LLC ("NASDAQ") [19] (equity options market share of 8.47% as of April 29, 2022 for the month of April) [20].	10Gb Ultra fiber connection	$15,000.
	SQF Port	1–5 ports. $1,500. 6–20 ports. $1,000. 21 or more ports. $500.
Nasdaq ISE LLC ("ISE") [21] (equity options market share of 5.48% as of April 29, 2022 for the month of April) [22].	10Gb Ultra fiber connection	$15,000.
	SQF Port	$1,100.
NYSE American LLC ("NYSE American") [23] (equity options market share of 8.13% as of April 29, 2022 for the month of April) [24].	10Gb LX LCN connection	$22,000.
	Order/Quote Entry Port	Ports 1–40. $450. Ports 41 and greater. $150.
Nasdaq GEMX, LLC ("GEMX") [25] (equity options market share of 2.36% as of April 29, 2022 for the month of April) [26].	10Gb Ultra connection	$15,000.
	SQF Port	$1,250.

Implementation and Procedural History

The proposed rule change will be effective May 2, 2022. The Exchange initially filed proposals to adopt tiered-pricing structures for the 10Gb ULL connections and Limited Service MEI Ports, with the proposed fees being effective beginning August 1, 2021. Between August 2021 and February 2022, the Exchange withdrew and refiled the proposed rule changes, each time to meaningfully attempt to provide additional justification for the proposed fee changes, provide enhanced details regarding the Exchange's cost methodology, and address questions contained in the Commission's suspension orders. The Exchange received six comment letters from three separate commenters on the filings.[27] This revised proposal provided additional details regarding the Exchange's cost methodology, revenue projections, and responded to various questions and requests for information contained in the Commission's suspension orders.[28] On April 1, 2022, the Exchange submitted revised proposals to provide additional clarity regarding the Exchange's cost justification and those proposals were subsequently suspended by the Commission.[29] The Exchange withdrew those revised proposals and submitted this filing on May 2, 2022. This newest revised filing builds upon the additional details regarding the Exchange's cost methodology and revenue projections, as well as the Exchange's responses to various questions and requests for information contained in the Commission's suspension orders.

2. Statutory Basis

The Exchange believes that the proposed fees are 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 Members and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposed fees further the objectives of Section 6(b)(5) of the Act [32] in that they are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes as set forth in recent Commission and Commission Staff guidance. On March 29, 2019, the Commission issued an Order disapproving a proposed fee change by the BOX Market LLC Options Facility to establish connectivity fees for its BOX Network (the "BOX Order").[33] On May 21, 2019, the Commission Staff issued guidance "to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange

[18] See "The market at a glance," available at *https://www.miaxoptions.com/* (last visited April 29, 2022).

[19] *See* NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services *and* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.

[20] *See supra* note 18.

[21] *See* ISE Pricing Schedule, Options 7, Section 7, Connectivity Fees *and* ISE Rules, General 8: Connectivity.

[22] *See supra* note 18.

[23] *See* NYSE American Options Fee Schedule, Section V.A. Port Fees *and* Section V.B. Co-Location Fees.

[24] *See supra* note 18.

[25] *See* GEMX Pricing Schedule, Options 7, Section 6, Connectivity Fees *and* GEMX Rules, General 8: Connectivity.

[26] *See supra* note 18.

[27] *See* letters from Richard J. McDonald, Susquehanna International Group, LLC ("SIG"), to Vanessa Countryman, Secretary, Commission, dated September 7, 2021, October 1, 2021, October 26, 2021, and March 15, 2022 ("SIG Letters"). *See also* letter from Tyler Gellasch, Executive Director, Healthy Markets Association ("HMA"), to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021 ("HMA Letter"); *and* letter from Ellen Green, Managing Director, Equity and Options Market Structure, Securities Industry and Financial Markets Association ("SIFMA"), to Vanessa Countryman, Secretary, Commission, dated November 26, 2021 ("SIFMA Letter").

[28] *See* Securities Exchange Act Release Nos. 92643 (August 11, 2021), 86 FR 46034 (August 17, 2021) (SR–MIAX–2021–35); 93165 (September 28, 2021), 86 FR 54750 (October 4, 2021) (SR–MIAX–2021–41); 93639 (November 22, 2021), 86 FR 67758 (November 29, 2021) (SR–MIAX–2021–41); 93775 (December 14, 2021), 86 FR 71996 (December 20, 2021) (SR–MIAX–2021–59); 94088 (January 27, 2022), 87 FR 5901 (February 2, 2022) (SR–MIAX–2021–59); and 94256 (February 15, 2022), 87 FR 9711 (February 22, 2022) (SR–MIAX–2022–07).

[29] *See* Securities Exchange Act Release Nos. 94720 (April 14, 2022), 87 FR 23586 (April 20, 2022) (SR–MIAX–2022–16) *and* 94719 (April 14, 2022), 87 FR 23600 (April 20, 2022) (SR–MIAX–2022–14).

[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* 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) (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).

Act.'' [34] Based on both the BOX Order and the Guidance, the Exchange believes that the proposed fees are consistent with the Act because they are: (i) Reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; and (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Proposed Fees Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [35] The Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [36] In the Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supra-competitive profit, specific information, including quantitative information, should be provided to support that argument.'' [37] The Exchange does not assert that the proposed fees are constrained by competitive forces. Rather, the Exchange asserts that the proposed fees are reasonable because they will permit recovery of the Exchange's costs in providing access services to supply 10Gb ULL connectivity and Limited Service MEI Ports and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [38] The Commission Staff further states in the Guidance that ''the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.'' [39] The Exchange provides this analysis below.

The proposed fees are based on a cost-plus model. The Exchange believes that it is important to demonstrate that the proposed fees are based on its costs and reasonable business needs and believes the proposed fees will allow the Exchange to begin to offset expenses. However, as discussed more fully below, such fees may also result in the Exchange recouping less than, or more than, all of its costs of providing 10Gb ULL connectivity and Limited Service MEI Ports because of the uncertainty of forecasting subscriber decision making with respect to firms' access needs. The Exchange believes that the proposed fees will not result in excessive pricing or supra-competitive profit based on the total expenses the Exchange incurs versus the total revenue the Exchange projects to collect, and therefore meets the standards in the Act as interpreted by the Commission and the Commission Staff in the BOX Order and the Guidance.

The suspension orders sought additional information and comments on various aspects of the prior proposed fee changes. In many respects, the Commission's questions about the prior proposed fee changes raise broader questions around the factors the Commission should consider and the type of data and analysis an exchange should provide in considering whether market data, port fees, or connectivity fees are fair and reasonable under a cost-based methodology. The suspension orders also sought more specific information regarding the allocation of third-party expenses, such as the overall estimated cost for each category of external expenses or at minimum the total applicable third-party expenses and percentage allocation or statements regarding the Exchange's overall estimated costs for the internal expense categories and general shared expenses figure. The Exchange added this additional information below.

In this filing, the Exchange offers a conceptual framework for further considering the Commission's questions that draws on the Exchange's own experience over several years of analyzing its own costs. The elements of that framework are as follows:

First, the Exchange proposes a flat, simple 10Gb ULL Fee that imposes a single monthly fee for Members and non-Members. The Exchange believes this relatively simple, flat fee structure is transparent and easy for users to apply, and also helps show that it meets the objectives of the Act. The Exchange also proposes a tiered-pricing structure for its Limited Service MEI Ports that continues to provide the first and second Limited Service MEI Ports free of charge. The Exchange believes the proposed tiered-pricing structure for Limited Service MEI Ports is also transparent and easy for users to apply, and is a common pricing method used by other options exchanges when charging for port connectivity.[40]

The Exchange then conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to providing 10Gb ULL connectivity and Limited Service MEI Ports. That methodology does not allow for ''double-counting'' of the same costs for different classes of exchange products—for example transaction services, market data, physical connectivity, ''logical'' port connections or regulatory resources. As a result of this review, the Exchange determined that it experienced an increase in costs since January and April 2021 as set forth above and determined to propose to increase select connectivity fees as described herein to attempt to recoup this increased expense.

The Exchange then sought to narrowly allocate specific costs to 10Gb ULL connectivity and Limited Service MEI Ports to which the proposed fees would apply. In this filing, the Exchange provided more detail about how that allocation was determined and included information about tangential cost items that were not included. In determining what portion (or percentage) to allocate to access services, each Exchange department head, in coordination with other Exchange personnel, determined the expenses that support access services and System Networks associated with 10Gb ULL connectivity and Limited

[34] *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'').

[35] *See id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *See supra* notes 19 and 23.

Service MEI Ports. This included numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders. The analysis also included each department head meeting with the divisions of teams within each department to determine the amount of time and resources allocated by employees within each division towards the access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange reviewed each individual expense to determine if such expense was related to 10Gb ULL connectivity and Limited Service MEI Ports. Once the expenses were identified, the Exchange department heads, with the assistance of the Exchange's internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing access services and the System Networks. The sum of all such portions of expenses represents the total cost to the Exchange to provide access services associated with 10Gb ULL connectivity and Limited Service MEI Ports. For the avoidance of doubt, no expense amount is allocated twice. Specifically, no expense amount is allocated to more than one expense category within this filing and no expense amount that is allocated as a cost to provide and maintain access to the 10Gb ULL connectivity and Limited Service MEI Ports in this filing have been or will be allocated as a cost to provide any other exchange product or service in any other fee filing. In the suspension orders, the Commission questioned whether further explanation of the Exchange's cost analysis was necessary. The Exchange provides further details concerning its cost analysis in response to this question.

The Exchange believes exchanges, like all businesses, should be provided flexibility when developing and applying a methodology to allocate costs and resources they deem necessary to operate their business, including providing market data and access services. The Exchange notes that costs and resource allocations may vary from business to business and, likewise, costs and resource allocations may differ from exchange to exchange when it comes to providing market data and access services. It is a business decision that must be evaluated by each exchange as to how to allocate internal resources and what costs to incur internally or via third parties that it may deem necessary to support its business and its provision of market data and access services to market participants.

Finally, the Exchange acknowledges that it is difficult to predict how much revenue the Exchange will receive from the proposed fees with precision. The analysis conducted by the Exchange is designed to make a fair and reasonable assessment of costs and resources allocated to support the provision of access services associated with the proposed fees. The Exchange further acknowledges that this assessment can only capture a moment in time and that costs and resource allocations may change. That is why the Exchange historically, and on an ongoing basis, reviews its costs and resource allocations to ensure it appropriately allocates resources to properly provide services to the Exchange's constituents. As part of this proposed rule change, and as described further below, the Exchange is committing to conduct an annual cost review with respect to fees that are cost justified in this proposed rule change beginning one year from the date of this proposal, and annually thereafter. The Exchange expects that it may propose to adjust fees at that time, either to increase fees in the event that revenues fail to reasonably cover costs at the estimated margin set forth below, or to decrease fees in the event that revenue materially exceeds the Exchange's current projections. In the event that the Exchange determines to propose a fee change, updated cost estimates will be included in a rule filing proposing the fee change.

The Exchange believes applying this framework to the proposed fees shows that they are consistent with the requirements of the Act, leaving aside that the proposed fees are relatively similar to fees charged by other exchanges for connectivity and port access.

Exchange Costs and Cost Methodology

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully support access to the Exchange via connectivity and ports. As described below, 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. Both fixed and variable expenses have significant impact on the Exchange's overall costs to provide 10Gb ULL connectivity and Limited Service MEI Ports. For example, to accommodate new Members, the Exchange may need to purchase additional hardware to support those Members and provide access through 10Gb ULL connectivity and Limited Service MEI Ports.[41] Further, as the total number of Members increases, the Exchange 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 the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the proposed fees are a reasonable attempt to offset those costs associated with providing access to and maintaining its System Networks' infrastructure.

The Exchange estimated its total annual expense to provide 10Gb ULL connectivity and Limited Service MEI Ports based on the following general expense categories: (1) External expenses, which include fees paid to third parties for certain products and services; (2) internal expenses relating to the internal costs to provide the services associated with 10Gb ULL connectivity and Limited Service MEI Ports; and (3) general shared expenses.[42] The below table details each of these individual external and internal annual costs considered by the Exchange to be directly related to offering 10Gb ULL connectivity and Limited Service MEI Ports, and not any other product or service offered by the Exchange. The below table also details the general shared expense allocated to this proposal. Each of these expenses are discussed in more detail further below.

For 2022, the total annual expense for providing the access services associated with providing 10Gb ULL connectivity for MIAX and MIAX Pearl Options combined, and Limited Service MEI Ports for MIAX only, is estimated to be $21,407,728, or $1,783,977 per month. The Exchange utilized its estimated 2022 revenue and costs, which utilize the same methodology set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[43]

[41] The Exchange is not considering future costs associated with accommodating new 10Gb ULL connectivity and Limited Service MEI Ports subscriptions.

[42] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

[43] 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

Continued

External expenses			
Category	Percentage of total expense amount allocated		
	10Gb ULL connectivity (MIAX)	10Gb ULL connectivity (MIAX pearl options)	Limited service MEI ports (MIAX only)
Data Center Provider	61%	61%	4.8%.
Fiber Connectivity Provider	61%	61%	2.6%.
Security Financial Transaction Infrastructure ("SFTI"), and Other Connectivity and Content Service Providers.	73.6%	73.6%	4.8%.
Hardware and Software Providers	50%	50%	4.8%.
Total of External Expenses			$4,556,734.[44]

Internal expenses			
Category	Expense amount allocated		
	10Gb ULL connectivity (MIAX)	10Gb ULL connectivity (MIAX pearl options)	Limited service MEI ports (MIAX only)
Employee Compensation	$4,108,382 (representing 27.5% of total $14,957,861 expense).	$2,955,419 (representing 27.5% of total $10,760,135 expense).	$1,057,907 (representing 7.1% of total $14,957,861 expense).
Depreciation and Amortization	$2,724,062 (representing 66% of total $4,135,294 expense).	$1,460,789 (representing 61.3% of total $2,382,314 expense).	$186,118 (representing 4.5% of total $4,135,294 expense).
Occupancy	$399,859 (representing 52% of total $769,108 expense).	$301,578 (representing 52% of total $580,068 expense).	$37,088 (representing 4.8% of total $769,108 expense).
Total of Internal Expenses			$13,231,202.
Allocated Shared Expenses	$1,982,793 (representing 49% of total $4,042,629 expense).	$1,351,081 (representing 44% of total $3,060,734 expense).	$285,918 (representing 7.1% of total $4,042,629 expense).
Total of Allocated Shared Expenses			$3,619,792.
Total External + Internal + Allocated Shared Expenses.			$21,407,728.

In its suspension orders, the Commission solicited commenters' views on whether the Exchange has provided sufficient detail on the identity and nature of services provided by third parties. The Commission further solicited commenters' views on whether the Exchange has provided sufficient detail on the elements that go into connectivity and port costs, including how shared costs are allocated and attributed to connectivity and port expenses, to permit an independent review and assessment of the reasonableness of purported cost-based fees and the corresponding profit margin thereon. In response, the Exchange provides additional detail regarding the identity and nature of services provided by third parties, the elements that go into connectivity and port costs, and how expenses are allocated. The Exchange believes this additional detail is sufficient to support a finding that the proposed fees are consistent with the Exchange Act.

For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange describes below the analysis conducted for each expense and the resources or determinations that were considered when determining the amount necessary to allocate to each expense. The Exchange notes that, without the specific external and internal expense items, the Exchange would not be able to provide access to its System Networks through 10Gb ULL connectivity and Limited Service MEI Ports. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, were identified through a line-by-line cost analysis and determined to be integral to providing access to its System Networks through 10Gb ULL connectivity and Limited Service MEI Ports for the reasons discussed below. Only a portion of all fees paid to such third parties are included in the third party expenses described herein, and,

Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87875 (December 31, 2019), 85 FR 770 (January 7, 2020) (SR–MIAX–2019–51). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2022 Form 1 Amendment, which will be filed in 2023. In its suspension orders, the Commission also asked should the Exchange use cost projections or actual costs estimated for 2021 in a filing made in 2022, or make cost projections for 2022. The Exchange utilized expenses from its most recent audited financial statement as those numbers are more reliable than more recent unaudited numbers, which may be subject to change.

[44] The Exchange does not believe it is appropriate to disclose the actual amount it pays to each individual third party provider as those fee arrangements are competitive or the Exchange is contractually prohibited from disclosing that number.

again, no expense amount is allocated twice. For example, the Exchange does not allocate its entire information technology and communication costs to providing access to its System Networks through 10Gb ULL connectivity and Limited Service MEI Ports because it determined that a portion of those costs are attributable to other areas of the Exchange's operations, such as transaction services, market data, and other forms of connectivity offered by the Exchange. This may result in the Exchange under allocating an expense to provide access to its System Networks through 10Gb ULL connectivity and Limited Service MEI Ports, and such expenses may actually be higher than what the Exchange allocated as part of this proposal.[45]

Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations, which resulted in revised percentage allocations in this filing as compared to prior versions of this proposed fee change that were previously withdrawn by the Exchange. The revised percentages are, among other things, the result of the shifting of internal resources in response to business objectives. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.[46]

The Exchange believes it is reasonable to consider the expense and revenue for 10Gb ULL connectivity and Limited Service MEI Ports 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.

External Expense Allocations

For 2022, annual expenses relating to fees paid by the Exchange to third parties for products and services necessary to provide 10Gb ULL connectivity and Limited Service MEI Ports are estimated to be $4,556,734.[47] This includes a portion of the fees paid to: (1) A third party data center provider, including for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) a fiber connectivity provider for network services (fiber and bandwidth products and services) linking the Exchange's and its affiliates' office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) SFTI, which supports connectivity feeds for the entire U.S. options industry; (4) SFTI and various other content and connectivity service providers, which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) hardware and software providers, which support the production environment in which Members and non-Members connect to the network to trade and receive market data.[48]

Data Center Space and Operations Provider

The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties where the Exchange houses servers, switches and related equipment. Data center costs include an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs. The data center provider operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. Without the retention of a third party data center, the Exchange would not be able to operate its systems, provide a trading platform for market participants, and produce and distribute market data. The Exchange does not employ a separate fee to cover its data center expense and recoups that expense, in part, by charging for 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange reviewed its data center footprint and space utilized, including its total rack space, cage usage, number of servers, switches, cabling within the data center, heating and cooling of physical space, storage space, and monitoring and divided its data center expenses among providing transaction services, market data, connectivity (10Gb ULL and 1Gb ULL separately), and ports based on space utilized by each area.[49] Based on this review, the Exchange and MIAX Pearl Options determined that 61% of the total applicable data center provider expense for each is applicable to providing 10Gb ULL connectivity and 4.8% for Limited Service MEI Ports for MIAX. The Exchange reviewed space utilized to house rack space, cage usage, servers, switches, cabling, storage space, heating and cooling of physical space, and monitoring, and identified that a small portion of that footprint is dedicated to equipment used to support 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange believes this allocation is reasonable because it represents the costs associated with housing the Exchange's equipment dedicated to supporting 10Gb ULL connectivity and Limited Service MEI Ports. 10Gb ULL connectivity and Limited Service MEI Ports are core means of access to the Exchange's network, providing several methods for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's data center expense is due to space utilized to provide and maintain connectivity and port access to the Exchange's System Networks, including providing cabling within the data center between market participants and the Exchange. The Exchange excluded from this allocation servers and space that are dedicated to market data. The Exchange also did not allocate the remainder of the data center expense because it pertains to space utilized by other areas of the Exchange's operations, such as 1Gb ULL connectivity, other types of ports, market data, and transaction services.

[45] The Exchange notes that expenses associated with its affiliates, Emerald and MIAX Pearl's equities trading platform, are accounted for separately and are not included within the scope of this filing.

[46] *See supra* notes 5, 6, and 8 and accompanying text.

[47] *See supra* note 44.

[48] *Id.*

[49] The Investors Exchange, Inc. (''IEX'') also allocated data center costs to produce market data based on space utilized. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945, at page 21949 (April 13, 2022) (SR–IEX–2022–02) (''IEX Market Data Fee Proposal'') (noting that ''[d]ata Center costs consist of the fees charged by the third-party data centers used by IEX and represent less than 10% the Exchange's total data center costs *based on space utilized*'' (*emphasis added*)).

Fiber Connectivity Provider

The Exchange engages a third-party service provider that provides the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data center, and office locations in Princeton and Miami. Fiber connectivity is necessary for the Exchange to switch to its secondary data center in the case of an outage in its primary data center. Fiber connectivity also allows the Exchange's National Operations & Control Center (''NOCC'') and Security Operations Center (''SOC'') in Princeton to communicate with the Exchange's primary and secondary data centers. As such, all trade data, including the billions of messages each day, flow through this third party provider's infrastructure over the Exchange's network. Fiber connectivity is also necessary for personnel responsible for overseeing and providing customer service related to supporting 10Gb ULL connectivity and Limited Service MEI Ports, receiving relevant data and being able to communicate between the Exchange's various locations and data centers. Without these services, the Exchange would not be able to operate and support the network and provide and maintain access services and System Networks associated with the 10Gb ULL connectivity and Limited Service MEI Ports to its Members and their customers. Without the retention of a third party fiber connectivity provider, the Exchange would not be able to communicate between its data centers and office locations in a manner necessary to maintain and support 10Gb ULL connectivity and Limited Service MEI Ports. Fiber connectivity is a necessary integral means to disseminate information, including data related to supporting 10Gb ULL connectivity and Limited Service MEI Ports, from the Exchange's primary data center to other Exchange locations. It is necessary for Exchange employees located in various locations to be able to communicate and receive the necessary data to maintain and provide customer support related to 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange would not be able to operate and support the network and provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports without third party fiber connectivity. The Exchange does not employ a separate fee to cover its fiber connectivity expense and recoups that expense, in part, by charging for 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange reviewed it costs to retain fiber connectivity from a third party, including the ongoing costs to support fiber connectivity, ensuring adequate bandwidth and infrastructure maintenance to support exchange operations, and ongoing network monitoring and maintenance. Based on this review, the Exchange and MIAX Pearl Options determined that 61% of the total fiber connectivity expense for each was applicable to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 2.6% for Limited Service MEI Ports for MIAX. The Exchange reviewed its total fiber connectivity expense and allocated it among transaction services, connectivity, ports, market data, and administrative operations, based on usage. The Exchange then further divided up its fiber connectivity costs related to connectivity and ports and identified the portion that is attributable to supporting 10Gb ULL connectivity and Limited Service MEI Ports, also based on usage. This allocation is, therefore, based on the amount of bandwidth and fiber connectivity the Exchange calculated is utilized to support exchange operations, and ongoing network monitoring and maintenance that are necessary to provide 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange believes this allocation is reasonable because 10Gb ULL connectivity and Limited Service MEI Ports are core means of access to the Exchange's network, providing several methods for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's fiber connectivity expense is due to providing and maintaining connectivity between the Exchange's System Networks, data centers, and office locations and is core to the daily operation of the Exchange. The Exchange also excluded from this allocation fiber connectivity usage related to other business lines, such as transaction services, market data, and other forms of connectivity offered by the Exchange, or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports.

Connectivity and Content Services Provided by SFTI and Other Providers

The Exchange relies on SFTI and various other connectivity and content service providers for connectivity and data feeds for the entire U.S. options industry, as well as content, connectivity, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity and Limited Service MEI Ports. Specifically, the Exchange utilizes SFTI and other content service provider to connect to other national securities exchanges, the Options Price Reporting Authority (''OPRA''), and to receive market data from other exchanges and market data providers. SFTI is operated by the Intercontinental Exchange, the parent company of five registered exchanges, and has become integral to the U.S. markets. The Exchange understands SFTI provides services to most, if not all, of the other U.S. exchanges and other market participants. Connectivity and market data provided by SFTI and other service is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity and Limited Service MEI Ports. Without services from SFTI and various other service providers, the Exchange would not be able to connect to other national securities exchanges, market data providers, or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its SFTI and content service provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange reviewed it costs to retain SFTI and other content service providers, including network monitoring and maintenance, remediation of connectivity related issues, and ongoing administrative activities related to connectivity management. Based on this review, the Exchange and MIAX Pearl determined that 73.6% of the total applicable SFTI and other service provider expense for each is allocated to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 4.8% for Limited Service MEI Ports for MIAX. The Exchange reviewed its total SFTI and

other service provider expense and allocated it among transaction services, connectivity, ports, other market data products, and administrative operations, based on usage. The Exchange then further divided up its SFTI and other service provider costs related to connectivity and ports and identified the portion that is attributable to supporting 10Gb ULL connectivity and Limited Service MEI Ports, also based on usage. This allocation is, therefore, based on the amount of SFTI and other service provider resources utilized to support exchange operations, and ongoing network monitoring and maintenance that are necessary to provide 10Gb ULL connectivity and Limited Service MEI Ports. SFTI and other content service providers are key vendors and necessary components in providing access to the Exchange. The primary service SFTI provides for the Exchange is connectivity to other national securities exchanges and their disaster recovery facilities and, therefore, a vast portion of this expense is allocated to providing access to the System Networks via 10Gb ULL connectivity and Limited Service MEI Ports. Connectivity via SFTI is necessary for purposes of order routing and accessing disaster recovery facilities in the case of a system outage. Engaging SFTI and other like vendors provides purchasers of 10Gb ULL connectivity to other national securities exchanges for purposes of order routing and disaster recovery. The Exchange did not allocate a portion of this expense that relates to the receipt of market data from other national securities exchanges and OPRA. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining the System Networks or access to its System Networks via 10Gb ULL connectivity or Limited Service MEI Ports, such as transaction services, market data, other forms of connectivity offered by the Exchange, or unrelated administrative services. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity and Limited Service MEI Ports, and not any other service, as supported by its cost review.

Hardware and Software Providers

The Exchange relies on dozens of third-party hardware and software providers for equipment necessary to operate its System Networks. This includes either the purchase or licensing of physical equipment, such as servers, switches, cabling, and devices needed by Exchange personnel to monitor servers and the health 10Gb ULL connectivity and Limited Service MEI Ports. This consists of real-time monitoring of system performance, integrity, and latency of 10Gb ULL connectivity and Limited Service MEI Ports. It also includes the Exchange purchasing or licensing software necessary for security monitoring, data analysis and Exchange operations. Hardware and software providers are necessary to maintain its System Networks and provide access to its System Networks via a 10Gb ULL connectivity and Limited Service MEI Ports. Hardware and software equipment and licenses for that equipment are also necessary to operate and monitor physical assets necessary to offer physical connectivity to the Exchange. Hardware and software equipment and licenses are key to the operation of the Exchange and, without them, the Exchange would not be able to operate and support its System Networks and provide access to its Members and their customers. The Exchange does not employ a separate fee to cover its hardware and software expense and recoups that expense, in part, by charging for 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange reviewed its hardware and software related costs, including software patch management, vulnerability management, administrative activities related to equipment and software management, professional services for selection, installation and configuration of equipment and software supporting exchange operations. The Exchange then divided those costs among transaction services, ports, connectivity, market data, and other Exchange operations based on whether all of that hardware or software is based on usage. The Exchange then reviewed the amount allocated to connectivity and ports generally and what portion of that hardware and software equipment or license is used to support 10Gb ULL connectivity and Limited Service MEI Ports specifically. Based on this review, the Exchange and MIAX Pearl determined that 50% of the total applicable hardware and software expense for each is allocated to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 4.8% for Limited Service MEI Ports for MIAX. These percentages reflect the amount of hardware and software equipment and licenses dedicated to support 10Gb ULL connectivity and Limited Service MEI Ports.[50] Hardware and software equipment and licenses are key to the operation of the Exchange and its System Networks. Without them, the Exchange would not be able to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange only allocated the portion of this expense to the hardware and software that is related to 10Gb ULL connectivity and Limited Service MEI Ports, such as operating servers and equipment necessary to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange, therefore, did not allocate portions of its hardware and software expense that related to other areas of the Exchange's business, such as hardware and software used for market data or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations, such as transaction services, market data, and other forms of connectivity offered by the Exchange, and is not directly relate to providing 10Gb ULL connectivity or Limited Service MEI Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports, and not any other service, as supported by its cost review.

Internal Expense Allocations

For 2022, total combined internal annual expense relating to the Exchange and MIAX Pearl Options to provide and maintain their System Networks and access to their System Networks for 10Gb ULL connectivity, and for access via Limited Service MEI Ports for MIAX, is estimated to be $13,231,202. This includes costs associated with: (1) Employee compensation and benefits for full-time employees that support the System Networks and access to System Networks via 10Gb ULL connectivity and Limited Service MEI Ports, including staff in network operations, trading operations, development, system operations, business, as well as staff in

[50] The Exchange notes that IEX used a similar methodology to allocate hardware costs to market data. *See* IEX Market Data Fee Proposal, *supra* note 49 at page 21950 (noting that ''IEX only included hardware specifically dedicated to the market data feeds in calculating the costs of providing market data'').

general corporate departments (such as legal, regulatory, and finance) that support those employees and functions as well as important system upgrades; (2) depreciation and amortization of hardware and software used to provide and maintain access services and System Networks associated with the 10Gb ULL connectivity and Limited Service MEI Ports, 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 and maintain the System Networks and access to System Networks via 10Gb ULL connectivity and Limited Service MEI Ports.

Employee Compensation and Benefits

Human personnel are key to exchange operations and supporting the Exchange's ongoing provision of 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange reviewed its employee compensation and benefits expense and the portion of that expense allocated to providing 10Gb ULL connectivity and Limited Service MEI Ports. As part of this review, the Exchange considered employees whose functions include providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports and used a blended rate of compensation reflecting salary, stock and bonus compensation, bonuses, benefits, payroll taxes, and 401K matching contributions.[51]

In its suspension orders, the Commission asked the Exchange provide more detail about the methodology the Exchange used to determine how much of an employee's time is devoted to connectivity and port related activities. In considering the cost of personnel, the Exchange generally considered the time spent on various access service projects and initiatives through project management tracking tools and analysis of employee resource allocations, among its Technology Team in the following areas: Technical Operations, Software Engineering, Quality Assurance, and Infrastructure. The Exchange did not consider non-Technology Teams such as Market Operations, Project Management, Regulatory, Legal, and Accounting/Finance.[52]

Based on this review, the Exchange and MIAX Pearl Options determined to allocate a combined $8,121,708 in combined employee compensation and benefits expense to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. This is only a portion of the $25,717,996 total projected combined expense for employee compensation and benefits for MIAX and MIAX Pearl Options. Of that total, the Exchange and MIAX Pearl Options allocated approximately 27.5% of the total applicable employee compensation and benefits expense for each to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 7.1% for Limited Service MEI Ports for MIAX. The Exchange and MIAX Pearl Options determined the cost allocations for employees who perform work in support of providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports to arrive at full time equivalents (''FTE'') of 12.0 FTEs for MIAX and 8.9 FTEs for MIAX Pearl Options across all the identified personnel related to 10Gb ULL connectivity, and 3.1 FTEs across all the identified personnel related to Limited Service MEI Ports for MIAX. The Exchange then multiplied the FTE times a blended compensation rate for all relevant Exchange personnel to determine the personnel costs associated with providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. Senior staff also reviewed these time allocations with department heads and team leaders to determine whether those allocations were appropriate. These employees are critical to the Exchange to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange determined the above allocation based on the personnel whose work focused on functions necessary to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange does not charge a separate fee regarding employees who support 10Gb ULL connectivity and Limited Service MEI Ports and the Exchange seeks to recoup those expenses, in part, by charging for 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange believes it is appropriate to include incentive compensation in the blended personnel compensation rate on the same basis as other personnel costs for in-scope employees because incentive compensation is a part of the total personnel costs associated with the Exchange's provision of 10Gb ULL connectivity and Limited Service MEI Ports. Moreover, the Exchange notes that it has taken a conservative approach in determining which employees to include in its cost analysis, in terms of function and percent allocation, so that the included personnel costs are directly and closely tied to the costs of providing 10Gb ULL connectivity and Limited Service MEI Ports. The FTE allocations represent just 31.5% of the Exchange's and MIAX Pearl's overall personnel costs. Consistent with the Exchange's conservative methodology to limit costs allocated to 10Gb ULL connectivity and Limited Service MEI Ports, this approach includes only a de minimis personnel cost allocation for senior level executives and no allocation for members of the Exchange's board of directors. Accordingly, the Exchange believes that the allocated personnel expenses included are appropriately attributable to 10Gb ULL connectivity and Limited Service MEI Ports.

Depreciation and Amortization

A key expense incurred by the Exchange relates to the depreciation and amortization of equipment that the Exchange procured to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange reviewed all of its physical assets and software, owned and leased, and determined whether each asset is related to providing and maintaining the 10Gb ULL connectivity and Limited Service MEI Ports, and added up the depreciation of those assets. All physical assets and software, which includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost and depreciated or leased over periods ranging from three to five years. Based on the Exchange's experience, this depreciation period equals the typical life expectancy of those assets. In determining the amount of depreciation and amortization to apply to providing

[51] For purposes of this allocation, the Exchange did not consider expenses related to office space, supplies, or equipment use by employees who support 10Gb ULL connectivity and Limited Service MEI Ports.

[52] The Exchange notes that IEX used a similar methodology to allocate employee compensation related costs to market data. *See* IEX Market Data Fee Proposal, *supra* note 49 at page 29150 (noting that ''[f]or personnel costs, IEX calculated an allocation of employee time for employees whose functions include providing and maintaining IEX Data and/or the proprietary market data feeds used to transmit IEX Data, and used a blended rate of compensation reflecting salary, stock and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions'').

and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange considered the depreciation of hardware and software that are key to the operation of the Exchange and its provision of 10Gb ULL connectivity and Limited Service MEI Ports. This includes servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were previously purchased to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. Without them, market participants would not be able to access the Exchange. The Exchange seeks to recoup a portion of its depreciation expense by charging for 10Gb ULL connectivity and Limited Service MEI Ports.

Based on this review, the Exchange and MIAX Pearl Options determined to allocate a combined $4,370,969 in combined depreciation and amortization expense to provide and maintain access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. This is only a portion of the $6,517,608 total projected combined expense for depreciation and amortization for MIAX and MIAX Pearl Options. This allocation represents approximately 66% for MIAX and 61.3% for MIAX Pearl Options of the total applicable depreciation expenses to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 4.5% for Limited Service MEI Ports for MIAX. For purposes of the allocation of these costs to 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange allocates the annual depreciation (*i.e.,* one-third or one-fifth of the initial asset value based on the typical life expectancy of those assets). One-third or one-fifth of the cost of each asset is included in the annual costs allocated to 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange only included assets specifically dedicated to 10Gb ULL connectivity and Limited Service MEI Ports in calculating the costs of providing 10Gb ULL connectivity and Limited Service MEI Ports. This means that physical assets used for such as transaction services, market data, other forms of connectivity offered by the Exchange, or other Exchange operations were excluded from the calculation.[53] The Exchange, therefore, did not allocate portions of depreciation expense that relates to other areas of the Exchange's business, such as the depreciation of hardware and software used for market data, unrelated administrative services, or other connectivity or ports offered by the Exchange. All of the expenses outlined in this proposed fee change refer to the operating expenses of the Exchange. In the suspension orders, the Commission asked for additional detail or explanation to ensure that no expense amount is allocated twice. The Exchange did not included any future capital expenditures within these costs ensuring that no cost is counted twice. Depreciation and amortization represent the expense of previously purchased hardware and internally developed software spread over the useful life of the assets. Due to the fact that the Exchange has only included operating expense and historical purchases, there is no double counting of expenses in the Exchange's cost estimates.

Occupancy

The Exchange rents and maintains multiple physical locations to house staff and equipment necessary to support access to System Networks via 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange's occupancy expense is not limited to the housing of personnel and includes locations used to store equipment necessary for Exchange operations. In determining the amount of its occupancy related expense, the Exchange considered actual physical space used to house employees whose functions include providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports. Similarly, the Exchange also considered the actual physical space used to house hardware and other equipment necessary to provide and maintain the 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange maintains staff that support 10Gb ULL connectivity and Limited Service MEI Ports in various locations and needs to provide workplaces for that staff as well as space to house hardware and equipment necessary for those employees to perform those functions.[54] This equipment includes computers, servers, and accessories necessary to support the access to the System Networks via 10Gb ULL connectivity and Limited Service MEI Ports. Based on this review, the Exchange and MIAX Pearl Options determined to allocate a combined $738,525 in occupancy expense to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports for MIAX. According to the Exchange's calculations, MIAX and MIAX Pearl Options each allocated approximately 52% of their total applicable occupancy expense to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and 4.8% for Limited Service MEI Ports for MIAX. This is only a portion of the $1,349,176 total projected combined expense for occupancy for MIAX and MIAX Pearl Options. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support 10Gb ULL connectivity and Limited Service MEI Ports. The Exchange considered the rent paid for the Exchange's Princeton and Miami offices, as well as various related costs, such as physical security, property management fees, property taxes, and utilities at each of those locations. The Exchange did not include occupancy expenses related to housing employees and equipment related to other Exchange operations, such as transaction and administrative services.

Allocated Shared Expense

Finally, a limited portion of general shared expenses was allocated to providing and maintaining access services and System Networks associated with 10Gb ULL connectivity and Limited Service MEI Ports as without these general shared costs, the Exchange would not be able to operate in the manner that it does. The costs included in general shared expenses include recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. For 2022, the Exchange's and MIAX Pearl Options's

[53] The Exchange notes that IEX used a similar methodology to allocate hardware costs to market data. *See* IEX Market Data Fee Proposal at note 54, *supra* note 49 at page 21950 (noting that ''[h]ardware is depreciated on a straight-line three-year period, which in IEX's experience, is equal to the typical life expectancy of those assets. As noted above, one-third of the cost of each hardware asset is included in the annual costs allocated to market data. IEX only included hardware specifically dedicated to the market data feeds in calculating the costs of providing market data. This means that physical assets used for both order entry and market data were excluded from the calculation'').

[54] For the avoidance of doubt, the Exchange did not include within this cost any portion of its costs related to third party fiber connectivity used by Exchange staff in different office locations to communicate as part of their role in supporting 10Gb ULL connectivity and Limited Service MEI Ports.

combined general shared expense allocated to 10Gb ULL connectivity and Limited Service MEI Ports for MIAX is estimated to be $3,619,792. This represents approximately 49% for MIAX and 44% for MIAX Pearl Options for 10Gb ULL connectivity, and 7.1% for MIAX for Limited Service MEI Ports, of the $7,103,363 total projected combined general shared expense for MIAX and MIAX Pearl Options. The Exchange used the weighted average of the above allocations to determine the amount of general shared expenses to allocate to the Exchange. Next, based on additional management and expense analysis, these fees are allocated to the proposal.

Revenue and Estimated Profit Margin

The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: Transaction fees, access fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms.

To determine the Exchange's and MIAX Pearl Option's estimated revenue associated with 10Gb ULL connectivity and Limited Service MEI Ports for MIAX, the Exchange and MIAX Pearl Options analyzed the number of subscribers currently utilizing 10Gb ULL connectivity (for both on the shared network) and Limited Service MEI Ports (for MIAX) and used a recent monthly billing cycle representative of current monthly revenue. The Exchange also provided its baseline by analyzing March 2022, the monthly billing cycle prior to the proposed fees, and compared this to its expenses for that month. As discussed below, the Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its estimates for purposes of these calculations, given the uncertainty of such estimates due to the continually changing access needs of market participants and potential changes in internal and external expenses, as well as because the Exchange is committing to review this cost analysis for these fees on an annual basis going forward.

For March 2022, prior to the proposed fees, the Exchange and MIAX Pearl Options had a combined 173 10Gb ULL connections and MIAX had 1,645 Limited Service MEI Ports purchased, for which the Exchange and MIAX Pearl Options charged a total of $1,829,387 (including charges for connections that were dropped or added mid-month, resulting in pro-rated charges). This resulted in a profit of $45,410 for that month (a profit margin of 2.5%). For April 2022, the Exchange and MIAX Pearl Options anticipate that a combined 174 10Gb ULL connections and 1,677 Limited Service MEI Ports for MIAX will be charged for (as of the date of this filing).[55] Assuming the Exchange and MIAX Pearl Options charge the proposed monthly rate of $12,000 per 10Gb ULL connection and the proposed tiered-pricing rates for Limited Service MEI Ports for MIAX, the Exchange and MIAX Pearl Options would generate revenue of $2,329,450 for April 2022 (not including potential pro-rated connection charges for mid-month connections) for 10Gb ULL connectivity for both exchanges and Limited Service MEI Ports for MIAX combined. This would result in a profit of $545,473 ($2,329,450 minus $1,783,977) for that month (a 23.4% profit margin). As discussed above, the Exchange believes it is reasonable to consider the expense and revenue for 10Gb ULL connectivity and Limited Service MEI Ports 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 Exchange believes that conducting the above analysis on a per month basis is reasonable as the revenue generated from access services subject to the proposed fee generally remains static from month to month. The Exchange also conducted the above analysis on a per month basis to comply with the Commission Staff's Guidance, which requires a baseline analysis to assist in determining whether the proposal generates a supra-competitive profit. The Exchange cautions that this profit margin may also fluctuate from month to month based on the uncertainty of predicting how many connections and ports may be purchased from month to month as Members and non-Members are free to add and drop connections and ports at any time based on their own business decisions.

The Exchange believes the proposed profit margin is reasonable and will not result in a ''supra-competitive'' profit. The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.''[56] Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2008.[57] The Exchange has operated at a net loss due to a number of factors, one of which is choosing to forgo revenue by offering certain products, such as connectivity, at lower rates than other options exchanges to attract order flow and encourage market participants to experience the high determinism, low latency, and resiliency of the Exchange's trading systems. The Exchange should not now be penalized for seeking to raise it fees to near market rates after offering such products as discounted prices. Therefore, the Exchange believes the proposed fees are reasonable because they are based on both relative costs to the Exchange to provide 10Gb ULL connectivity and Limited Service MEI Ports, the extent to which the product drives the Exchange's overall costs and the relative value of the product, as well as the Exchange's objective to make access to its Systems broadly available to market participants. The Exchange also believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup the Exchange's costs of providing 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent such revenue actually produces the revenue estimated. As a competitor in the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange will have to be successful in retaining existing clients that wish to utilize 10Gb ULL connectivity and Limited Service MEI Ports or obtaining new clients that will purchase such access. To the extent the Exchange is successful in encouraging new clients to utilize 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange does not believe it should be penalized for such

[55] The Exchange notes that the number of subscribers of 10Gb ULL connections and Limited Service MEI Ports may change over time. For example, from June 2021 to April 2022, MIAX and MIAX Pearl Options had the following number of combined subscribers of 10Gb ULL connectivity per month: June (152); July (156); August (154); September (154); October (154); November (152); December (159); January (174); February (171); March (173); April (174). From June 2021 to April 2022, MIAX had the following number of Limited Service MEI Ports utilized per month: June (1,246); July (1,248); August (1.720); September (1,729); October (1,681); November (1,674); December (1,628); January (1,670); February (1,638); March (1,645); April (1,677).

[56] *See supra* note 34.

[57] The Exchange has incurred a cumulative loss of $175 million since its inception in 2008 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000460.pdf.*

success. The Exchange, like other exchanges, is, after all, a for-profit business. While the Exchange believes in transparency around costs and potential margins, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes this proposal demonstrates this fact.

Further, the proposed profit margin reflects the Exchange's efforts to control its costs. A profit margin should not be judged alone based on its size, but whether the ultimate fee reflects the value of the services provided and is in line with other exchanges. A profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling costs, but not excessive where an exchange is charging the same fee but has a lower profit margin due to higher costs.

The expected profit margin is reasonable because the Exchange offers a premium System Network, System Networks connectivity, and a highly deterministic trading environment. The Exchange is recognized as a leader in network monitoring, determinism, risk protections, and network stability. For example, the Exchange experiences approximately a 95% determinism rate, system throughput of approximately 36 million quotes per second and average round trip latency rate of approximately 19 microseconds for a single quote. The Exchange provides extreme performance and radical scalability designed to match the unique needs of trading differing asset class/market model combinations. Exchange systems offer two customer interfaces, FIX gateway for orders, and ultra-low latency interfaces and data feeds with best-in-class wire order determinism. The Exchange also offers automated continuous testing to ensure high reliability, advanced monitoring and systems security, and employs a software architecture that results in minimizing the demands on power, space, and cooling while allowing for rapid scalability, resiliency and fault isolation. The Exchange also provides latency equalized cross-connects in the primary data center ensures fair and cost efficient access to the Exchange's Systems. The Exchange, therefore, believes the anticipated profit margin is reasonable because it reflects the Exchange's cost controls and the quality of the Exchanges systems.

Finally, the Exchange believes that the proposed fees are reasonable because they will not impose onerous audit requirements on subscribers, because there will be no need to substantiate the number of users of 10Gb ULL connectivity and Limited Service MEI Ports or the manner in which it is being used.

Annual Review of Fees

In its suspension orders, the Commission asks whether exchanges should periodically reevaluate fees on an ongoing and periodic basis in order to assure that actual revenue aligns with a reasonable cost-plus model. As described above and as part of this proposed rule change, the Exchange is committing to conduct a one year review of the fees that are cost justified as part of this proposed rule change after the date of this proposal, and annually thereafter. The Exchange expects that it may propose to adjust fees at that time, either to increase fees in the event that revenues fail to reasonably cover costs at the estimated margin set forth below [sic], or to decrease fees in the event that revenue materially exceeds the Exchange's current projections. In the event that the Exchange determines to propose a fee change, updated cost estimates will be included in a rule filing proposing the fee change. The Exchange believes this approach will further increase transparency around market data costs and help to ensure that Exchange fees continue to be reasonably related to costs.

The Proposed Fees Are Reasonable When Compared to the Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other options exchanges' costs to provide connectivity and port access or their fee markup over those costs, and therefore cannot use other exchange's connectivity and port fees as benchmarks to determine a reasonable markup over the costs of providing such access. Nevertheless, the Exchange believes the other exchanges' 10Gb connectivity and port fees are useful examples of alternative approaches to providing and charging for access notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of connectivity and ports. To that end, the Exchange believes the proposed fees are reasonable because the proposed fees are similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with comparable market shares.

As described in the table below, the Exchange's proposed fees remain similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with similar market share. In the each of the below cases, the Exchange's proposed fees are still significantly lower than that of competing options exchanges with similar market share. Each of the market data rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
MIAX (as proposed) (equity options market share of 5.67% as of April 29, 2022 for the month of April) [58].	10Gb ULL connection	$12,000.
	Limited Service MEI Port	1–2 ports. FREE (not changed in this proposal). 3–4 ports. $150. 5–6 ports. $200. 7 or more ports. $250.
NASDAQ [59] (equity options market share of 8.47% as of April 29, 2022 for the month of April) [60].	10Gb Ultra fiber connection	$15,000.
	SQF Port	1–5 ports. $1,500. 6–20 ports. $1,000. 21 or more ports. $500.
ISE [61] (equity options market share of 5.48% as of April 29, 2022 for the month of April) [62].	10Gb Ultra fiber connection SQF Port.	$15,000. $1,100
NYSE American[63] (equity options market share of 8.13% as of April 29, 2022 for the month of April) [64].	10Gb LX LCN connection Order/Quote Entry Port.	$22,000. Ports 1–40. $450. Ports 41 and greater. $150.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
GEMX[65] (equity options market share of 2.36% as of April 29, 2022 for the month of April)[66].	10Gb Ultra connection SQF Port.	$15,000. $1,250.

The Proposed Pricing Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that the proposed fees are reasonable, fair, equitable, and not unfairly discriminatory because they are designed to align fees with services provided and will apply equally to all subscribers.

10Gb ULL Connectivity

The Exchange believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory because, for one 10Gb ULL connection, the Exchange provides each Member or non-Member access to all twenty-four (24) matching engines on MIAX and a vast majority choose to connect to all twenty-four (24) matching engines. The Exchange believes that other exchanges require firms to connect to multiple matching engines.[67]

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity and port alternatives, as the users of 10Gb ULL connections consume the more bandwidth and network resources than users of 1Gb ULL connection. Specifically, the Exchange notes that 10Gb ULL connection users account for approximately more than 99% of message traffic over the network, while the users of the 1Gb ULL 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 with the network ability to support access to several distinct options markets and the capacity to handle approximately 38 million quote messages per second. On an average day, the Exchange and MIAX Pearl handle over approximately 8,304,500,000 billion total messages. Of that total, users of the 10Gb ULL connections generate approximately 8.3 billion messages, and users of the 1Gb connections generate approximately 4.5 million messages. 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. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the Exchange Act.[68] Thus, as the number of messages an entity increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. 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 market participants' benefit.

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 94% of the volume on the Exchange. This overall volume percentage (94% of total Exchange volume) is in line with the amount of network connectivity revenue collected from 10Gb ULL purchasers (87% 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 87% of the total network connectivity revenue collected by the Exchange from all connectivity alternatives; and Members and non-Members that purchased 1Gb and 10Gb connections accounted for approximately 13% of the revenue collected by the Exchange from all connectivity alternatives.

Limited Service MEI Ports

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity alternatives, as the users of the Limited Service MEI Ports consume the most bandwidth and resources of the network. Specifically, like above for the 10Gb ULL connectivity, the Exchange notes that the Market Makers who take the maximum amount of Limited Service MEI Ports account for approximately greater than 99% of message traffic over the network, while Market Makers with fewer Limited Service MEI Ports account for approximately less than 1% of message traffic over the network. In the Exchange's experience, Market Makers who only utilize the two free Limited Service MEI Ports do not have a business need for the high performance network solutions required by Market Makers who take the maximum amount of Limited Service MEI Ports. 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 9.1 billion total quotes. Of that total, Market Makers with the maximum amount of Limited Service MEI Ports generate approximately 6 billion messages, and Market Makers who utilize the two free Limited Service MEI Ports generate 1.5

[58] *See supra* note 18.

[59] *See supra* note 19.

[60] *See supra* note 18.

[61] *See supra* note 21.

[62] *See supra* note 18.

[63] *See supra* note 23.

[64] *See supra* note 18.

[65] *See supra* note 25.

[66] *See supra* note 18.

[67] *See* Specialized Quote Interface Specification, Nasdaq PHLX, Nasdaq Options Market, Nasdaq BX Options, Version 6.5a, Section 2, Architecture (revised August 16, 2019), *available at http://www.nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/SQF6.5a-2019-Aug.pdf*. The Exchange notes that it is unclear whether the NASDAQ exchanges include connectivity to each matching engine for the single fee or charge per connection, per matching engine. *See also* NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020). The Exchange notes that NYSE provides a link to an Excel file detailing the number of matching engines per options exchange, with Arca and Amex having 19 and 17 matching engines, respectively.

[68] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

billion messages. Specifically, Market Makers who receive 1 to 2 Limited Service MEI ports for free submitted an average of 312,274,040 quotes per day for the month of April 2022. Also for April 2022, Market Makers who purchased 3 to 4 Limited Service MEI ports submitted an average of 774,859,930 quotes per day and Market Makers who purchased 7 or more Limited Service MEI ports submitted an average of 1,198,621,664 quotes per day.[69] 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. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the Exchange Act.[70] Thus, as the number of connections a Market Maker has increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. The Exchange sought to design the proposed tiered-pricing structure to set the amount of the fees to relate to the number of connections a firm purchases. The more connections purchased by a Market Maker likely results in greater expenditure of Exchange resources and increased cost to the Exchange. With this in mind, the Exchange proposes no fee or lower fees for those Market Makers who receive fewer Limited Service MEI Ports since those Market Makers generally tend to send the least amount of orders and messages over those connections. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that Market Makers who take the most Limited Service MEI Ports 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 those Market Makers.

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.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing 10Gb ULL connectivity and Limited Service MEI Ports at below market rates to market participants since the Exchange launched operations. As described above, the Exchange has operated at a cumulative net annual loss since it launched operations in 2008 [71] due to providing a low cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very marginal cost, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low cost exchange alternative to the options industry, which resulted in lower initial revenues. Examples of this are 10Gb ULL connectivity and Limited Service MEI Ports, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Further, the Exchange does not believe that the proposed fee increase for the 10Gb ULL connection 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. As is the case with the current proposed flat fee, the proposed fee would apply uniformly to all market participants regardless of the number of connections they choose to purchase. The proposed fee does not favor certain categories of market participants in a manner that would impose an undue burden on competition.

Inter-Market Competition

The Exchange also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, options market participants are not forced to connect to all options exchanges. There is no reason to believe that our proposed price increase will harm another exchange's ability to compete. There are other options markets of which market participants may connect to trade options. There is also a possible range of alternative strategies, including routing to the exchange through another participant or market center or accessing the Exchange indirectly. Market participants are free to choose which exchange or reseller to use to satisfy their business needs. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[72] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[73] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the

[69] No one purchased 5 or 6 Limited Service Ports in April 2022.

[70] 17 CFR 240.17a-1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[71] *See supra* note 57.

[72] 15 U.S.C. 78s(b)(3)(C).

[73] 15 U.S.C. 78s(b)(1).

rules and regulations thereunder applicable to the exchange.[74] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [75]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [76] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [77] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[78]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposed fees are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[79]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[80]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C) [81] and 19(b)(2)(B) [82] of the Act to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[83] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Exchange has sufficiently demonstrated how the proposed rule change is consistent with Sections 6(b)(4),[84] 6(b)(5),[85] and 6(b)(8) [86] of the Act. Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. *Cost Estimates and Allocation.* The Exchange states that it is not asserting that the proposed fees are constrained by competitive forces.[87] Rather, the Exchange states that its proposed fees are based on a ''cost-plus model,'' employing a ''conservative approach,'' and that the expenses are ''directly related'' to 10Gb ULL connectivity and Limited Service MEI Ports, and not any other product or service offered by the Exchange.[88] In explaining its costs, should the Exchange identify more specifically which, if any, of its costs are incurred solely to provide 10Gb ULL connectivity and solely to provide Limited Service MEI Ports? Regarding the allocations provided by the Exchange as described in greater detail above, do commenters believe that the Exchange provided sufficient detail about how it determined these allocations and why they are reasonable? [89] Why or why not? Do commenters believe that the Exchange provided sufficient context to permit an independent review and assessment of the reasonableness of the allocations? Do commenters believe that the Exchange provided sufficient detail or explanation to support its claim that ''no expense amount is allocated twice,'' [90] whether among the sub-categories of expenses in this filing, across the Exchange's fee filings for other products or services, or over time?

2. *Revenue Estimates and Profit Margin Range.* The Exchange uses a single monthly revenue figure (April 2022) as the basis for calculating its projected combined profit margin of 23.4%.[91] The Exchange argues that projecting revenues on a per month basis is reasonable ''as the revenue generated from access services subject to

[74] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[75] *See id.*

[76] 15 U.S.C. 78f(b)(4).

[77] 15 U.S.C. 78f(b)(5).

[78] 15 U.S.C. 78f(b)(8).

[79] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[80] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[81] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[82] 15 U.S.C. 78s(b)(2)(B).

[83] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[84] 15 U.S.C. 78f(b)(4).

[85] 15 U.S.C. 78f(b)(5).

[86] 15 U.S.C. 78f(b)(8).

[87] *See supra* Section II.A.2.

[88] *See id.*

[89] *See id.*

[90] *See id.*

[91] *See id.*

the proposed fee generally remains static from month to month.'' [92] Yet the Exchange also acknowledges that ''profit margin may also fluctuate from month to month based on the uncertainty of predicting how many connections and ports may be purchased from month to month as Members and non-Members are free to add and drop connections and ports at any time based on their own business decisions.'' [93] Do commenters believe a single month provides a reasonable basis for a revenue projection? If not, why not? Should the Exchange provide a range of profit margins that it believes are reasonably possible, and the reasons therefor? The Exchange also provided its baseline by analyzing March 2022.[94] Do commenters believe that March 2022 is an appropriate month for a baseline? What are commenters' views on the Exchange providing a combined profit margin for both 10Gb ULL connectivity and Limited Service MEI Ports, rather than separate margins for each?

3. *Reasonableness.* The Exchange states that its proposed fees are ''reasonable because they will permit recovery of the Exchange's costs in providing access services to supply 10Gb ULL connectivity and Limited Service MEI Ports and will not result in the Exchange generating a supra-competitive profit.'' [95] The Exchange offers several justifications for why its estimated profit margin (which is blended and not discussed separately for each service) is not a supra-competitive profit, including: (a) When it launched operations in 2008, it chose to forgo revenue by offering certain products at lower rates than other options exchanges to attract order flow; (b) the Exchange has been successful in controlling its costs; (c) a profit margin should not be judged alone based on its size, but on whether the ultimate fee reflects the value of the services provided, and (d) the Exchange's proposed fees remain similar to or less than fees charged for access provided by other options exchanges with similar market share. Do commenters agree that these factors are relevant to assessment of whether the fees are reasonable for each service? Should such an assessment include consideration of any factors other than costs; and if so, what factors should be considered, and why?

4. *Periodic Reevaluation.* The Exchange has stated that it will conduct a review of the cost-based fees subject to this proposal one year after the date of the proposal, and annually thereafter.[96] In light of the impact that the number of connections and ports purchased has on profit margins, and the potential for costs to decrease (or increase) over time, what are commenters' views on the need for exchanges to commit to reevaluate, on an ongoing and periodic basis, their cost-based fees to ensure that the fees stay in line with their stated profitability projections and do not become unreasonable over time, for example, by failing to adjust for efficiency gains, cost increases or decreases, and changes in amounts purchased? How formal should that process be, how often should that reevaluation occur, and what metrics and thresholds should be considered? How soon after a new fee change is implemented should an exchange assess whether its revenue and/or cost estimates were accurate and at what threshold should an exchange commit to file a fee change if its estimates were inaccurate?

5. *Tiered Structure for Additional Limited Service MEI Ports.* The Exchange states that the proposed tiered fee structure is equitably allocated among users of the network connectivity alternatives, because users of Limited Service MEI Ports ''consume the most bandwidth and resources of the network.'' [97] The Exchange states that users of the ''maximum amount of Limited Service MEI Ports'' account for approximately greater than 99% of message traffic over the network, while users of ''fewer Limited Service MEI Ports'' account for approximately less than 1% of message traffic over the network.[98] Specifically, the Exchange states that Market Makers who utilize 1–2, 3–4, or 7 or more Limited Service MEI ports submit an average of 312,274,040 quotes per day, 774,859,930 quotes per day, and 1,198,621,664 quotes per day, respectively, for the month of April 2022.[99] According to the Exchange, 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.[100] Given this difference in network utilization rate, the Exchange believes that its tiered structure is reasonable, equitable, and not unfairly discriminatory.[101] Do commenters believe that the fees for each tier (including the intermediary tiers), as well as the fee differences between the tiers, are supported by the Exchange's assertions? If not, is there an alternative basis on which increased demand by a market-making firm on the Exchange's resources would justify a tiered fee structure for additional Limited Service MEI Ports?

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [102] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[103] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[104] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.[105]

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, any potential comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in

[92] *See id.*

[93] *See id.*

[94] *See id.*

[95] *See id.*

[96] *See id.*

[97] *See id.*

[98] *See id.*

[99] *See id.*

[100] *See id.*

[101] *See id.*

[102] 17 CFR 201.700(b)(3).

[103] *See id.*

[104] *See id.*

[105] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 446–47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[106]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by June 7, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 21, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–MIAX–2022–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–MIAX–2022–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–MIAX–2022–20 and should be submitted on or before June 7, 2022. Rebuttal comments should be submitted by June 21, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[107] that File No. SR–MIAX–2022–20 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[108]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10507 Filed 5–16–22; 8:45 am]

BILLING CODE 8011–01–P

[106] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[107] 15 U.S.C. 78s(b)(3)(C).

[108] 17 CFR 200.30–3(a)(12), (57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34581; File No. 812–15317]

Blackstone Floating Rate Enhanced Income Fund, et al.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order (''Order'') under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to amend a previous order granted by the Commission that permits certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

Applicants: Blackstone Floating Rate Enhanced Income Fund, Blackstone Long-Short Credit Income Fund, Blackstone Private Credit Fund, Blackstone Senior Floating Rate Term Fund, Blackstone Strategic Credit Fund, Blackstone Secured Lending Fund, Blackstone Liquid Credit Strategies LLC, Blackstone Credit BDC Advisors LLC, Blackstone Alternative Credit Advisors LP, Blackstone Liquid Credit Advisors I LLC, Blackstone Liquid Credit Advisors II LLC, Blackstone Mezzanine Advisors L.P., Blackstone CLO Management LLC (Management Series), Blackstone Ireland Limited, Blackstone Ireland Fund Management Limited, G QCM SCSP, GSO Barre Des Ecrins Fund I SCSP, GSO Barre Des Ecrins Fund II SCSP, GSO Barre Des Ecrins Master Fund SCSP, BSOF Master Fund II L.P., BSOF Master Fund L.P., BSOF Parallel Master Fund L.P., Allegany Park CLO, Ltd., Beechwood Park CLO, Ltd., Blackstone European Senior Loan Fund, Blackstone/GSO Global Dynamic Credit Master Fund, Blackstone Secured Trust Ltd, Blackstone Securities Partners L.P., Blackstone HPPI CLO Fund FCP–RAIF, Blackstone Holdings I L.P., Blackstone Holdings II L.P., Blackstone Holdings III L.P., Blackstone Holdings IV L.P., Blackstone Holdings Finance Co, L.L.C., Blackstone Us Loan Master Fund, Blackstone Treasury Holdings II LLC, Blackstone CLO Opportunity Master Fund LP, Bowman Park CLO, Ltd., Bristol Park CLO, Ltd., Buckhorn Park CLO, Ltd., Burnham Park CLO, Ltd., Buttermilk Park CLO, Ltd., BCRED Twin Peaks LLC, BCRED Siris Peak Funding LLC, BCRED Denali Peak Funding LLC, BXC Jade Topco 1 LP, BXC Jade Topco 2 LP, BXC Jade Topco 3 LP, BXC Jade Topco 4 LP, Carysfort Park CLO DAC, Castle Park CLO Designated Activity Company, Catskill Park CLO, Ltd., Cayuga Park CLO, Ltd., Chenango Park CLO, Ltd., Cirrus Funding 2018–1, Ltd., Clarinda Park CLO Designated Activity Company, Clontarf Park CLO Designated Activity Company, Cole Park CLO Limited, Cook Park CLO, Ltd., Crosthwaite Park CLO Designated Activity Company, Cumberland Park CLO, Ltd., Dartry Park CLO Designated Activity Company, Deer Park CLO DAC, Dewolf Park CLO, Ltd., Diamond CLO 2018–1 Ltd., Diamond CLO 2019–1 Ltd., Dorchester Park CLO Designated Activity Company, Dunedin Park CLO Designated Activity Company, Elm Park CLO Designated Activity Company, Emerson Park CLO, Ltd., Fillmore Park CLO, Ltd., Fleet Street Auto 2020 LP, Gilbert Park CLO, Ltd., GN Loan Fund LP, Greenwood Park CLO, Ltd., Griffith Park CLO Designated Activity Company,

Grippen Park CLO, Ltd., Blackstone Senior Floating Rate Opportunity Fund LP, GSO Aiguille Des Grands Montets Fund I LP, GSO Aiguille Des Grands Montets Fund II LP, GSO Aiguille Des Grands Montets Fund III LP, GSO Capital Opportunities Fund III LP, Blackstone Capital Opportunities Fund IV LP, GSO Capital Solutions Fund II LP, GSO Capital Solutions Fund III LP, GSO Churchill Partners II LP, GSO Churchill Partners LP, GSO COF III Co-Investment Fund LP, Blackstone COF IV Co-Investment Fund LP, GSO Co-Investment Fund-D LP, GSO Credit Alpha Diversified Alternatives LP, GSO Credit Alpha Fund II LP, GSO Credit Alpha Fund LP, GSO Credit-A Partners LP, GSO Diamond Portfolio Fund LP, GSO Direct Lending Fund-D LP, GSO Energy Lending Fund-A Onshore LP, GSO Energy Lending Fund-A Overseas LP, GSO Energy Partners-A LP, GSO Energy Partners-B LP, GSO Energy Partners-C II LP, GSO Energy Partners-C LP, GSO Energy Partners-D LP, GSO Energy Partners-E LP, GSO Energy Select Opportunities Fund II LP, GSO Energy Select Opportunities Fund LP, GSO European Senior Debt Fund II LP, GSO European Senior Debt Fund LP, GSO European Senior Debt Fund II Levered EEA SCSP, GSO European Senior Debt Fund II EEA SCSP, GSO Harrington Credit Alpha Fund L.P., GSO Jasmine Partners LP, GSO Orchid Fund LP, GSO Palmetto Opportunistic Investment Partners LP, GSO Palmetto Strategic Partnership, L.P., GSO RP Holdings LP, GSO SJ Partners LP, GSO Special Situations Master Fund LP, Harbor Park CLO, Ltd., Harriman Park CLO, Ltd., Holland Park CLO Designated Activity Company, Jay Park CLO, Ltd., Long Point Park CLO, Ltd., Maple Park CLO, Ltd., Marlay Park CLO Designated Activity Company, Marino Park CLO DAC, Milltown Park CLO Designated Activity Company, Myers Park CLO, Ltd., Niagara Park CLO, Ltd., Orwell Park CLO Designated Activity Company, Palmerston Park CLO Designated Activity Company, Phoenix Park CLO Designated Activity Company, Reese Park CLO, Ltd., Richmond Park CLO Designated Activity Company, Seapoint Park CLO Designated Activity Company, Seneca Park CLO, Ltd., Sorrento Park CLO Designated Activity Company, Southwick Park CLO, Ltd., Stratus CLO 2020–2, Ltd., Stewart Park CLO, Ltd., Sutton Park CLO Designated Activity Company, Taconic Park CLO, Ltd., Thacher Park CLO, Ltd., Thayer Park CLO, Ltd., Thompson Park CLO, Ltd., Treman Park CLO, Ltd., Tryon Park CLO, Ltd., Tymon Park CLO Designated Activity Company, Vesey Park CLO DAC, Webster Park CLO, Ltd., Westcott Park CLO, Ltd., Willow Park CLO Designated Activity Company, Blackstone Green Private Credit Fund III (Lux) Feeder SCSP, Blackstone Green Private Credit Fund III (Lux) SCSP, Boyce Park CLO, Ltd., Nyack Park CLO, Ltd., Bethpage Park CLO, Ltd., King's Park CLO, Ltd., Cabinteely Park CLO DAC, Stratus CLO 2021–2, Ltd., Stratus CLO 2021–1, Ltd., Stratus CLO 2021–3, Ltd., Basswood Park CLO, Ltd., Tallman Park CLO, Ltd., Whetstone Park CLO, Ltd., Wellman Park CLO, Ltd., Point Au Roche Park CLO, Ltd., Rockland Park CLO, Ltd., Rockfield Park CLO DAC, Peace Park CLO, Ltd., Dillon's Park CLO DAC, Otranto Park CLO DAC, BXC Armadillo Co-Investment Fund-D LP, BXC Azul Super Topco LP, BXC Jade Super Topco LP, BX Shipston SCSP, BX Shipston I SARL, BX Shipston Direct Lending SCSP, BXC Space Topco LP, BXC Sapphire Topco LP, BXC Cyan Topco LP, BXC Cobalt Topco LP, BXC Aegean Topco LP, BXC Azure Topco LP, BXC Jade Topco 5–B LP, BXC Jade Topco 6–B LP, BXC Jade Topco 7–B LP, BXC Jade Topco 8–B LP, BXC Jade Topco 9–B LP, BXC Jade Topco 10–B LP.

FILING DATES: The application was filed on April 7, 2022, and amended on May 2, 2022, and May 10, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on, June 6, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Rajib Chanda at *Rajib.Chanda@stblaw.com* and Christopher Healey at *Christopher.Healey@stblaw.com.*

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' second amended and restated application, dated May 10, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Dated: May 11, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10497 Filed 5–16–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94892; File No. SR–EMERALD–2022–18]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing of a Proposed Rule Change To Establish Fees for the Exchange's cToM Market Data Product; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

May 11, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Item II below, which Item has been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

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 Exchange's Fee Schedule (''Fee Schedule'') to establish fees for the market data product known as MIAX Emerald Complex Top of Market (''cToM''). The fees became operative on April 29, 2022. 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 Description of 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 [sic] 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 previously adopted rules governing the trading of Complex Orders [5] on the MIAX Emerald System [6] in 2018,[7] ahead of the Exchange's planned launch, which took place on March 1, 2019. Shortly thereafter, the Exchange adopted the market data product, cToM, and provided cToM free of charge for over two years to incentivize market participants to subscribe and absorbed all costs associated with producing the cToM data product.[8] As discussed more fully below, the Exchange recently calculated its annual aggregate costs for providing cToM to subscribers to be $236,284, or $19,690 per month. Because the Exchange has offered cToM free of charge, the Exchange has borne 100% of the costs for the compilation and dissemination of cToM to subscribers. The Exchange now proposes to amend Section 6)a) of the Fee Schedule to establish fees for the cToM data product in order to recoup a portion, but not all, of these ongoing costs.

Background

In summary, cToM provides subscribers with the same information as the MIAX Emerald Top of Market (''ToM'') data product as it relates to the Strategy Book,[9] *i.e.,* the Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable order and quoting interest in the complex strategy on the Exchange. However, cToM provides subscribers with the following additional information that is not included in ToM: (i) The identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information; and (iii) the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). cToM is therefore a distinct market data product from ToM in that it includes additional information that is not available to subscribers that receive only the ToM data feed. ToM subscribers are not required to subscribe to cToM, and cToM subscribers are not required to subscribe to ToM.[10]

Proposal

The Exchange now proposes to amend Section 6(a) of the Fee Schedule to charge monthly fees to Distributors [11] of cToM. Specifically, the Exchange proposes to assess Internal Distributors $1,250 per month and External Distributors $1,750 per month for the cToM data feed.[12] The proposed fees are identical to the fees that the Exchange, and its affiliate, Miami International Securities Exchange (''MIAX''), currently charge for their ToM data products, both of which were previously published by the Commission and remain in effect today.[13] The Exchange does not propose to adopt redistribution fees for the cToM data feed. However, the recipient of the cToM data feed would be required to become a data subscriber and would be subject to the applicable fees. The Exchange also does not propose to charge any additional fees based on a subscriber's use of the cToM data feed, *e.g.,* displayed versus non-displayed use, and does not propose to impose any individual per user fees.

As it does today for ToM, the Exchange proposes to assess cToM fees on Internal and External Distributors in each month the Distributor is credentialed to use cToM in the production environment. Also, as the Exchange does today for ToM, market data fees for cToM will be reduced for new Distributors for the first month during which they subscribe to cToM, based on the number of trading days that have been held during the month prior to the date on which that subscriber has been credentialed to use cToM in the production environment. Such new Distributors will be assessed a pro-rata percentage of the fees listed in the table in Section 6(a) of the Fee Schedule, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been credentialed to use cToM in the production environment, divided by the total number of trading days in the affected calendar month.

The Exchange believes that other exchanges' fees for complex market data are useful examples and provides the below table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar complex market data. As shown by the below table, the Exchange's proposed fees for cToM are similar to or less than fees charged for similar data products provided by other options exchanges.

[5] *See* Exchange Rule 518(a)(5) for the definition of Complex Orders.

[6] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[7] *See* Securities Exchange Act Release Nos. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (In the Matter of the Application of MIAX EMERALD, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission); *and* 85345 (March 18, 2019), 84 FR 10848 (March 22, 2019) (SR–EMERALD–2019–13) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 518, Complex Orders).

[8] *See* Securities Exchange Act Release No. 85207 (February 27, 2019), 84 FR 7963 (March 5, 2019) (SR–EMERALD–2019–09) (providing a complete description of the cToM data feed).

[9] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[10] *See supra* note 8.

[11] A ''Distributor'' of MIAX Emerald data is any entity that receives a feed or file of data either directly from MIAX Emerald or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All Distributors are required to execute a MIAX Emerald Distributor Agreement. *See* Section 6(a) of the Fee Schedule.

[12] The Exchange also proposes to make a minor related change to remove ''(as applicable)'' from the explanatory paragraph in Section 6(a) as it will not change fees for both the ToM and cToM data feeds.

[13] *See* Securities Exchange Act Release Nos. 91145 (February 17, 2021), 86 FR 11033 (February 23, 2021) (SR–EMERALD–2021–05); 73942 (December 24, 2014), 80 FR 71 (January 2, 2015) (SR–MIAX–2014–66).

Exchange	Monthly fee
MIAX Emerald (as proposed)	$1,250—Internal Distributor, $1,750—External Distributor.
NYSE American, LLC ("Amex") [14]	$1,500—Access Fee, $1,000—Redistribution Fee (this fee is in addition to the Access Fee resulting in a $2,500 monthly fee for external distribution).
NYSE Arca, Inc. ("Arca") [15]	$1,500—Access Fee, $1,000—Redistribution Fee (this fee is in addition to the Access Fee resulting in a $2,500 monthly fee for external distribution).
NASDAQ PHLX LLC ("PHLX") [16]	$3,000—Internal Distributor, $3,500—External Distributor.

The Exchange also proposes to amend the paragraph below the table of fees for ToM and cToM in Section 6(a) of the Fee Schedule to make a minor, non-substantive correction by deleting the phrase ''(as applicable)'' in the first sentence following the table of fees for ToM and cToM. The purpose of this proposed change is to remove unnecessary text from the Fee Schedule.

cToM Content Is Available From Alternative Sources

cToM is also not the exclusive source for Complex Order information from the Exchange and market participants may choose to subscribe to the Exchange's other data products to receive such information. It is a business decision of market participants whether to subscribe to the cToM data product or not. Market participants that choose not to subscribe to cToM can derive much, if not all, of the same information provided in the cToM feed from other Exchange sources, including, for example, the MIAX Emerald Order Feed (''MOR'').[17] The following cToM information is provided to subscribers of MOR: The Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable order and quoting interest in the complex strategy on the Exchange; the identification of the complex strategies currently trading on the Exchange; and the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). In addition to the cToM information contained in MOR, complex strategy last sale information can be derived from the Exchange's ToM data feed. Specifically, market participants may deduce that last sale information for multiple trades in related options series that are disseminated via the ToM data feed with the same timestamp are likely part of a Complex Order transaction and last sale.

Implementation

The proposed rule change will be effective May 2, 2022. The Exchange initially filed this proposal on June 30, 2021 with the proposed fees effective beginning July 1, 2021.[18] Between August 2021 and February 2022, the Exchange withdrew and refiled the proposed rule change, each time to meaningfully attempt to provide additional justification for the proposed fee changes, provide enhanced details regarding the Exchange's cost methodology, and address questions contained in the Commission's suspension order.[19] No comment letters were submitted on any filings made to date regarding the proposed cToM fees. The Commission again suspended the proposed fees on February 15, 2022.[20] The Exchange then provided the cToM data feed free of charge for the month of March 2022 and absorbed all associated costs.

On March 30, 2022, the Exchange withdrew the proposed rule change that was previously suspended by the Commission on February 15, 2022. After providing the cToM data product free of charge for the month of March 2022, on April 1, 2022, the Exchange submitted a revised proposal for immediate effectiveness. This revised proposal provided additional details regarding the Exchange's cost methodology, revenue projections, and responded to various questions and requests for information contained in the Commission's suspension orders. The Exchange withdrew that revised proposal and submitted a further revised filing on April 29, 2022. The newest revised filing builds upon the additional details regarding the Exchange's cost methodology and revenue projections, as well as the Exchange's responses to various questions and requests for information contained in the Commission's suspension orders.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with Section 6(b) of the Act [21] in general, and furthers the objectives of Section 6(b)(4) of the Act [22] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposed fees further the objectives of Section 6(b)(5) of the Act [23] in that they are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes as set forth in recent Commission and Commission Staff guidance. On March 29, 2019, the Commission issued an Order disapproving a proposed fee change by the BOX Market LLC Options Facility to establish connectivity fees for its BOX

[14] *See* NYSE American Options Proprietary Market Data Fees, American Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Market_Data_Fee_Schedule.pdf.*

[15] *See* NYSE Arca Options Proprietary Market Data Fees, Arca Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Options_Proprietary_Data_Fee_Schedule.pdf.*

[16] *See* PHLX Price List—U.S. Derivatives Data, PHLX Orders Fees, at *http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#PHLX.*

[17] *See* MIAX website, Market Data & Offerings, at *https://www.miaxoptions.com/market-data-offerings* (last visited April 1, 2022). In general, MOR provides real-time ulta-low latency updates on the following information: New Simple Orders added to the MIAX Emerald Order Book; updates to Simple Orders resting on the MIAX Emerald Order Book; new Complex Orders added to the Strategy Book (*i.e.,* the book of Complex Orders); updates to Complex Orders resting on the Strategy Book; MIAX Emerald listed series updates; MIAX Emerald Complex Strategy definitions; the state of the MIAX Emerald System; and MIAX Emerald's underlying trading state.

[18] *See* Securities Exchange Act Release No. 92358 (July 9, 2021), 86 FR 37361 (July 15, 2021) (SR–EMERALD–2021–21).

[19] *See* Securities Exchange Act Release Nos. 92789 (August 27, 2021), 86 FR 49364 (September 2, 2021) (SR–MIAX–2021–28, SR–EMERALD–2021–21) (''Suspension Order 1''); 93471 (October 29, 2021), 86 FR 60947 (November 4, 2021) (SR–EMERALD–2021–32); 93427 (October 26, 2021), 86 FR 60310 (November 1, 2021) (SR–EMERALD–2021–34); *and* 93811 (December 17, 2021), 86 FR 73051 (December 23, 2021) (SR–EMERALD–2021–44).

[20] *See* Securities Exchange Act Release No. 94263 (February 15, 2022), 87 FR 9766 (February 22, 2022) (SR–EMERALD–2022–06) (''Suspension Order 2'').

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(4).

[23] 15 U.S.C. 78f(b)(5).

Network (the ''BOX Order'').[24] On May 21, 2019, the Commission Staff issued guidance ''to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act.'' [25] Based on both the BOX Order and the Guidance, the Exchange believes that the proposed fees are consistent with the Act because they are: (i) Reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable and will not result in excessive pricing or supra-competitive profit; and (iv) identical to the prices the Exchange currently charges for its ToM data product and the prices the Exchange's affiliate, MIAX, charges for its ToM product, both of which were previously published by the Commission and remain in effect today.[26]

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, cToM further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of cToM. Particularly, cToM provides subscribers with the same information as ToM, but includes the following additional information: (i) The identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information; and (iii) the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). The Exchange believes cToM provides a valuable tool that subscribers can use to gain substantial insight into the trading activity in Complex Orders, but also emphasizes such data is not necessary for trading. Moreover, other exchanges offer similar data products.[27]

The Proposed Fees Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants.

In the Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [28] The Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [29] In the Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supra-competitive profit, specific information, including quantitative information, should be provided to support that argument.'' [30] The Exchange does not assert that the proposed fees are constrained by competitive forces. Rather, the Exchange asserts that the proposed fees are reasonable because they will permit recovery of the Exchange's costs in producing and disseminating cToM data and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [31] The Commission Staff further states in the Guidance that ''the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.'' [32] The Exchange provides this analysis below.

The proposed fees are based on a cost-plus model. The Exchange believes that it is important to demonstrate that the proposed fees are based on its costs and reasonable business needs and believes the proposed fees will allow the Exchange to begin to offset expenses. However, as discussed more fully below, such fees may also result in the Exchange recouping less than, or more than, all of its costs of providing the cToM data feed because of the uncertainty of forecasting subscriber decision making with respect to firms' market data needs. The Exchange believes that the proposed fees will not result in excessive pricing or supra-competitive profit based on the total expenses the Exchange incurs versus the total revenue the Exchange projects to collect, and therefore meets the standards in the Act as interpreted by the Commission and the Commission Staff in the BOX Order and the Guidance.

The suspension orders sought additional information and comments on various aspects of the prior proposed fee changes. In many respects, the Commission's questions about the prior proposed fee changes raise broader questions around the factors the Commission should consider and the type of data and analysis an exchange should provide in considering whether market data, port fees, or connectivity fees are fair and reasonable under a cost-based methodology. The suspension orders also sought more specific information regarding the allocation of third-party expenses, such as the overall estimated cost for each category of external expenses or at minimum the total applicable third-party expenses and percentage allocation or statements regarding the Exchange's overall estimated costs for the internal expense categories and general shared expenses figure. The Exchange added this additional information below.

In this filing, the Exchange offers a conceptual framework for further considering the Commission's questions that draws on the Exchange's own experience over several years of analyzing its own costs. The elements of that framework are as follows:

First, the Exchange created a flat, simple fee structure that imposes a single monthly fee for Internal Distributors and External Distributors, without added fees based on the way the data is used or individual per user fees. The Exchange believes this relatively simple, flat fee structure is

[24] *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) (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).

[25] *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'').

[26] *See supra* note 13.

[27] *See supra* notes 14 through 16.

[28] *See* Guidance, *supra* note 25.

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

transparent and easy for users to apply, and this difference also helps show that it meets the objectives of the Act.

The Exchange then conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the cToM data feed. That methodology does not allow for ''double-counting'' of the same costs for different classes of exchange products—for example transaction services, other market data products, physical connectivity, ''logical'' port connections or regulatory resources.

The Exchange then sought to narrowly allocate specific costs to the market data products to which the proposed fees would apply. In this filing, the Exchange provided more detail about how that allocation was determined and included information about tangential cost items that were not included. In determining what portion (or percentage) to allocate to producing and disseminating the cToM data feed, each Exchange department head, in coordination with other Exchange personnel, determined the expenses that support producing and distributing the cToM data feed. This included numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders. The analysis also included each department head meeting with the divisions of teams within each department to determine the amount of time and resources allocated by employees within each division towards producing and distributing the cToM data feed. The Exchange reviewed each individual expense to determine if such expense was related to producing and disseminating the cToM data feed. Once the expenses were identified, the Exchange department heads, with the assistance of the Exchange's internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports producing and disseminating the cToM data feed. The sum of all such portions of expenses represents the total cost to the Exchange to produce and disseminate the cToM data feed. For the avoidance of doubt, no expense amount is allocated twice. Specifically, no expense amount is allocated to more than one expense category within this filing and no expense amount that is allocated as a cost to produce and disseminate the cToM data feed in this filing has been or will be allocated as a cost to provide any other exchange product or service in any other fee filing. In the suspension orders, the Commission questioned whether further explanation of the Exchange's cost analysis was necessary. The Exchange provides further details concerning its cost analysis in response to this question.

The Exchange believes exchanges, like all businesses, should be provided flexibility when developing and applying a methodology to allocate costs and resources they deem necessary to operate their business, including providing market data and access services. The Exchange notes that costs and resource allocations may vary from business to business and, likewise, costs and resource allocations may differ from exchange to exchange when it comes to providing market data and access services. It is a business decision that must be evaluated by each exchange as to how to allocate internal resources and what costs to incur internally or via third parties that it may deem necessary to support its business and its provision of market data and access services to market participants.

Finally, the Exchange acknowledges that it is difficult to predict how much revenue the Exchange will receive from the proposed fees with precision. The analysis conducted by the Exchange is designed to make a fair and reasonable assessment of costs and resources allocated to support the production and dissemination of the cToM data feed associated with the proposed fees. The Exchange further acknowledges that this assessment can only capture a moment in time and that costs and resource allocations may change. That is why the Exchange historically, and on an ongoing basis, reviews its costs and resource allocations to ensure it appropriately allocates resources to properly provide services to the Exchange's constituents. As part of this proposed rule change, and as described further below, the Exchange is committing to conduct an annual cost review with respect to fees that are cost justified in this proposed rule change beginning one year from the date of this proposal, and annually thereafter. The Exchange expects that it may propose to adjust fees at that time, either to increase fees in the event that revenues fail to reasonably cover costs at the estimated margin set forth below, or to decrease fees in the event that revenue materially exceeds the Exchange's current projections. In the event that the Exchange determines to propose a fee change, updated cost estimates will be included in a rule filing proposing the fee change.

The Exchange believes applying this framework to the proposed fees shows that they are consistent with the requirements of the Act, leaving aside that the proposed fees are relatively similar to, or less than, fees charged by other exchanges for similar market data products.

Exchange Costs and Cost Methodology

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully support the production and dissemination of the cToM data feed. As described below, 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.[33] The Exchange believes the proposed fees are a reasonable attempt to offset a portion of those costs associated with producing and disseminating the cToM data feed.

The Exchange estimated its total annual expense to provide the cToM data feed based on the following general expense categories: (1) External expenses, which include fees paid to third parties for certain products and services; (2) internal expenses relating to the internal costs to produce and disseminate the cToM data feed; and (3) general shared expenses.[34] The below table details each of these individual external and internal annual costs considered by the Exchange to be directly related to offering cToM to subscribers, and not any other product or service offered by the Exchange. The below table also details the general shared expense allocated to this proposal. Each of these expenses are discussed in more detail further below.

For 2022, the total annual expense for producing and disseminating the cToM data feed is estimated to be $236,284, or $19,690 per month. The Exchange utilized its estimated 2022 revenue and

[33] Both fixed and variable expenses have significant impact on the Exchange's overall costs to provide the cToM data feed. For example, to accommodate new Members, the Exchange may need to purchase additional hardware to support those Members and provide the cToM data feed. Further, as the total number of Members increases, the Exchange 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 the Exchange and its affiliates to provide access to its Members is not fixed.

[34] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to adjustments to internal resource allocations and different system architecture of the Exchange as compared to its affiliates.

costs, which utilize the same methodology set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[35]

External expenses	
Category	Percentage of total expense amount allocated
Data Center Provider	0.20%.
Fiber Connectivity Provider	0.20%.
Hardware and Software Providers	0.20%.
Total of External Expenses	$5,434.[36]
Internal expenses	
Category	Expense amount allocated
Employee Compensation	$209,610 (representing 2% of total $9,900,032 expense)
Depreciation and Amortization	$4,055 (representing 0.12% of total $3,363,841 expense)
Occupancy	$11,410 (representing 2% of total $538,916 expense)
Total of Internal Expenses	$225,075
Total Allocated Shared Expenses	$5,775 (representing 0.2% of total $2,872,232 expense)
Total External + Internal + Allocated Shared Expenses	$236,284

In its suspension orders, the Commission solicited commenters' views on whether the Exchange has provided sufficient detail on the identity and nature of services provided by third parties. The Commission further solicited commenters' views on whether the Exchange has provided sufficient detail on the elements that go into producing and distributing the cToM data feed, including how shared costs are allocated and attributed to the cToM data feed, to permit an independent review and assessment of the reasonableness of purported cost-based fees and the corresponding profit margin thereon. In response, the Exchange provides additional detail regarding the identity and nature of services provided by third parties, the elements that go into producing and distributing the cToM data feed, and how expenses are allocated. The Exchange believes this additional detail is sufficient to support a finding that the proposed fees are consistent with the Exchange Act.

The Exchange notes that it only has a single source of revenue, distribution fees, to recover those costs associated with providing and disseminating the cToM data feed. For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing the cToM data feed. The Exchange describes below the analysis conducted for each expense and the resources or determinations that were considered when determining the amount necessary to allocate to each expense. The Exchange notes that, without the specific third party and internal expense items, the Exchange would not be able to provide and distribute cToM data feed. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, were identified through a line-by-line cost analysis and determined to be integral to providing and distributing the cToM data feed for the reasons discussed below. Only a portion of all fees paid to such third parties are included in the third party expenses described herein, and, again, no expense amount is allocated twice. For example, the Exchange does not allocate its entire information technology and communication costs to providing and distributing the cToM data feed because it determined that a portion of those costs are attributable to other areas of the Exchange's operations, such as ports and transaction services, as well as other market data products provided by the Exchange. This may result in the Exchange under allocating an expense to provide the cToM data feed, and such expenses may actually be higher than what the Exchange allocated as part of this proposal.[37]

Further, as part of its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations, which resulted in revised percentage allocations in this filing as compared to prior versions of this proposed fee change that were previously withdrawn by the Exchange. The revised percentages are, among other things, the result of the shifting of internal resources in response to business objectives. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third parties, adjustments to internal resource allocations, and different system

[35] 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-party expense described in this filing is attributed to the same line item for the Exchange's 2022 Form 1 Amendment, which will be filed in 2023. In its suspension orders, the Commission also asked should the Exchange use cost projections or actual costs estimated for 2021 in a filing made in 2022, or make cost projections for 2022. The Exchange utilized expenses from its most recent audited financial statement as those numbers are more reliable than more recent unaudited numbers, which may be subject to change.

[36] The Exchange does not believe it is appropriate to disclose the actual amount it pays to each individual third party provider as those fee arrangements are competitive or the Exchange is contractually prohibited from disclosing that amount.

[37] The Exchange notes that expenses associated with its affiliates, MIAX and MIAX Pearl (the options and equities markets), are accounted for separately and are not included within the scope of this filing.

architecture of the Exchange as compared to its affiliates.[38]

External Expense Allocations

For 2022, annual expenses relating to fees paid by the Exchange to third parties for products and services necessary to provide the cToM data feed are estimated to be $5,434.[39] This includes a portion of the fees paid to: (1) A third party data center provider, including for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) a fiber connectivity provider for network services (fiber and bandwidth products and services) linking the Exchange's and its affiliates' office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; and (3) hardware and software providers, which support the production environment in which Members and non-Members connect to the network to receive market data.[40]

Data Center Space and Operations Provider

The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties where the Exchange houses servers, switches and related equipment. Data center costs include an allocation of the costs the Exchange incurs to provide and distribute market data in the third party data centers where it maintains its equipment as well as related costs described below. The data center provider operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. Without the retention of a third party data center, the Exchange would not be able to operate its systems, provide a trading platform for market participants, and produce and distribute market data. The Exchange does not employ a separate fee to cover its data center expense and recoups that expense, in part, by charging for the cToM data feed.

The Exchange reviewed its data center footprint and space utilized, including its total rack space, cage usage, number of servers, switches, cabling within the data center, heating and cooling of physical space, storage space, and monitoring and divided its data center expenses among providing transaction services, market data, and connectivity based on space utilized by each area.[41] Based on this review, the Exchange determined that 0.20% of the total applicable data center provider expense is applicable to providing the cToM data feed. The Exchange reviewed space utilized to house rack space, cage usage, servers, switches, cabling, storage space, heating and cooling of physical space, and monitoring, and identified that a small portion of that footprint is dedicated to equipment used to produce and distribute the cToM data feed.

The Exchange believes this allocation is reasonable because it represents the costs associated with housing the Exchange's equipment dedicated to processing and disseminating the cToM data feed. The Exchange excluded from this allocation a portion of the Exchange's data center expense that is due to space utilized to provide and maintain connectivity to the Exchange's System Networks, including providing cabling within the data center between market participants and the Exchange. The Exchange also did not allocate the remainder of the data center expense because it pertains to space utilized by other areas of the Exchange's operations, such as connectivity, ports and transaction services, as well as other market data products provided by the Exchange.

Fiber Connectivity Provider

The Exchange engages a third party service provider that provides the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data center, and office locations in Princeton and Miami. Fiber connectivity is necessary for the Exchange to switch to its secondary data center in the case of an outage in its primary data center. Fiber connectivity also allows the Exchange's National Operations & Control Center (''NOCC'') and Security Operations Center (''SOC'') in Princeton to communicate with the Exchange's primary and secondary data centers. As such, all trade data, including the billions of messages each day, flow through this third party provider's infrastructure over the Exchange's network. Fiber connectivity is also necessary for personnel responsible for overseeing and providing customer service related to producing and distributing the cToM data feed, receiving relevant data and being able to communicate between the Exchange's various locations and data centers. Without the retention of a third party fiber connectivity provider, the Exchange would not be able to communicate between its data centers and office locations in a manner necessary to maintain and support the cToM data feed. Fiber connectivity is a necessary integral means to disseminate information, including data related to producing and distributing the cToM data feed, from the Exchange's primary data center to other Exchange locations. It is necessary for Exchange employees located in various locations to be able to communicate and receive the necessary data to maintain and provide customer support related to the cToM data feed. The Exchange would not be able to operate and support the network and produce and distribute the cToM data feed without third party fiber connectivity. The Exchange does not employ a separate fee to cover its fiber connectivity expense and recoups that expense, in part, by charging for cToM data feed.

The Exchange reviewed it costs to retain fiber connectivity from a third party, including the ongoing costs to support fiber connectivity, ensuring adequate bandwidth and infrastructure maintenance to support exchange operations, and ongoing network monitoring and maintenance and determined that 0.20% of the total fiber connectivity expense was applicable to producing and distributing the cToM data feed. The Exchange reviewed its total fiber connectivity expense and allocated it among transaction services, connectivity, ports, other market data products, and administrative operations based on usage. The Exchange then further divided up its fiber connectivity costs related to market data and

[38] The Exchange notes that the expense allocations differ from the Exchange's filing earlier in 2021, SR–EMERALD–2021–05, because that prior filing pertained to several different market data fees, which the Exchange had not been charging for since the Exchange launched operations in March 2019. *See* Securities Exchange Act Release No. 91145 (February 17, 2021), 86 FR 11033 (February 23, 2021) (SR–EMERALD–2021–05) (adopting fees for the ToM, Administrative Information Subscriber ('AIS'), and MOR data feeds, all of which had been free for market participants for over two years since inception).

[39] *See supra* note 36.

[40] *Id.* The Exchange did not allocate any expense associated with the proposed fees towards the Securities Financial Transaction Infrastructure (''SFTI'') and various other service providers' because the Exchange's architecture takes advantage of an advance in design to eliminate the need for a market data distribution gateway layer. The computation and dissemination via an API is done solely within the match engine environment and is then delivered via the Member and non-Member connectivity infrastructure. This architecture delivers a market data system that is more efficient both in cost and performance. Accordingly, the Exchange determined not to allocate any expense associated with SFTI and various other service providers.

[41] The Investors Exchange, Inc. (''IEX'') also allocated data center costs to produce market data based on space utilized. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945, at page 21949 (April 13, 2022) (SR–IEX–2022–02) (''IEX Market Data Fee Proposal'') (noting that ''[d]ata Center costs consist of the fees charged by the third-party data centers used by IEX and represent less than 10% the Exchange's total data center costs *based on space utilized*'' (*emphasis added*)).

identified the portion that is attributable to producing and maintaining the cToM data feed, also based on usage. This allocation is, therefore, based on the amount of bandwidth and fiber connectivity the Exchange calculated is utilized to support exchange operations, and ongoing network monitoring and maintenance that are necessary to produce and maintain the cToM data feed. The Exchange believes this allocation is reasonable because it reflects the portion of the fiber connectivity expense that relates to producing and distributing the cToM data feed. The Exchange excluded a large portion of the Exchange's fiber connectivity expense that is due to providing and maintaining connectivity between the Exchange's System Networks, data centers, and office locations and is core to the daily operation of the Exchange. The Exchange also excluded from this allocation fiber connectivity usage related to system connectivity or other business lines, such as transaction services and other market data products offered by the Exchange, or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing the cToM data feed. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to produce and distribute the cToM data feed.

Hardware and Software Providers

The Exchange relies on dozens of third party hardware and software providers for equipment necessary to produce and disseminate the cToM data feed. This includes either the purchase or licensing of physical equipment, such as servers, switches, cabling, and devices needed by Exchange personnel to monitor servers and the health of market data products, including the cToM data feed. This consists of real-time monitoring of system performance, integrity, and latency of market data products. It also includes the Exchange purchasing or licensing software necessary for security monitoring, data analysis and Exchange operations. Hardware and software providers are necessary to produce and distribute the cToM data feed. Hardware and software equipment and licenses for that equipment are also necessary to operate and monitor physical assets necessary to produce and distribute the cToM data feed. Hardware and software equipment and licenses are key to the operation of the Exchange and without them the Exchange would not be able to produce and distribute the cToM data feed. The Exchange does not employ a separate fee to cover its hardware and software expense and recoups that expense, in part, by charging for cToM data feed dissemination.

The Exchange reviewed its hardware and software related costs, including software patch management, vulnerability management, administrative activities related to equipment and software management, professional services for selection, installation and configuration of equipment and software supporting exchange operations. The Exchange then divided those costs among transaction services, ports, connectivity, other market data products, and other Exchange operations based on whether all of that hardware or software is based on usage. The Exchange then reviewed the amount allocated to producing and distributing market data generally and what portion of that hardware and software equipment or license is used to support the cToM data feed specifically. Based on this review, the Exchange determined that 0.20% of the total applicable hardware and software expense is allocated to producing and distributing the cToM data feed. This percentage reflects the amount of hardware and software equipment and licenses dedicated to produce and maintain the cToM data feed.[42] Hardware and software equipment and licenses are key to the operation of the Exchange and production and distribution of market data. Without them, the Exchange would not be able to develop, and market participants would not be able to purchase, the cToM data feed. The Exchange only allocated the portion of this expense to the hardware and software that is related to the cToM data feed, such as operating servers and equipment necessary to produce and distribute the cToM data feed. The Exchange, therefore, did not allocate portions of its hardware and software expense that related to other areas of the Exchange's business, such as hardware and software used for connectivity or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations, such as ports or transaction services, as well as other market data products provided by the Exchange, and is not directly related to producing and disseminating the cToM data feed. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to produce and disseminate the cToM data feed, and not any other service, as supported by its cost review.

Internal Expense Allocations

For 2022, total internal annual expense relating to the Exchange producing and distributing the cToM data feed is estimated to be $225,075. This includes costs associated with: (1) Employee compensation and benefits for full-time employees that support market data, 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 as well as important system upgrades; (2) depreciation and amortization of hardware and software used to produce and distribute the cToM data feed, 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 support the cToM data feed.

Employee Compensation and Benefits

Human personnel are key to exchange operations and supporting the Exchange's ongoing provision of the cToM data feed. The Exchange reviewed its employee compensation and benefits expense and the portion of that expense allocated to providing the cToM data feed. As part of this review, the Exchange considered employees whose functions include providing and maintaining the cToM data feed and used a blended rate of compensation reflecting salary, stock and bonus compensation, bonuses, benefits, payroll taxes, and 401K matching contributions.[43]

In its suspension orders, the Commission asked the Exchange provide more detail about the methodology the Exchange used to determine how much of an employee's time is devoted to market data related activities. In considering the cost of personnel, the Exchange generally considered the time spent on various market data projects and initiatives through project management tracking tools and analysis of employee resource allocations, among its Technology Team in the following areas: Technical

[42] The Exchange notes that IEX used a similar methodology to allocate hardware costs to market data. *See* IEX Market Data Fee Proposal, *id.* at page 21950 (noting that ''IEX only included hardware specifically dedicated to the market data feeds in calculating the costs of providing market data'').

[43] For purposes of this allocation, the Exchange did not consider expenses related to office space, supplies, or equipment use by employees who support cToM data feed.

Operations, Software Engineering, Quality Assurance, and Infrastructure. The Exchange did not consider non-Technology Teams such as Market Operations, Project Management, Regulatory, Legal, and Accounting/Finance.[44]

Based on this review, the Exchange determined to allocate $209,610 in employee compensation and benefits expense to producing and distributing the cToM data feed. This represents approximately 2.0% of the $9,900,032 total projected expense for employee compensation and benefits. The Exchange determined the cost allocation for employees who perform work in support of producing and distributing the cToM data feed to arrive at a full time equivalent (''FTE'') of 0.6 FTEs across all the identified personnel. The Exchange then multiplied the FTE times a blended compensation rate for all relevant Exchange personnel to determine the personnel costs associated with producing and distributing the cToM data feed. Senior staff also reviewed these time allocations with department heads and team leaders to determine whether those allocations were appropriate. These employees are critical to the Exchange to producing and distributing the cToM data feed. The Exchange determined the above allocation based on the personnel whose work focused on functions necessary to producing and distributing the cToM data feed. The Exchange does not charge a separate fee for employees who support the cToM data feed and the Exchange seeks to recoup that expense, in part, by charging for the cToM data feed.

The Exchange believes it is appropriate to include incentive compensation in the blended personnel compensation rate on the same basis as other personnel costs for in-scope employees because incentive compensation is a part of the total personnel costs associated with the Exchange's costs to provide the cToM data feed. Moreover, the Exchange notes that it has taken a conservative approach in determining which employees to include in its cost analysis, in terms of function and percent allocation, so that the included personnel costs are directly and closely tied to the costs of providing the cToM data feed. The FTE allocation represents just 2.0% of the Exchange's overall personnel costs. Consistent with the Exchange's conservative methodology to limit costs allocated to producing and disseminating the cToM data feed, this approach includes only a de minimis personnel cost allocation for senior level executives and no allocation for members of the Exchange's board of directors. Accordingly, the Exchange believes that the allocated personnel expenses included are appropriately attributable to producing and disseminating the cToM data feed.

Depreciation and Amortization

A key expense incurred by the Exchange relates to the depreciation and amortization of equipment that the Exchange procured to produce and distribute the cToM data feed. The Exchange reviewed all of its physical assets and software, owned and leased, and determined whether each asset is related to providing and maintaining the cToM data feeds, and added up the depreciation of those assets. All physical assets and software, which includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost and depreciated or leased over periods ranging from three to five years. Based on the Exchange's experience, this depreciation period equals the typical life expectancy of those assets. In determining the amount of depreciation and amortization to apply to providing the cToM data feeds, the Exchange considered the depreciation of hardware and software that are key to its provision of the cToM data feeds. This includes servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were previously purchased to produce and distribute the cToM data feed. Without them, market participants would not be able to receive the cToM data feed. The Exchange seeks to recoup a portion of its depreciation expense by charging for the cToM data feed.

Based on this review, the Exchange determined to allocate $4,055 in depreciation and amortization expense to producing and distributing the cToM data feed. This is only 0.12% of the $3,363,841 total projected expense for depreciation and amortization. For purposes of the allocation of these costs to the cToM data feed, the Exchange allocates the annual depreciation (*i.e.,* one-third or one-fifth of the initial asset value based on the typical life expectancy of those assets). One-third or one-fifth of the cost of each asset is included in the annual costs allocated to the cToM data feed. The Exchange only included assets specifically dedicated to the cToM data feed in calculating the costs of providing the cToM data feed. This means that physical assets used for transaction services, other market data products, or other Exchange operations were excluded from the calculation.[45] The Exchange, therefore, did not allocate portions of depreciation expense that relates to other areas of the Exchange's business, such as the depreciation of hardware and software used for connectivity, unrelated administrative services, or other market data products provided by the Exchange. All of the expenses outlined in this proposed fee change refer to the operating expenses of the Exchange. In the suspension orders, the Commission asked for additional detail or explanation to ensure that no expense amount is allocated twice. The Exchange did not included any future capital expenditures within these costs ensuring that no cost is counted twice. Depreciation and amortization represent the expense of previously purchased hardware and internally developed software spread over the useful life of the assets. Due to the fact that the Exchange has only included operating expense and historical purchases, there is no double counting of expenses in the Exchange's cost estimates.

Occupancy

The Exchange rents and maintains multiple physical locations to house staff and equipment necessary to support the production and dissemination of the cToM data feed. The Exchange's occupancy expense is not limited to the housing of personnel and includes locations used to store equipment necessary for Exchange operations. In determining the amount of its occupancy related expense, the Exchange considered actual physical space used to house employees whose functions include producing and distributing the cToM data feed. Similarly, the Exchange also considered

[44] The Exchange notes that IEX used a similar methodology to allocate employee compensation related costs to market data. *See* IEX Market Data Fee Proposal, *supra* note 41 at page 29150 (noting that ''[f]or personnel costs, IEX calculated an allocation of employee time for employees whose functions include providing and maintaining IEX Data and/or the proprietary market data feeds used to transmit IEX Data, and used a blended rate of compensation reflecting salary, stock and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions'').

[45] The Exchange notes that IEX used a similar methodology to allocate hardware costs to market data. *See* IEX Market Data Fee Proposal at note 54, *supra* note 41 at page 21950 (noting that ''[h]ardware is depreciated on a straight-line three-year period, which in IEX's experience, is equal to the typical life expectancy of those assets. As noted above, one-third of the cost of each hardware asset is included in the annual costs allocated to market data. IEX only included hardware specifically dedicated to the market data feeds in calculating the costs of providing market data. This means that physical assets used for both order entry and market data were excluded from the calculation'').

the actual physical space used to house hardware and other equipment necessary to provide and maintain the cToM data feed. The Exchange maintains staff that support producing and distributing the cToM data feed in various locations and needs to provide workplaces for that staff as well as space to house hardware and equipment necessary for those employees to perform those functions.[46] This equipment includes computers, servers, and accessories necessary to support producing and distributing cToM data feed. Based on this review, the Exchange determined to allocate $11,410 of its occupancy expense to producing and distributing the cToM data feed. According to the Exchange's calculations, it allocated approximately 2.0% of the total applicable occupancy expense to producing and distributing the cToM data feeds. This is only a portion of the $538,916 total projected expense for occupancy. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the cToM data feed. The Exchange considered the rent paid for the Exchange's Princeton and Miami offices, as well as various related costs, such as physical security, property management fees, property taxes, and utilities at each of those locations. The Exchange did not include occupancy expenses related to housing employees and equipment related to other Exchange operations, such as transaction and administrative services.

Allocated Shared Expense

Finally, a limited portion of general shared expenses was allocated to the cToM data feed costs, as without these general shared costs, the Exchange would not be able to operate in the manner that it does and produce and distribute the cToM data feed. The costs included in general shared expenses include recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. For 2022, the Exchange's general shared expense allocated to the cToM data feed is estimated to be $5,755. This represents approximately 0.2% of the $2,872,232 total projected general shared combined expense. The Exchange used the weighted average of the above allocations to determine the amount of general shared expenses to allocate to the Exchange. Next, based on additional management and expense analysis, these fees are allocated to the proposal.

Revenue and Estimated Profit Margin

The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: Transaction fees, access fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms.

To determine the Exchange's estimated revenue associated with the cToM data feed, the Exchange analyzed the number of Members and non-Members currently receiving the cToM data feed and used a recent monthly billing cycle representative of current monthly revenue. The Exchange also provided its baseline by analyzing March 2022, the monthly billing cycle prior to the proposed cToM data fee, and compared this to its expenses for that month. As discussed below, the Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its estimates for purposes of these calculations, given the uncertainty of such estimates due to the continually changing access needs of market participants and potential changes in internal and third party expenses.

For the month of March 2022, prior to the effectiveness of the proposed cToM fees, the Exchange had 13 cToM data feed subscribers, for which the Exchange charged $0. This resulted in a loss of $19,690 for that month. For April 2022, the Exchange anticipates that it will have 13 cToM data feed subscribers.[47] Assuming the Exchange charges the proposed fees for Distributors, the Exchange would generate revenue of $16,250 for April 2022. This would result in a loss of $3,440 ($16,250 minus $19,690) for the month of April (a negative 21% margin from March 2022 to April 2022).

The Exchange believes that conducting the above analysis on a per month basis is reasonable as the revenue generated from the cToM data feed is generally remains static from month to month. The Exchange also conducted the above analysis on a per month basis to comply with the Commission Staff's Guidance, which requires a baseline analysis to assist in determining whether the proposal generates a supra-competitive profit. The Exchange cautions that this margin may also fluctuate from month to month based on the uncertainty of predicting how many subscribers may purchase cToM data feed subscriptions from month to month as Members and non-Members are free to add and drop subscriptions at any time based on their own business decisions.

The Exchange believes the proposed margin is reasonable and will not result in a ''supra-competitive'' profit. The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.''[48] Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2019.[49] The Exchange has operated at a net loss due to a number of factors, one of which is choosing to forgo revenue by offering certain products, such as the cToM data feed, for free, as well as other products at lower rates, than other options exchanges to attract order flow and encourage market participants to experience the high determinism, low latency, and resiliency of the Exchange's trading systems. The Exchange previously provided the cToM data feed free of charge and absorbed all costs associated with providing the cToM data feed to market participants. In this proposal, the Exchange would continue to offer the cToM data feed for a fee that still falls short of covering the Exchange's expenses. The Exchange is not generating a profit, and therefore, cannot be deemed to be generating a ''supra-competitive'' profit by now charging for the cToM data feed. The Exchange should not now be penalized for seeking to adopt fees to at least cover a portion of its costs after offering the cToM data feed free of charge. Therefore, the Exchange believes the proposed fees are reasonable because they are based on both relative costs to the Exchange to generate and disseminate cToM, the extent to which the product drives the Exchange's overall costs and the relative value of the product, as well as the Exchange's

[46] For the avoidance of doubt, the Exchange did not include within this cost any portion of its costs related to third party fiber connectivity used by Exchange staff in different office locations to communicate as part of their role in supporting the cToM data feed.

[47] The Exchange notes that the number of cToM subscribers may change over time. Beginning with June 2021, the month prior to the original fee change to adopt cToM data fees, the Exchange had the following number of subscribers each month: June (13 subscribers); July (13 subscribers); August (12 subscribers); September (15 subscribers); October (12 subscribers); November (12 subscribers); December (12 subscribers); January (12 subscribers); February (12 subscribers); March (13 subscribers); and April (13 subscribers).

[48] *See* Guidance, *supra* note 25.

[49] The Exchange has incurred a cumulative loss of $22 million since its inception in 2019 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at* https://sec.report/Document/9999999997-21-004557/.

objective to make cToM broadly available to market participants. The Exchange also believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup some of the Exchange's annual costs of providing the cToM data feed.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent such revenue actually produces the revenue estimated. As a generally new entrant to the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from the cToM data feed, the Exchange will have to be successful in retaining existing clients that wish to receive the cToM data feed or obtaining new clients that will purchase such data. To the extent the Exchange is successful in encouraging new clients to receive the cToM data feed, the Exchange does not believe it should be penalized for such success. The Exchange, like other exchanges, is, after all, a for-profit business. While the Exchange believes in transparency around costs and potential margins, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes this proposal demonstrates this fact.

Finally, the Exchange believes that the proposed fees are reasonable because they will not impose onerous audit requirements on subscribers, because there will be no need to substantiate the number of users of cToM or the manner in which it is being used, but rather only whether it is being redistributed internally or to external third parties.

Annual Review of Fees

In its suspension orders, the Commission asks whether exchanges should periodically reevaluate fees on an ongoing and periodic basis in order to assure that actual revenue aligns with a reasonable cost-plus model. As described above and as part of this proposed rule change, the Exchange is committing to conduct a one year review of the fees that are cost justified as part of this proposed rule change after the date of this proposal, and annually thereafter. The Exchange expects that it may propose to adjust fees at that time, either to increase fees in the event that revenues fail to reasonably cover costs at the estimated margin set forth above, or to decrease fees in the event that revenue materially exceeds the Exchange's current projections. In the event that the Exchange determines to propose a fee change, updated cost estimates will be included in a rule filing proposing the fee change. The Exchange believes this approach will further increase transparency around market data costs and help to ensure that Exchange fees continue to be reasonably related to costs.

The Proposed Fees Are Reasonable When Compared to the Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other options exchanges' costs to provide market data or their fee markup over those costs, and therefore cannot use other exchange's market data fees as a benchmark to determine a reasonable markup over the costs of providing market data. Nevertheless, the Exchange believes the other exchanges' complex market data fees are useful examples of alternative approaches to providing and charging for complex market data notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of complex market data. To that end, the Exchange believes the proposed cToM data fees are reasonable because the proposed fees are similar to, or less than fees charged for complex market data provided by other options exchanges with comparable market shares.

As described in the below table, the Exchange's proposed fees remain less than fees charged for similar market data products provided by other options exchanges with similar market share. Each of the market data rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

Exchange	Monthly fee
MIAX Emerald (as proposed)	$1,250—Internal Distributor, $1,750—External Distributor.
Amex [50]	$1,500—Access Fee, $1,000—Redistribution Fee (this fee is in addition to the Access Fee resulting in a $2,500 monthly fee for external distribution).
Arca [51]	$1,500—Access Fee, $1,000—Redistribution Fee (this fee is in addition to the Access Fee resulting in a $2,500 monthly fee for external distribution).
PHLX [52]	$3,000—Internal Distributor, $3,500—External Distributor.

The Proposed Pricing Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that the proposed fees are reasonable, fair, and equitable, and not unfairly discriminatory because they are designed to align fees with services provided and will apply equally to all subscribers. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess Internal Distributors fees that are less than the fees assessed for External Distributors for subscriptions to the cToM data feed because Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights. All Members and non-Members that determine to receive any market data feed of the Exchange (or its affiliates, MIAX Pearl and MIAX), must first execute, among other things, the MIAX Exchange Group Exchange Data Agreement (the ''Exchange Data Agreement'').[53] Pursuant to the Exchange Data Agreement, Internal Distributors are restricted to the ''internal use'' of any market data they receive. This means that Internal

[50] *See* NYSE American Options Proprietary Market Data Fees, American Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Market_Data_Fee_Schedule.pdf.*

[51] *See* NYSE Arca Options Proprietary Market Data Fees, Arca Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Options_Proprietary_Data_Fee_Schedule.pdf.*

[52] *See* PHLX Price List—U.S. Derivatives Data, PHLX Orders Fees, at *http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#PHLX.*

[53] *See* Exchange Data Agreement, available at *https://miaxweb2.pairsite.com/sites/default/files/page-files/MIAX_Exchange_Group_Data_Agreement_09032020.pdf.*

Distributors may only distribute the Exchange's market data to the recipient's officers and employees and its affiliates.[54] External Distributors may distribute the Exchange's market data to persons who are not officers, employees or affiliates of the External Distributor,[55] and may charge their own fees for the redistribution of such market data. External Distributors may monetize their receipt of the cToM data feed by charging their customers fees for receipt of the Exchange's cToM data. Internal Distributors do not have the same ability to monetize the Exchange's cToM data feed. Accordingly, the Exchange believes it is fair, reasonable and not unfairly discriminatory to assess External Distributors a higher fee for the Exchange's cToM data feed as External Distributors have greater usage rights to commercialize such market data and can adjust their own fee structures if necessary.

The Exchange also utilizes more resources to support External Distributors versus Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of Exchange staff. For example, External Distributors have monthly reporting requirements under the Exchange's Market Data Policies.[56] Exchange staff must then, in turn, process and review information reported by External Distributors to ensure the External Distributors are redistributing cToM data in compliance with the Exchange's Market Data Agreement and Policies.

The Exchange believes the proposed cToM fees are equitable and not unfairly discriminatory because the fee level results in a reasonable and equitable allocation of fees amongst subscribers for similar services, depending on whether the subscriber is an Internal or External Distributor. Moreover, the decision as to whether or not to purchase market data is entirely optional to all market participants. Potential purchasers are not required to purchase the market data, and the Exchange is not required to make the market data available. Purchasers may request the data at any time or may decline to purchase such data. The allocation of fees among users is fair and reasonable because, if market participants determine not to subscribe to the data feed, firms can discontinue their use of the cToM data.

The Exchange further believes that the proposed fees are reasonable, fair, and equitable, and non-discriminatory because they will apply to all subscribers in the same manner based on whether the data is used for internal purposes or distributed to third parties. All similarly situated market participants are subject to the same fees. The fees also do not depend on any distinctions between or among Members, customers, broker-dealers, or any other entity, because they are solely determined by the individual market participant based on its business needs. The Exchange also notes that the proposed monthly cToM fees for Internal and External Distributors are the same prices that the Exchange charges for its ToM data product.

Finally, the Exchange believes that the proposed fees are consistent with Section 11A of the Exchange Act in that it is designed to facilitate the economically efficient execution of securities transactions, fair competition among brokers and dealers, exchange markets and markets other than exchange markets, and the practicability of brokers executing investors' orders in the best market. Specifically, the proposed low cost-based fee will enable a broad range of market participants to receive the cToM data feed, thereby facilitating the economically efficient execution of securities transactions on the Exchange, fair competition between and among such Members, and the practicability of Members that are brokers executing investors' orders on the Exchange when it is the best market.

For the foregoing reasons, the Exchange believes that the proposed fee is reasonable, equitably allocated, and not unfairly discriminatory.

* * * * *

The Exchange believes the proposed change to delete certain text from Section 6(a) of the Fee Schedule promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because the proposed change is a non-substantive edit to the Fee Schedule to remove unnecessary text. The Exchange believes that this proposed change will provide greater clarity to Members and the public regarding the Exchange's Fee Schedule and that it is in the public interest for the Fee Schedule to be accurate and concise so as to eliminate the potential for confusion.

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.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing cToM to market participants. As described above, the Exchange has operated at a cumulative net annual loss since it launched operations in 2019[57] due to providing a low cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very marginal cost, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low cost exchange alternative to the options industry which resulted in lower initial revenues. An example of this is cToM, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Since the Exchange initially launched operations with the cToM data product in 2019, all Exchange Members and non-Members have had the ability to receive the Exchange's cToM data free of charge for the past three years. Since 2019, when the Exchange adopted Complex Order functionality, the Exchange has spent time and resources building out additional features for Complex Order functionality in its System to provide better trading strategies and risk protections for market participants in order to better compete with other exchanges' complex functionality and similar data products focused on complex orders.[58] The Exchange now seeks to recoup its costs for providing cToM to market participants and believes the proposed

[54] *See id.*

[55] *See id.*

[56] Section 6 of the Exchange's Market Data Policies, *available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Exchange_Group_Market_Data_Policies_07202021.pdf.*

[57] *See supra* note 49.

[58] *See supra* notes 14 through 16.

fees will not result in excessive pricing or supra-competitive profit.

Inter-Market Competition

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. There is no reason to believe that the newly proposed fees to receive the cToM data feed would impair other exchange's ability to compete or cause any unnecessary or inappropriate burden on inter-market competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that purchase cToM. The proposed fees are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

The Exchange does not believe that the proposed rule change to make a minor, non-substantive edit to Section 6(a) of the Fee Schedule by deleting unnecessary text will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This proposed rule change is not being made for competitive reasons, but rather is designed to remedy a minor non-substantive issue and will provide added clarity to the Fee Schedule. The Exchange believes that it is in the public interest for the Fee Schedule to be accurate and concise so as to eliminate the potential for confusion on the part of market participants. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency regarding the Exchange's Fee Schedule.

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. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[59] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[60] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[61] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [62]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [63] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [64] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[65]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposed fees for the cToM market data feed are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[66]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[67]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C) [68] and 19(b)(2)(B) of the Act [69] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[70] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Exchange has sufficiently demonstrated how the proposed rule change is consistent with Sections 6(b)(4),[71] 6(b)(5),[72] and 6(b)(8) [73] of the Act. Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its

[59] 15 U.S.C. 78s(b)(3)(C).

[60] 15 U.S.C. 78s(b)(1).

[61] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[62] *Id.*

[63] 15 U.S.C. 78f(b)(4).

[64] 15 U.S.C. 78f(b)(5).

[65] 15 U.S.C. 78f(b)(8).

[66] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[67] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[68] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[69] 15 U.S.C. 78s(b)(2)(B).

[70] *Id.*

[71] 15 U.S.C. 78f(b)(4).

[72] 15 U.S.C. 78f(b)(5).

[73] 15 U.S.C. 78f(b)(8).

facilities. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth above, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. *Cost Estimates and Allocation.* The Exchange states that it is not asserting that the proposed fees are constrained by competitive forces, but rather sets forth a ''cost-plus model,'' employing a ''conservative approach,'' that the expenses are ''directly related'' to cToM data, and not any other product or service offered by the Exchange, and states that the proposed fees are ''reasonable because they will permit recovery of the Exchange's costs in providing cToM data and will not result in the Exchange generating a supra-competitive profit.'' [74] In explaining its costs, should the Exchange identify more specifically which, if any, of its costs are incurred solely to provide cToM data? Regarding the allocations provided by the Exchange as described in greater detail above, do commenters believe that the Exchange provided sufficient detail about how it determined these allocations and why they are reasonable? Why or why not? Do commenters believe that the Exchange provided sufficient context to permit an independent review and assessment of the reasonableness of the cost allocations? Do commenters believe that the Exchange provided sufficient detail or explanation to support its claim that ''no expense amount is allocated twice,'' [75] whether *among* the sub-categories of expenses in this filing, *across* the Exchange's fee filings for other products or services, or *over time*?

2. *Revenue Estimates and Profit Margin Range.* The Exchange provides a single monthly revenue figure as the basis for calculating its anticipated profit margin. Do commenters believe this is reasonable? If not, why not? The profit margin is also dependent on the accuracy of the cost projections which, if inflated (intentionally or unintentionally), may render the projected profit margin meaningless. The Exchange acknowledges that this margin may fluctuate from month to month as Members and non-Members add and drop subscriptions,[76] and that costs may increase. The Exchange does not account for the possibility of cost decreases, however. What are commenters' views on the extent to which actual costs (or revenues) deviate from projected costs (or revenues)? Do commenters believe that the Exchange's methodology for estimating the profit margin is reasonable? Should the Exchange provide a range of profit margins that it believes are reasonably possible, and the reasons therefor?

3. *Reasonableness.* The Exchange states that the proposed fees are reasonable because the Exchange is operating at a negative margin for this product. Further, the Exchange states that it chose to initially provide the cToM data product for free and to forego revenue that they otherwise could have generated from assessing any fees.[77] What are commenters' views regarding what factors should be considered in determining what constitutes a reasonable fee for the cToM market data product? Do commenters believe it relevant to an assessment of reasonableness that, according to the Exchange, the Exchange's proposed fees are similar to or lower than fees charged by competing options exchanges with similar market share? Should an assessment of reasonableness include consideration of factors other than costs; and if so, what factors should be considered, and why?

4. *Periodic Reevaluation.* The Exchange has stated that it will conduct a one-year review of the cost-based fees subject to this proposal after the date of the proposal, and annually thereafter. In light of the impact that the number of subscriptions has on profit margins, and the potential for costs to decrease (or increase) over time, what are commenters' views on the need for exchanges to commit to reevaluate, on an ongoing and periodic basis, their cost-based data fees to ensure that the fees stay in line with their stated profitability projections and do not become unreasonable over time, for example, by failing to adjust for efficiency gains, cost increases or decreases, and changes in subscribers? How formal should that process be, how often should that reevaluation occur, and what metrics and thresholds should be considered? How soon after a new data fee change is implemented should an exchange assess whether its revenue and/or cost estimates were accurate and at what threshold should an exchange commit to file a fee change if its estimates were inaccurate?

5. *Fees for Internal Distributors versus External Distributors.* The Exchange argues that it is reasonable, equitable, and not unfairly discriminatory to assess Internal Distributors fees that are lower than the fees assessed for External Distributors for subscriptions to the cToM data feed ($1,250 per month for Internal Distributors versus $1,750 per month for External Distributors), since Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights, including rights to commercialize such market data.[78] In addition, the Exchange states that it ''utilizes more resources'' to support External Distributors as compared to Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring ''additional time and effort'' of the Exchange's staff.[79] What are commenters' views on the adequacy of the information the Exchange provides regarding the differential between the Internal Distributor and External Distributor fees? Do commenters believe that the fees for Internal Distributors and External Distributors, as well as the fee differences between Distributors, are supported by the Exchange's assertions that it sets the differentiated pricing structure in a manner that is equitable and not unfairly discriminatory? Do commenters believe that the Exchange should demonstrate how the proposed Distributor fee levels correlate with different costs to better substantiate how the Exchange ''utilizes more resources'' to support External Distributors versus Internal Distributors and permit an assessment of the Exchange's statement that ''External Distributors have reporting and monitoring obligations that Internal Distributors do not have,

[74] *See supra* Section II.A.2.

[75] *See id.*

[76] *See id.*

[77] *See id.*

[78] *See id.*

[79] *See id.*

thus requiring additional time and effort of Exchange staff''?[80]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.''[81] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[82] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[83] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.[84]

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, any potential comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

V. Request for Written Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above, as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[85]

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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–2022–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2022–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and 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–2022–18 and should be submitted on or before June 7, 2022. Rebuttal comments should be submitted by June 21, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[86] that File Number SR–EMERALD–2022–18 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[87]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10509 Filed 5–16–22; 8:45 am]

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[80] *See id.*

[81] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[82] *See id.*

[83] *See id.*

[84] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 446–47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

[85] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[86] 15 U.S.C. 78s(b)(3)(C).

[87] 17 CFR 200.30–3(a)(12), (57), and (58).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–22, OMB Control No. 3235–0006]

Submission for OMB Review; Comment Request; Extension: Form 13F

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 13(f)[1] of the Securities Exchange Act of 1934[2] (the ''Exchange Act'') empowers the Commission to: (1) Adopt rules that create a reporting and disclosure system to collect specific information; and (2) disseminate such information to the public. Rule 13f–1[3] under the Exchange Act requires institutional investment managers that exercise investment discretion over accounts that have in the aggregate a fair market value of at least $100,000,000 of certain U.S. exchange-traded equity securities, as set forth in rule 13f–1(c),

[1] 15 U.S.C. 78m(f).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.13f–1.

to file quarterly reports with the Commission on Form 13F.[4]

The information collection requirements apply to institutional investment managers that meet the $100 million reporting threshold. Section 13(f)(6)(A) of the Exchange Act defines an ''institutional investment manager'' as any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person. Rule 13f–1(b) under the Exchange Act defines ''investment discretion'' for purposes of Form 13F reporting.

The reporting system required by Section 13(f) of the Exchange Act is intended, among other things, to create in the Commission a central repository of historical and current data about the investment activities of institutional investment managers, and to improve the body of factual data available to regulators and the public.

The currently approved burden estimates include a total hour burden of 472,521.6 hours, with an internal cost burden of $31,186,425.60, to comply with Form 13F.[5] Consistent with a recent rulemaking proposal that made adjustments to these estimates due primarily to the Commission's belief that the currently approved estimates do not appropriately reflect the information collection costs associated with Form 13F,[6] the table below reflects the revised estimates.

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[4] 17 CFR 249.325.

[5] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2018.

[6] *See* Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV–NR; Amendments to Form 13F, Investment Company Release No. 34415 (Nov. 4, 2021).

Table: Form 13F Current and Revised Burden Estimates

	Initial hours	Annual hours		Wage rate	Internal time cost	External costs[1]
REVISIONS TO CURRENT PRA BURDEN ESTIMATES						
Revised Burdens for 13F-HR Filings						
Current estimated annual burden of Form 13F-HR per filer		80.8 hours	x	$66[2]	$5,332.80	
Revised current annual estimated burden per filer		10 hours[3]	x	$202.50 (blended rate for senior programmer and compliance clerk)[4]	$2,025	$789[6]
		1 hour[3]		$368 (compliance attorney rate)[5]	$368	
Total revised estimated burden per filer		11 hours			$2,393	$789
Number of filers		5,466 filers[7]			5,466 filers	5,466 filers
Revised current annual burden of Form 13F-HR filings		60,126 hours			$13,080,138	$4,312,674
Revised Burdens for 13F-NT Filings						
Current estimated annual burden of Form 13F-NT		80.8 hours				
Revised current annual burden of Form 13F-NT per filer		4 hours	x	$71 (wage rate for compliance clerk)	$284	$300
Number of filers		1,535 filers[8]			1,535 filers	1,535 filers
		6,140 hours			$435,940	$460,500
Revised Burdens for Form 13F Amendment Filings						
Current estimated burden per amendment filing		4 hours		$66.00	$264	
Revised current estimated burden per amendment		3.5 hours[9]	x	$202.50 (blended rate for senior programmer and compliance clerk)	$708.75	$300
		0.5 hour[9]		$368 (compliance attorney rate)	$184	
Total revised estimates burden per amendment		4 hours			$892.75	$300
Number of amendments		244 amendments[10]			244 amendments	244 amendments
Revised current annual estimated burden of all amendments		976 hours			$217,831	$73,200
TOTAL ESTIMATED FORM 13F BURDEN						
Currently approved burden estimates	472,521.6 hours				$31,186,425.60	$0
Revised current burden estimates	67,242 hours				$13,733,909	$4,846,374

Notes:

1. The external costs of complying with Form 13F can vary among filers. Some filers use third-party vendors for a range of services in connection with filing reports on Form 13F, while other filers use vendors for more limited purposes such as providing more user-friendly versions of the list of section 13(f) Securities. For purposes of the PRA, we estimate that each filer will spend an average of $300 on vendor services each year in connection with the filer's four quarterly reports on Form 13F-HR or Form 13F-NT, as applicable, in addition to the estimated vendor costs associated with any amendments. In addition, some filers engage outside legal services in connection with the preparation of requests for confidential treatment or analyses regarding possible requests, or in connection with the form's disclosure requirements. For purposes of the PRA, we estimate that each manager filing reports on Form 13F-HR will incur $489 for one hour of outside legal services each year.
2. $66 was the estimated wage rate for a compliance clerk in 2018.
3. The estimate reduces the total burden hours associated with complying with the reporting requirements of Form 13F-HR from 80.8 to 11 hours. We believe that this reduction adequately reflects the reduction in the time managers spend complying with Form 13F-HR as a result of advances in technology that have occurred since Form 13F was adopted. The revised estimate also assumes that an in-house compliance attorney would spend 1 hour annually on the preparation of the filing, as well as determining whether a 13(f) Confidential Treatment Request should be filed. The remaining 10 hours would be divided equally between a senior programmer and compliance clerk.
4. The $202.50 wage rate reflects current estimates of the blended hourly rate for an in-house senior programmer ($334) and in-house compliance clerk ($71). $202.50 is based on the following calculation: ($334+$71) / 2 = $202.50. The $334 per hour figure for a senior programmer is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013 ("SIFMA Report"), modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. The $71 per hour figure for a compliance clerk is based on salary information from the SIFMA Report, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.
5. The $368 per hour figure for a compliance attorney is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013 ("SIFMA Report"), modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.
6. $789 includes an estimated $300 paid to a third-party vendor in connection with the Form 13F-HR filing as well as an estimated $489 for one hour of outside legal services. We estimate that Form 13F-HR filers will require some level of external legal counsel in connection with these filings.
7. This estimate is based on the number of 13F-HR filers as of December 2019.
8. This estimate is based on the number of Form 13F-NT filers as of December 2019.
9. The revised estimate assumes that an in-house compliance attorney would spend 0.5 hours annually on the preparation of the filing amendment, as well as determining whether a 13(f) Confidential Treatment Request should be filed. The remaining 3.5 hours would be divided equally between a senior programmer and compliance clerk.
10. This estimate is based on the number of Form 13F amendments filed as of December 2019.

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The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by June 16, 2022. to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: May 11, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10504 Filed 5–16–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94891; File No. SR–FINRA–2022–011]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Expand TRACE Reporting Requirements to Trades in U.S. Dollar-Denominated Foreign Sovereign Debt Securities

May 11, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 2022, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. 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 the Substance of the Proposed Rule Change

FINRA is proposing to expand reporting requirements for the Trade Reporting and Compliance Engine (TRACE) to collect information on trades in foreign sovereign debt securities that are United States (U.S.) dollar-denominated.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is submitting this proposed rule change to amend certain rules in the Rule 6700 Series (Trade Reporting and Compliance Engine (TRACE)) to require members to report to TRACE transactions in U.S. dollar-denominated foreign sovereign debt securities. Under the proposal, trades in U.S. dollar-denominated foreign sovereign debt securities would be subject to same-day reporting and would not be disseminated publicly.

Background

Currently, almost all U.S. dollar-denominated debt securities traded in

the U.S. are TRACE-Eligible Securities [3] and therefore are subject to TRACE reporting requirements. This includes the U.S. dollar-denominated debt of foreign private issuers. However, trades in the U.S. dollar-denominated debt of foreign sovereign issuers are not subject currently to TRACE reporting.

The proposed rule change would enhance FINRA's regulatory audit trail and provide FINRA with important transaction information on a growing segment of the market. As discussed further below, the U.S. dollar-denominated foreign sovereign debt market is a large market segment. FINRA believes the proposed rule change would advance FINRA's oversight of the fixed income markets without imposing significant burdens and costs on members, as FINRA understands that U.S. dollar-denominated foreign sovereign debt securities generally trade at firms that already have TRACE reporting workflows in place.

Proposed Amendments

FINRA is proposing changes to the TRACE reporting rules to require that members report to TRACE transactions in U.S. dollar-denominated foreign sovereign debt securities for regulatory purposes. First, FINRA is proposing to amend paragraph (a) of Rule 6710 (Definitions) [4] to include the term ''Foreign Sovereign Debt Security'' in the definition of TRACE-Eligible Security. FINRA also would define ''Foreign Sovereign Debt Security'' [5] in paragraph (kk) of Rule 6710 as a debt security issued or guaranteed by the government of a foreign country, any political subdivision of a foreign country (*e.g.,* state, provincial, or municipal governments), or a supranational entity.[6]

With this proposal, FINRA would expand TRACE reporting requirements to include U.S. dollar-denominated debt of Schedule B-eligible issuers [7]—*i.e.,* U.S. dollar-denominated debt of foreign sovereign issuers that are not foreign private issuers. Accordingly, members no longer would be required to distinguish between foreign sovereign debt and foreign private issuer debt for purposes of TRACE reporting. In addition, we note that members' reporting obligations for transactions with a foreign component would continue to follow existing guidance.[8] FINRA also is proposing to amend Rule 6730 (Transaction Reporting) to adopt a same-day reporting requirement for trades in U.S. dollar-denominated foreign sovereign debt. Under the proposed amendments, reportable transactions in foreign sovereign debt executed on a business day at or after 12:00:00 a.m. Eastern Time (ET) through 5:00:00 p.m. ET must be reported the same day during TRACE System Hours.[9] Transactions executed on a business day after 5:00:00 p.m. ET but before the TRACE system closes must be reported no later than the next business day (T+1) during TRACE System Hours, and, if reported on T+1, designated ''as/of'' and include the date of execution. Transactions executed on a business day at or after 6:30:00 p.m. ET through 11:59:59 p.m. ET—or on a Saturday, a Sunday, a federal or religious holiday or other day on which the TRACE system is not open at any time during that day—must be reported the next business day (T+1) during TRACE System Hours, designated ''as/of,'' and include the date of execution.

FINRA believes the same-day reporting requirement as opposed to a shorter reporting timeframe is appropriate because trades in U.S. dollar-denominated foreign sovereign debt securities would be reported for regulatory purposes only. To reflect this, FINRA is further proposing to amend Rule 6750 (Dissemination of Transaction Information) to specify that FINRA will not disseminate information on transactions in foreign sovereign debt securities at this time.[10]

FINRA notes that, under the proposal, members would be required to report specific items of transaction information in line with existing requirements for TRACE-Eligible Securities.[11] Among other things, trade reports would be required to include: The CUSIP or CINS number, or FINRA-assigned TRACE symbol; [12] an identifier for the contra-party (either MPID, ''A'' for non-member affiliate, or ''C'' for customer); the side of the reporting party (buy or sell); the quantity of the transaction *i.e.,* face value amount of the transaction); the price of the transaction expressed as a percentage of face/par value; the time of execution; the date of execution (for ''as/of'' trades); the settlement date; any commission charged if the member is acting as agent; and any applicable trade modifiers.

FINRA also notes that, if U.S. dollar-denominated foreign sovereign debt securities become subject to TRACE reporting requirements, they would become subject to applicable transaction reporting fees. Specifically, U.S. dollar-denominated foreign sovereign debt securities would be subject to trade reporting fees pursuant to paragraph

[3] Rule 6710 (Definitions) generally defines a ''TRACE-Eligible Security'' as a debt security that is U.S. dollar-denominated and is: (1) Issued by a U.S. or foreign private issuer, and, if a ''restricted security'' as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A; (2) issued or guaranteed by an ''Agency,'' as defined in Rule 6710(k) or a ''Government-Sponsored Enterprise,'' as defined in Rule 6710(n); or (3) a ''U.S. Treasury Security,'' as defined in Rule 6710(p). The term ''TRACE-Eligible Security'' does not include a debt security that is issued by a foreign sovereign or a ''Money Market Instrument,'' as defined in Rule 6710(o).

[4] The text of Rule 6710 incorporates the changes adopted in SR–FINRA–2019–008, which is yet to be implemented.

[5] FINRA notes that its proposed definition of ''Foreign Sovereign Debt Security'' relies on existing FINRA and SEC guidance. Specifically, FINRA published guidance in 2004 to clarify the distinction between foreign private and foreign sovereign issuers. As noted in that guidance, the term ''foreign private issuer'' means a foreign issuer that is not eligible to use the SEC's Schedule B for registering a debt offering in the United States. *See Notice to Members* 04–90 (December 2004).

[6] ''Supranational entity'' would include multi-national organizations such as the International Bank for Reconstruction & Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the International Finance Corporation, and the European Investment Bank.

[7] Schedule B is used to register debt for issuance in the United States by foreign governments or political subdivisions of foreign governments, and in some cases supranational organizations, issuers of government-guaranteed securities, and certain other issuers closely aligned and identified with a sovereign. *See* 15 U.S.C. 77aa.

[8] *See e.g.,* TRACE Frequently Asked Questions #3.1.65 (providing that a member is not required to report a debt security to TRACE that is sold pursuant to Regulation S in an off-shore transaction; however, if a debt security originally sold in a Regulation S transaction is subsequently purchased or sold as part of a U.S. transaction, the transactions following the Regulation S transaction must be reported to TRACE).

[9] *See* Rule 6710(t). ''TRACE System Hours'' means the hours the TRACE system is open, which are 8:00:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time on a business day, unless otherwise announced by FINRA.

[10] FINRA notes that, if the proposed rule change is adopted, FINRA will take a measured approach to potential dissemination, as it has taken historically with other TRACE-Eligible Securities and would first analyze the regulatory data to determine the appropriate contours of a potential dissemination framework.

[11] *See* Rule 6730(c).

[12] FINRA understands that some foreign sovereign debt securities may not have a CUSIP or CINS number but may have been assigned another type of identifier (*e.g.,* an ISIN). To facilitate trade reporting of U.S. dollar-denominated foreign sovereign debt, where a CUSIP or CINS is not available, FINRA intends to permit members to report using a FINRA-assigned symbol that corresponds to the security's other identifier(s) (*e.g.,* the FINRA-assigned symbol would be associated with the ISIN on the Security Master List). FINRA notes that Rule 6730(a)(7) will continue to apply. Therefore, members remain obligated to make a good faith determination as to whether they have engaged in a reportable transaction in a TRACE-Eligible Security and, if the TRACE-Eligible Security is not entered in the TRACE system, the member must promptly notify and provide FINRA Operations the information required under Rule 6760(b) prior to reporting the transaction.

(b)(1) of Rule 7730 (Trade Reporting and Compliance Engine (TRACE)).[13] Similarly, U.S. dollar-denominated foreign sovereign debt securities would become subject to FINRA's Trading Activity Fee at the rate applicable to bonds, as set out in Section 1 of Schedule A to the FINRA By-Laws.

If the Commission approves the filing, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.* The effective date will be no later than 365 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[14] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, Section 15A(b)(5) of the Act,[15] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls, and Section 15A(b)(9) of the Act,[16] which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

The proposed rule change is designed to provide FINRA with important transaction information on a growing segment of the debt market, consistent with Section 15A(b)(6). The proposal would do so by requiring members to report transactions in U.S. dollar-denominated foreign sovereign debt securities for regulatory purposes. Issuance activity in U.S. dollar-denominated foreign sovereign debt securities has accelerated in recent years, and FINRA believes that enhancing the audit trail with information on this growing market segment will support better informed surveillance and regulation.

Pursuant to the proposal, members would become subject to trade reporting fees under Rule 7730 and FINRA's Trading Activity Fee in connection with transactions in U.S. dollar-denominated foreign sovereign debt. The proposal would apply these fees, at established rates, equally to members reporting transactions in U.S. dollar-denominated sovereign debt securities. The proposed transaction reporting fees are consistent with FINRA's existing framework under Rule 7730 and FINRA's Trading Activity fee for similar types of transactions required to be reported to TRACE. Specifically, as noted above, transactions in U.S. dollar-denominated foreign sovereign debt securities would be charged a trade reporting fee as set forth in Rule 7730(b)(1), and U.S. dollar-denominated foreign sovereign debt securities would become subject to the Trading Activity Fee at the rate applicable to bonds set out in Section 1 of Schedule A to the FINRA By-Laws. Thus, FINRA believes that the proposed rule change is consistent with Section 15A(b)(5).

In addition, FINRA believes that U.S. dollar-denominated foreign sovereign debt securities generally trade at firms that already have TRACE reporting workflows in place. Accordingly, FINRA believes that the proposed rule change also is consistent with Section 15A(b)(9), because it would allow FINRA to advance its regulatory goal of obtaining important transaction information on these securities through incremental measures that FINRA does not believe would impose significant burdens and costs on members.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

Regulatory Objective

FINRA is proposing that members be required to report transactions in U.S. dollar-denominated foreign sovereign debt securities to TRACE on a same-day basis, so that FINRA may better supervise the market. These foreign sovereign debt security transactions would not be disseminated publicly.

Economic Baseline

Members are not currently required to report transactions in U.S. dollar-denominated foreign sovereign debt securities to TRACE. Therefore, there is no current TRACE data or reasonably complete alternative source with which to estimate the amount of trading volume that will become subject to reporting under the proposal. This analysis is therefore informed by available data on the issuance and amount outstanding of U.S. dollar-denominated foreign sovereign debt obtained from other sources.[17]

As of December 31, 2021, the total amount outstanding of marketable U.S. dollar-denominated foreign sovereign debt was approximately $2.0 trillion across 2,400 securities issued by 163 foreign sovereign governments. This compares to approximately $22.6 trillion, $1.4 trillion, and $10.1 trillion, respectively, in marketable U.S. Treasury Securities, Agency Debt Securities, and U.S. corporate debt.[18]

In 2021, U.S. and foreign sovereign governments issued in aggregate approximately $6.1 trillion of marketable U.S. dollar-denominated debt. Foreign sovereign governments issued $259 billion of it, representing approximately 4.3% of the total amount, and the U.S. Government (U.S. Treasury Securities and Agency Debt Securities) issued the remaining amount, $5.83 trillion.[19] By comparison, foreign and domestic private issuers issued a total of $1.96 trillion in U.S. dollar-denominated corporate debt in 2021.

The number of U.S. dollar-denominated foreign sovereign debt issuances has increased from 337 unique securities in 2012 to 470 in 2021. As shown in Figure 1, the top five non-U.S. government issuers of marketable U.S. dollar-denominated debt from January 1, 2017 through December 31, 2021 (measured by par value issued) are: Argentina, Saudi Arabia, the UAE, Egypt, and Austria. Austria has increased its issuance of sovereign U.S. dollar-denominated debt by more than six times between 2015 and 2020, as measured by the number of unique securities (increasing from 22

[13] *See* FINRA Rule 7730(b)(1). Rule 7730(b)(1) states that, except for certain securitized products, a member ''shall be charged a trade reporting fee based upon a sliding scale ranging from $0.475 to $2.375 per transaction based on the size of the reported transaction.''

[14] 15 U.S.C. 78*o*–3(b)(6).

[15] 15 U.S.C. 78*o*–3(b)(5).

[16] 15 U.S.C. 78*o*–3(b)(9).

[17] Data regarding U.S. dollar-denominated foreign sovereign and supranational debt was retrieved from Bloomberg on 3/16/2022 covering the period from January 1, 2012 through December 31, 2021.

[18] These estimates are derived from data sourced from Bloomberg. The $10.1 trillion in U.S. corporate debt does not include debt securities defined as ''Money Market Instruments'' in Rule 6710(o); these money market instruments are debt securities that, at issuance, have a maturity of one calendar year or less.

[19] The estimates for U.S. Government (U.S. Treasury Securities and Agency Debt) issuance amounts are derived from data sourced from Securities Industry and Financial Markets Association (SIFMA). All other estimates and figures in the Economic Impact Assessment are derived from data sourced from Bloomberg.

to 134). Figure 2 illustrates the change in the issued amount of U.S. dollar-denominated foreign sovereign debt from 2012 to 2021.

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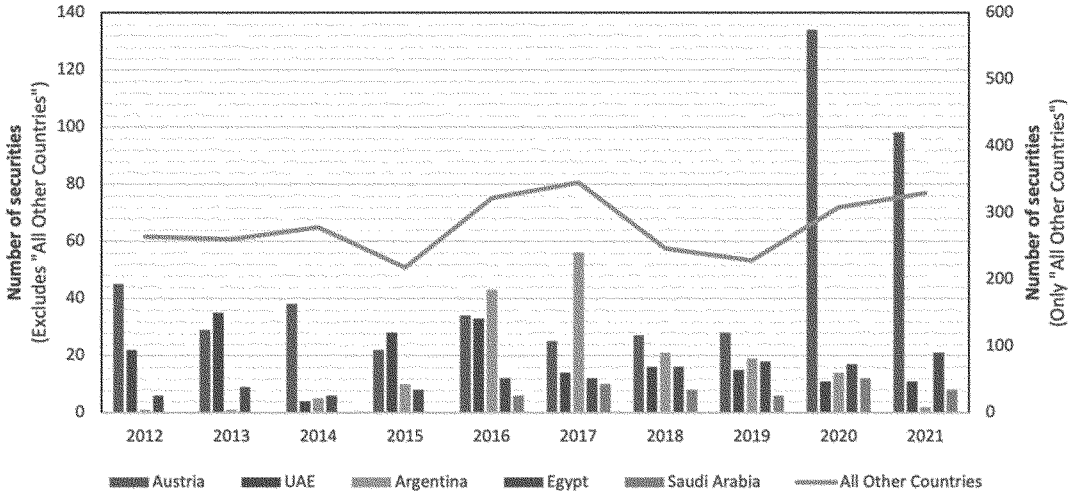
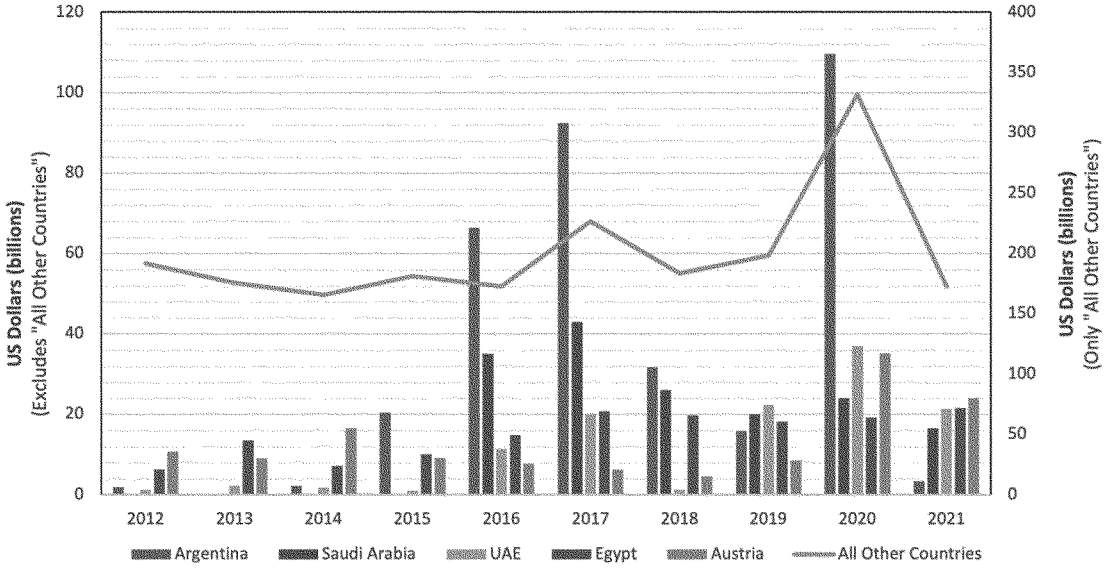
Figure 1. Number of foreign sovereign debt issuances in US dollars by country and year



Source: Data downloaded from Bloomberg on 03/16/2022.

Figure 2. Par value of foreign sovereign debt by country and year of issuance



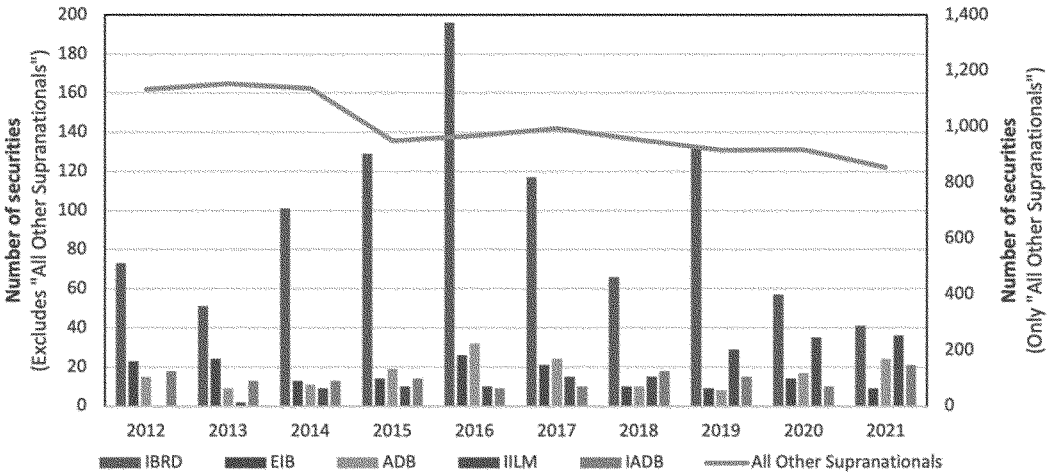
Source: Data downloaded from Bloomberg on 03/16/2022.

At the end of 2021, the total amount outstanding of marketable U.S. dollar-denominated supranational debt was approximately $733 billion across approximately 3,414 securities issued by 44 supranational organizations. The top five largest supranational issuers of marketable U.S. dollar-denominated debt from January 1, 2017 to December 31, 2021 (measured by par value issued) is about 57.0% of the total amount outstanding. These five entities are: International Bank for Reconstruction and Development (''IBRD''), European Investment Bank (''EIB''), Asian Development Bank (''ADB''), Inter-American Development Bank (''IADB''), and International Islamic Liquidity Management (''IILM'').

Figure 3 shows that the number of supranational U.S. dollar-denominated debt issuances increased from 1,065 unique securities in 2011 to 1,346 in 2021. In 2021, out of a total of 21 supranational organizations, IBRD issued the largest number of U.S. dollar-denominated supranational debt

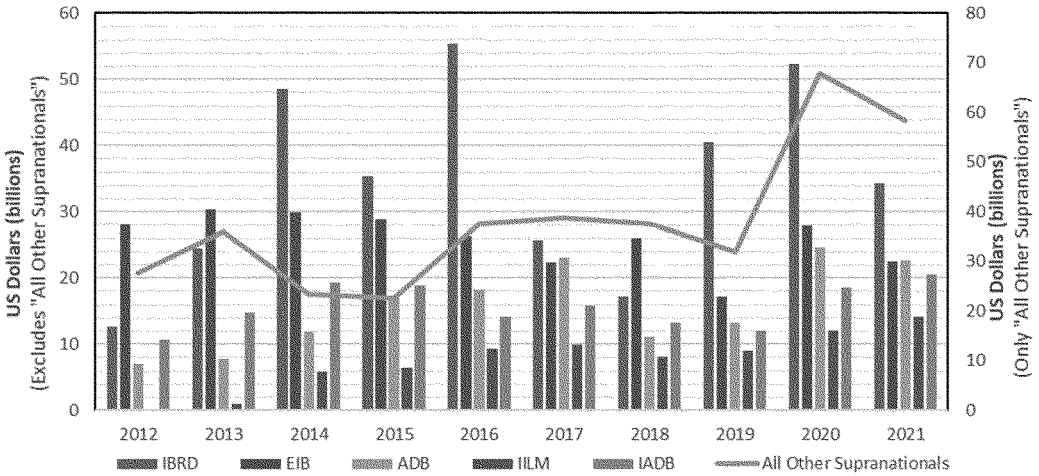
offerings (41 securities). Figure 4 illustrates the increase in the number of U.S. dollar-denominated debt issuances by supranational organizations; specifically, issuances increased from $85.9 billion in 2012 to $172.4 billion in 2021. From January 1, 2017 through December 31, 2021, $114.02 billion was issued by the top five largest supranational issuers of U.S. dollar-denominated debt (measured by par value issued).

Figure 3. Number of debt issuances in US dollars by supranational organization and year of issuance



Source: Data downloaded from Bloomberg on 03/16/2022.

Figure 4. Par value of debt by supranational organization and year of issuance



Source: Data downloaded from Bloomberg on 03/16/2022.

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Based on discussions with broker-dealers that are active in multiple foreign sovereign debt markets, FINRA understands that market participants do not generally treat debt issued by a foreign sovereign in U.S. dollars as fungible with debt issued by the same foreign sovereign in local or other currencies; therefore, FINRA does not believe that members would seek to substitute U.S. dollar-denominated foreign sovereign debt securities with securities issued by the foreign sovereign in a foreign currency.

Economic Impact

Requiring members to report transactions in U.S. dollar-denominated foreign sovereign debt securities to TRACE would benefit regulatory oversight of the fixed income markets by providing FINRA with important data regarding member activity in this space. In particular, the receipt of the transaction price, par value traded, and other transaction information in TRACE would create a better-informed surveillance program to help detect fraud, manipulation, unfair pricing, and other potential misconduct. Academic studies have found a positive empirical relationship between the strength of market regulation and market quality in multiple jurisdictions, including the United States.[20]

[20] *See e.g.,* Douglas Cumming et al., Exchange Trading Rules and Stock Market Liquidity, 99 J. Fin. Econ. 651 (2011) (discussing the impact of trading rules on liquidity in the equity markets)); Howell E. Jackson & Mark J. Roe, Public and Private

Potential concerns related to the dissemination of this transaction information are not relevant to this rule change because FINRA is not proposing that U.S. dollar-denominated foreign sovereign debt securities be disseminated at this time.[21] Members engaged in (or that anticipate entering) this business may face some additional development costs to report these transactions to TRACE, but such costs are expected to be relatively modest because, if the members already have systems in place to report other types of TRACE-Eligible Securities, they may be able to leverage those systems in connection with the proposed reporting requirement. Members will incur costs from the fees associated with the TRACE reporting required by the proposal. FINRA is not able to estimate the anticipated aggregate amount that would be collected from members from these fees because there is no current TRACE data (or reasonably complete alternative source) with which to estimate the trading volume that will become subject to reporting under this proposal.

As discussed above, FINRA understands that market participants do not generally treat debt issued by a foreign sovereign in U.S. dollars as fungible with debt issued by the same foreign sovereign in local or other currencies; therefore, FINRA does not believe that firms would be likely to avoid the proposed reporting requirements by shifting trading to foreign sovereign debt denominated in another currency.

FINRA estimates that the benefit from improved surveillance of member trading activity in U.S. dollar-denominated foreign sovereign debt securities outweighs the costs to members associated with complying with the proposed reporting requirement.

Alternatives Considered

No alternatives were considered.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in *Regulatory Notice* 19–25 (July 2019). Four comments were received in response to the *Regulatory Notice*.[22] A copy of the *Regulatory Notice* and copies of the comment letters received in response to the *Regulatory Notice* are available on FINRA's website at *http://www.finra.org*. Three commenters were generally supportive of the expansion of TRACE to cover U.S. dollar-denominated foreign sovereign debt[23] and one commenter neither supported nor opposed the proposal,[24] as discussed below.

SIFMA and FIF requested clarification on the scope of the proposal, including regarding the definition of ''political subdivision.'' As discussed above, a political subdivision is, for example, a state, provincial or municipal government. FINRA notes that, as a practical matter, the proposal would remove the current need for members to distinguish between U.S. dollar-denominated foreign sovereign debt and U.S. dollar-denominated foreign private issuer debt, because transactions in both categories of debt would be subject to reporting under the proposal (so long as the security otherwise meets the definition of ''TRACE-Eligible Security''). In addition, as discussed above, the proposal would expand TRACE reporting to include U.S. dollar-denominated debt of Schedule B-eligible issuers—*i.e.,* U.S. dollar-denominated debt of foreign sovereign issuers that are not foreign private issuers.[25] In addition, the proposal would not alter FINRA's approach to the regulatory reporting framework, including for reporting trades in foreign private issuer debt, or reporting trades in debt issued pursuant to SEC Regulation S.[26]

SIFMA, FIF and Bloomberg noted that CUSIPs may not be available for all U.S. dollar-denominated foreign sovereign debt securities at the time they become TRACE-Eligible Securities and they suggested that FINRA permit members to report using alternative identifiers.[27] As noted above, FINRA intends to provide a FINRA-assigned symbol that corresponds to one or more non-CUSIP identifiers (*e.g.,* ISIN).

Dimensional advocated for a 15-minute reporting requirement and for public dissemination of transaction information on U.S. dollar-denominated foreign sovereign debt securities.[28] In contrast, SIFMA noted potential issues regarding public dissemination, including risks to liquidity and an incomplete data set, and believed that a same-day reporting requirement was appropriate because the proposal impacted new securities and operational processes. FINRA continues to believe that same-day reporting is appropriate at this time because these transactions will not initially be publicly disseminated. FINRA intends to take a similar measured approach to potential dissemination that it has taken historically with other TRACE-Eligible Securities and, therefore, would first analyze the regulatory data to determine the appropriate contours of a potential dissemination framework.

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 of such date (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–FINRA–2022–011 on the subject line.

Enforcement of Securities Laws: Resource-Based Evidence, 93 J. Fin. Econ. 207 (2009) (discussing the correlation between public enforcement of securities laws and several market indicators, including trading volume and capital formation).

[21] *See supra* note 10.

[22] *See* Letter from Gerard O'Reilly, Co-CEO and Chief Investment Officer, Dimensional Fund Advisors LP, to Marcia E. Asquith, Office of the Corporate Secretary, FINRA, dated September 23, 2019 (''Dimensional''); Letter from Peter Warms, Bloomberg L.P., to Marcia E. Asquith, Office of the Corporate Secretary, FINRA, dated September 24, 2019 (''Bloomberg''); Letter from Christopher Bok, Director, Financial Information Forum, to Marcia E. Asquith, Office of the Corporate Secretary, FINRA, dated September 24, 2019 (''FIF''); and Letter from Christopher B. Killian, Managing Director, Securitization and Corporate Credit, SIFMA to Marcia E. Asquith, Office of the Corporate Secretary, FINRA, dated September 24, 2019 (''SIFMA'').

[23] *See* Bloomberg, Dimensional, and FIF.

[24] *See* SIFMA.

[25] *See supra* notes 5 and 7.

[26] *See supra* note 8.

[27] *See* SIFMA, FIF, and Bloomberg.

[28] *See* Dimensional.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2022–011. 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 FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2022–011 and should be submitted on or before June 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10508 Filed 5–16–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94896/May 11, 2022]

Data Collection Initiation Date and Contingent Phase-In Termination Date for the De Minimis Notional Thresholds of Security-Based Swap Dealing

AGENCY: Securities and Exchange Commission.

ACTION: Commission announcement.

SUMMARY: The definition of ''security-based swap dealer'' is subject to a *de minimis* exception whereby a person is deemed not to be a security-based swap dealer as a result of security-based swap dealing activity that falls below certain *de minimis* thresholds. These *de minimis* thresholds are subject to temporarily higher, phase-in levels of security-based swap dealing activity that will be in effect until the ''phase-in termination date.'' The phase-in termination date will be determined in part by reference to a ''data collection initiation date.'' The Commission is making this announcement to confirm that the data collection initiation date was November 8, 2021, and, absent additional Commission action, the phase-in termination date shall be November 8, 2026.

DATES: The data collection initiation date referenced in 17 CFR 240.3a71–2 and 240.3a71–2A, was November 8, 2021. Absent additional action by the Commission pursuant to 17 CFR 240.3a71–2(a)(2)(ii)(A), the phase-in termination date will be November 8, 2026.

FOR FURTHER INFORMATION CONTACT: Carol McGee, Assistant Director, Laura Compton, Senior Special Counsel, Office of Derivatives Policy, Division of Trading and Markets, at (202) 551–5870.

SUPPLEMENTARY INFORMATION: For purposes of this announcement, the Commission uses the following terms:

Commission reference	CFR citation (17 CFR)
Securities Exchange Act of 1934[1] (''Exchange Act''):	
Rule 3a71–2	§ 240.3a71–2.
Rule 3a71–2(a)	§ 240.3a71–2(a).
Rule 3a71–2(a)(1)(i)	§ 240.3a71–2(a)(1)(i).
Rule 3a71–2(a)(1)(ii)	§ 240.3a71–2(a)(1)(ii).
Rule 3a71–2(a)(2)(i)	§ 240.3a71–2(a)(2)(i).
Rule 3a71–2(a)(2)(ii)(A)	§ 240.3a71–2(a)(2)(ii)(A).
Rule 3a71–2(a)(2)(ii)(B)	§ 240.3a71–2(a)(2)(ii)(B).
Rule 3a71–2(a)(2)(iii)	§ 240.3a71–2(a)(2)(iii).
Rule 3a71–2A	§ 240.3a71–2A.
Rule 3a71–2A(a)(1)	§ 240.3a71–2A(a)(1).
Rule 3a71–2A(b) through (c)	§§ 240.3a71–2A(b) through (c).
Rule 3a71–2A note	§ 240.3a71–2A note.
Regulation SBSR	§§ 242.900 through 242.909.

Background

Section 3(a)(71) of the Exchange Act[2] defines the term ''security-based swap dealer'' (''SBSD'') and provides in relevant part that a person shall be deemed not to be an SBSD as a result of security-based swap dealing activity that falls below certain *de minimis* thresholds.[3] In 2012, the Commission adopted Exchange Act Rule 3a71–2(a), which provides that to qualify for this *de minimis* exception, all security-based swap positions connected with the person's and its affiliates' dealing activity over the immediately preceding twelve months must fall below three separate thresholds.[4] Two of the thresholds are subject to temporarily higher, phase-in levels of aggregate gross notional amounts of *de minimis* security-based swap dealing activity.[5] For credit default swaps that are security-based swaps, the *de minimis* threshold is an aggregate gross notional

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78a *et seq.*

[2] 15 U.S.C. 78c(a)(71).

[3] *See* Exchange Act Section 3(a)(71)(D).

[4] *See* Exchange Act Rule 3a71–2(a); Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' Release No. 34–66868 (Apr. 27, 2012) [77 FR 30596, 30727 (May 23, 2012)].

[5] The higher phase-in levels of *de minimis* security-based swap dealing activity are not available to the extent that a person engages in security-based swap dealing activity with counterparties that are natural persons, other than natural persons who qualify as eligible contract participants by virtue of section 1a(18)(A)(xi)(II) of the Commodity Exchange Act, 7 U.S.C. 1a(18)(A)(xi)(II). *See* Exchange Act Rule 3a71–2(a)(2)(i).

amount of no more than $3 billion, subject to a phase-in level of an aggregate gross notional amount of no more than $8 billion.[6] For security-based swaps that are not credit default swaps, the *de minimis* threshold is an aggregate gross notional amount of no more than $150 million, subject to a phase-in level of an aggregate gross notional amount of no more than $400 million.[7]

The phase-in period for these *de minimis* security-based swap dealing activity thresholds is available until the ''phase-in termination date.''[8] The phase-in termination date, in turn, depends in part on the ''data collection initiation date'' established pursuant to Exchange Act Rule 3a71–2(a)(2)(iii). That rule provides that the data collection initiation date was the later of (1) the last compliance date for the registration and regulatory requirements for SBSDs and major security-based swap participants under Exchange Act Section 15F,[9] and (2) the first date on which compliance with the trade-by-trade reporting rules for credit-related and equity-related security-based swaps to a registered security-based swap data repository is required. With respect to the first prong of Exchange Act Rule 3a71–2(a)(2)(iii), the compliance date for registration and regulatory requirements for SBSDs and major security-based swap participants under Exchange Act Section 15F was October 6, 2021.[10] With respect to the second prong of Exchange Act Rule 3a71–2(a)(2)(iii), on May 7, 2021, DTCC Data Repository registered with the Commission, which definitively set November 8, 2021, as the first compliance date for Regulation SBSR's requirements regarding reporting of credit-related and equity-related security-based swaps.[11] Pursuant to Exchange Act Rule 3a71–2(a)(2)(iii), the data collection initiation date thus was November 8, 2021.

The phase-in termination date is determined through a separate mechanism that depends in part on the data collection initiation date and also, as explained below, in part upon the timing of a Commission staff report addressing the rules and interpretations further defining the Exchange Act's definition of the term ''security-based swap dealer,'' including the *de minimis* exception to that definition.[12] The report must be published in the **Federal Register** for public comment no later than three years following the data collection initiation date, or November 8, 2024, and could be published earlier.[13] Nine months after the publication of the report, the Commission may by order either terminate the phase-in period for the *de minimis* thresholds or provide notice of its determination that it is necessary or appropriate in the public interest to propose through rulemaking an alternative to the $3 billion and $150 million *de minimis* thresholds. The Commission's order in either case shall establish the phase-in termination date.[14] Alternatively, if the phase-in termination date has not been previously established in such an order, the phase-in termination date shall be five years after the data collection initiation date,[15] or November 8, 2026.

Commission Announcement

The data collection initiation date referenced in Exchange Act Rules 3a71–2 and 3a71–2A was November 8, 2021. Absent additional Commission action establishing the phase-in termination date pursuant to Exchange Act Rule 3a71–2(a)(2)(ii)(A), the phase-in termination date shall be November 8, 2026.

By the Commission.

Dated: May 11, 2022.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2022–10511 Filed 5–16–22; 8:45 am]

BILLING CODE 8011–01–P

[6] Exchange Act Rule 3a71–2(a)(1)(i).

[7] Exchange Act Rule 3a71–2(a)(1)(ii).

[8] Exchange Act Rule 3a71–2(a)(2)(i).

[9] 15 U.S.C. 78o–10.

[10] *See* Cross-Border Application of Certain Security-Based Swap Requirements, Release No. 34–87780 (Dec. 18, 2019) [85 FR 6270, 6345 (Feb. 4, 2020)] (''Cross-Border Amendments Release''). In the Cross-Border Amendments Release, the Commission set the compliance date for registration and regulatory requirements for SBSDs and major security-based swap participants as 18 months after the effective date described therein; that effective date was 60 days after publication of the Cross-Border Amendments Release in the **Federal Register**. The Cross-Border Amendments Release was published in the **Federal Register** on Feb. 4, 2020; 60 days after that date was Apr. 6, 2020. Eighteen months after Apr. 6, 2020, was Oct. 6, 2021.

[11] The first compliance date for Regulation SBSR with respect to a security-based swap asset class was the first Monday that was the later of: (1) Six months after the date on which the first security-based swap data repository that can accept transaction reports in that asset class registers with the Commission; or (2) one month after the compliance date for registration and regulatory requirements for SBSDs and major security-based swap participants. *See* Cross-Border Amendments Release, 85 FR 6346. DTCC Data Repository (U.S.), LLC registered as a security-based swap data repository for credit and equity asset classes (*i.e.,* the asset classes referenced in Exchange Act Rule 3a71–2(a)(2)(iii)) on May 7, 2021. *See* Security-Based Swap Data Repositories; DTCC Data Repository (U.S.), LLC; Order Approving Application for Registration as a Security-Based Swap Data Repository, Release No. 34–91798 (May 7, 2021) [86 FR 26115 (May 12, 2021)]. Nov. 8, 2021, was both the first Monday that was six months after May 7, 2021, and the first Monday that was one month after the Oct. 6, 2021, compliance date for registration and regulatory requirements for SBSDs and major security-based swap participants. *See also* SEC Approves Registration of First Security-Based Swap Data Repository; Sets the First Compliance Date for Regulation SBSR, Press Release No. 2021–80 (May 7, 2021), available at *https://www.sec.gov/news/press-release/2021-80* (''Today's SEC action sets Nov. 8, 2021, as the first compliance date for Regulation SBSR, which governs regulatory reporting and public dissemination of security-based swap transactions.'').

[12] *See* Exchange Act Rule 3a71–2A note. As appropriate, based on the availability of data and information, the report generally should assess whether any of the *de minimis* thresholds should be increased or decreased. *See* Exchange Act Rule 3a71–2A(a)(1). The Commission intends to consider this report in reviewing the effect and application of the *de minimis* thresholds based on the evolution of the security-based swap market following the implementation of the registration and regulatory requirements of Exchange Act Section 15F; the report may also be informative as to potential changes to the rules further defining the term ''security-based swap dealer.'' *See* Exchange Act Rule 3a71–2A note. The Commission directed staff also to report on the rules and interpretations further defining the Exchange Act's definition of the term ''major security-based swap participant,'' to which the *de minimis* thresholds in Exchange Act Rule 3a71–2 do not apply.

[13] *See* Exchange Act Rule 3a71–2A(b) through (c).

[14] *See* Exchange Act Rule 3a71–2(a)(2)(ii)(A).

[15] Exchange Act Rule 3a71–2(a)(2)(ii)(B).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94894; File No. SR–BOX–2022–17]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees

May 11, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 27, 2022, BOX Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule to establish a new monthly Participant Fee on the BOX Options Market LLC (''BOX'') options facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 a new monthly Participant Fee. Specifically, the Exchange proposes to adopt electronic Market Maker Trading Permit Fees as follows: (i) $4,000 per month for Market Maker Appointments in up to and including 10 classes; (ii) $6,000 per month for Market Maker Appointments in up to and including 40 classes; (iii) $8,000 per month for Market Maker Appointments in up to and including 100 classes; and (iv) $10,000 per month for Market Maker Appointments for over 100 classes. For the calculation of the monthly electronic Market Maker Trading Permit fees, the number of classes is defined as the greatest number of classes the Market Maker was appointed to quote in on any given day within the calendar month. The Exchange notes that the proposed electronic Market Maker Trading Permit fees are lower than fees assessed at competing options exchanges.[5] The Exchange notes the current monthly Participant Fee of $1,500 per month will not apply to electronic Market Makers. Under this proposal, electronic Market Makers will pay the applicable monthly electronic Market Maker Trading Permit fee only. All other electronic Participants[6] will continue to pay the monthly Participant Fee in Section I.B of the BOX Fee Schedule.

The Exchange initially filed the proposed fee change on January 3, 2022 (SR–BOX–2022–01) (the ''Original Filing''). BOX withdrew the Original Filing and submitted SR–BOX–2022–04 (the ''Second Proposed Rule Change''). BOX withdrew the Second Proposed Rule Change and submitted the SR–BOX–2022–06 (the ''Third Proposed Rule Change''). On February 1, 2022, BOX withdrew the Third Proposed Rule Change and submitted SR–BOX–2022–07 (the ''Fourth Proposed Rule Change'') to lower the fees detailed in the past filings after industry feedback. On April 5, 2022, BOX withdrew and submitted SR–BOX–2022–12 (the ''Fifth Proposed Rule Change''). On April 11, 2022, BOX withdrew and submitted SR–BOX–2022–15 (the ''Sixth Proposed Rule Change''). The Exchange is now withdrawing the Sixth Proposed Rule Change and submitting this filing (the ''Seventh Proposed Rule Change'').

The Exchange notes that the proposed electronic Market Maker Trading Permit fees have been effective, and thus paid by BOX Market Makers, since January 1, 2022.[7] The Exchange believes it is notable that during this time, there have been no comment letters submitted to the Commission arguing that the Exchange's new fees are unreasonable. The Exchange also believes it's significant and notable that, due to industry feedback received in January from BOX Market Makers, the Exchange withdrew its proposed fee change and refiled to decrease the proposed fees in response to the feedback.

As discussed herein, the Exchange believes the proposed changes are consistent with the Act because they are reasonable, equitably allocated, and not unfairly discriminatory, and not an undue burden on competition, as they are supported by evidence (including data and analysis) and are constrained by significant competitive forces. The Exchange also believes the proposed fees are reasonable as they are in line with the amounts assessed to Market Makers by other exchanges for similar permits. Accordingly, the Exchange believes 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 the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange established the $1,500 monthly Participant Fee in October 2016 for all Participants regardless of account type.[9] At the time BOX established this Participant Fee, BOX's market share was 2.45% and the total volume of options contracts traded on BOX in September 2016 was 8,737,707. The Exchange established this lower (when compared to other options exchanges in the industry) Participant Fee in order to encourage market participants to become Participants of BOX and register as BOX Market Makers. Since 2016, BOX has grown its market share and membership base significantly. Specifically, in September 2021, BOX's market share was 5.19% and the total volume of option contracts traded on BOX in September 2021 was 42,098,287. BOX recently reviewed its current Participant Fees detailed in Section I of the BOX Fee Schedule. In its review, BOX determined that

[5] *See* NYSE Arca, Inc. (''NYSEArca'') Fee Schedule (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, and an additional $3,000 for all option issues traded on the Exchange). The Exchange notes that these fees are compounded, so Market Makers who trade in all option issues on the exchange are assessed $18,000 per month. *See also* Miami International Securities Exchange, LLC (''MIAX'') Fee Schedule (assessing Market Makers $7,000 for up to 10 classes or up to 20% of classes by volume, $12,000 for up to 40 classes or up to 35% of classes by volume, $17,000 for up to 100 classes or up to 50% or classes by volume, and $22,000 for over 100 classes or over 50% of classes by volume up to all classes listed on MIAX).

[6] The Exchange notes the following Participant types on BOX: Public Customers, Professional Customers, Broker Dealers, and Market Makers. Pursuant to this proposal, Public Customers, Professional Customers, and Broker Dealers will continue to be charged the $1,500 Participant Fee detailed in Section I.B of the BOX Fee Schedule.

[7] The Exchange notes that the higher fees from the Original Filing were assessed for the month of January 2022, however the proposed fees were assessed for February 2022 and will continue to be assessed.

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] *See* Securities Exchange Act Release No. 79038 (October 4, 2016), 81 FR 70214 (October 11, 2016) (SR–BOX–2016–47).

Participant Fees would need to be raised, and a flat fee for all Participant types is no longer appropriate. Specifically, BOX found that electronic Market Makers had been benefitting from a flat Participant Fee rate while (1) consuming the most bandwidth and resources of the network; (2) transacting the vast majority of the volume on BOX; and (3) requiring the high touch network support services provided by BOX and its staff. The Exchange notes that Broker Dealers, Professional Customers, and Public Customers take up significantly less BOX resources and costs as discussed further below. Further, BOX notes that Market Makers account for greater than 99% of message traffic over the network, while other non-Market Maker market participants account for less than 1% of message traffic over the network. In BOX's experience, most BOX Participants do not have a business need for the high performance network solutions required by Market Makers. BOX's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 3 million quote messages per second. On an average day, the BOX Trading Host handles over 1.6 billion total messages. Of those 1.6 billion daily messages, BOX Market Makers generate 1.59 billion of those messages, while other BOX Participants generate 9.5 million messages. Additionally, in order to achieve consistent, premium network performance, BOX must build out and maintain a network that has the capacity to handle the message rate requirements beyond those 1.6 billion daily messages. These billions of messages per day consume BOX'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 begin to pay for a higher portion of the access costs (compared to other BOX Participant types).

BOX notes that while Market Makers continue to account for a vast majority of the increased costs and resources placed on BOX and its systems (as discussed herein), Market Makers continue to be valuable market participants on the exchanges as the options market is a quote driven industry. BOX recognizes the value that Market Makers bring to the Exchange. In fact, BOX provides Market Makers volume-based discounts and rebates to incentivize Market Makers to direct order flow to the Exchange to obtain the benefit of the rebate, which will in turn benefit all market participants by increasing liquidity on the Exchange. Additionally, for certain transactions, BOX also assesses a lower fee for Market Makers compared to the fee for Broker Dealers or Professional Customers for the same reason.[10] The proposed Trading Permit fees discussed herein are meant to strike a balance between offsetting the costs to which Market Makers place on BOX and continuing to incentivize Market Makers to access and make a market on BOX.

In its review of Participant Fees, BOX found that since 2016, Market Makers have had the luxury of paying the same Participant Fees as other account types despite Market Makers consuming the most resources on the BOX system and contributing to increased costs for BOX. As such, the Exchange proposes to establish higher, separate electronic Trading Permit fees for Market Makers that are more aligned with the costs and resources that Market Makers continue to place on BOX and its systems. Additionally, the Exchange believes that the proposed change will better align BOX Participant Fees with rates charged by competing options exchanges in the industry for similar Trading Permits for such market participants. As such, BOX believes the proposed electronic Market Maker Trading Permit fees are reasonable in that they are lower than comparable fees at other options exchanges.[11] Further, the Exchange believes that the proposal is reasonably designed to continue to compete with other options exchanges by incentivizing market participants to register as Market Makers on BOX in a manner than enables BOX to improve its overall competitiveness and strengthen market quality for all market participants. As stated above, the Exchange believes the proposed Market Maker Trading Permit fees are an appropriate balance between offsetting the costs to which Market Makers cost BOX and continuing to incentivize Market Makers to access and make a market on BOX.

The proposed fees are equitable and not unfairly discriminatory as the fees apply equally to all electronic Market Makers. As such, all similarly situated electronic Market Makers, with the same number of appointments, will be subject to the same electronic Market Maker Trading Permit fee. The Exchange also believes that assessing lower fees to electronic Market Makers that quote in fewer classes is reasonable and appropriate as it will allow BOX to retain and attract smaller-scale electronic Market Makers, which are an integral component of the options industry marketplace. Since these smaller electronic Market Makers utilize less bandwidth and capacity on the BOX network due to the lower number of quoted classes, the Exchange believes it is reasonable and appropriate to offer such electronic Market Makers a lower fee. The Exchange also notes that other options exchanges assess permit fees at different rates, based upon a member's participation on that exchange,[12] and, as such, this concept is not new or novel.

Further, the Exchange believes the proposed tiered structure of the electronic Market Maker Trading Permit fees is reasonable and appropriate. Under the proposal, electronic Market Makers will be charged monthly fees based on the greatest number of classes quoted on any given trading day in a calendar month. Under the proposed fee structure, the fees increase as the number of classes quoted by a Market Maker increases. The Exchange believes this structure is reasonable because the BOX system requires increased performance and capacity in order to provide the opportunity for Market Makers to quote in a higher number of options classes on BOX. Specifically, the more classes that are actively quoted

[10] For example, in Section IV.A (Non-Auction Transactions) of the BOX Fee Schedule, Market Makers are assessed a lower fee than Broker Dealers and Professional Customers when their orders interact with Public Customers, Professional Customers, Broker Dealers, and Market Makers. They are also eligible for rebates under the Tiered Volume Rebate for Non-Auction Transactions in Section IV.A.1 of the BOX Fee Schedule. Additionally, Market Makers are assessed lower fees on opening or re-opening transactions than Professional Customers and Broker Dealers under Section IV.A.2 of the BOX Fee Schedule.

[11] *See supra* note 5.

[12] *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.

on BOX by a Market Maker requires increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and appropriate when taking into account how the increased number of quoted classes directly impact the costs and resources required for BOX. Further, the Exchange believes that the proposed tiered structure is equitable and not unfairly discriminatory as all similarly situated Market Makers will be charged the same fee. The Exchange notes that another options exchange in the industry calculates Market Maker Permit Fees in the same manner.[13]

The Exchange notes that there is no regulatory requirement that market makers connect and access any one options exchange. Moreover, a Market Maker membership is not a requirement to participate on the Exchange and participation on an exchange is completely voluntary. BOX reviewed membership details at three options exchanges and found that there are 62 market making firms across these three exchanges.[14] Further, BOX found that 42 of the 62 market making firms access only one of the three exchanges. Additionally, BOX has identified numerous market makers that are members of other options exchanges, but not the Exchange. For example, BOX identified 47 market makers that are members of Cboe Exchange Inc. (an exchange that only lists options), but not the Exchange (which also lists only options). Not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the market maker membership analysis of three options exchanges discussed above. Indeed, Market Makers choose if and how to access a particular exchange and because it is a choice, BOX must set reasonable pricing, otherwise prospective market makers would not connect and existing Market Makers would disconnect from the Exchange.

As discussed above, BOX responded to Market Maker feedback to the proposed fees in January 2022 and due to this valuable feedback, BOX lowered the proposed fees. The Exchange believes that this reduction demonstrates that competitive constraints do not depend on showing that a Market Maker walked away, or threatened to walk away, from BOX due to a pricing change. Rather, the absence of negative feedback (in and of itself, and particularly when coupled with valuable feedback suggesting modifications or alternatives) is indicative that the proposed fees are, in fact, reasonable and consistent with BOX being subject to competitive forces in setting fees. Accordingly, the Exchange believes the Commission has a sufficient basis to determine that BOX was subject to significant competitive forces in setting the terms of its proposed fees. Moreover, the Commission has found that, if an exchange meets the burden of demonstrating it was subject to significant competitive forces in setting its fees, the Commission ''will find that its fee rule is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the rule violate the Act or the rules thereunder.'' [15] The Exchange is not aware of, nor has the Commission articulated, a substantial countervailing basis for finding the proposal violates the Act or the rules thereunder.

In order to provide more detail and to quantify BOX's costs associated with providing access to the BOX network in general, BOX notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to BOX. BOX incurs technology expenses related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the expenses associated with access services for electronic Market Makers increases. For example, new Market Makers to BOX may require the purchase of additional hardware to support those Participants as well as enhanced monitoring and reporting of customer performance that BOX provides. Further, as the total number of Market Makers increase, BOX 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 BOX to provide access to its electronic Market Makers is not fixed. BOX believes the proposed electronic Market Maker Trading Permit fees are reasonable in order to offset a portion of the costs to BOX associated with providing access to Market Makers to its network infrastructure.

As discussed above, BOX Market Makers have and continue to account for the vast majority of network capacity utilization and trading activity on BOX and thus account for the majority of expenses placed on BOX systems. Specifically, in 2017 (the year after BOX established the flat Participant Fee), the total expense for providing access services for all Participant types was approximately $819,000. Broken down further, in 2017, the total expense for providing access services to non-Market Maker Participants was approximately $117,000 and the total expense for providing access services to Market Makers was approximately $702,000. The Exchange has seen this disparity in access expenses between non-Market Makers and Market Makers year after year since the establishment of the Participant Fee in 2016. In 2018, the total expense for providing access services for all Participant types was approximately $763,000—approximately $109,000 allocated to non-Market Maker expenses and approximately $654,000 allocated to Market Maker expenses. In 2019, the total expense for providing access services for all Participant types was approximately $722,000—approximately $103,000 allocated to non-Market Maker expenses and approximately $619,000 allocated to Market Makers. In 2020, the total expense for providing access services for all Participant types was approximately $1.1 million—approximately $161,000 allocated to non-Market Maker expenses and approximately $971,000 allocated to Market Makers. Further, as discussed herein, BOX experienced a material increase in costs in 2021 and projects a similar material increase for 2022 due to projects to make its network environment more transparent and deterministic, and increased order flow seen throughout the industry. Specifically, in 2021, the total expense for providing access services for all Participant types was approximately $1.29 million—approximately $190,000 allocated to non-Market Maker expenses

[13] *See* Nasdaq Phlx LLC (''Phlx'') Fee Schedule, Section 8(B) detailing the tiered structure for Streaming Quote Trader (''SQT'') Fees.

[14] BOX reviewed membership lists at Cboe Exchange Inc. (''Cboe''), Miami International Securities Exchange, LLC (''MIAX''), and BOX—all of which detail the firms registered as making makers on their respective exchanges. The Nasdaq and NYSE exchange groups do not provide this level of detail in their membership lists. As such, BOX has not included the Nasdaq and NYSE exchanges in this analysis.

[15] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (''2008 ArcaBook Approval Order'') (approving proposed rule change to establish fees for a depth-of-book market data product).

and approximately $1.1 million allocated to Market Makers. Further, in the projected expenses for 2022, the total projected expense for providing access services for all Participant types is approximately $1.89 million—approximately $270,000 allocated to non-Market Maker expenses and $1.62 million allocated to Market Makers. As illustrated by these access expenses year over year, it is clear that BOX Market Makers account for the majority of expenses related to the provision of access services for BOX Participants. Accordingly, BOX believes that it is reasonable and appropriate to charge electronic Market Makers more than other BOX Participants for electronic Trading Permits to access the BOX network.

The Exchange believes that the proposed electronic Market Maker Trading Permit fees are reasonable, equitable, and not unfairly discriminatory. The Exchange believes that the reasonableness of its proposed fees is demonstrated by the very fact that such fees are in line with, and in some cases lower than, the costs of similar access fees at other exchanges.[16] The Exchange notes these fees were similarly filed with the Commission and neither suspended nor disapproved.[17] The proposed fees are fair and equitable and not unfairly discriminatory because they apply equally to all Market Makers and access to BOX is offered on terms that are not unfairly discriminatory. BOX 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 BOX. BOX believes that the proposed fee rates and criteria provide an objective and flexible framework that will encourage Market Makers to be appointed and quote in option classes while also equitably allocating the fees in a reasonable manner amongst Market Maker appointments to account for quoting and trading activity.[18]

The Exchange again notes that it operates in a highly competitive market in which market makers can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, BOX must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. BOX believes that the proposed changes reflect this competitive environment.

The Exchange again notes it is not aware of any reason why Market Makers 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 Maker, did not make business or economic sense for such Market Maker to access such exchange. The Exchange again notes that no market makers are required by rule, regulation, or competitive forces to be a Market Maker on the Exchange.

Furthermore, the Exchange wishes to highlight that one Market Maker modified their access to BOX since the implementation of the proposed fee change. This Market Maker was approved as an electronic Market Maker in 2017 but never underwent the process of provisioning itself to access the BOX systems.[19] After the Market Maker reviewed the notice the Exchange issued describing the proposed fees, the Market Maker informed the Exchange that it would terminate its Market Maker status on BOX as it had no intention to provision itself for access. The Exchange believes this further demonstrates competition within the market for exchange access, which as a result constrains fees the Exchange may charge for that access. The Exchange believes the fact that this Participant chose to terminate its Market Maker status on BOX but retained its status as an Order Flow Provider on BOX demonstrates that market participants can and do alter their membership statuses at exchanges if the market participant deems any fees as too high for its relevant marketplace. In BOX's case, the Participant determined that the Exchange's proposed fees for electronic Market Makers did not make business sense for itself, however it retained its membership as a BOX Participant in a different capacity.

In sum, the Exchange believes the proposed fees are reasonable and reflect a competitive environment, as BOX seeks to amend its Trading Permit fees for Market Makers, while still attracting Market Makers to continue to, or seek to, access BOX. The Exchange further believes the proposed Trading Permit fees discussed herein are an appropriate balance between offsetting the costs to which Market Makers cost BOX and continuing to incentivize Market Makers to access and make a market on BOX.

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 electronic Market Maker Trading Permit fees do not place certain market participants at a relative disadvantage to other market participants because the proposed 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 BOX. Further, the Exchange believes that the proposed electronic Market Maker Trading Permit fees will not impose a burden on intramarket competition because, when these fees are viewed in the context of the overall activity on BOX, Market Makers: (1) Consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on BOX; and (3) require the high touch network support services provided by BOX and its staff, including more costly network monitoring, reporting and support services, resulting in a much higher cost to BOX. The Exchange notes that the majority of customer demand comes from Market Makers, whose transactions make up a majority of the volume on BOX. Further, as discussed herein, other Participant types (Broker Dealers, Professional Customers, and Public Customers) take up significantly less BOX resources and costs. As such, the Exchange does not believe charging electronic Market Makers higher Trading Permit fees than other Participant types will impose a burden on intramarket competition.

The Exchange believes that the tiered structure of the proposed electronic Market Maker Trading Permit fees will not impose a burden on intramarket competition because the tiered structure takes into account the number of classes quoted by each individual Market Maker. As discussed herein, the BOX system requires increased performance and capacity in order to provide the opportunity for each Market Maker to quote in a higher number of options classes on BOX. Specifically, the more

[16] *See supra* note 5.

[17] The Exchange presumes that the fees of other exchanges are reasonable, as required by the Exchange Act in the absence of any suspension or disapproval order by the Commission providing otherwise.

[18] Prior to filing the Original Proposal, the Exchange notes that BOX Market Makers were made aware of the proposed tier structure and fee change. BOX received feedback from Market Makers and adjusted the fees accordingly based on their feedback. Market Makers are not required to quote on every options exchange. BOX Market Makers choose to quote and transact business on BOX because BOX is providing increased trading opportunities for these firms.

[19] The Exchange notes that the Participant is also currently an Order Flow Provider on BOX.

classes that are actively quoted on BOX by a Market Maker requires increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and appropriate when taking into account how the increased number of quoted classes directly impact the costs and resources for BOX.

Inter-Market Competition

The Exchange believes the proposed Market Maker Trading Permit Fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, market making firms are not forced to become market makers on all options exchanges. The Exchange notes that it has far less Market Makers as compared to the much greater number of market makers at other options exchanges. There are a number of large market makers that are participants of other options exchange but not Participants of BOX. The Exchange is also unaware of any assertion that its existing fee levels or the proposed electronic Market Maker Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by a market making firm, they can simply discontinue their membership with BOX.

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 17% 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 November 2021, BOX had a market share of approximately 5.58% of executed multiply-listed equity options [20] and BOX 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, BOX must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the facility.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [21] and Rule 19b–4(f)(2) thereunder,[22] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2022–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2022–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–BOX–2022–17, and should be submitted on or before June 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10520 Filed 5–16–22; 8:45 am]

BILLING CODE 8011–01–P

[20] *See* Options Volume by Exchange available at *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Volume-by-Exchange.*

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

[22] 17 CFR 240.19b–4(f)(2).

[23] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the

collection of information described below. The Paperwork Reduction Act (PRA) federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before July 18, 2022.

ADDRESSES: Send all comments to, John Kelly, Case Management Specialist, Office of the Ombudsman, Small Business Administration.

FOR FURTHER INFORMATION CONTACT: John Kelly, Case Management Specialist, *john.kelly@sba.gov* 202–205–6178, or Curtis B. Rich, Agency Clearance Officer, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The Small Business Regulatory Enforcement Fairness Act of 1966, 15 U.S.C. 657(b)(2)(B), requires the SBA National Ombudsman to establish a means for SBA to receive comments on regulatory and compliance actions from small entities regarding their disagreements with a Federal Agency action. The Ombudsman uses it to obtain the agency's response, encourage a fresh look by the agency at a high level, and build a smaller business-friendly regulatory environment.

OMB Control Number: 3245–0313.

Title: ''Federal Agency Comment Form''.

Description of Respondents: Small business entities.

Form Number: SBA Form 1993.

Annual Responses: 340.

Annual Burden: 340.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2022–10577 Filed 5–16–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board

AGENCY: Small Business Administration.

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The SBA is issuing this notice to announce the date, time and agenda for a meeting of the National Small Business Development Center Advisory Board. The meeting will be open to the public; however, advance notice of attendance is required.

DATES: Tuesday, May 23, 2022, at 2:00 p.m. EDT.

ADDRESSES: Meeting will be held via Microsoft Teams.

FOR FURTHER INFORMATION CONTACT: Rachel Karton, Office of Small Business Development Centers, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; *Rachel.newman-karton@sba.gov;* 202–619–1816.

If anyone wishes to be a listening participant or would like to request accommodations, please contact Rachel Karton at the information above.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), the SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

Purpose

The purpose of the meeting is to discuss the following issues pertaining to the SBDC Program:

- SBA|OSBDC Leadership Update
- Strategy for Increasing Board Awareness and Understanding of the SBDC Program
- ASBDC Conference—Townhall Planning

Andrienne Johnson,

Committee Management Officer.

[FR Doc. 2022–10501 Filed 5–16–22; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2020–0018]

Social Security Ruling 22–2p; Titles II and XVI: Evaluation of Claims Involving the Issue of Similar Fault in the Providing of Evidence

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR).

SUMMARY: We are providing notice of SSR 22–2p. This ruling rescinds and replaces SSR 16–2p and explains when we may find that there is a reason to believe that similar fault was involved in the providing of evidence to us in support of a claim under titles II or XVI of the Social Security Act (Act). We are revising the evidentiary standard for similar fault from a ''preponderance of the evidence'' to ''reason to believe'' to align more closely with the standard provided in the Act. We are also incorporating into this ruling a procedure that we currently have in other subregulatory instructions. The procedure provides that, before we disregard evidence under the Act at the hearings level of our administrative review process, we will consider the individual's objection to the disregarding of that evidence. We expect that the procedures we follow under this ruling will allow us to implement relevant sections of the Act in a manner consistent with the Act and principles of constitutional due process.

DATES: We will apply this notice on May 17, 2022.

FOR FURTHER INFORMATION CONTACT: Mary Quatroche, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, 410–597–1632. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213 or visit our internet site, Social Security online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are publishing it in accordance with 20 CFR 402.35(b)(1). SSRs do not have the same force and effect as statutes or regulations, but they are binding on all components of the Social Security Administration. 20 CFR 402.35(b)(1).

We use SSRs to make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made in our administrative review process, Federal court decisions, decisions of our Commissioner, opinions from our Office of the General Counsel, or other interpretations of law and regulations.

This SSR will remain in effect until we publish a notice in the **Federal Register** that rescinds it, or we publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance, Programs Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006—Supplementary Security Income.)

The Acting Commissioner of Social Security, Kilolo Kijakazi, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for the

Social Security Administration, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

Policy Interpretation Ruling

SSR 22–2p: Titles II and XVI: Evaluation of Claims Involving the Issue of Similar Fault in the Providing of Evidence

This Social Security Ruling (SSR) rescinds and replaces SSR 16–2p: ''Titles II and XVI: Evaluation of Claims Involving the Issue of Similar Fault in the Providing of Evidence.''

Purpose: To explain the process we use when we evaluate and adjudicate claims in which there is reason to believe similar fault was involved in the providing of evidence to us in support of a claim for benefits under title II or payments under title XVI of the Social Security Act (Act).

Citations (Authority): Sections 205(u) and 1631(e)(7) of the Social Security Act, 42 U.S.C. 405(u) and 1383(e)(7), as amended; 20 CFR 404.704, 404.708, 404.1512, 404.1520, 416.912, 416.920, 416.924, and 422.130.

Dates: We will apply this notice on May 17, 2022.

Introduction

The Social Security Independence and Program Improvements Act of 1994, Public Law 103–296, amended the Act to add provisions addressing fraud or similar fault. These amendments to sections 205 and 1631 of the Act require us to immediately redetermine an individual's entitlement to monthly insurance benefits under title II or eligibility for payments under title XVI if there is reason to believe that fraud or similar fault was involved in the individual's application for such benefits or payments.

The Act further provides that, when we redetermine entitlement or eligibility, or when we make an initial determination of entitlement or eligibility, we ''shall disregard any evidence if there is reason to believe that fraud or similar fault was involved in the providing of such evidence.'' [1]

This ruling explains the standards we use when we determine whether there is reason to believe that similar fault was involved in providing evidence in connection with a claim for benefits or payments. The ruling applies to all claims for benefits under title II or payments under title XVI of the Act; *e.g.,* claims for old-age and survivors benefits and disability benefits under title II of the Act, and claims for Supplemental Security Income payments for the aged, blind, and disabled under title XVI of the Act.

This ruling does not replace or limit other appropriate standards and criteria for development and evaluation of claims in accordance with our rules. There may be instances in which we will not disregard evidence under the statutory provisions discussed in this ruling, but nevertheless, factors may exist that justify considering the evidence in question less persuasive or probative than other evidence.

Policy Interpretation

A. General

1. Sections 205(u) and 1631(e)(7) of the Act require us to disregard evidence if there is reason to believe that fraud or similar fault was involved in the providing of that evidence.

2. A finding that there is reason to believe similar fault was involved in providing evidence is sufficient to take the administrative actions described in this ruling. Although a finding of ''fraud'' made as part of a criminal prosecution can serve as a basis for the administrative actions described below, such a finding is not required.

3. We may discover suspected fraud or similar fault related to a claim for benefits or payments or in the provision of evidence in a variety of ways. Most often, we learn about fraud from our Office of the Inspector General (OIG). OIG is responsible for investigating fraud in our programs and must notify us under section 1129(l) of the Act when it has reason to believe that fraud was involved in an individual's claim for benefits or payments, including in the provision of evidence. We refer to this notification as a section 1129(l) referral. We may also learn about fraud from a Federal or State prosecutor during the course of a criminal investigation or prosecution. With regard to similar fault, as we administer our programs, we may uncover information that provides a reason to believe similar fault was involved in the provision of evidence in an individual's claim for benefits or payments.

4. We may find there is reason to believe similar fault was involved in providing evidence based on the actions of any individual whose actions affect the evidence provided in support of the claim, even when such an individual has no direct relationship to the claimant, beneficiary, or recipient or acts without the claimant, beneficiary, or recipient's knowledge or participation. These individuals may include, but are not limited to, claimants, beneficiaries, auxiliaries, recipients, spouses, representatives, medical sources, translators, interpreters, and representative payees. For example, we may have reason to believe a medical source or representative provided false information to support a claim without the knowledge or participation of the claimant, beneficiary, or recipient.

5. We must disregard evidence under sections 205(u)(1)(B) and 1631(e)(7)(A)(ii) of the Act due to similar fault if there is reason to believe, meaning reasonable grounds to suspect, that the person knew the evidence provided was false or incomplete or that the information that was material to the determination was knowingly concealed. A finding of similar fault requires more than mere suspicion, speculation, or a hunch, but it does not require a preponderance of evidence.

6. In certain circumstances, we may disregard evidence provided by someone who has not committed fraud or similar fault, but whose evidence relies on other evidence involving fraud or similar fault. For example, we may disregard parts of a medical source's opinion which rely on evidence that we disregarded from another medical source. Depending on the extent to which the medical source relied on the disregarded evidence, we may disregard some or all of the medical source's opinion.

7. Before we disregard evidence pursuant to sections 205(u)(1)(B) and 1631(e)(7)(A)(ii) of the Act at the hearings level of our administrative review process, we will consider the individual's objection to the disregarding of that evidence. After considering any objections, our adjudicators will decide whether there is reason to believe that similar fault was involved in providing evidence in the individual's case.

8. Generally, a finding that there is reason to believe similar fault was involved in providing evidence does not constitute complete adjudicative action in any claim. Even if we disregard evidence, we will evaluate the remaining evidence of record and determine whether that evidence supports a finding of entitlement to benefits or eligibility for payments.

9. If, after disregarding evidence, we determine an individual is not entitled to benefits or eligible for payments, an individual who is dissatisfied with our determination or decision may request an appeal of our determination or decision. In conjunction with such an appeal, an individual may object to our finding to disregard evidence under the

[1] See 42 U.S.C. 405(u)(1)(B) and 1383(e)(7)(A)(ii).

Act. We will consider any appeal in accordance with our rules for administrative review.

B. Definitions

1. *Fraud.* Fraud exists when a person, with the intent to defraud, either makes or causes to be made, a false statement or misrepresentation of a material fact for use in determining rights under the Act; or conceals or fails to disclose a material fact for use in determining rights under the Act.

2. *Similar Fault.* Similar fault is involved with respect to a determination if: ''an incorrect or incomplete statement that is material to the determination is knowingly made or information that is material to the determination is knowingly concealed.'' [2]

3. *Material.* Material describes a statement or information, or an omission from a statement or information that could influence us in determining entitlement to benefits under title II or eligibility for benefits under title XVI of the Act.

4. *Knowingly.* Knowingly describes a person's awareness or understanding regarding the correctness or completeness of the information he or she provides us, or the materiality of the information he or she conceals from us.

5. *Reason to Believe.* Reason to believe means reasonable grounds to suspect that fraud or similar fault was involved in the application or the provision of evidence. The reason to believe standard requires more than mere suspicion, speculation, or a hunch, but it does not require a preponderance of evidence.

C. Development and Evaluation

1. Adjudicators at all levels of the administrative review process are responsible for taking all appropriate steps to resolve similar fault issues in accordance with the standards in this ruling. If we do not find that there is reason to believe evidence provided by a source involved similar fault, we will consider the evidence in accordance with our rules such as our rules regarding evaluating symptoms and medical evidence. We will adhere to existing due process and confidentiality requirements during the process of resolving similar fault issues.

2. In making a determination or decision about whether there is similar fault, all adjudicators must:

a. Consider all evidence in the case record before determining whether specific evidence must be disregarded.

b. Determine if there is a reason to believe, as defined in this ruling, that similar fault was involved in the provision of evidence. Adjudicators may make reasonable inferences based on all the information in the record such as facts or case characteristics common to patterns of known or suspected fraudulent activity. For us to disregard evidence, it is not necessary that the affected beneficiary or recipient had knowledge of or participated in the fraud or similar fault.

c. Disregard the evidence and fully document the record with the description of the disregarded evidence and the reasons for disregarding the evidence, if the adjudicator determines that there is a reason to believe similar fault was involved in the provision of the evidence.

D. Notice of Determination or Decision

In determinations or decisions that involve a finding of similar fault and disregarding evidence, the notice of determination or decision must:

1. Explain the applicable provision of the Act that allows the adjudicator to disregard particular evidence due to a similar fault finding.

2. Identify the documents or other evidence that is being disregarded.

3. Provide a discussion of the evidence that supports a finding to disregard evidence. The discussion must explain that, in accordance with the law, the evidence identified cannot be used as evidence in a claim because, after considering all the information in the case record, the adjudicator has reason to believe that similar fault was involved in providing the evidence. A similar fault finding can be made only if there is reason to believe the person knew that the evidence provided was false or incomplete. A similar fault finding cannot be based on speculation or suspicion.

4. Provide a determination or decision based on an evaluation of the remaining evidence in accordance with other rules and procedures. A similar fault finding does not constitute complete adjudicative action in any claim. A person may still be found entitled to benefits or eligible for payments despite that some evidence in the case record has been disregarded based on similar fault. For example, a person may be found to be under a disability based on impairments that are established by evidence that is not disregarded because of similar fault.

5. Include standard appeal language.

Cross-References: SSR 85–23: Title XVI: Reopening Supplemental Security Income Determinations at Any Time for ''Similar Fault''; SSR 22–1p: Titles II and XVI: Fraud and Similar Fault Redeterminations Under Sections 205(u) and 1631(e)(7) of the Social Security Act.

[2] See 42 U.S.C. 405(u)(2) and 1383(e)(7)(B).

[FR Doc. 2022–10559 Filed 5–16–22; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2020–0017]

Social Security Ruling 22–1p; Titles II and XVI: Fraud and Similar Fault Redeterminations Under Sections 205(u) and 1631(e)(7) of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR).

SUMMARY: We are providing notice of SSR 22–1p. This ruling rescinds and replaces SSR 16–1p and explains the revised process we will use to redetermine an individual's entitlement to benefits or eligibility for payments under titles II or XVI of the Social Security Act (Act) when there is reason to believe that fraud or similar fault was involved in that individual's original application for benefits or payments. We are revising the evidentiary standard for fraud and similar fault from a ''preponderance of the evidence'' to ''reason to believe'' to align more closely with the standard provided in the Act. We are also providing a new procedure at the hearings level of our administrative review process. The procedure provides that, before we disregard evidence under the Act at the hearings level of our administrative review process, we will consider the individual's objection to the disregarding of that evidence. We expect that these revised procedures will allow us to implement relevant sections of the Act in a manner consistent with the decisions of the Courts of Appeals that have considered legal challenges to the procedures outlined in SSR 16–1p.

DATES: We will apply this notice on May 17, 2022.

FOR FURTHER INFORMATION CONTACT: Mary Quatroche, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, 410–966–4794. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213 or visit our internet site, Social Security online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are publishing it in accordance with 20 CFR

402.35(b)(1). SSRs do not have the same force and effect as statutes or regulations, but they are binding on all components of the Social Security Administration. 20 CFR 402.35(b)(1).

We use SSRs to make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made in our administrative review process, Federal court decisions, decisions of our Commissioner, opinions from our Office of the General Counsel, or other interpretations of law and regulations.

This SSR will remain in effect until we publish a notice in the **Federal Register** that rescinds it, or we publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance, Programs Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006—Supplementary Security Income.)

The Acting Commissioner of Social Security, Kilolo Kijakazi, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for the Social Security Administration, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

Policy Interpretation Ruling

SSR 22–1p: Titles II and XVI: Fraud and Similar Fault Redeterminations Under Sections 205(u) and 1631(e)(7) of the Social Security Act

This Social Security Ruling (SSR) rescinds and replaces SSR 16–1p: ''Titles II and XVI: Fraud and Similar Fault Redeterminations Under Sections 205(u) and 1631(e)(7) of the Social Security Act.''

Purpose: To explain the process we use to redetermine an individual's entitlement to benefits or eligibility for payments under titles II or XVI of the Social Security Act (Act) when there is reason to believe that fraud or similar fault was involved in that individual's original application for benefits or payments.[1]

Citations (Authority): Sections 205(u) and 1631(e)(7) of the Social Security Act, 42 U.S.C. 405(u) and 1383(e)(7), as amended; 20 CFR 404.704, 404.708, 404.1512, 404.1520, 416.912, 416.920, 416.924, and 422.130.

Dates: We will apply this notice on May 17, 2022.

Introduction

The Social Security Independence and Program Improvements Act of 1994, Public Law 103–296, amended the Act to add provisions addressing fraud or similar fault. These amendments to sections 205 and 1631 of the Act require us to immediately redetermine an individual's entitlement to monthly insurance benefits under title II or eligibility for payments under title XVI if there is reason to believe that fraud or similar fault was involved in the individual's application for such benefits or payments.

The Act further provides that, when we redetermine entitlement or eligibility, or when we make an initial determination of entitlement or eligibility, ''we shall disregard any evidence if there is reason to believe that fraud or similar fault was involved in the providing of such evidence.''[2] If, after redetermining entitlement to benefits or eligibility for payments, we determine that the evidence does not support entitlement to benefits or eligibility for payments, we may terminate such entitlement or eligibility and may treat benefits or payments paid based on such evidence as overpayments.

This ruling explains the standards we use when we determine whether there is reason to believe that fraud or similar fault was involved in providing evidence in connection with an application for benefits or payments. The ruling applies to all applications for benefits under title II and payments under title XVI of the Act; *e.g.,* claims for old-age and survivors benefits and disability benefits under title II of the Act, and applications for Supplemental Security Income payments for the aged, blind, and disabled under title XVI of the Act.

This ruling also describes the process we use when we redetermine an individual's entitlement to benefits or eligibility for payments when there is reason to believe that fraud or similar fault was involved in that individual's original application for benefits or payments.

This ruling does not replace or limit other appropriate standards and criteria for development and evaluation of claims in accordance with our rules. There may be instances in which we will not disregard evidence under the statutory provisions discussed in this ruling, but nevertheless, factors may exist that justify considering the evidence in question less persuasive or probative than other evidence.

Policy Interpretation

A. General

1. Sections 205(u) and 1631(e)(7) of the Act require us to immediately redetermine an individual's entitlement to monthly insurance benefits under title II or eligibility for payments under title XVI if there is reason to believe that fraud or similar fault was involved in the individual's application for benefits or payments.

2. The Act requires us to redetermine an individual's entitlement or eligibility immediately, unless a United States Attorney or other Department of Justice prosecutor, or equivalent State prosecutor, with jurisdiction over potential or actual-related criminal cases, certifies, in writing, that there is a substantial risk that our action with regard to beneficiaries or recipients in a particular investigation would jeopardize the criminal prosecution of a person involved in a suspected fraud.

3. We may discover suspected fraud or similar fault related to a claim for benefits or payments or in the provision of the evidence in a variety of ways. Most often, we learn about fraud from our Office of the Inspector General (OIG). OIG is responsible for investigating fraud within our programs and must notify us under section 1129(l) of the Act when it has reason to believe that fraud was involved in an individual's claim for benefits or payments. We refer to this notification as a section 1129(l) referral. We may also learn about fraud from a Federal or State prosecutor during the course of a criminal investigation or prosecution. With regard to similar fault, as we administer our programs, we may uncover information that provides a reason to believe similar fault was involved in the provision of evidence in an individual's claim for benefits or payments.

4. We may find there is reason to believe fraud or similar fault was involved in a claim for benefits or payments, or in providing evidence, based on the actions of any individual whose actions affect an application for benefits or payments, or the evidence provided in support of it, even when such an individual has no direct relationship to the affected claimant, beneficiary, or recipient or acts without

[1] Fraud and similar fault redeterminations under sections 205(u) and 1631(e)(7) of the Act are distinct from reopenings as described in 20 CFR 404.987–404.996 and 20 CFR 416.1487–416.1494. Fraud and similar fault redeterminations are also distinct from redeterminations of Supplemental Security Income eligibility under title XVI of the Act as described in 20 CFR 416.204 and 416.987.

[2] See 42 U.S.C. 405(u)(1)(B), 1383(e)(7)(A)(ii).

the affected claimant's, beneficiary's, or recipient's knowledge or participation. These individuals may include, but are not limited to, claimants, beneficiaries, auxiliaries, recipients, spouses, representatives, medical sources, translators, interpreters, and representative payees. For example, we may have reason to believe a medical source or a representative provided false information to support a claim without the knowledge or participation of the beneficiary or the recipient.

5. When we redetermine an individual's entitlement to benefits or eligibility for payments under sections 205(u) or 1631(e)(7) of the Act, we must disregard evidence if there is reason to believe that fraud or similar fault was involved in providing that evidence.

6. Except for evidence we are required to disregard under the Act, we will consider all other evidence that relates to the individual's entitlement or eligibility during the period at issue in the redetermination, in accordance with our rules. Even if we disregard evidence, we will evaluate the remaining evidence of record and determine whether that evidence supports a finding of entitlement to benefits or eligibility for payments. This includes evidence included in the record at the time of the original favorable determination or decision, along with evidence provided during the redetermination process. When requested, we will help individuals obtain evidence relevant to the redetermination.

7. If, after redetermining an individual's entitlement to monthly insurance benefits under title II or eligibility for payments under title XVI, we determine that the evidence does not support such entitlement to benefits or eligibility for payments, we may terminate such entitlement or eligibility and may treat benefits paid or payments made based on such evidence as overpayments.

8. If an individual disagrees with our finding that the evidence does not support his or her entitlement or eligibility at the time of the original favorable determination or decision, that individual may appeal our determination or decision. Together with such an appeal, an individual may object to our finding to disregard evidence under the Act. We will consider any appeal in accordance with our rules for administrative review.

9. If the individual believes he or she was disabled at any point after the period at issue in the redetermination, he or she may file a new application while appealing our determination or decision.[3]

10. If we assess an overpayment, we will apply the provisions of 20 CFR part 404, subpart F (20 CFR 404.501 *et seq.*) and 20 CFR part 416, subpart E (20 CFR 416.501 *et seq.*). We will consider a request to waive the overpayment in accordance with our rules.

B. Definitions

1. *Fraud.* Fraud exists when a person, with the intent to defraud, either makes or causes to be made, a false statement or misrepresentation of a material fact for use in determining rights under the Act; or conceals or fails to disclose a material fact for use in determining rights under the Act.

2. *Similar Fault.* Similar fault is involved with respect to a determination if: ''an incorrect or incomplete statement that is material to the determination is knowingly made, or information that is material to the determination is knowingly concealed.''[4]

3. *Material.* Material describes a statement or information, or an omission from a statement or information that could influence us in determining entitlement to benefits under title II or eligibility for payments under title XVI of the Act.

4. *Knowingly.* Knowingly describes a person's awareness or understanding regarding the correctness or completeness of the information he or she provides us, or the materiality of the information he or she conceals from us.

5. *Reason to Believe.* Reason to believe means reasonable grounds to suspect that fraud or similar fault was involved in the application or in the provision of evidence. The reason to believe standard requires more than mere suspicion, speculation, or a hunch, but it does not require a preponderance of evidence.

C. How We Redetermine an Individual's Entitlement to Benefits or Eligibility for Payments Under Sections 205(u) and 1631(e)(7) of the Act

1. Under sections 205(u) and 1631(e)(7) of the Act, we will immediately redetermine an individual's entitlement to benefits or eligibility for payments when there is reason to believe that fraud or similar fault was involved in an individual's application for benefits or payments, including the providing of evidence.

2. We will disregard any evidence if we find there is reason to believe that fraud or similar fault was involved in the providing of such evidence. We will consider all evidence in the case record before determining whether specific evidence must be disregarded. In determining if there is reason to believe fraud or similar fault was involved, adjudicators may make reasonable inferences based on the totality of the circumstances such as facts or case characteristics common to patterns of known or suspected fraudulent activity. For us to disregard evidence it is not necessary that the affected beneficiary or recipient had knowledge of or participated in the fraud or similar fault. We will fully document the record with the description of the disregarded evidence and the reasons for disregarding the evidence.

a. We will disregard evidence supplied, prepared, or signed by a medical source or nonmedical source when there is reason to believe that the source knowingly (1) provided incorrect or incomplete evidence material to the determination or decision or (2) concealed or failed to disclose evidence material to the determination or decision, even if it includes a report prepared or signed by another source.

b. In certain circumstances, we may disregard evidence provided by someone who has not committed fraud or similar fault, but whose evidence relies on other evidence involving fraud or similar fault. For example, we may disregard parts of a medical source's opinion, which relies on evidence that we disregarded from another medical source. Depending on the extent to which the medical source relied on the disregarded evidence, we may disregard some or all of the medical source's opinion.

c. Before we disregard evidence pursuant to sections 205(u)(1)(B) and 1631(e)(7)(A)(ii) of the Act at the hearings level of our administrative review process, we will consider the individual's objection to the disregarding of that evidence. After considering any objections, our adjudicators will decide whether there is reason to believe that fraud or similar fault was involved in providing evidence in the individual's case.

d. If we do not find there is reason to believe evidence provided by a source involved fraud or similar fault, we will consider the evidence in accordance with our rules, such as our rules regarding evaluating symptoms and medical evidence. We will adhere to existing due process and confidentiality requirements during the process of resolving fraud or similar fault issues.

[3] SSR 11–1p: Titles II and XVI: Procedures for Handling Requests to File Subsequent Applications for Disability Benefits does not apply in the context of fraud or similar fault redeterminations.

[4] See 42 U.S.C. 405(u)(2), 1383(e)(7)(B).

3. We will consider the claim only through the date of the final determination or decision on the beneficiary's or recipient's application for benefits or payments (*i.e.,* the date of the original favorable determination or decision).

4. We will consider evidence relevant to the issues we decide during a redetermination. For example, we will consider evidence that postdates the original date of the favorable determination or decision if that evidence relates to the period at issue in the redetermination. We will not develop evidence about new medical conditions or impairments arising after the date of the original favorable determination or decision.

5. Generally, a finding that there is reason to believe fraud or similar fault was involved in providing evidence does not constitute complete adjudicative action on the redetermination. Even if we disregard evidence, we will evaluate the remaining evidence of record and determine whether that evidence supports a finding of entitlement to benefits or eligibility for payments.

D. Appeal Rights

1. Our regulations contain examples of administrative actions that are not initial determinations.[5] Our initiation of a redetermination under sections 205(u) and 1631(e)(7) of the Act is not listed as an example in those regulations. However, the initiation of a redetermination is similar to the administrative action of starting or discontinuing a continuing disability review, which is listed as an example in the regulations of an administrative action that is not an initial determination.[6] Therefore, we interpret our regulations to mean that our initiation of a redetermination under sections 205(u) and 1631(e)(7) of the Act is not an initial determination that is subject to administrative or judicial review.

2. After a redetermination, an individual who is dissatisfied with our determination or decision may request an appeal of our determination or decision. In conjunction with such an appeal, an individual may object to our finding to disregard evidence under the Act. We will consider any appeal in accordance with our rules for administrative review.

3. An individual may appeal any overpayments we assess, or request waiver of the overpayment. We will consider any appeal of the assessment of an overpayment or a request for waiver of our overpayment in accordance with our rules.[7]

Cross-References: SSR 85–23: Title XVI: Reopening Supplemental Security Income Determinations at Any Time for ''Similar Fault''; SSR 22–2p: Titles II and XVI: Evaluation of Claims Involving the Issue of Similar Fault in the Providing of Evidence.

[FR Doc. 2022–10558 Filed 5–16–22; 8:45 am]

BILLING CODE 4191–02–P

[5] 20 CFR 404.903 and 416.1403.

[6] 20 CFR 404.903(z) and 416.1403(a)(24).

[7] 20 CFR part 404.501–404.545 and 20 CFR 416.501–416.590.

DEPARTMENT OF STATE

[Public Notice: 11733]

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended Extension of Waiver Authority

Pursuant to the authority vested in the President under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (hereinafter ''the Act''), and assigned to the Secretary of State by virtue of Section 1(a) of E.O. 13346 of July 8, 2004, and delegated by Department of State Delegation of Authority 513, of April 7, 2021, I determine, pursuant to Section 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by Section 402 of the Act will substantially promote the objectives of Section 402 of the Act. I further determine that continuation of the waiver applicable to Turkmenistan will substantially promote the objectives of Section 402 of the Act.

This Determination shall be published in the **Federal Register**.

Dated: April 18, 2022.

Wendy Sherman,

Deputy Secretary of State.

[FR Doc. 2022–10575 Filed 5–16–22; 8:45 am]

BILLING CODE 4710–46–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects—Southwest Corridor Light Rail Project, RapidRide Roosevelt (RapidRide J Line) Project, and Northern Bus Garage Renovation Project

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) regarding three projects: Southwest Corridor Light Rail Project, Portland, Tigard, and Tualatin County, Oregon; RapidRide Roosevelt (RapidRide J Line) Project, Seattle, Washington; and Northern Bus Garage Renovation Project, Washington, DC. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: A claim seeking judicial review of FTA actions announced herein for the listed public transportation projects will be barred unless the claim is filed on or before October 14, 2022.

FOR FURTHER INFORMATION CONTACT: Kathryn Loster, Assistant Chief Counsel, Office of Chief Counsel, (312) 353–3869, or Saadat Khan, Environmental Protection Specialist, Office of Environmental Programs, (202) 366–9647. FTA is located at 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions subject to 23 U.S.C. 139(l) by issuing certain approvals for the public transportation projects listed below. The actions on the projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the projects to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA environmental project files for the projects. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information. Contact information for FTA's Regional Offices may be found at *https://www.transit.dot.gov.*

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA (42 U.S.C. 4321–4375), Section 4(f) requirements (23 U.S.C. 138, 49 U.S.C. 303), Section 106 of the National Historic Preservation Act (54 U.S.C. 306108), Section 6(f) of the Land and Water Conservation Fund Act of 1965 (54 U.S.C. 200305), Endangered Species Act (16 U.S.C. 1531), Clean Water Act (33 U.S.C. 1251), the Uniform Relocation and Real Property Acquisition Policies Act (42 U.S.C. 4601), and the Clean Air Act (42 U.S.C.

7401–7671q). This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The projects and actions that are the subject of this notice follow:

1. *Project name and location:* Southwest Corridor Light Rail Project, Portland, Tigard, and Tualatin, Oregon. *Project Sponsor:* Metro and Tri-County Metropolitan Transportation District of Oregon (TriMet), Portland, Oregon. *Project description:* The Project extends the existing MAX light rail transit network with a new 11-mile light rail service serving southwest Portland, Tigard, and Tualatin, Oregon. The new light rail alignment will generally be either center-running within existing or new streets, or adjacent to roadways or railroads. The project includes construction of 13 new stations, as well as up to 2,020 park and ride spaces at 5 new or modified park and ride facilities. Additionally, the project work involves new or rebuilt roadways and bridges, as well as streetscape elements such as sidewalks, bicycle facilities, landscape buffers, and lighting. *Final agency action:* Section 106 Memorandum of Agreement, dated December 15, 2021; Section 4(f) determination dated April 8, 2022; Southwest Corridor Light Rail Project Record of Decision (ROD), dated April 08, 2022. *Supporting documentation:* Southwest Corridor Light Rail Project Final Environmental Impact Statement (FEIS), dated January 13, 2022. Southwest Corridor Light Rail Project Draft Environmental Impact Statement (DEIS), dated May 25, 2018. The ROD, FEIS, DEIS and associated documents can be viewed and downloaded from: *https://www.oregonmetro.gov/southwest-corridor-plan.*

2. *Project name and location:* RapidRide Roosevelt (RapidRide J Line) Project, Seattle, Washington. *Project Sponsor:* Seattle Department of Transportation (SDOT) and King County Metro (Metro), Seattle, Washington. *Project description:* The Project involves implementing a bus rapid transit service with 2.3 miles of new transit lane improvements that serves the neighborhoods from Downtown Seattle to the Roosevelt neighborhood in Seattle, Washington. The project work includes construction of up to 26 new RapidRide stations, bicycle lanes, signal infrastructure, sidewalk upgrades, signage, and roadway channelization. *Final agency action:* Section 106 No Adverse Effect determination, dated April 16, 2021; Section 4(f) *de minimis* impact determination, dated May 14, 2020; RapidRide Roosevelt Project Finding of No Significant Impact (FONSI), dated April 26, 2022. *Supporting documentation:* RapidRide Roosevelt Project Supplemental Environmental Assessment (EA), dated October 13, 2021. RapidRide Roosevelt Project EA, dated January 3, 2020. The FONSI, Supplemental EA, EA and associated documents can be viewed and downloaded from: *https://www.seattle.gov/transportation/projects-and-programs/programs/transit-program/transit-plus-multimodal-corridor-program/rapidride-roosevelt.*

3. *Project name and location:* Northern Bus Garage Renovation Project, Washington, DC. *Project Sponsor:* Washington Metropolitan Area Transit Authority (WMATA), Washington, DC. *Project description:* The Project involves the replacement and renovation of the existing bus garage, which has met its useful life. The structural improvements are needed in order to maintain efficient storage and maintenance, replace deteriorating concrete conditions, better accommodate articulated buses, and reduce deadheading. The project will be constructed within the existing current facility footprint located on an approximately 5.25-acre site at 4615 14th Street, NW, Washington, DC. *Final agency actions:* Section 4(f) individual use determination, dated April 20, 2022; Section 106 Memorandum of Agreement, dated December 20, 2021; and Determination of the applicability of a categorical exclusion pursuant to 23 CFR 771.118(d), dated April 20, 2022. *Supporting documentation:* Documented Categorical Exclusion (CE) checklist and supporting materials, dated April 01, 2022. The CE checklist and associated documents can be viewed and downloaded from: *https://wmata.com/initiatives/plans/northern-bus-garage/building-new.cfm.*

Authority: 23 U.S.C. 139(l)(1).

Mark A. Ferroni,

Deputy Associate Administrator for Planning and Environment.

[FR Doc. 2022–10553 Filed 5–16–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0030]

Agency Request for Information; State Electronic Data Collection Grant Program: Extension of Comment Period

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Extension of comment period.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) received one petition to extend the comment period for a request for information (RFI) notice on the agency's efforts to develop and implement a new discretionary grant program to increase the number of States, U.S. territories, and Indian tribes electronically transferring their motor vehicle crash data to NHTSA. NHTSA published an RFI notice requesting information from interested parties on April 29, 2022. The comment period for the RFI notice was scheduled to end on May 31, 2022. NHTSA is extending the comment period for the April 29, 2022, RFI notice by 45 days.

DATES: The comment period for the RFI notice published on April 29, 2022 is extended to July 15, 2022.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9332 before coming.
- *Fax:* 202–493–2251.

Regardless of how you submit your comments, please mention the docket number identified in the heading of this document.

Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments

from the public to better inform its decision-making process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.* In order to facilitate comment tracking and response, the Agency encourages commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov,* or the street address listed above. To be sure someone is there to help you, please call (202) 366–9332 before coming. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Ms. Barbara Rhea, State Data Reporting Systems Division Chief, NHTSA (phone: 202–366–2714) or you may send an email to Ms. Rhea at *Barbara.rhea@dot.gov.* Address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On April 29, 2022, pursuant to Section 24108(d) of the Infrastructure Investment and Jobs Act, NHTSA published an RFI notice seeking comment on its plans to develop a new State electronic data collection program that requires NHTSA to develop and implement a new discretionary grant program. The new grant program is to provide support to States to upgrade and standardize their State crash data systems to enable electronic data collection, intrastate data sharing, and electronic data transfer to NHTSA. The new program will increase the accuracy, timeliness, and accessibility of the data including data relating to fatalities involving vulnerable road users to States and NHTSA. *See* Public Law 117–58, 24108(d)(3), 135 Stat 429. Eligible States [1] may use these grants for the costs of equipment to upgrade a statewide crash data repository; adoption of electronic crash reporting by law enforcement agencies and increasing alignment of State crash data with the latest Model Minimum Uniform Crash Criteria.[2] This notice requests information from interested parties, including State crash data owners, highway safety offices, law enforcement, and other stakeholders to assist NHTSA in the development of a new State electronic data collection program that supports State crash data system improvements, enhances NHTSA's National Center for Statistics and Analysis (NCSA) data infrastructure where these data will be stored, and shares a subset of the resulting data with the public. NHTSA plans to utilize the information provided under this RFI notice to enhance and support the development of the State electronic data collection discretionary grant program. The comment period for the RFI notice was scheduled to end on May 31, 2022.

Comment Period Extension Requests

The Governors Highway Safety Association (GHSA) requested a 60-day extension of the comment period. The requestor states that the RFI notice addresses several complex topics that would require conducting in-depth review and analysis to develop informed feedback. They suggested the additional time would allow them to conduct the detailed review of the notice and develop appropriate responses. The requestor stated that the additional time would allow for more fully developed feedback to support the agency's next steps.

Agency Decision

NHTSA determined that the requestor provided sufficient justification for an extension, and that the extension is consistent with the public interest. NHTSA agrees that allowing additional time for the public and its stakeholders to provide comments to the questions raised in the RFI notice would better inform NHTSA regarding the various program areas and topics discussed in the RFI notice. Therefore, NHTSA is granting the aforementioned request to extend the comment period; however, NHTSA is extending it for 45 days. A 45-day extension appropriately balances NHTSA's interest in providing the public with sufficient time to comment on the questions raised in the RFI notice with its interest to pursue development of this program in a timely manner and its ability to present proposals at the 2022 Traffic Records Forum, scheduled for August 7–10, 2022.

Authority: S. 24108, Pub. L. 117–58, 135 Stat 429; 49 U.S.C. 30166 and 30182; delegation of authority at 49 CFR 1.95 and 49 CFR 501.8.

Chou-Lin Chen,

Associate Administrator for the National Center for Statistics and Analysis.

[FR Doc. 2022–10510 Filed 5–16–22; 8:45 am]

BILLING CODE 4910–59–P

[1] Under BIL, ''State'' is defined as each of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Northern Mariana Islands and the Secretary of the Interior, acting on behalf of an Indian Tribe. *See* Public Law 117–58, 24108(d)(1)(A).

[2] § 24108(d)(3)(C).

DEPARTMENT OF TRANSPORTATION

[OMB Control No. 2105–XXXX; Docket No. DOT–OST–2020–0084]

Supplemental Notice of Information Collection; Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

AGENCY: Department of Transportation.

ACTION: Supplemental Notice; request for comment.

SUMMARY: The U.S. Department of Transportation has re-initiated OMB review of the following proposed Information Collection Request ''Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)'' for approval under the Paperwork Reduction Act (PRA). The U.S. Department of Transportation previously initiated, but did not complete, such review under 85 FR 64614.

DATES: Submit comments on or before: June 16, 2022.

ADDRESSES: Submit comments identified by Information Collection 2105–XXXX, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments to *https://www.regulations.gov,* will be posted to the docket unchanged.
- *Mail:* U.S. Department of Transportation, Office of the Chief Information Officer, 1200 New Jersey Avenue SE, Washington, DC 20590. ATTN: Chief Data Officer/IC 2105–XXXX, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation).

Instructions: Please submit comments only and cite Information Collection 2105–XXXX, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation) in all correspondence related to this collection. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three business days after submission to verify posting (except allow 30 days for

posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Amira Boland, Office of Management and Budget, 725 17th St. NW, Washington, DC 20006, or via email to *amira.c.boland@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

Title: Improving Customer Experience (OMB Circular A–11, Section 280 Implementation).

Abstract: A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership.

This proposed information collection activity provides a means to garner customer and stakeholder feedback in an efficient, timely manner in accordance with the Administration's commitment to improving customer service delivery as discussed in Section 280 of OMB Circular A–11 at *https://www.performance.gov/cx/a11-280.pdf.* As discussed in OMB guidance, agencies should identify their highest-impact customer journeys (using customer volume, annual program cost, and/or knowledge of customer priority as weighting factors) and select touchpoints/transactions within those journeys to collect feedback.

These results will be used to improve the delivery of Federal services and programs. It will also provide government-wide data on customer experience that can be displayed on *www.performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

As a general matter, these information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The U.S. Department of Transportation will only submit collections if they meet the following criteria.

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used for general service improvement and program management purposes;
- Upon agreement between OMB and the agency all or a subset of information may be released as part of A–11, Section 280 requirements only on *performance.gov*. Summaries of customer research and user testing activities may be included in public-facing customer journey maps or summaries.
- Additional release of data must be done coordinated with OMB.

These collections will allow for ongoing, collaborative and actionable communications between the Agency, its customers and stakeholders, and OMB as it monitors agency compliance on Section 280. These responses will inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on services will be unavailable.

Current Action: Supplementary Notice of New Collection of Information.

Type of Review: New.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Number of Respondents: Below is a preliminary estimate of the aggregate burden hours for this new collection. U.S. Department of Transportation will provide refined estimates of burden in subsequent notices.

Average Expected Annual Number of Activities: Approximately five types of customer experience activities such as feedback surveys, focus groups, user testing, and interviews.

Average Number of Respondents per Activity: 1 response per respondent per activity.

Annual Responses: 2,001,550.

Average Minutes per Response: 2 minutes—60 minutes, dependent upon activity.

Burden Hours: U.S. Department of Transportation requests approximately 101,125 burden hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection *Regulations.gov*.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Daniel Morgan,

Assistant Chief Information Officer for Data Services/Chief Data Officer.

[FR Doc. 2022–10584 Filed 5–16–22; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund Notice of Funds Availability (NOFA) Inviting Applications for the Fiscal Year (FY) 2022 Funding Round of the Small Dollar Loan Program (SDLP)

Funding Opportunities: Small Dollar Loan Program; 2022 Funding Round.

Funding Opportunity Title: Notice of Funds Availability (NOFA) inviting Applications for the fiscal year (FY) 2022 Funding Round of the Small Dollar Loan Program (SDL Program).

Announcement Type: Announcement of funding opportunity.

Funding Opportunity Number: CDFI–2022–SDL.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.025.

Dates:

TABLE 1—FY 2022 SMALL DOLLAR LOAN PROGRAM FUNDING ROUND CRITICAL DEADLINES FOR APPLICANTS

Description	Deadline	Time (eastern time—ET)	Submission method
OMB Standard Form (SF)-424 Mandatory form	June 15, 2022	11:59 p.m	Electronically via *Grants.gov.*
Last day to enter the Employer Identification Number (EIN) and Unique Entity Identifier (UEI) numbers in AMIS.	June 15, 2022	11:59 p.m	Electronically via Awards Management Information System (AMIS).
Last day to contact SDL Program Staff	July 13, 2022	5:00 p.m	Service Request via AMIS or CDFI Fund Helpdesk: 202–653–0421 or *sdlp@cdfi.treas.gov.*
Last day to contact the Office of Compliance Monitoring and Evaluation (CME) and Office of Certification Policy and Evaluation (CPE) staff.	July 13, 2022	5:00 p.m	CCME Helpdesk: 202–653–0423 or Compliance and Reporting AMIS Service Request.
Last day to contact IT Help desk re AMIS support and Application submission.	July 15, 2022	5:00 p.m	CDFI Fund IT Helpdesk: 202–653–0422 or IT AMIS Service Request.
SDL Program Application and Required Attachments.	July 15, 2022	5:00 p.m	Electronically via AMIS.

Executive Summary: The Small Dollar Loan Program (SDL Program) is administered by the Community Development Financial Institutions Fund (CDFI Fund). Through the SDL Program, the CDFI Fund provides (1) grants for Loan Loss Reserves (LLR) to enable a Certified Community Development Financial Institution (CDFI) establish a loan loss reserve fund in order to cover the losses on small dollar loans associated with starting a new small dollar loan program or expanding an existing small dollar loan program; and (2) grants for Technical Assistance (TA) for technology, staff support, and other eligible activities to enable a Certified CDFI to establish and maintain a small dollar loan program. All awards provided through this Notice of Funds Availability (NOFA) are subject to funding availability.

I. Program Description

A. Authorizing Statute: The SDL Program is authorized by Title XII—Improving Access to Mainstream Financial Institutions Act of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111–203), which amended the Riegle Community Development Banking and Financial Institutions Act of 1994 (Pub. L. 103–325) to include the SDL Program (12 U.S.C. 4719). For a complete understanding of the program, the CDFI Fund encourages Applicants to review the SDL Program funding application (referred to hereafter as the ''Application,'' meaning the application submitted in response to this NOFA) and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 1000), which is the Department of the Treasury's codification of the Office of Management and Budget (OMB) government-wide framework for grants management at 2 CFR part 200 (Uniform Requirements). Each capitalized term used in this NOFA, but not defined herein, shall have the respective meanings assigned to them in the Application or the Uniform Requirements. Details regarding Application content requirements are found in the Application and related materials at *www.cdfifund.gov/sdlp.*

B. History: The CDFI Fund was established by the Riegle Community Development and Regulatory Improvement Act of 1994 to promote economic revitalization and community development through investment in and assistance to CDFIs. Since its creation in 1994, the CDFI Fund has provided more than $5.2 billion through a variety of monetary awards programs to CDFIs, community development organizations, and financial institutions. In addition, the CDFI Fund has allocated $66 billion in tax credit allocation authority to Community Development Entities through the New Markets Tax Credit Program (NMTC Program), and has guaranteed more than $1.8 billion in bonds through the CDFI Bond Guarantee Program.

C. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: The Uniform Requirements codify financial, administrative, procurement, and program management standards that Federal award-making agencies must follow. Per the Uniform Requirements, when evaluating Applications, awarding agencies must evaluate the risks to the program posed by each Applicant, and each Applicant's merits and eligibility. These requirements are designed to ensure that Applicants for Federal assistance receive a fair and consistent review prior to an award decision. This review will assess items such as the Applicant's financial stability, quality of management systems, history of performance, and single audit findings. In addition, the Uniform Requirements include guidance on audit requirements and other award compliance requirements for award Recipients.

D. Priorities: The purpose of the SDL Program is to provide grants for LLR and TA to qualified organizations to establish and maintain small dollar loan programs that are safe, affordable, and responsible. SDL Program funding is intended to expand consumer access to financial institutions by providing alternatives to high cost small dollar lending. The SDL Program funding is also intended to help unbanked and underbanked populations build credit, access affordable capital, and allow greater access into the mainstream financial system. To pursue these objectives, the CDFI Fund will prioritize funding for Applications that propose to offer small dollar loan programs that include any of the following characteristics: (1) Offer small dollar loan terms that are at least ninety (90) days; (2) use ability to repay underwriting that considers the borrower's ability to repay a loan based on both the borrower's income and

expenses; (3) make loan decisions within one business day (or twenty-four (24) hours) after receipt of required documents; (4) offer a reduction in the borrower's loan rate if the borrower elects to use automatic debit payments; (5) offer automatic savings features that are built into the regularly-scheduled payments on a loan—provided that the resulting payment is still affordable—or, at a minimum, loans that can be structured so that, subject to the borrower's consent, payments continue for a period of time after the loan is repaid with all of the payments going into a savings vehicle; and (6) offer access to financial education, including credit counseling, particularly if the Applicant offers financial education programs that are used as substitutes for late fees and overdraft fees when borrowers are at risk of incurring a late fee or overdraft fee.

E. Funding limitations:

1. The CDFI Fund reserves the right to fund, in whole or in part, any, all, or none of the Applications submitted in response to this NOFA.

2. *Prohibited Practices:* SDL Program Awards may not be used to support small dollar loan programs that have any of the lending practices and loan characteristics listed in Table 2.

TABLE 2—SDL PROGRAM PROHIBITED PRACTICES

Prohibited practice	Prohibited practice definition
i. High-Rate loans	Loans that exceed the lower of an all-inclusive 36% APR or the interest rate limit as set by the state agency that oversees financial institutions in your state.
ii. Coerced automated repayments	Loans that: (1) Have delayed loan disbursements for borrowers who do not agree to automatic repayments, (2) charge fees for borrowers who select manual payments, or (3) require borrowers to make payments using wire transfers or other means that may result in additional fees for borrowers.
iii. Excessive refinancing	Loans that allow refinancing before at least 80% of the principal has been repaid.
iv. Loan insurance or credit card add-ons	Loans that offer add-on insurance or credit card products, whether they are automatic or not, that require borrowers to opt-in or opt-out to decline coverage, or require the borrower to accept or opt-out of a credit card. For example, loans that automatically include insurance products such as credit, life, disability insurance or involuntary unemployment insurance coverage, or loans that automatically open a credit card for the borrower.
v. Security interests in household goods, vehicles, or deposit accounts. Exception: Loans with a savings account component or credit builder loans.	Loans that are secured, except for loans secured by a savings account for loans with a savings component or credit builder loans.
vi. Excessive late fees on missed loan payments.	Loans that charge more than one fee per late payment.
vii. Abusive overdraft practices	Loans that charge more than one overdraft fee per month. Loans that have posting practices delaying credit for payments that result in overdrafts and fees. Loans that charge overdraft fees more than six times per year.
viii. Aggressive debt collection practices	Loans in which the lender: • Does not offer a workout program or other accommodations to help struggling borrowers before pursuing other debt collection avenues. • All debt collection activities must comply with the Fair Debt Collection Practices Act, whether conducted by the lender, a contract debt collector or sold to third party debt collectors. • Does not disclose to borrowers the details of its debt collection practices or provide notice to a borrower when its account is placed with debt collectors.
ix. Forced arbitration clause and class action ban.	Loan contracts that contain mandatory arbitration clauses that prevent borrowers from seeking legal remedies in court or participating in a class action lawsuit.

F. SDL Program Statutory Requirements:

1. SDL Program Awards may not be used to provide direct loans to consumers.

2. SDL Program Awards may only be used to support small dollar loan programs that offer small dollar loans to consumers that:

(a) Are made in amounts that do not exceed $2,500;

(b) must be repaid in installments;

(c) have no prepayment penalty;

(d) have payments that are reported to a least one of the consumer reporting agencies that compiles and maintains files on consumers on a nationwide basis; and

(e) are underwritten with standards that consider the consumer's ability to repay.

II. Federal Award Information

A. Funding Availability: The CDFI Fund expects to award, through this NOFA, up to $11.1 million, as indicated in the following table:

TABLE 3—SDL PROGRAM ANTICIPATED AWARD AMOUNTS

Eligible awards	Award amount	
	Minimum	Maximum
Loan Loss Reserves	$20,000	Up to 20% of the Applicant's 3 year Projected Total On-Balance Sheet Small Dollar Loans to be closed, not to exceed $350,000.
Technical Assistance	10,000	$150,000.
Combination of Loan Loss Reserves and Technical Assistance.	30,000	$500,000 (Up to 20% of the Applicant's 3 year Projected Total On-Balance Sheet Small Dollar Loans to be closed, not to exceed $350,000 plus $150,000).

Eligible Applicants may submit only one SDL Program Application and therefore will need to determine if they are applying for an LLR grant, a TA grant, or both. The CDFI Fund reserves the right to award more or less than the amounts cited above in each category, based upon available funding and other factors, as appropriate.

B. Types of Awards: The CDFI Fund will provide SDL Program Awards for LLR or TA in the form of grants to support the eligible activities as set forth in this NOFA and Application.

C. Anticipated Start Date and Period of Performance: The Period of Performance for each SDL Program Award begins with the date that the CDFI Fund announces the Recipients of the FY 2022 SDL Program Awards and includes a Recipient's three full consecutive fiscal years after the date of the Award announcement, during which time the Recipient must meet the Performance Goals and Measures (PG&Ms) set forth in the Assistance Agreement. The Budget Period for an SDLP Award is the same as the Period of Performance.

D. Eligible Activities: An SDL Program Award must support or finance activities to establish and maintain small dollar loan programs that are safe, affordable, and responsible. SDL Program Awards may only be used as follows:

1. Loan Loss Reserves: Loan Loss Reserve (LLR) Awards must be set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on small dollar loans. LLR Awards may be used to mitigate losses on a new or established small dollar loan program. LLR Award Recipients must meet Performance Goals and Measures, which will be derived from projections and attestations provided by the Applicant in its Application, prior to the end of the Period of Performance.

2. Technical Assistance: TA Awards may be used for technology, staff support, and other costs associated with establishing and maintaining a small dollar loan program as listed in Table 4. The seven eligible activity categories are: (i) Compensation—Personal Services; (ii) Professional Service Costs; (iii) Travel Costs; (iv) Training and Education Costs; (v) Equipment; (vi) Supplies; and (vii) Development Services. The TA Award must be expended in the seven eligible activity categories before the end of the Period of Performance. None of the eligible activity categories are authorized for indirect costs or an associated indirect cost rate. Any expenses that are prohibited by the Uniform Requirements are unallowable and are generally found in Subpart E-Cost Principles.

SDL Program Recipients must meet certain PG&Ms which will require the Recipient to expend the SDL Program Award on eligible activities and close small dollar loans.

(i)(a) LLR Award Recipients that will use the SDL Program Award to start a new small dollar loan program must expend 50% of the Recipient's first payment amount by the end of the second year of the Period of Performance for loan loss reserves for a new small dollar loan program and expend 100% of the total award amount by the Period of Performance end date for loan loss reserves for a new small dollar loan program. LLR Award Recipients that will use the SDL Program Award to expand an existing small dollar loan program must expend 75% of the Recipient's first payment amount by the end of the first year of the Period of Performance for loan loss reserves to expand an existing small dollar loan program and expend 100% of the total Award amount by the Period of Performance end date for loan loss reserves to expand an existing small dollar loan program.

(i)(b) TA Award Recipients that will use the SDL Program Award to start a new small dollar loan program must expend 50% of the Recipient's first payment amount by the end of the second year of the Period of Performance on eligible activities to start a new small dollar loan program and expend 100% of the total Award amount by the Period of Performance end date on eligible activities to start a new small dollar loan program. TA Award Recipients that will use the SDL Program Award to expand an existing small dollar loan program must expend 75% of the Recipient's first payment amount by the end of the first year of the Period of Performance on eligible activities to expand an existing small dollar loan program and expend 100% of the total Award amount by the Period of Performance end date on eligible activities to expand an existing small dollar loan program.

(ii) All SDL Program Award Recipients must close small dollar loans based on the three-year projected small dollar loan total to be closed as proposed in the Application, demonstrating an increase in lending. This amount may be adjusted based on Award size.

Final PG&Ms may differ and will be set forth in the final SDL Program Assistance Agreement.

For purposes of this NOFA, the seven eligible TA activity categories are defined below:

TABLE 4—ELIGIBLE TECHNICAL ASSISTANCE ACTIVITY CATEGORIES, SUBJECT TO THE APPLICABLE PROVISIONS OF THE UNIFORM REQUIREMENTS

(i) Compensation —Personal Services	TA paid to cover all remuneration, paid currently or accrued, for services of Applicant's employees related to establishing or maintaining the Applicant's small dollar loan program rendered during the Period of Performance under the TA grant in accordance with section 200.430 of the Uniform Requirements. Any work performed directly, but unrelated to the purposes of the TA grant may not be paid as Compensation through a TA grant. For example, the salaries for building maintenance are not related to the purpose of a TA grant and would be deemed unallowable.
(ii) Professional service costs	TA used to pay for professional and consultant services (*e.g.,* such as strategic and marketing plan development) related to establishing or maintaining the Applicant's small dollar loan program, rendered by persons who are members of a particular profession or possess a special skill (*e.g.,* credit analysis, portfolio management), and who are not officers or employees of the Applicant, in accordance with section 200.459 of the Uniform Requirements. Payment for a consultant's services may not exceed the current maximum of the daily equivalent rate paid to an Executive Schedule Level IV Federal employee.

TABLE 4—ELIGIBLE TECHNICAL ASSISTANCE ACTIVITY CATEGORIES, SUBJECT TO THE APPLICABLE PROVISIONS OF THE UNIFORM REQUIREMENTS—Continued

(iii) Travel costs	TA used to pay costs of transportation, lodging, subsistence, and related items incurred by the Applicant's personnel who are on travel status on business related to establishing or maintaining the Applicant's small dollar loan program, in accordance with section 200.475 of the Uniform Requirements. Travel costs do not include costs incurred by the Applicant's consultants who are on travel status. Any payments for travel expenses incurred by the Applicant's personnel but unrelated to carrying out the purpose of the TA grant would be deemed unallowable. As such, documentation must be maintained that justifies the travel as necessary to the TA grant.
(iv) Training and education costs	TA used to pay the cost of training and education provided by the Applicant for employees' development in accordance with section 200.473 of the Uniform Requirements. TA can only be used to pay for training costs incurred by the Applicant's employees related to establishing or maintaining the Applicant's small dollar loan program. Training and education costs may not be incurred by the Applicant's consultants.
(v) Equipment	TA used to pay for tangible personal property, having a useful life of more than one year and a per-unit acquisition cost of at least $5,000, as defined in the Uniform Requirements, related to establishing or maintaining the Applicant's small dollar loan program. For example, items such as information technology systems are allowable as Equipment costs. The Applicant must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 with respect to the purchase of Equipment.
(vi) Supplies	TA used to pay for tangible personal property with a per unit acquisition cost of less than $5,000, as defined in the Uniform Requirements, related to establishing or maintaining the Applicant's small dollar loan program. For example, a desktop computer costing $1,000 is allowable as a Supply cost. The Applicant must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 with respect to the purchase of Supplies.
(vii) Development Services	TA used to pay for activities undertaken by an Applicant that prepares or assists current or potential borrowers to use the Applicant's small dollar loan program. For example, such activities include financial education, including credit counseling.

E. Persistent Poverty Counties: Pursuant to the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) and Consolidated Appropriations Act, 2022 (Pub. L. 117–103), Congress mandated that at least 10% of the CDFI Fund's appropriations be directed to counties that meet the criteria for ''Persistent Poverty'' designation. Persistent Poverty Counties (PPCs) are defined as any county, including county equivalent areas in Puerto Rico, that has had 20% or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and the 2011–2015 5-year data series available from the American Community Survey of the Census Bureau, or any other territory or possession of the United States that has had 20% or more of its population living in poverty over the past 30 years, as measured by the 1990, 2000 and 2010 Island Areas Decennial Censuses, or equivalent data, of the Bureau of the Census and published by the CDFI Fund at: *https://www.cdfifund.gov/Documents/PPC%20updated%20Oct.2017.xlsx.* To comply with this mandate, the CDFI Fund will prioritize funding to Applicants that have headquarters (as stated in the Applicant's Application) located in PPCs.

III. Eligibility Information

A. Eligible Applicants: In order to be eligible to apply for an SDL Program Award, Eligible Applicants are as follows:

1. For LLRs:

(a) A Certified Community Development Financial Institution (CDFI); or

(b) a partnership between a Certified CDFI and a Federally Insured Depository Institution [1] (FIDI) with a primary mission to serve targeted Investment Areas [2].

2. For TA:

(a) A Certified CDFI; or

(b) a partnership between two or more Certified CDFIs.

3. For Combination of LLR and TA:

(a) A Certified CDFI.

Eligible Applicants may submit only one SDL Program Application and therefore will need to determine if they are eligible and applying for LLR, TA, or both.

For purposes of the Application, the term ''Applicant'' refers to an organization applying on its own as a Certified CDFI or refers to the designated lead Certified CDFI applying on behalf of a partnership. The Applicant must use the SDL Program Award to establish or maintain a small dollar loan program. In the case of a partnership, the designated lead Certified CDFI must use the SDL Program Award to establish or maintain a small dollar loan program.

B. Additional Guidance on Applicants Applying as Partnerships: The partnership must designate a lead Certified CDFI for the partnership that will submit the Application. This designated lead Certified CDFI will also submit a written partnership agreement (*e.g.,* Memorandum of Understanding) detailing roles and responsibilities of the partners, partner replacement or substitution restrictions, any financial contributions and profit sharing arrangements, and performance requirements for the entities in the partnership.

A partner may be a FIDI, if the partnership is applying for an LLR Award, or a Certified CDFI, if the partnership is applying for a TA Award. A partner may not apply for its own Award under the FY 2022 SDL Program funding round or apply as a partner for more than one Application submitted under the FY 2022 SDL Program funding round. A partnership is a formal arrangement, as evidenced by a

[1] A ''federally insured depository institution'' is any insured depository institution as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) and any insured credit union as that term is defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

[2] 12 U.S.C. 4702(16), Investment Area—The term ''investment area'' means a geographic area (or areas) including an Indian reservation that—

(A)(i) meets objective criteria of economic distress developed by the Fund, which may include the percentage of low-income families or the extent of poverty, the rate of unemployment or underemployment, rural population outmigration, lag in population growth, and extent of blight and disinvestment; and (ii) has significant unmet needs for loans or equity investments; or

(B) encompasses or is located in an empowerment zone or enterprise community designated under section 1391 of the Internal Revenue Code of 1986.

written partnership agreement (*e.g.,* Memorandum of Understanding), between a Certified CDFI and a FIDI or between two or more Certified CDFIs. The partnership must be designed to accomplish one or more of the strategic goals discussed in the Business Strategy and Community Impact section of the SDL Applicant's Application and be integral to the successful completion of the Applicant's strategic goal(s). The partnership should be such that the Applicant's strategic goal(s) would not be achievable without the direct input and/or assistance of the partner. An Applicant that collaborates or coordinates with a FIDI or a CDFI to achieve the strategic goals detailed in the Application is not required to apply as a partnership. Applicants that apply as a partnership will be evaluated based on the same criteria as Applicants that apply without a partnership. If selected to receive an SDL Program Award, the lead Certified CDFI Recipient will be solely responsible for carrying out the activities described in its Application and complying with the terms and conditions of the Assistance Agreement. The partner(s) will not be a co-Recipient of the award. As such, the lead Certified CDFI Recipient will be prohibited from using the SDL Program Award to fund any activity carried out directly by the partner or an Affiliate or Subsidiary thereof. Examples of partnerships include the following:

Applying as a Partnership

Example 1: ABC Certified CDFI has a strategic goal of increasing its small dollar lending by X% over X number of years. ABC Certified CDFI will request an SDL Program Award for LLR to mitigate losses on the small dollar loans it provides as it seeks to expand its small dollar loan program. ABC Certified CDFI has a Partnership Agreement in place with a local FIDI in which the FIDI will refer all small dollar loan candidates to ABC Certified CDFI to expand ABC Certified CDFI's small dollar loan program. ABC Certified CDFI will explain in its narrative and Partnership Agreement how a SDL Program Award for LLRs and the referrals from the local FIDI partner will ensure that its strategic goal of increasing small dollar lending is achieved.

Example 2: XYZ Certified CDFI has a strategic goal to provide a new small dollar loan product. XYZ Certified CDFI will request a SDL Program Award for TA to upgrade its technology systems to support a new small dollar loan product. XYZ Certified CDFI has a Partnership Agreement in place with a Certified CDFI that will provide free financial counseling services to the XYZ Certified CDFI's small dollar loan Applicants. XYZ Certified CDFI chooses to apply as a partnership with the Certified CDFI as its partner. XYZ Certified CDFI will explain in its narrative and Partnership Agreement how a SDL Program Award for TA and the financial counseling provided to potential borrowers will support the growth of the new small dollar loan program.

Note: A Certified CDFI Depository Institution Holding Company Applicant that intends to carry out the activities of an Award through its Subsidiary Certified CDFI Insured Depository Institution should not apply as a partnership. Instead, the Certified CDFI Depository Institution Holding Company should apply as a sole entity. Table 5 indicates the criteria that each Application must meet in order to be eligible for an SDL Program Award pursuant to this NOFA.

TABLE 5—ELIGIBILITY REQUIREMENTS FOR SDL PROGRAM APPLICANTS

All Applicants	• Must be a Certified CDFI as set forth in 12 CFR 1805.201 and the CDFI Fund has officially notified the entity that it meets all CDFI Certification requirements as of the publication date of this NOFA. ○ The CDFI Fund will consider an Application submitted by an Applicant that has pending noncompliance issues with its Annual Certification and Data Collection Report if the CDFI Fund has not yet made a final compliance determination. ○ If a Certified CDFI loses its certification at any point prior to the award announcement, the Application will be deemed ineligible and no longer be considered for an Award by the CDFI Fund. • The financial information in the Application (including any uploaded attachments) should only reflect the activities of the entity that will carry out the proposed award activities. Do not include financial or portfolio information from parent companies, Affiliates, or Subsidiaries in the Application. Also, do not include financial or portfolio information from partner entities, if the Applicant is applying as a partnership. • An Applicant that applies on behalf of another organization will be rejected without further consideration, other than Depository Institution Holding Companies (see below).
FIDI Partner	• Is not required to be a Certified CDFI. • Must have a primary mission to serve targeted Investment Areas.
Application and submission overview through *Grants.gov* and Awards Management Information System (AMIS).	• Applicants must submit the Required Application Documents listed in Table 6. • The CDFI Fund will only accept Applications that use the official Application templates provided on the *Grants.gov* and AMIS websites. Applications submitted with alternative or altered templates will not be considered. • Applicants undergo a two-step process that requires the submission of Application documents by two separate deadlines in two different locations: (1) The SF–424 in *Grants.gov* and (2) all other Required Application Documents in AMIS. • *Grants.gov* and the Standard Form 424 (SF–424): ○ *Grants.gov*: Applicants must submit the SF–424, Application for Federal Assistance. ○ All Applicants must register in the *Grants.gov* system to successfully submit an Application. The CDFI Fund strongly encourages Applicants to register as soon as possible. ○ The CDFI Fund will not extend the SF–424 application deadline for any Applicant that started the *Grants.gov* registration process on, before, or after the date of the publication of this NOFA, but did not complete it by the deadline, except in the case of a Federal government administrative or Federal technological error that directly resulted in a late submission of the SF–424. ○ The SF–424 must be submitted in *Grants.gov* on or before the deadline listed in Table 1 and Table 6. Applicants are strongly encouraged to submit their SF–424 as early as possible in the *Grants.gov* portal. ○ The deadline for the *Grants.gov* submission is before the AMIS submission deadline.

TABLE 5—ELIGIBILITY REQUIREMENTS FOR SDL PROGRAM APPLICANTS—Continued

	○ The SF–424 must be submitted under the SDL Program Funding Opportunity Number for the SDL Program Application. ○ If the SF–424 is not accepted by *Grants.gov* by the deadline, the CDFI Fund will not review any material submitted in AMIS and the Application will be deemed ineligible. • AMIS and all other Required Application Documents listed in Table 6: ○ AMIS is an enterprise-wide information technology system. Applicants will use AMIS to submit and store organization and Application information with the CDFI Fund. ○ Applicants are only allowed one SDL Program Application submission in AMIS. ○ Each Application in AMIS must be signed by an Authorized Representative. ○ Applicants must ensure that the Authorized Representative is an employee or officer of the Applicant, authorized to sign legal documents on behalf of the organization. Consultants working on behalf of the organization may not be designated as Authorized Representatives. ○ Only the Authorized Representative or Application Point of Contact, included in the Application, may submit the Application in AMIS. ○ All Required Application Documents must be submitted in AMIS on or before the deadline specified in Tables 1 and 6. ○ The CDFI Fund will not extend the deadline for any Applicant except in the case of a Federal government administrative or Federal technological error that directly resulted in the late submission of the Application in AMIS.
Employer Identification Number (EIN)	• Applicants must have a unique EIN assigned by the Internal Revenue Service (IRS). • The CDFI Fund will reject an Application submitted with the EIN of a parent or Affiliate organization. • The EIN in the Applicant's AMIS account must match the EIN in the Applicant's System for Award Management (SAM) account. The CDFI Fund reserves the right to reject an Application if the EIN in the Applicant's AMIS account does not match the EIN in its SAM account. • Applicants must enter their EIN into their AMIS profile by the deadline specified in Tables 1 and 6.
Unique Entity Identifier (UEI)	• The transition from the Dun and Bradstreet Universal Numbering System (DUNS) to UEI is a federal, government-wide initiative. • The CDFI Fund will reject an Application submitted with the UEI number of a parent or Affiliate organization. • The UEI number in the Applicant's AMIS account must match the UEI number in the Applicant's *Grants.gov* and SAM accounts. The CDFI Fund will reject an Application if the UEI number in the Applicant's AMIS account does not match the UEI number in its *Grants.gov* and SAM accounts. • Applicants must enter their UEI number into their AMIS profile on or before the deadline specified in Tables 1 and 6. • For Applicants applying as a partnership, the UEI number of the designated lead Certified CDFI Applicant in AMIS must match the UEI number on the SF–424 submitted through *Grants.gov*.
System for Award Management (SAM)	• SAM is a web-based, government-wide application that collects, validates, stores, and disseminates business information about the federal government's trading partners in support of the contract awards, grants, and electronic payment processes. • Applicants must register in SAM as part of the *Grants.gov* registration process. • Applicants that have an active SAM registration are already assigned an UEI. Applicants must also have an EIN number in order to register in SAM. • Applicants must be registered in SAM in order to submit an SF–424 in *Grants.gov*. • The CDFI Fund reserves the right to deem an Application ineligible if the Applicant's SAM account expires during the time period between the submission of the Applicant's SF–424 and the Award announcement, or is set to expire before September 30, 2022, and the Applicant does not re-activate, or renew, as applicable, the account within the deadlines that the CDFI Fund communicates to affected Applicants during the Application evaluation period.
AMIS Account	• The Authorized Representative and/or Application Point of Contact must be included as ''users'' in the Applicant's AMIS account. • An Applicant that fails to properly update its AMIS account may miss important communication from the CDFI Fund and/or may not be able to successfully submit an Application.
501(c)(4) status	• Pursuant to 2 U.S.C. 1611, any 501(c)(4) organization that engages in lobbying activities is not eligible to receive a SDL Program grant.
Compliance with Nondiscrimination and Equal Opportunity Statutes, Regulations, and Executive Orders.	• An Applicant may not be eligible to receive an award if proceedings have been instituted against it in, by, or before any court, governmental agency, or administrative body, and a final determination within the last three years indicates the Applicant has violated any of the following laws, including but not limited to: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Age Discrimination Act of 1975, (42 U.S.C. 6101–6107), and Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency.
Depository Institution Holding Companies (DIHC) [3] Applicant.	• In the case where a Certified CDFI Depository Institution Holding Company Applicant intends to carry out the activities of an award through its Subsidiary Certified CDFI Insured Depository Institution, the Application must be submitted by the Certified CDFI Depository Institution Holding Company and reflect the activities and financial performance of the Subsidiary Certified CDFI Insured Depository Institution.

TABLE 5—ELIGIBILITY REQUIREMENTS FOR SDL PROGRAM APPLICANTS—Continued

	• If a Certified CDFI Depository Institution Holding Company and its Certified CDFI Subsidiary Insured Depository Institution both apply for a SDL Program grant, only the Depository Institution Holding Company will receive an Award, not both. In such instances, the Subsidiary Insured Depository Institution will be deemed ineligible. • Authorized Representatives of both the Depository Institution Holding Company and the Subsidiary CDFI Insured Depository Institution must certify that the information included in the Application represents that of the Subsidiary CDFI Insured Depository Institution, and that the Award funds will be used to support the Subsidiary CDFI Insured Depository Institution for the eligible activities outlined in the Application.
Use of Award	• All Awards made through this NOFA must be used to support the Applicant's activities in at least one of the Eligible Activity Categories (see Section II. (D)). • With the exception of Depository Institution Holding Company Applicants, Awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent. • The Recipient of any Award made through this NOFA must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs. • For Applicants applying as a partnership, only the designated lead Certified CDFI may use the Award to carry out the activities of the award.
Requested Award amount	• An Applicant must state its requested Award amount in the Application in AMIS. An Applicant that does not include this amount will not be allowed to submit an Application.
Pending resolution of noncompliance	• If an Applicant (or Affiliate of an Applicant) that is a prior recipient or allocatee under any CDFI Fund program: (i) Has demonstrated it has been in noncompliance with a previous assistance agreement, award agreement, allocation agreement, bond loan agreement, or agreement to guarantee and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance with or default of its previous agreement, the CDFI Fund will consider the Applicant's Application under this NOFA pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance.
Noncompliance or default status	• The CDFI Fund will not consider an Application submitted by an Applicant that is a prior CDFI Fund award recipient or allocatee under any CDFI Fund program if, as of the AMIS Application deadline in this NOFA, (i) the CDFI Fund has made a final determination in writing that such Applicant (or Affiliate of such Applicant) is in noncompliance with or default of a previously executed assistance agreement, award agreement, allocation agreement, bond loan agreement, or agreement to guarantee, and (ii) the CDFI Fund has provided written notification that such entity is ineligible to apply for or receive any future CDFI Fund awards or allocations. Such entities will be ineligible to submit an Application for such time period as specified by the CDFI Fund in writing. • The CDFI Fund will not consider any Applicant that has defaulted on a loan from the CDFI Fund within five years of the Application deadline.
Debarment/Do Not Pay Verification	• The CDFI Fund will conduct a debarment check and will not consider an Application submitted by an Applicant if the Applicant (or Affiliate of an Applicant) is delinquent on any Federal debt. • The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal government. The Do Not Pay Business Center provides delinquency information to the CDFI Fund to assist with the debarment check.
Regulated Institutions [4]	• Each Regulated Institution SDL Program Applicant must have a CAMELS/CAMEL rating (rating for banks and credit unions, respectively) or equivalent type of rating by its regulator (collectively referred to as "CAMELS/CAMEL rating") of a "1", "2", or "3". • SDL Program Applicants with CAMELS/CAMEL ratings of "4" or "5" will not be eligible for awards. • The CDFI Fund will also evaluate material concerns identified by the Appropriate Federal Banking Agency in determining the eligibility of Regulated Institution Applicants.

Any Applicant that does not meet the criteria in Table 5 is ineligible to apply for an SDL Program Award under this NOFA.

C. Contacting the CDFI Fund: Accordingly, Applicants that are prior Recipients and/or allocatees under any CDFI Fund program are advised to comply with requirements specified in an Assistance Agreement, allocation agreement, bond loan agreement, or agreement to guarantee, and to ensure their Affiliates are in compliance with any agreements. All outstanding reporting and compliance questions should be directed to the Office of Compliance Monitoring and Evaluation (CME) Help Desk by AMIS Service Requests or by telephone at (202) 653–0421; except in the case of SDL Program reporting and compliance questions, which should be directed to the SDL Program Help Desk by completing a Service Request through AMIS using ''Small Dollar Loan Program'' for the Service Request program. Alternatively, the public can contact SDL Program staff via email at *SDLP@cdfi.treas.gov* or by telephone at (202) 653–0421. The CDFI Fund will not respond to Applicants' reporting or compliance telephone calls or email inquiries that are received after 5:00 p.m. ET on July 13, 2022 until after the Application deadline. The CDFI Fund will respond to technical issues related to AMIS

[3] Depository Institution Holding Company or DIHC means a Bank Holding Company or a Savings and Loan Holding Company.

[4] Regulated Institutions include Insured Credit Unions, Insured Depository Institutions, State-Insured Credit Unions and Depository Institution Holding Companies.

Accounts through 5:00 p.m. ET on July 15, 2022, via AMIS Service Requests, or at *AMIS@cdfi.treas.gov,* or by telephone at (202) 653–0422.

D. Matching Funds Requirements: The Matching Funds requirement for SDL Program Applicants was waived in the final FY 2021 and 2022 appropriations. Therefore, SDL Program Applicants are not required to provide Matching Funds.

E. Other Eligibility Criteria:

1. *How Affiliated Entities Can Submit an Application:* As part of the Application review process, the CDFI Fund considers whether Applicants are Affiliates, as such term is defined in 12 CFR 1807.104. If an Applicant and its Affiliate(s) wish to submit an Application, they must do so through one of the Affiliated entities, in one Application; an Applicant and its Affiliates may not submit separate Applications. If Affiliates submit multiple or separate Applications, the CDFI Fund may, at its discretion, reject all such Applications received or select only one of the submitted Applications to deem eligible, assuming that Application meets all other eligibility criteria in Section III of this NOFA. Furthermore, an Applicant that receives an award in this SDL Program round may not become an Affiliate of another Applicant that receives an award in this SDL Program round at any time after the submission of an SDL Program Application under this NOFA. This requirement will also be a term and condition of the Assistance Agreement (see Application Frequently Asked Questions on the CDFI Fund's website at *http://www.cdfifund.gov/sdlp* for more details).

2. *Required Loan Features:* An Applicant will not be eligible to receive an SDL Program Award if the Applicant fails to demonstrate in the Application that its SDL Program Award would be used to establish or maintain a small dollar loan program that offers small dollar loans to consumers that:

(a) Are made in amounts that do not exceed $2,500;

(b) must be repaid in installments;

(c) have no prepayment penalty; and

(d) have payments that are reported to at least one of the consumer reporting agencies that complies and maintain files on consumers on a nationwide basis.

3. *Prohibited Practices.* Applicants are not eligible to use SDL Program Awards to support small dollar loan programs that have the lending practices and loan characteristics listed in Table 2.

IV. Application and Submission Information

A. Address to Request Application Package: Application materials can be found on the *Grants.gov* and the CDFI Fund's website at *www.cdfifund.gov/sdlp.* Applicants may request a paper version of any Application material by contacting the CDFI Fund Help Desk by email at *sdlp@cdfi.treas.gov* or by telephone at (202) 653–0421.

B. Content and Form of Application Submission: The CDFI Fund will post to its website, at *www.cdfifund.gov/sdlp,* instructions for accessing and submitting an Application. Detailed Application content requirements are found in the Application and related guidance documents.

All Applications must be prepared in English and calculations must be made in U.S. dollars. Table 6 lists the required funding Application documents for the FY 2022 SDL Program Round. Applicants must submit all required documents for the Application to be deemed complete. Please be aware that an Applicant that fails to submit audited financial statements for its three most recently completed fiscal years will be deemed as not having a complete Application and will be considered ineligible. The CDFI Fund reserves the right to request and review other pertinent or public information that has not been specifically requested in this NOFA or the Application. Information submitted by the Applicant that the CDFI Fund has not specifically requested will not be reviewed or considered as part of the Application. Information submitted must accurately reflect the Applicant's activities and/or its Subsidiary Insured Depository Institution, in the case where the Applicant is an Insured Depository Institution Holding Company.

TABLE 6—FUNDING APPLICATION DOCUMENTS

Application document	Submission format	Required?
Standard Form (SF) 424 Mandatory Form	Fillable PDF in *Grants.gov*	Required for all Applicants.
SDL Program Application	AMIS	Required for all Applicants.
Attachments to the Application:		
Audited financial statements (three most recently completed fiscal years prior to the publication date of this NOFA).	PDF in AMIS	Required only for Loan funds, venture capital funds, and other non-Regulated Institutions.
Management Letter for the Applicant's Most Recently Completed Fiscal Year. The Management Letter is prepared by the Applicant's auditor and is a communication on internal control over financial reporting, compliance, and other matters. The Management Letter contains the auditor's findings regarding the Applicant's accounting policies and procedures, internal controls, and operating policies, including any material weaknesses, significant deficiencies, and other matters identified during auditing. The Management Letter may include suggestions for improving on identified weaknesses and deficiencies and/or best practice suggestions for items that may not be considered to be weaknesses or deficiencies. The Management Letter may also include items that are not required to be disclosed in the annual audited financial statements. The Management Letter is distinct from the auditor's Opinion Letter, which is required by Generally Accepted Accounting Principles (GAAP). Management Letters are not required by GAAP, and are sometimes provided by the auditor as a separate letter from the audit itself.	PDF in AMIS	Required only for Loan funds, venture capital funds, and other non-Regulated Institutions.
Year-end call reports for Applicant's three most recently completed fiscal years prior to the publication date of the NOFA (for additional guidance see FAQ).	PDF in AMIS	Required only for Regulated Institutions.

TABLE 6—FUNDING APPLICATION DOCUMENTS—Continued

Application document	Submission format	Required?
A Qualified Federally Insured Depository Institution (FIDI) Partnership Attestation Form demonstrating that the FIDI has a primary mission of serving targeted Investment Areas.	PDF in AMIS	Required only for a FIDI that is applying as a partnership with a Certified CDFI for an LLR Award.
A Partnership Agreement between a Certified CDFI and FIDI, that has a primary mission of serving targeted Investment Areas, applying for an LLR Award, *or* a Partnership Agreement between or among two or more Certified CDFIs applying for a TA Award detailing the terms of their partnership to establish or maintain a small dollar loan program.	PDF in AMIS	Required only for: (1) A FIDI and a Certified CDFI applying for an LLR Award; and (2) two or more Certified CDFIs that are applying as a partnership for a TA Award.

The CDFI Fund has a sequential, two-step process that requires the submission of Application documents in separate systems and on separate deadlines. The SF–424 form must be submitted through *Grants.gov* and all other Application documents through the AMIS portal. The CDFI Fund will not accept Applications via email, mail, facsimile, or other forms of communication, except in extremely rare circumstances that have been pre-approved by the CDFI Fund. The separate Application deadlines for the SF–424 and all other Application materials are listed in Tables 1 and 6. Only the Authorized Representative for the Organization or Application Point of Contact designated in AMIS may submit the Application through AMIS.

Applicants are strongly encouraged to submit the SF–424 as early as possible through *Grants.gov* in order to provide sufficient time to resolve any potential submission issues. Applicants should contact *Grants.gov* directly with questions related to the registration or submission process, as the CDFI Fund does not administer the *Grants.gov* system.

The CDFI Fund strongly encourages Applicants to start the *Grants.gov* registration process as soon as possible, as it may take several weeks to complete (refer to the following link: *http://www.grants.gov/web/grants/register.html*). An Applicant that has previously registered with *Grants.gov* must verify that its registration is current and active. If an Applicant has not previously registered with *Grants.gov*, it must first successfully register in *SAM.gov*, as described in Section IV.D below.

C. Unique Entity Identifier: The Unique Entity Identifier (UEI) has replaced the Dun and Bradstreet Universal Numbering System (DUNS) number. The UEI, generated in the System for Award Management (*SAM.gov*), has become the official identifier for doing business with the federal government. This transition allows the federal government to streamline the entity identification and validation process, making it easier and less burdensome for entities to do business with the federal government. If an entity is registered in *SAM.gov* today, its UEI has already been assigned and is viewable in *SAM.gov*, this includes inactive registrations. New registrants will be assigned a UEI as part of their SAM registration.

D. System for Award Management: Any entity applying for Federal grants or other forms of Federal financial assistance through *Grants.gov* must be registered in SAM before submitting its Application materials through that platform. When accessing *SAM.gov*, users will be asked to create a login.gov user account (if they do not already have one). Registration in SAM is required as part of the *Grants.gov* registration process. Going forward, users will use their *login.gov* username and password every time when logging into *SAM.gov*. The SAM registration process can take four weeks or longer to complete so Applicants are strongly encouraged to begin the registration process upon publication of this NOFA in order to avoid potential Application submission issues. An original, signed notarized letter identifying the authorized entity administrator for the entity associated with the UEI number is required by SAM and must be mailed to the Federal Service Desk. This requirement is applicable to new entities registering in SAM or on existing registrations where there is no existing entity administrator. Existing entities with registered entity administrators do not need to submit an annual notarized letter.

Applicants that have previously completed the SAM registration process must verify that their SAM accounts are current and active. Applicants are required to maintain a current and active SAM account at all times during which it has an active Federal award or an Application under consideration for an award by a Federal awarding agency.

The CDFI Fund will not consider any Applicant that fails to properly register or activate its SAM account and, as a result, is unable to submit its Application by the Application deadline. Applicants must contact SAM directly with questions related to registration or SAM account changes, as the CDFI Fund does not maintain this system. For more information about SAM, please visit *https://www.sam.gov* or call 866–606–8220.

TABLE 7—GRANTS.GOV REGISTRATION TIMELINE SUMMARY

Step	Agency	Estimated minimum time to complete
Register in *SAM.gov*	System for Award Management (SAM). This step will include obtaining a UEI	Four Weeks.*
Register in *Grants.gov*	*Grants.gov*	One Week.**

* Applicants are advised that the stated duration are estimates only and represent minimum timeframes. Actual timeframes may take longer. The CDFI Fund will not consider any Applicant that fails to properly register or activate its SAM account, has not yet received a UEI number, and/or fails to properly register in *Grants.gov*.

** This estimate assumes an Applicant has a UEI number, an EIN number, and is already registered in *SAM.gov*.

E. Submission Dates and Times:

1. *Submission Deadlines:* Table 8 lists the deadlines for submission of the documents related to the FY 2022 SDL Program Funding Round:

TABLE 8—FY 2022 SDL PROGRAM DEADLINES FOR APPLICANTS

Document	Deadline	Time–eastern time (ET)	Submission method
SF–424 Mandatory form	June 15, 2022	11:59 pm	Electronically via *Grants.gov.*
Create AMIS Account (if the Applicant does not already have one).	June 15, 2022	11:59 p.m	Electronically via AMIS.
SDL Program Application and Required Attachments.	July 15, 2022	5:00 p.m	Electronically via AMIS.

2. Confirmation of Application Submission in Grants.gov and AMIS: Applicants are required to submit the SF–424 Mandatory Form through the *Grants.gov* system under the FY 2022 SDL Program Funding Opportunity Number (listed at the beginning of this NOFA). All other required Application materials must be submitted through AMIS. Application materials submitted through each system are due by the applicable deadline listed in Table 6. Applicants must submit the SF–424 by an earlier deadline than that of the other required Application materials in AMIS. If a valid SF–424 is not submitted through *Grants.gov* by the corresponding deadline, the Applicant will not be able to submit the additional Application materials in AMIS, and the Application will be deemed ineligible. Thus, Applicants are strongly encouraged to submit the SF–424 as early as possible in the *Grants.gov* portal, given that potential submission issues may impact the ability to submit a complete Application.

(a) *Grants.gov* Submission Information: Each Applicant will receive an initial email from *Grants.gov* immediately after submitting the SF–424, confirming that the submission has entered the *Grants.gov* system. This email will contain a tracking number for the submitted SF–424. Within forty-eight (48) hours, the Applicant will receive a second email which will indicate if the submitted SF–424 was either successfully validated or rejected with errors. However, Applicants should not rely on the email notification from *Grants.gov* to confirm that their SF–424 was validated. Applicants are strongly encouraged to use the tracking number provided in the first email to closely monitor the status of their SF–424 by checking *Grants.gov* directly. The Application materials submitted in AMIS are not accepted by the CDFI Fund until *Grants.gov* has validated the SF–424. In the *Grants.gov* Workspace function, please note that the Application package has not been submitted if you have not received a tracking number.

(b) *AMIS Submission Information:* AMIS is a web-based portal where Applicants will directly enter their Application information and add required attachments listed in Table 6. Each Applicant must register as an organization in AMIS in order to submit the required Application materials through this portal. AMIS will verify that the Applicant provided the minimum information required to submit an Application. Applicants are responsible for the quality and accuracy of the information and attachments included in the Application submitted in AMIS. The CDFI Fund strongly encourages the Applicant to allow sufficient time to confirm the Application content, review the material submitted, and remedy any issues prior to the Application deadline. Applicants can only submit one Application in AMIS. Upon submission, the Application will be locked and cannot be resubmitted, edited, or modified in any way. The CDFI Fund will not unlock or allow multiple AMIS Application submissions.

Prior to submission, each Application in AMIS must be signed by an Authorized Representative. An Authorized Representative is an employee or officer and has the authority to legally bind and make representations on behalf of the Applicant; consultants working on behalf of the Applicant cannot be designated as Authorized Representatives. The Applicant may include consultants as Application point(s) of contact, who will be included on any communication regarding the Application and will be able to submit the Application but cannot sign the Application. The Authorized Representative and/or Application point(s) of contact must be included as ''Contacts'' in the Applicant's AMIS account. The Authorized Representative must also be a ''user'' in AMIS. An Applicant that fails to properly register and update its AMIS account may miss important communications from the CDFI Fund or fail to submit an Application successfully. Only an Authorized Representative for the organization or an Application point of contact can submit the Application in AMIS. After submitting its Application, the Applicant will not be permitted to revise or modify its Application in any way or attempt to negotiate the terms of an Award.

3. Multiple Application Submissions: Applicants are only permitted to submit one complete Application. However, the CDFI Fund does not administer *Grants.gov*, which does allow for multiple submissions of the SF–424. If an Applicant submits multiple SF–424 Applications in *Grants.gov*, the CDFI Fund will only review the SF–424 Application submitted in *Grants.gov* that is attached to the AMIS Application. Applicants can only submit one Application through AMIS.

4. Late Submission: The CDFI Fund will not accept an SF–424 submitted after the applicable *Grants.gov* or AMIS Application submitted after the AMIS Application deadline, except where the submission delay was a direct result of a Federal government administrative or Federal government technological error. This exception includes any errors associated with *Grants.gov*, *SAM.gov*, AMIS or any other applicable government system.

(a) *SF–424 Late Submission:* In cases where a Federal government administrative or Federal government technological error directly resulted in the late submission of the SF–424, the Applicant must submit a written request for acceptance of the late SF–424 submission and include documentation of the error no later than two business days after the SF–424 deadline. The CDFI Fund will not respond to requests for acceptance of late SF–424 submissions after that time period. Applicants must submit late SF–424 submission requests to the CDFI Fund

via an AMIS service request to the SDL Program with a subject line of ''Late SF–424 Submission Request—Small Dollar Loan Program.''

(b) *AMIS Application Late Submission:* In cases where a Federal government administrative or Federal government technological error directly resulted in a late submission of the Application in AMIS, the Applicant must submit a written request for acceptance of the late Application submission and include documentation of the error no later than two business days after the Application deadline. The CDFI Fund will not respond to requests for acceptance of late AMIS Application submissions after that time period. Applicants must submit late Application submission requests to the CDFI Fund via an AMIS service request to the SDL Program with a subject line of ''Late Application Submission Request—Small Dollar Loan Program.''

5. Intergovernmental Review: Not Applicable.

6. Funding Restrictions: SDL Program Awards are limited by the following:

(a) A Recipient shall use SDL Program Award funds only for the eligible activities set forth in the Application and as described in Section II.B and Section II.D of this NOFA and its Assistance Agreement.

(b) A Recipient may not disburse SDL Program Award funds to an Affiliate, Subsidiary, or any other entity in any manner that would create a Subrecipient relationship (as defined in the Uniform Requirements) without the CDFI Fund's prior written approval.

(c) SDL Program Award dollars shall only be paid to the Recipient.

(d) The CDFI Fund, in its sole discretion, may pay SDL Program Awards in amounts, or under terms and conditions, which are different from those requested by an Applicant. However, the CDFI Fund will not grant an Award in excess of the amount requested by the Applicant.

V. Application Review Information

A. Criteria: All complete and eligible Applications will be reviewed in accordance with the criteria and procedures described in this NOFA, the Application guidance, and the Uniform Requirements. As part of the review process, the CDFI Fund reserves the right to contact the Applicant by telephone, email, mail, or through an on-site visit for the sole purpose of clarifying or confirming Application information at any point during the review process. The CDFI Fund reserves the right to collect such additional information from Applicants as it deems appropriate. If contacted, the Applicant must respond within the time period communicated by the CDFI Fund or its Application may be rejected. The CDFI Fund will review the SDL Program Applications in accordance with the process below. All CDFI Fund reviewers will complete the CDFI Fund's conflict of interest process.

B. Review and Selection Process:

The CDFI Fund will evaluate each complete and eligible Application using the multi-phase review process described in this Section. Where appropriate, the CDFI Fund will use different criteria in order to evaluate the financial health, capacity, and strategies of the Applications based on the proposed use(s) of the SDL Program Award. These differences are noted in the following sections and the Application Instructions. Applicants that meet the minimum criteria will advance to the next step in the review process.

1. Eligibility Review: The CDFI Fund will evaluate each Application to determine its eligibility status pursuant to Section III of this NOFA.

2. Financial Analysis and Compliance Risk Evaluation:

i. *Financial Analysis:* For Regulated Institutions, the CDFI Fund will consider financial safety and soundness information from the Appropriate Federal or State Banking Agency. As detailed in Table 5, each Regulated Institution SDL Program Applicant must have a CAMELS/CAMEL rating of a ''1'', ''2'', or ''3'', and no significant material concerns from its regulator.

For non-regulated Applicants, the CDFI Fund will evaluate the financial health and viability of each non-regulated Applicant using the Application Assessment Tool and the financial information provided by the Applicant. For the Financial Analysis, each non-regulated Applicant will receive a Total Financial Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. The Total Financial Composite Score is based on the analysis of twenty-three (23) financial indicators. Applications will be grouped based on the Total Financial Composite Score. Applicants must receive a Total Financial Composite Score of one (1), two (2), or three (3) to advance to the Business Strategy and Community Impact Review phase. CDFI Fund staff will review and confirm the scores for Applications that receive an initial Total Financial Composite Score of four (4) or five (5). If the Total Financial Composite Score remains four (4) or five (5) after CDFI Fund staff review, the Applicant will not advance to the Business Strategy and Community Impact Review phase.

ii. *Compliance Risk Evaluation:* For the compliance analysis, the CDFI Fund will evaluate the compliance risk of each Applicant using information provided in the Application, as well as an Applicant's reporting history, reporting capacity, and performance risk with respect to the Applicant's PG&Ms for all CDFI Fund awards. Each Applicant will receive a Total Compliance Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. CDFI Fund staff will review and confirm the scores for Applications that receive an initial Total Compliance Composite Score of four (4) or five (5). If the Applicant is deemed a high compliance risk after CDFI Fund Staff review, the Applicant will not advance to the Business Strategy and Community Impact Review phase.

3. Business Strategy and Community Impact Review: Applicants that proceed to this phase will be evaluated on the soundness of their proposed business strategy and community impact. Applicants will receive a Total Business Strategy and Community Impact Review Score equivalent to ''Low Risk,'' ''Medium Risk'' or ''High Risk.'' Applicants must receive a Total Business Strategy and Community Impact Review Score that is equivalent to a ''Low Risk'' or ''Medium Risk'' to move forward to the Final Award Decision and Award Amount Determination Stage. Applicants that receive an overall rating of ''High Risk'' in this Review will not move forward to the Final Award Decision and Award Amount Determination Stage, and will not receive further consideration for an SDL Program Award.

In the Business Strategy and Community Impact section, the CDFI Fund will review and evaluate: (i) The needs of communities and persons in the areas the Applicant proposes to serve with an SDL Program Award and the extent to which the proposed strategy addresses these needs; (ii) the small dollar lending and financing gaps addressed by its business strategy; (iii) the projected SDL Program activities and track record; (iv) the role the SDL Program Award plays in its financing strategy and the expected community impact that will be sought as a result of the proposed program. Expected community impacts may include improved financial strength and stability for low-income and underserved people and/or improved borrower delinquency rate and/or improved credit history and credit scores and/or access to mainstream financial products and expanded activity in other credit facilities (*e.g.,* borrower received an auto loan) and/or

continued access to financial education, including credit counseling and/or help to create or preserve savings and/or help borrowers consolidate or reduce debt at a lower cost.

a. For the Applicant requesting an Award for LLR, the Applicant will discuss how the LLR will be used to launch a small dollar loan program or increase the volume of its existing small dollar program that meets the statutory and other requirements described in this NOFA. The Applicant will also describe its strategy and structure of the LLR account. Further, the Applicant will discuss the anticipated loss rate that these reserves will cover and how this was estimated.

b. For the Applicant applying for a TA Award, the Applicant will describe the strategy for how a TA Award will be used to launch a small dollar loan program or increase the volume of its existing small dollar program that meets the statutory and other requirements described in this NOFA. The Applicant will include information about intended uses, such as: Technology support, including software and peripherals and/or staff support, including salary and training and/or credit monitoring and reporting capability and/or marketing or promotional support and/or fees for consultants and/or audit or oversight costs.

Within the Business and Community Impact Strategy Section, an Applicant will generally be deemed a lower risk to the extent that it: (i) Clearly aligns its proposed SDL Program Award activities and products with the small dollar needs and financing gaps it identifies; (ii) demonstrates that its strategy and activities will result in more favorable financing rates and terms for borrowers; (iii) demonstrates that its projected activities are achievable based on the Applicant's strategy and track record and demonstrates an increase in its small dollar lending; (iv) describes a clear process for selecting borrowers that have a clear need for its small dollar loan program financing; and (v) has a credible pipeline of borrowers. An Applicant will generally score more favorably to the extent it has a volume of projected activities supported by its track record. An Applicant will also score favorably if its small dollar loan program offers one or more of the following lending practices and loan characteristics that promote affordable and responsible small dollar lending: The loan term is at least ninety (90) days, and/or it considers the borrower's ability to repay by assessing both the borrower's income and expenses (*i.e.,* base lending on a borrower's ability to repay according to the terms of the loan, while meeting other expenses, without needing to refinance/re-borrow, and without relying on collateral), and/or loan decisions are made within one business day (twenty-four (24) hours) after receipt of required documents, and/or the borrower receives a reduction in its loan rate if s/he uses automatic debit payments, and/or the Applicant's small dollar loan program offers automatic savings features, and/or the Applicant offers access to financial education, including credit counseling.

4. Final Award Decision and Award Amount Determination: During this last phase, the CDFI Fund will review all SDL Program Applications that make it to this step to ensure adherence with the SDL Program's policies and procedures, as well as applicable Federal regulations. The CDFI Fund will also review the Applicant's management team and key staff, compliance status, eligibility, due diligence, and regulatory matters. This due diligence includes an analysis of programmatic and financial risk factors including, but not limited to, financial stability, history of performance in managing Federal awards (including timeliness of reporting and compliance), audit or regulator findings, and the Applicant's ability to effectively implement Federal requirements. For Applicants applying for awards to establish a small dollar loan program, the CDFI Fund will also consider the Applicant's ability to start a new small dollar loan program. If an Applicant is found to be a significant risk as a result of the due diligence review, the CDFI Fund may eliminate the Applicant from consideration for an SDL Program Award.

The CDFI Fund will determine award amounts for Applications based on the due diligence performed, the Applicant's requested amount, and certain other factors, including but not limited to, the Applicant's three-year projected total small dollar loans to be closed, minimum award size, Applicants that offer one or more of the preferred lending practices and loan characteristics stated in this NOFA that promotes affordable and responsible small dollar lending, Applicants that have headquarters (as stated in the Applicant's Application) located in PPCs, an Applicant's risk rating level, and funding availability. Award amounts may be reduced from the requested award amount as a result of the above factors.

5. Regulated Institutions: The CDFI Fund will consider safety and soundness information from the Appropriate Federal or State Banking Agency. If the Applicant is a CDFI Depository Institution Holding Company, the CDFI Fund will consider information provided by the Appropriate Federal or State Banking Agencies about both the CDFI Depository Institution Holding Company and the Certified CDFI Subsidiary Insured Depository Institution that will expend and carry out the award. If the Appropriate Federal or State Banking Agency identifies safety and soundness concerns, the CDFI Fund will assess whether such concerns cause or will cause the Applicant to be incapable of undertaking the activities for which funding has been requested.

6. Non-Regulated Institutions: The CDFI Fund must ensure, to the maximum extent practicable, that Applicants which are non-regulated CDFIs are financially and managerially sound, and maintain appropriate internal controls (12 U.S.C. 4707(f)(1)(A) and 12 CFR 1805.800(b)). Further, the CDFI Fund must determine that an Applicant's capacity to operate as a CDFI and its continued viability will not be dependent upon assistance from the CDFI Fund (12 U.S.C. 4704(b)(2)(A)). If it is determined that the Applicant is incapable of meeting these requirements, the CDFI Fund reserves the right to deem the Applicant ineligible or terminate the award.

C. Anticipated Award Announcement: The CDFI Fund anticipates making the SDL Program Award announcement before September 30, 2022. However, the anticipated award announcement date is subject to change without notice.

D. Application Rejection: The CDFI Fund reserves the right to reject an Application if information (including administrative errors) comes to the CDFI Fund's attention that: Adversely affects an Applicant's eligibility for an award; adversely affects the Recipient's certification as a CDFI (to the extent that the award is conditional upon CDFI certification); adversely affects the CDFI Fund's evaluation or scoring of an Application; or indicates fraud or mismanagement on the Applicant's part. If the CDFI Fund determines any portion of the Application is incorrect in a material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the Application. The CDFI Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the CDFI Fund deems it appropriate. If the changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information about the changes through its website. The CDFI Fund's award decisions are final, and there is no right to appeal decisions.

VI. Federal Award Administration Information

A. Award Notification: Each successful Applicant will receive notification from the CDFI Fund stating that its Application has been approved for an Award. Each Applicant not selected for an Award will receive notification and be provided a debriefing document in its AMIS account.

B. Administrative and Policy Requirements Prior to Entering into an Assistance Agreement: The CDFI Fund may, in its discretion and without advance notice to the Recipient, terminate the Award or take other actions as it deems appropriate if, prior to entering into an Assistance Agreement, information (including an administrative error) comes to the CDFI Fund's attention that adversely affects the following: The Recipient's eligibility for an Award; the CDFI Fund's evaluation of the Application; the Recipient's compliance with any requirement listed in the Uniform Requirements; or indicates fraud or mismanagement on the Recipient's part, including mismanagement of another Federal award.

By receiving notification of a SDL Program Award, the Recipient agrees that, if the CDFI Fund becomes aware of any information (including an administrative error) prior to the Effective Date of the Assistance Agreement that either adversely affects the Recipient's eligibility for an SDL Program Award, or adversely affects the CDFI Fund's evaluation of the Recipient's Application, or indicates fraud or mismanagement on the part of the Recipient, the CDFI Fund may, in its discretion and without advance notice to the Recipient, rescind the notice of award or take other actions as it deems appropriate.

The CDFI Fund reserves the right, in its sole discretion, to rescind an Award if the Recipient fails to return the Assistance Agreement, signed by an Authorized Representative of the Recipient, and/or provide the CDFI Fund with any other requested documentation, within the CDFI Fund's deadlines.

In addition, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA for any criteria described in Table 9:

TABLE 9—REQUIREMENTS PRIOR TO EXECUTING AN ASSISTANCE AGREEMENT

Requirement	Criteria
Failure to meet reporting requirements.	• If an Applicant received a prior award or allocation under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee, as of the date of the notice of award, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a Payment of SDL Program Award, until said prior Recipient or allocatee is current on the reporting requirements in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee. • If such a prior Recipient or allocatee is unable to meet this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the notice of award and the SDL Program Award made under this NOFA. • Please note that automated systems employed by the CDFI Fund for receipt of reports submitted electronically typically acknowledge only a report's receipt; such acknowledgment does not warrant that the report received was complete, nor that it met reporting requirements. If said prior Recipient or allocatee is unable to meet this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the notice of Award and the SDL Program Award made under this NOFA.
Failure to maintain CDFI Certification (if applicable).	• A Recipient must be a Certified CDFI as is defined in the SDL Program Application and this NOFA, prior to entering into an Assistance Agreement. • If, at any time prior to entering into an Assistance Agreement under this NOFA, an Applicant that is a Certified CDFI has submitted reports (or failed to submit an annual certification report as instructed by the CDFI Fund) to the CDFI Fund that demonstrate noncompliance with the requirements for certification, but the CDFI Fund has yet to make a final determination regarding whether or not the entity is Certified, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a Payment of SDL Program Award, pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance. • If the Applicant is unable to meet this requirement, in the sole determination of the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the notice of award and the SDL Program Award made under this NOFA.
Pending resolution of noncompliance.	• The CDFI Fund will delay entering into an Assistance Agreement with a Recipient that has pending noncompliance issues with any of its previously executed CDFI Fund award(s), allocation(s), bond loan agreement(s), or agreement(s) to guarantee. • If said prior Recipient or allocatee is unable satisfactorily resolve the compliance issues, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the notice of award and the SDL Program Award made under this NOFA.
Default or Noncompliance status	• If, at any time prior to entering into an Assistance Agreement, the CDFI Fund determines that an Applicant (or an Affiliate of the Applicant) that is a prior CDFI Fund Recipient or allocatee under any CDFI Fund program is noncompliant or found in default with any previously executed CDFI Fund award or Assistance agreement(s) and the CDFI Fund has provided written notification that the Applicant is ineligible to apply for or receive any future awards or allocations for a time period specified by the CDFI Fund in writing, the CDFI Fund may, in its sole discretion, delay entering into an Assistance Agreement with Applicant until the Recipient has cured the noncompliance by taking actions the CDFI Fund has specified in writing within such specified timeframe. If the Recipient is unable to cure the noncompliance within the specified timeframe, the CDFI Fund may modify or rescind all or a portion of the SDL Program Award made under this NOFA.

TABLE 9—REQUIREMENTS PRIOR TO EXECUTING AN ASSISTANCE AGREEMENT—Continued

Requirement	Criteria
Compliance with Federal civil rights requirements.	• If, prior to entering into an Assistance Agreement under this NOFA, the Recipient receives a final determination, made within the three years prior to the publication of this NOFA until the Assistance Agreement is executed, in any proceeding instituted against the Recipient in, by, or before any court, governmental, or administrative body or agency, declaring that the Recipient has violated the following laws: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Age Discrimination Act of 1975, (42 U.S.C. 6101–6107), and Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, the CDFI Fund will terminate and rescind the Assistance Agreement and the award made under this NOFA.
Do Not Pay	• The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient (or Affiliate of a Recipient) is determined to be ineligible based on data in the Do Not Pay database. • The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal government.
Safety and soundness	• If it is determined that the Recipient is or will be incapable of meeting its SDL Program Award obligations, the CDFI Fund will deem the Recipient to be ineligible or require it to improve safety and soundness conditions prior to entering into an Assistance Agreement.

C. Assistance Agreement: Each Applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the CDFI Fund in order to become a Recipient and receive Payment. Each SDL Program Assistance Agreement has a three-year Period of Performance.

1. The Assistance Agreement will set forth certain required terms and conditions of the SDL Program Award, which will include, but not be limited to:

(a) The amount of the award;

(b) The approved uses of the award;

(c) Performance goals and measures; and

(d) Reporting requirements for all Recipients.

2. Prior to executing the Assistance Agreement, the CDFI Fund may, in its discretion, allow Recipients to request changes to certain performance goals and measures. The CDFI Fund, in its sole determination, may approve or reject these requested changes or propose other modifications, including a reduction in the Award amount. The CDFI Fund will only approve performance goals and measures if it determines that such requested changes do not undermine the competitive process upon which the SDL Program Award determination was made. Any modifications agreed upon prior to the execution of the Assistance Agreement will become a condition of the Award.

3. The Assistance Agreement shall provide that, prior to any determination by the CDFI Fund that a Recipient has failed to comply substantially with the SDL Program statute or the environmental quality regulations, the CDFI Fund shall provide the Recipient with reasonable notice and opportunity for hearing. If the Recipient fails to comply substantially with the Assistance Agreement, the CDFI Fund may:

(a) Require changes in the performance goals set forth in the Assistance Agreement;

(b) Reduce or terminate the SDL Program Award; or

(c) Require repayment of any SDL Program Award that has been distributed to the Recipient.

4. The Assistance Agreement shall also provide that, if the CDFI Fund determines noncompliance with the terms and conditions of the Assistance Agreement on the part of the Recipient, the CDFI Fund may:

(a) Bar the Recipient from reapplying for any assistance from the CDFI Fund; or

(b) Take such other actions as the CDFI Fund deems appropriate or as set forth in the Assistance Agreement.

5. In addition to entering into an Assistance Agreement, each Applicant selected to receive a SDL Program Award must furnish to the CDFI Fund a certificate of good standing from the jurisdiction in which it was formed. The CDFI Fund may, in its sole discretion, also require the Applicant to furnish an opinion from its legal counsel, the content of which may be further specified in the Assistance Agreement, and which, among other matters, opines that:

(a) The Recipient is duly formed and in good standing in the jurisdiction in which it was formed and the jurisdiction(s) in which it transacts business;

(b) The Recipient has the authority to enter into the Assistance Agreement and undertake the activities that are specified therein;

(c) The Recipient has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Assistance Agreement;

(d) The Recipient is not in default of its articles of incorporation or formation, bylaws or operating agreements, other organizational or establishing documents, or any agreements with the Federal government; and

(e) The Recipient is exempt from Federal Income taxation pursuant to the Internal Revenue Code of 1986.

D. Paperwork Reduction Act: Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. If applicable, the CDFI Fund may inform Applicants that they do not need to provide certain Application information otherwise required. Pursuant to the Paperwork Reduction Act, the SDL Program Application has been assigned the following control number: 1559–0036.

E. Reporting: The CDFI Fund will require each Recipient that receives a SDL Program Award through this NOFA to account for and report to the CDFI Fund on the use of the SDL Program Award. This will require Recipients to establish administrative controls, subject to the Uniform Requirements and other applicable OMB guidance. The CDFI Fund will collect information from each such Recipient on its use of the SDL Program Award annually following Payment and more often if deemed appropriate by the CDFI Fund in its sole discretion. The CDFI Fund will provide guidance to Recipients outlining the format and content of the information required to be provided to describe how the funds were used.

The CDFI Fund may collect information from each Recipient including, but not limited to, an annual report with the components listed in Table 10:

TABLE 10—REPORTING REQUIREMENTS

Criteria	Description
Single Audit (if applicable)	A non-profit Recipient must complete an annual Single Audit pursuant to the Uniform Requirements (2 CFR 200.500) if it expends $750,000 or more in Federal awards in its fiscal year, or such other dollar threshold established by OMB pursuant to 2 CFR 200.501. If a Single Audit is required, it must be submitted electronically to the Federal Audit Clearinghouse (FAC) (see 2 CFR subpart F-Audit Requirements in the Uniform Requirements) and optionally through AMIS.
Financial Statement Audit	For-profit and nonprofit Recipients must submit a Financial Statement Audit (FSA) report in AMIS, along with the Recipient's statement of financial condition audited or reviewed by an independent certified public accountant.
Uses of Award Report	The Recipient must submit the Uses of Award Report to the CDFI Fund in AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its SDL Program grant through its Subsidiary CDFI Insured Depository Institution, that Subsidiary CDFI Insured Depository Institution must also submit a Uses of Award Report. Furthermore, if the Depository Institution Holding Company itself deploys any portion of the SDL Program grant, the Depository Institution Holding Company must submit a Uses of Award Report.
Performance Progress Report	The Recipient must submit the Performance Progress Report through AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its SDL Program grant through its Subsidiary CDFI Insured Depository Institution, that Subsidiary CDFI Insured Depository Institution must also submit a Performance Progress Report. Furthermore, if the Depository Institution Holding Company itself deploys any portion of the SDL Program grant, the Depository Institution Holding Company must submit a Performance Progress Report.

* Personally Identifiable Information (PII) is information, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Although Applicants are required to enter addresses of homes and other properties in AMIS, Applicants should not include the following PII for the individuals who received the financial products or services in AMIS or in the supporting documentation (*i.e.,*—name of the individual, Social Security Number, driver's license or state identification number, passport number, Alien Registration Number, etc.). This information should be redacted from all supporting documentation (if applicable).

Each Recipient is responsible for the timely and complete submission of the annual reporting documents. The CDFI Fund will use such information to monitor each Recipient's compliance with the requirements set forth in the Assistance Agreement and to assess the impact of the SDL Program. The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Recipients.

F. Financial Management and Accounting: The CDFI Fund will require Recipients to maintain financial management and accounting systems that comply with Federal statutes, regulations, and the terms and conditions of the SDL Program Award. These systems must be sufficient to permit the preparation of reports required by general and program specific terms and conditions, including the tracing of funds to a level of expenditures adequate to establish that such funds have been used in accordance with the Federal statutes, regulations, and the terms and conditions of the SDL Program Award.

The cost principles used by Recipients must be consistent with Federal cost principles; must support the accumulation of costs as required by the principles; and must provide for adequate documentation to support costs charged to the SDL Program Award. In addition, the CDFI Fund will require Recipients to: Maintain effective internal controls; comply with applicable statutes and regulations, the Assistance Agreement, and related guidance; evaluate and monitor compliance; take action when not in compliance; and safeguard personally identifiable information.

VII. Agency Contacts

A. Availability: The CDFI Fund will respond to questions and provide support concerning this NOFA and the Application between the hours of 9:00 a.m. and 5:00 p.m. ET, starting on the date of the publication of this NOFA until the close of business on the third business day preceding the Application deadline. The CDFI Fund will not respond to questions or provide support concerning the Application that are received after 5:00 p.m. ET on said date, until after the Application deadline. CDFI Fund IT support will be available until 5:00 p.m. ET on date of the Application deadline. Applications and other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's website at *http://www.cdfifund.gov/sdlp.* The CDFI Fund will post on its website responses to questions of general applicability regarding the SDL Program.

B. The CDFI Fund's contact information is listed in Table 11:

TABLE 11—CONTACT INFORMATION

Type of question	Preferred method	Telephone No. (not toll free)	Email addresses
SDL Program	Submit a Service Request in AMIS	202–653–0421	*sdlp@cdfi.treas.gov.*
CDFI Certification	Submit a Service Request in AMIS	202–653–0423	*ccme@cdfi.treas.gov.*
Compliance Monitoring and Evaluation	Submit a Service Request in AMIS	202–653–0423	*ccme@cdfi.treas.gov.*
Information Technology Support	Submit a Service Request in AMIS	202–653–0422	*AMIS@cdfi.treas.gov.*

The preferred method of contact is to submit a Service Request within AMIS. For an SDL Program Application question, select ''Small Dollar Loan Program'' for the program. For a CDFI Certification question, select ''Certification.'' For a Compliance question, select ''Compliance & Reporting.'' For Information

Technology, select ''Technical Issues.'' Failure to select the appropriate program for the Service Request could result in delays in responding to your question.

C. Communication With the CDFI Fund: The CDFI Fund will use AMIS to communicate with Applicants and Recipients, using the contact information maintained in their respective AMIS accounts. Therefore, the Recipient and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact persons and Authorized Representatives, email addresses, fax numbers, phone numbers, and office addresses) in its AMIS account(s). For more information about AMIS please see the Help documents posted at *https://amis.cdfifund.gov/s/Training.*

D. Civil Rights and Diversity: Any person who is eligible to receive benefits or services from the CDFI Fund or Recipients under any of its programs is entitled to those benefits or services without being subject to prohibited discrimination. The Department of the Treasury's Office of Civil Rights and Diversity enforces various Federal statutes and regulations that prohibit discrimination in financially assisted and conducted programs and activities of the CDFI Fund. If a person believes that s/he has been subjected to discrimination and/or reprisal because of membership in a protected group, s/he may file a complaint with: Director, Office of Civil Rights and Diversity, 1500 Pennsylvania Ave. NW, Washington, DC 20220 or (202) 622–1160 (not a toll-free number).

E. Statutory and National Policy Requirements: The CDFI Fund will manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, Federal law, and public policy requirements: Including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

VIII. Other Information

None.

Authority: Pub. L. 111–203. 12 U.S.C. 4719, 12 CFR part 1805, 12 CFR part 1815, 12 U.S.C. 4502.

Jodie L. Harris,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2022–10526 Filed 5–16–22; 8:45 am]

BILLING CODE 4810–05–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel; Notice of Availability of Report of 2021 Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: A report summarizing the closed meeting activities of the Art Advisory Panel during Fiscal Year 2021 has been prepared. A copy of this report has been filed with the Assistant Secretary for Management of the Department of the Treasury.

DATES: *Applicable Date:* This notice is applicable May 11, 2022.

ADDRESSES: The report is available at *https://www.irs.gov/compliance/appeals/art-appraisal-services.*

FOR FURTHER INFORMATION CONTACT: Robin B. Lawhorn, AP:SPR:AAS, Internal Revenue Service/Independent Office of Appeals, 400 West Bay Street, Suite 252, Jacksonville, FL 32202, Telephone number (904) 661–3198 (not a toll free number).

SUPPLEMENTARY INFORMATION: It has been determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is, therefore, not required. Additionally, this document does not constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Authority: 5 U.S.C. app. 2, section 10(d), of the Federal Advisory Committee Act, and 5 U.S.C. 552b, of the Government in the Sunshine Act.

Andrew J. Keyso Jr.,

Chief, Independent Office of Appeals.

[FR Doc. 2022–10492 Filed 5–16–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. app. 2., that a virtual meeting of the Advisory Committee on Disability Compensation (Committee) will begin and end as follows:

Dates	Times	Open session
Tuesday, May 31, 2022	11:00 a.m.–12:00 p.m. Eastern Standard Time (EST)	Yes.
Wednesday, June 1, 2022	11:00 a.m.–12:00 p.m. (EST)	Yes.

The meeting sessions are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities.

The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The agenda will include deliberations and voting on recommendations that will be included in the 2022 Biennial Report from 11:00 a.m. to 12:00 p.m.

No time will be allocated at this virtual meeting for receiving oral presentations from the public. The public may submit one-page summaries of their written statements for the Committee's review. Public comments may be received no later than May 17, 2022, for inclusion in the official meeting record. Please send these comments to Sian Roussel of the Veterans Benefits Administration, Compensation Service, at *sian.roussel@va.gov.*

Members of the public who wish to obtain a copy of the agenda should contact Sian Roussel at *Sian.Roussel@va.gov* and provide their name, professional affiliation, email address and phone number. The call-in number (United States, Chicago) for those who would like to attend the meeting (audio only) is +1 872–701–0185; phone conference ID: 885 049 439#.

Dated: May 11, 2022.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–10527 Filed 5–16–22; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 87 Tuesday,

No. 95 May 17, 2022

Part II

Department of Housing and Urban Development

24 CFR Parts 887 and 984

Streamlining and Implementation of Economic Growth, Regulatory Relief, and Consumer Protection Act Changes to Family Self-Sufficiency Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 887 and 984

[Docket No. FR–6114–F–03]

RIN 2577–AD09

Streamlining and Implementation of Economic Growth, Regulatory Relief, and Consumer Protection Act Changes to Family Self-Sufficiency (FSS) Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing and Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations to implement changes to the Family Self-Sufficiency (FSS) program made by the Economic Growth, Regulatory Relief, and Consumer Protection Act (''the Economic Growth Act'' or ''the Act''). Section 306 of the Act made multiple amendments to the FSS program, including changes to the methodology for determining the size of the FSS program, expanding the definition of eligible families to include tenants of certain privately owned multifamily properties subsidized with Project-Based Rental Assistance (PBRA), updating the FSS Contract of Participation (CoP), reducing burdens on Public Housing Agencies (PHAs) and multifamily assisted housing owners, clarifying escrow account requirements, and updating the FSS Action Plan requirements. After consideration of public comments, this final rule incorporates these changes, responds to public comments, and further revises HUD's FSS regulations to further streamline the program for PHAs, multifamily property owners, and eligible families, including providing that families participating in the Housing Choice Voucher Homeownership Program and all Section 8 programs can participate in the FSS program, revising certain definitions that apply to the program to align with commenters' suggestions, making changes to the CoP provisions, revising the lists of activities for which forfeited escrow funds may be used, and making changes to portability provisions.

DATES:

Effective date: June 16, 2022.

Compliance date: Public Housing Authority and Owner compliance with this rule is required no later than November 14, 2022.

FOR FURTHER INFORMATION CONTACT: For Public and Indian Housing (PIH) FSS contact Anice S. Chenault, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 4120, Washington, DC 20410; telephone number 502–618–6163 (this is not a toll-free number); and for Multifamily FSS contact Elizabeth Fernandez, Office of Multifamily Housing Programs, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 6182, Washington, DC 20410; telephone number 202–402–6763 (this is not a toll-free number). The public is encouraged to email questions to *FSS@hud.gov* or *MF_FSS@hud.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1990, section 554 of the Cranston Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) amended the United States Housing Act of 1937 by adding a new section 23 (42 U.S.C. 1437u) to create the FSS program. The FSS program requires that PHAs and Indian Housing Authorities [1] use Public and Indian Housing assistance and Section 8 Housing assistance rental voucher programs, together with public and private resources, to provide supportive services, case management, and an escrow account to participating families, with the intent to help families achieve economic independence and self-sufficiency. The program's goal is to enable participating low-income families to increase their earned income, achieve economic stability, and reduce or eliminate their need for welfare assistance and rental subsidies. FSS Program Coordinators create plans with participating families to achieve goals and connect them with services that will assist the family in making progress toward economic security. As the family's earnings increase, the difference between the original rent and the increased rent due to increased earned income is credited to an interest-bearing escrow account on the family's behalf. Families that meet program requirements and successfully complete the FSS program receive their accrued FSS escrow funds, plus interest. No regulatory restrictions exist on the use of the escrowed funds. Many families use the funds to help with the purchase of a home, debt reduction, post-secondary education, or to start a new business.

On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (the ''Economic Growth Act'' or ''the Act'') was signed into law (Pub. L. 115–174), and section 306 of title III of the Act, Protections for Veterans, Consumers, and Homeowners, amended the United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*), FSS program, which required HUD to issue regulations to update its program requirements and provide new provisions for private owners of multifamily assisted housing to set up their own FSS programs. Additional details about the FSS program may be found in the background of the ''Streamlining and Implementation of Economic Growth, Regulatory Relief, and Consumer Protection Act Changes to Family Self-Sufficiency (FSS)'' at 85 FR 59234 (September 21, 2020).

II. The September 21, 2020, Proposed Rule

On September 21, 2020 (85 FR 59234), HUD published a proposed rule to implement changes required by the Economic Growth Act and streamline the FSS program. The public comment period closed on November 20, 2020, and HUD received 105 public comments. The proposed rule makes changes to the existing FSS regulations at 24 CFR part 984 and adds a new 24 CFR part 887 to address the FSS program for owners of multifamily assisted housing. The proposed rule also updates references to PHAs and owners and clarifies the provisions that would apply to both when operating an FSS program. Owners would be subject to the requirements only if they are operating an FSS program.

The changes include updating the mandatory size of a PHA's required FSS program and available exceptions; updating the definition of eligible families; allowing family members other than the Head of Household for rental assistance purposes to sign the Contract of Participation (CoP) and to meet the employment obligation; amending the definition of supportive services; changing the term of the CoP; amending the requirements pertaining to the management of the escrow account, including the requirements for forfeiture of the escrow funds; and, amending reporting requirements. Also, the Economic Growth Act provided new provisions for private owners of multifamily assisted housing to set up their own FSS program or enter into a Cooperative Agreement with another private owner or PHA to offer an FSS

[1] The Native American Housing Assistance and Self Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) removed the application of the FSS program to Indian Housing Authorities.

program to the owner's assisted residents. For more information about the specific proposed changes to conform with the Economic Growth Act see the background of the ''Streamlining and Implementation of Economic Growth, Regulatory Relief, and Consumer Protection Act Changes to Family Self-Sufficiency (FSS)'' at 85 FR 59234 (September 21, 2020).

HUD also proposed changes, that were not statutorily required, to streamline the program, including removing references to the establishment of mandatory programs; requiring an FSS Program Coordinator as a Program Coordinating Committee (PCC) member; requiring that at least one resident participant from each HUD-assisted program served by FSS is a member of the PCC; revising the amount of time a family must be independent from welfare assistance prior to expiration of the CoP; expanding the definition of ''good cause'' for a contract extension to include the active pursuit of a goal that will further self-sufficiency, such as a college degree or credit repair program; removing the provision that automatically completes the FSS contract when thirty percent (30%) of the family's adjusted monthly income equals or exceeds the Fair Market Rent (FMR); requiring that nullification would occur when the PHA or owner and participant determine that services integral to an FSS family's advancement towards self-sufficiency are unavailable or when the head of FSS family becomes permanently disabled and unable to work or dies during the period of the contract, with exceptions; differentiating between ''determining the FSS escrow amount'' and ''crediting that FSS escrow amount'' to a family's FSS escrow account and requiring that, during the term of the FSS contract, the PHA or owner credits the escrow amount to each Family's FSS escrow account on a monthly basis; revising the provision concerning reduction of amounts due by the FSS family; and revising several provisions concerning FSS families that move with continued housing choice voucher (HCV) assistance from the jurisdiction of one PHA to the jurisdiction of another PHA under portability. HUD also reminded PHAs and owners that they may not establish mandatory goals or requirements for all participants other than the two mandatory goals set in regulation (seek and maintain suitable employment, and be independent from welfare assistance), and that all other goals must be set on an individual basis.

After the publication of the proposed rule, HUD determined that changes to the information collection requirements described in it would be necessary. As a result, on November 15, 2021, at 86 FR 62964, HUD published a supplemental notice of proposed rulemaking re-opening the public comment period on the information collection requirements in the September 21, 2020, proposed rule. HUD received only one comment, which spoke about affordable housing generally and not about FSS or information collection requirements.

III. Changes Made at the Final Rule Stage

In response to public comments, a discussion of which is presented in Section IV, and in further consideration of issues addressed at the proposed rule stage, HUD is publishing this final rule adopting the September 21, 2020, proposed rule as final with the following changes.

A. *Purpose, applicability, and scope.* As part of this final rule, HUD updates the list of public housing and voucher programs through which families can participate in the FSS program in § 984.101. Public commenters noted that the change in the Economic Growth Act provided HUD with further flexibility to allow participants beyond those being funded under 8(o) of the U.S. Housing Act of 1937. After further consideration, HUD amends § 984.101 to provide that families participating in the HCV Homeownership Program under section 8(y) of the U.S. Housing Act of 1937 will also be allowed to participate in the FSS program. Additionally, this final rule includes Moderate Rehabilitation and Moderate Rehabilitation Single Room Occupancy for homeless individuals under 24 CFR part 882 in the list of programs under which families can participate in FSS, as these are also Section 8-assisted housing. The final rule also explicitly identifies Family Unification Program (FUP) assistance under section 8(x) of the 1937 Act as a program under which families can participate in FSS; the proposed rule did not adequately distinguish that FUP is not a section 8(o) program, unlike other special purpose vouchers.

This final rule also clarifies in § 984.101 that participation in the FSS program, or lack thereof, may not be used as cause to terminate rental assistance.

B. *Definitions.* In § 984.103, this final rule maintains the current definition of ''effective date of the Contract of Participation'' which currently is the first day of the month following the month in which the FSS family and the PHA or owner entered into the Contract of Participation, rather than finalize the proposed rule definition that would have made this the date the parties sign the contract. HUD revises the definition slightly so the effective date will be the first day of the month following the date in which the FSS family and the PHA or owner entered into the Contract of Participation for clarity, but the change is not substantive. HUD is maintaining the current definition because many commenters requested that the CoP continue to conform with other rental assistance processes that operate on a monthly cycle.

Additionally, this final rule revises the definition of ''FSS family in good standing'' as recommended by some commenters to mean an FSS family that is in compliance with their FSS CoP, has satisfied or is current on any debts owed the PHA or owner, and is in compliance with the regulations regarding participation in the relevant rental assistance program. The definition under the proposed rule provided that an FSS family is in good standing if it is not in eviction proceedings and is otherwise in compliance with any repayment agreement and the FSS CoP and did not include language noting that the family must also be in compliance with regulations for the relevant assistance program. This final rule also expands the definition of ''Personal welfare'' in § 984.103 to include health, dental, mental health and health insurance services.

C. *Cooperative Agreements.* In response to public comment, this final rule specifies in §§ 887.107 and 984.106 that Cooperative Agreements between PHAs and owners of multifamily properties must include processes for the entities to communicate with each other about changes in their Action Plans to ensure continued coordination between the participating entities in administering their program.

D. *FSS award funds formula.* This final rule removes language in §§ 887.111 and 984.107 of the proposed rule that stated notice of, and changes to, the FSS Award Funds Formula will be published in the **Federal Register**, as the formula will continue to be published in Notices of Funding Opportunities (NOFO).[2] HUD believes that adding the publication of the funding formula in the **Federal Register** would duplicate the inclusion of the formula that would also need to be

[2] HUD currently uses the term Notices of Funding Opportunity or ''NOFO'' for documents that would previously have been referred to as Notice of Funding Availability or ''NOFAs.'' This change is based on the terminology used in Office of Management and Budget Management in its Guidance for Grants and Agreements (85 FR 49506, August 13, 2020).

included in the NOFO. This final rule adds the statutory formula to HUD's regulations in § 984.107 for clarity.

E. *FSS Action Plans.* Section 984.201 of this final rule includes examples of policies over which PHAs/owners have discretion. These may be included in the FSS Action Plan to help HUD determine the soundness of the PHA or owner's FSS program.

F. *FSS appropriated funds.* This final rule revises § 984.302 to clarify that FSS appropriated funds awarded pursuant to this statute may be used by PHAs or owners for eligible FSS costs, including when an owner operates an FSS program through a Cooperative Agreement or on its own. Additionally, to ensure that there is no confusion about funding available to PBRA owners who operate an FSS program, this final rule adds a provision at § 887.113(a), that states that owners may also or alternatively use residual receipts to pay for reasonable FSS program operation costs, including hiring an FSS Program Coordinator or coordinators for their FSS program. This new regulatory text implements statutory language of section 23(l) of the U.S. Housing Act of 1937, as amended by the Economic Growth Act, which states that PBRA owners may access funding from any residual receipt accounts for the property to hire an FSS Program Coordinator(s) for their program.

G. *Contract of Participation.* In § 984.303, which covers the ''Contract of Participation,'' this final rule makes various changes and revisions. This clarifies that there will only be one CoP per household, and there may be an Individual Training and Services Plan (ITSP) for as many members of the household that wish to participate, which will be incorporated into the CoP. The rule also revises the regulatory text in paragraph (b)(3) to clarify that all considerations allowed for other residents for repayment agreements and other matters shall also be allowed for FSS participants. The rule revises § 984.303(b)(2) to state that being independent from welfare assistance will be a mandatory final goal instead of an interim goal.

Additionally, the rule revises paragraph (b)(4)(iii) to note that the determination of suitable employment will be made with the agreement of the affected participant, so that the affected participant has input into this matter along with the PHA or owner, and expands the regulation to include that the determination will involve consideration of the receipt of other benefits of the participant, to ensure that new employment will not cause the loss of necessary supports, in addition to the skills, education, and job training of that participant. Further, in paragraph (a) this final rule eliminates the requirement from the proposed rule that the family consult with the PHA or owner in designating the head of FSS family, as HUD believes that it is generally in the best interests of assisted households to choose the head of FSS family that is most suitable for their individual household circumstances.

This final rule also revises paragraph (d) to clarify that the determination of good cause for a Contract extension can include circumstances beyond the control of the FSS family that impede the family's ability to complete the CoP obligations and can include any circumstance that the PHA or owner determines warrants an extension, as long as the PHA or owner is consistent in its determinations. Further, this final rule provides in paragraph (k) that while the CoP will be terminated, escrow can be disbursed to the family when services that the PHA or owner and the FSS family have agreed are integral to the FSS family's advancement towards self-sufficiency are unavailable. Under the proposed rule language, only the PHA or owner made that determination.

This final rule revises paragraph (f) to clarify that modifications to the CoP must be in writing and signed by the PHA/owner as well as the head of FSS family. Additionally, this final rule revises paragraph (j) to clarify that only non-HUD funds or non-HUD restricted funds can be used by PHAs and owners to offer supportive services to former FSS families that have left assisted housing.

Lastly, this final rule provides in paragraph (k) that a CoP will be terminated but escrow can be disbursed to the family rather than forfeited, if an FSS family in good standing moves outside the jurisdiction of the PHA for good cause, as determined by the PHA, and continuation of the CoP after the move, or completion of the CoP prior to the move, is not possible.

H. *FSS escrow account.* This final rule removes from § 984.305 language that would permit a PHA or owner to set a policy to either conduct a new re-examination of income before the effective date of the FSS contract, or to use the amounts on the family's last income re-examination when setting a participant's baseline rent. This final rule will instead require the PHA or owner to use the amounts on the most recent rent certification. HUD believes this is more in line with congressional intent.

Additionally, this final rule expands the list of eligible activities for which forfeited escrow funds may be used to include other costs related to achieving obligations outlined in the CoPs of remaining FSS participants and adds to the list of ineligible activities ''general administrative costs of the FSS program.'' HUD has made this change to eliminate any incentive PHAs may have had not to graduate participating families so as to recapture the forfeited escrow funds and to ensure forfeited funds are used to advance participants' goals and not for the overall implementation of the FSS program.

This final rule does not contain language from the proposed rule that would have provided for escrow disbursement to an estate if the head of the FSS family dies before a CoP is completed, as HUD determined that there is no legal authority for this. However, if the head of the FSS family dies before the CoP is completed, another member of the FSS family may take over the CoP.

This final rule also clarifies how the increase in the family's monthly rent is determined when computing the FSS credit amount for Section 8 Moderate Rehabilitation (Mod Rehab) and PBRA families and that, as is the case with Project-Based Vouchers (PBVs), it is the difference between the baseline monthly rent and the current gross rent.

I. *HCV portability requirement.* Due to the fact that PBVs are allocated to a specific unit, a family with a PBV does not have the right to take that rental assistance and move. Generally, after having a PBV for 12 months, the family may apply for and receive Tenant-Based Rental Assistance (TBRA, also known as a Tenant-Based Voucher) if it is available. The proposed rule did not discuss an FSS family's right to move after transitioning from a PBV to TBRA. In § 984.306, this final rule clarifies that a PBV family that has been enrolled in the FSS program for 12 months, and who exercises its right to transfer from the PBV unit to tenant-based rental assistance in accordance with 24 CFR 983.261, may move outside of the jurisdiction of the initial PHA in accordance with standard portability regulations. The PHA's discretion to allow portability moves for TBRA FSS participants within the 12 months following the effective date of the CoP also applies to PBV families who become Tenant-Based voucher families.

Additionally, this final rule provides that a receiving PHA that is already serving the number of families identified in its FSS Action Plan and determines it does not have the resources to manage the additional FSS contract is not required to enroll a porting family. In such cases, the initial PHA must discuss with the family

options available to the family, such as modification of the FSS contract, termination of the FSS contract and forfeiture of escrow, termination of the contract and the release of escrow if the initial PHA determines there is good cause for the move, or locating a receiving PHA that has the capacity to enroll the family into its FSS program. HUD has made this change after considering public comments and determining that a lack of capacity to serve a ported FSS family would be a reasonable justification for a receiving PHA to deny enrollment of the ported FSS family into its FSS program.

Further, in response to comments, this final rule allows a family that was not an FSS participant at the initial PHA to enroll in a receiving PHA's program when the receiving PHA bills the initial PHA if the initial PHA agrees, and the initial PHA manages an FSS program. Under the proposed rule, if the receiving PHA bills the initial PHA, a family that was not an FSS participant at the initial PHA would not have been able to enroll in the receiving PHA's FSS program.

J. *Basic requirements of FSS (for multifamily FSS programs).* This final rule revises § 887.105 to provide that where a Program Coordinating Committee (PCC) is available, owners can either work with that PCC or create their own, either by themselves, or in conjunction with other owners. This adds flexibility to the language that was in the proposed rule that said owners must work with a PCC when one is available and did not mention an option for such owners to create their own PCCs.

Additionally, under this final rule, multifamily owners are not exempt from the family selection procedures in § 984.203. HUD makes this change from the proposed rule in order to give the owner the option of using certain selection preferences and motivational screening factors and make it easier for an owner to operate an FSS program through a Cooperative Agreement with a PHA that uses selection preferences or motivational screening factors.

K. *Additional grammatical and technical changes.* This final rule makes additional grammatical and technical changes throughout, such as clarifying the usage of the word ''jurisdiction'' so that it is only used when referring to a PHA's jurisdiction, and not also the community where a PBRA property is located; clarifying that PBRA owners may develop their own FSS Action Plans; including ''Head of Household'' in the list of definitions defined in part 5 of HUD's regulations; and other minor changes for clarity and conformance.

L. *Delayed compliance date.* This final rule includes a compliance date that provides PHAs and owners with up to six months from the date of publication of this rule to comply with its provisions. HUD encourages PHAs and owners to comply with this new rule's provisions as soon as possible. This means that all FSS Action Plans must be updated by the compliance date. HUD intends to provide guidance on that process and encourages PHAs and Owners to visit the FSS Resources web page at: *https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/fss* and to subscribe to HUD's FSS listserv at *https://public.govdelivery.com/accounts/USHUDPIH/signup/30989.* The requirements in this rule may apply to CoPs that are signed after the effective date of the rule but before the compliance date if the PHA or Owner is in compliance with the new rule. PHAs and Owners may reach an agreement with FSS participants covered by existing CoPs to modify those CoPs on a family-by-family basis, so those contracts are governed by this final rule.

IV. Public Comments

The public comment period for the September 21, 2020, proposed rule closed on November 20, 2020. HUD received and reviewed 105 comments on the proposed rule from a wide variety of interested entities, including: Individuals, public housing agencies, affordable housing organizations, housing associations, community development corporations, and investment companies. This section addresses significant issues raised by the public comments and is organized by the proposed rule section, with summaries of the issues followed by HUD's responses. There were also numerous comments received both in support of and opposition to the proposed rule generally, as well as comments that did not address one specific section of the proposed rule. Those comments are organized into general categories and responded to accordingly. Following are the issues raised by the public comments and HUD's responses.

General Support

Commenters generally supported the proposed rule as beneficial to program participants and to beneficiaries. A commenter supported updating FSS rules so that PHAs do not have to ignore outdated language.

HUD Response: HUD appreciates this feedback and the time taken to review the proposed rule.

Section 984.101: Purpose, Applicability, Scope

Section 8 Participants Eligibility

A commenter asked HUD to clearly state that all Section 8 participants are eligible to participate in FSS, including those with Non-Elderly Disabled (NED), Veterans Affairs Supportive Housing (VASH), and Mainstream Vouchers. The commenter also asked HUD to provide specific instructions on reporting through the PIH Information Center (PIC) and Voucher Management System (VMS), noting that there is no clear direction on how to assist families on Mainstream 5 and the funds used for escrows need to be backed out and submitted as Housing Assistance Payments (HAP) in the Mainstream 5 VMS line. The commenter said when they asked HUD, they were told Mainstream 5 participants were not eligible to participate in FSS as the funds are from the Section 811 Supportive Housing for Persons with a Disability program.

HUD Response: As stated in the proposed and this final rule, families assisted under Section 8 voucher programs are eligible to participate in FSS. This includes any applicable special purpose voucher considered rental assistance under section 8(o) or 8(x) of the U.S. Housing Act of 1937 (1937 Act) (such as Family Unification Program (FUP), Foster Youth Initiative (FYI), Veterans Affairs Supportive Housing (VASH), and Mainstream Vouchers). Based on comments received concerning the eligibility of Housing Choice Vouchers (HCV) homeownership families for FSS, HUD has revised the regulatory text to clarify and allow HCV homeownership families to participate in FSS. Additionally, this final rule includes Section 8 Moderate Rehabilitation for low-income families and Moderate Rehabilitation Single Room Occupancy for homeless individuals under 24 CFR part 882 in the list of programs under which families can participate in FSS, as these are also Section 8-assisted housing. For further explanation concerning this change, see the discussion of public comments on § 984.103. As it relates to the reporting concerns raised by a commenter, HUD is in the process of updating VMS to allow PHAs to properly report FSS escrow deposits and forfeitures for Mainstream Voucher participants and will share guidance when it is available.

Non-Participation

Commenters supported HUD's addition of language clarifying that a family's rental assistance shall not be

delayed or terminated by reason of a family electing not to participate in the FSS program because families may, despite best efforts, fail to meet the obligations and objectives of the CoP, which would disincentivize participation. A commenter stated that the non-participation clause was too narrow and suggested HUD should affirmatively state that rental assistance cannot be terminated for non-compliance with the FSS program to avoid ambiguity and conform with the statute.

HUD Response: This final rule revises § 984.101(d) to be clear that participation in the FSS program, or lack thereof, may not be used as cause to terminate rental assistance. This final rule also revises § 887.101(d) to be clear that assistance under Section 8 Housing assistance payments programs cannot be refused, delayed or terminated because a family chooses not to participate in an FSS program.

Mandatory and Voluntary Programs

A commenter stated HUD should leave the language as is and allow the PHA to decide if they want to keep the program voluntary or make it mandatory.

HUD Response: As used in the proposed rule and this final rule, the terms ''voluntary'' and ''mandatory'' refer to whether PHAs are required to institute an FSS program, not whether residents must participate. All FSS programs must be voluntary for participants.

Section 984.102: Program Objectives

Graduation Timing

A commenter requested that HUD add a provision allowing a client to graduate at time of verification of full-time/suitable employment or at the time the new wages/income from employment is added to the Form HUD–50058 Family Report.

HUD Response: As explained in § 984.303, the CoP is considered completed and a family's participation in the program is considered concluded when the FSS family has fulfilled all of its obligation under the CoP, on or before the expiration of the Contract term. Section 984.303(b) requires that the head of FSS family under the CoP seek and maintain suitable employment during the term of the contract, but the family may have other obligations under the CoP, as described in § 984.303. Participants may graduate at any time their obligations under the CoP are met. The national average time in the program for graduates is less than four years. HUD notes that the goal of FSS is self-sufficiency; therefore, a participant being hired for their first job may in fact be only at the beginning of what they can achieve while in the FSS program.

Performance Measures

Commenters recommended that HUD allow the public the opportunity to comment on any performance standards. A commenter said any performance standards that will impact new, or renewal funding and incentives should be subject to public comments prior to the effective date. A commenter said that there were issues with HUD's attempt to implement new performance metrics in the past and asked that HUD's scoring system not place excessive weight on increased earned income, which may negatively impact FSS program participants that are enrolled in lengthier training and educational programs compared to participants that focus specifically on employment. A commenter said any weighing of graduation rates and earnings performance should be equal to reflect their equal importance. Other commenters expressed concern that the ''Composite Score'' methodology does not give credit for programs or participants who enter educational pursuits prior to entering employment. Another commenter recommended that the performance measures and criteria for awarding incentives include an FSS family's successful move to homeownership when graduating.

A commenter stated that HUD received criticism for attempting to implement the performance measurement system and that HUD found inexplicable anomalies between consecutive years of scoring of certain housing authorities. The commenter said that Congress specifically prohibited HUD in an appropriations act from using funding to consider FSS performance measures or scores in determining funding awards. The commenter stated that the system does not account for the diversity of households in educational levels, skills, and employability at enrollment, and that HUD's own contractor recommended that HUD tailor its performance measurement system to fit the stated structure and goals of the program. The commenter suggested HUD devise a system that: Is not implemented retroactively; does not fail to award points to all the educational, employment and supportive services allowed by statute for program participants; does not score performance until FSS contracts are completed; does not penalize non-metropolitan areas who may have a dearth of employment opportunities in their markets; does not penalize PHAs that are voluntarily administering an FSS program with no FSS Program Coordinator funding from HUD; and does not prevent PHAs from administering the FSS program at the local level. The commenter also said HUD lacks authority to determine how participants and PHAs will devise their contracts under FSS, and that if HUD wants to limit pre-employment services and educational/job training, it should seek a statutory change. This commenter asked HUD to remove from the final rule the explicit language related to HUD's proposed measurement system factors—namely graduation from the program, increased earned income, and program participation—since no such language is included in section 306 of the Economic Growth, Regulatory Relief, and Consumer Protection Act.

Two commenters stated the proposed rule is silent about how performance standards would affect coordinator funding awards and said HUD should comply with Congress' directive by specifying that funding for renewed and additional coordinator positions would be subject to performance criteria. One commenter said it would not be fair to provide agencies serving more families than they are required additional points as other programs may be serving families and individuals that may require more time with a coordinator. Another commenter stated the ''Composite Score'' accurately evaluates the success of the FSS program outcomes, and that when one looks at the outcomes achieved and not the process then it becomes clear what is being evaluated.

A commenter said it has no objection to HUD using a PIC driven ''Composite Score'' to evaluate its FSS program but asked that HUD provide detailed reporting guidelines on how and when the data is mined from PIC to ensure they are reporting accurately. Another commenter said that the HUD-commissioned MDRC National FSS Evaluation will provide rich information about FSS program operations and that any changes in evaluation measurements should wait until the results of this study are published so that they may inform best practices for performance measurement. One commenter stated a concern that the proposed rule would not give credit to a program for graduating participants who have never received Temporary Assistance for Needy Families (TANF) or whose wages remained steady throughout the five-year FSS contract. The commenter was also concerned that the performance measure did not address the number of program

participants who did not have TANF within the time of their FSS contract.

Another commenter expressed concern about the potential for developing a tool that is not flexible enough to reflect the complicated nature of the participants in the FSS program, the outside forces that directly impact their ability to meet and reach their ITSP goals, and the non-quantifiable impact of services and supports on their long-term economic stability. The commenter opposed the development of a tool that is applied the same way to all programs, if that tool cannot account for the impact of region, participant enrollment characteristics, short- and medium-term economic realities and changing government priorities.

Commenters stated that the proposed rule did not reference Moving to Work (MTW) agencies as being covered by such an evaluation system, but it also did not indicate that MTW agencies will be exempt or subject to different criteria. The commenters said that the scoring criteria in the proposed rule should not apply to MTW agencies without engaging the MTW Collaborative and the individual MTW PHAs in a collaborative process to develop the tool, ensuring that in drafting scoring criteria HUD will consider the unique circumstances of MTW agencies operating alternative FSS programs. A commenter said that the Form HUD–50058/PIC does not allow for accurate reporting for MTW agencies, and if HUD intends to use Form HUD–50058–MTW for FSS performance scoring, HUD must fix the existing technical issues.

HUD Response: The Proposed Family Self-Sufficiency Performance Measurement System (''Composite Score'') Notice requesting public comment was published on December 12, 2017 (82 FR 58434). The Final Notice was published in the **Federal Register** on November 15, 2018 (83 FR 57493). HUD wishes to note that the Performance Management System, as published, is not structured to include MTW agencies, unfunded FSS programs or PBRA FSS programs. The majority of the comments above commented on the current Performance Measurement System, not the proposed rule.

Section 984.103: Definitions

Baseline Annual Earned Income

A commenter agreed with HUD's proposed definition of ''Baseline Annual Earned Income,'' stating it aligns with the new Housing Opportunity through Modernization Act (HOTMA) proposal of removing Earned Income Disallowance (EID). One commenter agreed that disregarded income associated with self-sufficiency incentives should no longer be excluded in calculating baseline annual earned income because families who previously could not build escrow could now do so even if they are in a waiver program. Another commenter stated that instructing PHAs and owners to add back any disregard of earned income associated with self-sufficiency initiatives would have a punitive effect and likely deter rather than encourage participation for the persons with disabilities who could most benefit from FSS. This commenter said that just as HUD is proposing greater consistency across the board by allowing FSS families the opportunity to continue participation during the six-month Zero-HAP window rather than automatically graduating families who meet the 30% rule, HUD should maintain consistency across programs by continuing to extend the EID in calculating the baseline income for FSS CoP purposes.

Commenters requested that HUD clarify the definition and asked specifically about the meaning of ''disregard of earned income associated with self-sufficiency initiatives.'' One commenter asked if it referenced EID, Jobs Plus, or others, and, if so, that HUD provide a citation to the source of these initiatives so PHAs may easily reference them. Another commenter asked HUD to clarify whether the self-sufficiency initiatives HUD is in the process of implementing from the HOTMA would impact the calculation of FSS escrow.

HUD Response: As explained in the proposed rule's preamble, adding back any disregarded earned income associated with self-sufficiency initiatives at the time that the PHA or owner determines the baseline annual earned income (that is, when the PHA or owner is determining the amount of earned income when the family enrolls in the program), helps ensure that escrow amounts are the result of increases in earned income while the family is in the FSS program. Otherwise, the family's earned income would be lower at baseline resulting in potential for higher escrow credits based on increases in earned income that happened prior to FSS enrollment. It does not mean that this will necessarily result in all families with a disregard not being able to escrow, but rather, that the calculation will more accurately reflect increases in escrow that are the result of increases in earned income while the family is in FSS. Based on this, HUD has determined not to change the proposed regulatory language. Currently, ''self-sufficiency initiatives'' includes programs that include financial incentives including the Jobs Plus Earned Income Disregard and the standard Earned Income Disregard. HUD's proposed rule implementing sections 102, 103, and 104 of HOTMA (published on September 17, 2019 at 84 FR 48820) would eliminate the standard Earned Income Disregard. Additionally, that proposed rule would change rent calculation, but would not introduce new ''self-sufficiency initiatives'' (with financial incentives). HUD is not including the name of specific self-sufficiency initiatives in the rule, as we do not wish to limit ''self-sufficiency initiatives'' to those that exist at present. However, this final rule revises the definition to note that disregarded earned income ''or other adjustments associated with self-sufficiency initiatives'' may be applied when calculating baseline annual earned income, to account for ''self-sufficiency initiatives.'' This final rule also clarifies that any disregarded earned income ''and other adjustments associated with self-sufficiency initiatives'' will be included in calculations of current annual earned income.

Certification/Documentation of Goal Attainment and Completion

A commenter stated the certification standard should be consistent with the HCV program of self-certification, and PHAs should strive to get third-party verification to confirm CoP goals were met. Another commenter recommended that HUD reduce unnecessary administrative burdens on housing providers and demonstrate trust in families by clarifying that self-certification is permissible for documenting: (1) Completion of ITSP Goals; and (2) being independent from cash welfare assistance. This commenter recommended that under § 984.305(c), HUD explicitly state that self-certification of goal completion is sufficient evidence.

One commenter asked that HUD further clarify the certification definition to include a verification hierarchy to track ITSP goals with evidence provided by participants, such as third-party authentic documents, to help keep clear, concise record keeping. This commenter supported self-certification only in situations where third-party verification would be difficult.

HUD Response: The definition of certification, as written, and 24 CFR 984.305(c)(1) and (2) allows for PHAs and owners to accept self-certification of being independent from welfare assistance from FSS participants and 24 CFR 984.305(c)(4) also gives PHAs and owners the discretion to require third party verification. This final rule notes

that the requirements for the documentation of attainment of ITSP goals will be left to the PHA or owner to determine, and the policy may be included in their FSS Action Plan.

Current Monthly Rent

A commenter recommended that HUD allow the current definition of family rent to remain, to decrease the uncertainty FSS Program Coordinators may have when explaining what family rent is to an FSS participant when determining the escrow calculation.

HUD Response: HUD declines to accept the commenter's recommendation. The proposed rule does not define ''family rent.'' The definitions of ''baseline monthly rent'' and ''current monthly rent'' were updated in the proposed rule and this final rule to reflect the evolution of rent options and nuances since the original regulations were written. The definition in the current regulation does not encompass the current realities.

Effective Date of the Contract of Participation (CoP) (Question 1)

Several commenters supported the proposed change to the effective date of the CoP. Commenters suggested that this could cause less confusion about the FSS program start date. One commenter supported the change but noted that software changes may need to be implemented to track these new dates. Two commenters supported the change to define this as the day the head of FSS family and PHA or owner execute the CoP. One commenter stated the current definition creates unnecessary delays for families interested in enrolling in the program. A commenter suggested applying this change prospectively rather than retroactively, as that would cause undue confusion for all parties.

Many commenters opposed the proposed change to the CoP effective date. Commenters stated that the change would make recordkeeping and escrow reporting more complicated, creating an administrative burden. Other commenters said it would be harder to track and monitor progress and end dates for FSS program participants. A commenter requested the option of keeping the effective date as the first of the following month.

Several commenters opposed defining the date of the CoP as the date it is executed, stating the CoP should continue to begin the next first of the month from the date of signing the contract.

Other commenters noted that the change would be inconsistent with rent calculations, which are generally effective the first day of the month. One commenter noted that Section 8 actions could affect an FSS program participant's income on the day that the Contract of Participation is signed, or the time directly afterwards.

A commenter said there are some Form HUD–50058 (Family Report) actions that are not processed due to household changes, but Contract rent increases or change of unit due to extenuating circumstances such as fire, flooding, or owner possession of unit, and asked how this would impact the CoP start date.

A commenter stated that because the tenant file comes from the Section 8 population to the FSS program, there have always been issues with actions that are in process by the current occupancy specialist and the FSS reporting timelines. For FSS Program Coordinators that do not process their own actions or in some cases do not even have access to those functions in the HCV software, this must be coordinated with the Occupancy Specialist. In the case of the proposed rule, the FSS enrollment addendum, for example, would be entered for the October 15th enrollment date and the pending action would still need to be deleted and reprocessed to include the FSS progress enrollment, so either way there is additional data entry to be done and clear communication with other staff if one is not processing the actions in the software.

Another commenter suggested an option to keep the effective date of the CoP on the first of the following month after signing to allow for easier tracking and PIC submission purposes.

A commenter said that starting the CoP on the date the contract is executed may pose a challenge if the participant has submitted an interim recertification for a rent decrease that has not yet been processed at the time of enrollment. The commenter asked if a recertification that occurred before the execution of the CoP but processed after the execution of the CoP would count as the first recertification of income for the purpose of the CoP? Would the baseline rent be the last rental amount paid by the family or the next rental payment which would reflect the interim recertification? The commenter stated that it is unclear if a family graduates from the program mid-month as to whether an agency would be required to pro-rate the family's escrow credit for the month or not.

One commenter stated that if the effective date of the contract is changed from the date of signing, this affects the monthly rent roll and landlord payments, which would trigger the system to pro-rate payments that were already issued for that month. A commenter said a new workaround may need to be created to overcome this issue.

HUD Response: HUD appreciates the comments on the proposal. Many commenters opposed the change and requested that the CoP continue to conform with other rental assistance processes that operate on a monthly cycle. This final rule does not include the provision to change the effective date to the same date as the enrollment date. The CoP effective date will remain the first of the month following execution of the CoP. HUD does not believe that the rent roll or landlord payments should be impacted by the Contract effective date. The new statute and proposed and final regulation state that the CoP will end no later than 5 years after the first *recertification of income* after the execution date of the CoP. Therefore, a change in rent due to ''contract rent increases or change of unit due to extenuating circumstances such as fire, flooding, or owner possession of unit'' as suggested by a commenter, would not impact the start date or the length of the CoP. HUD notes that while the statute uses the term ''recertification,'' these regulations use the term ''re-examination,'' and these two terms have the same meaning in this rule.

Eligible Families

Commenters requested that HUD not limit eligible voucher recipients to ''section 8(o)'' program participants in the proposed definition of ''eligible families'' and should replace this with ''Housing Choice Voucher program participants, including families with project-based vouchers and homeownership vouchers.'' These commenters said that HUD does not explain why the proposed definition excludes these voucher participants. The commenters stated that a HUD Q&A clarifies that families receiving rental assistance through the Family Unification Program, other special purpose vouchers or Tenant Protection Vouchers would still be eligible to participate in FSS.[3] The commenters said the statute does not prohibit these categories of families, and families utilizing the HCV homeownership program still pay income-based rent and could benefit from the additional savings available through the FSS program. These commenters stated HUD would also need to eliminate the

[3] U.S. Department of Housing and Urban Development, *Family Self-Sufficiency Program Proposed Rule Questions & Answers (Q&A), https://www.hud.gov/sites/dfiles/PIH/documents/QA_on_FSS_Proposed%20Rule_-clean.pdf.*

proposed definition of ''section 8(o)'' and make parallel changes in the definition of ''FSS family'' and elsewhere in the new regulations. Another commenter advocated that anyone of any income-based program should be eligible for this opportunity because the FSS program's objective is to help people become independent of welfare assistance and work their way up to homeownership.

A commenter recommended this definition be changed to allow families participating in the HCV homeownership program to have the opportunity to participate in FSS. Another commenter disagreed that those FSS participants who move into homeownership could or should remain on the FSS Program because most of the homeownership programs in their area offer assistance programs in case homeowners face hardship. A commenter recommended that Homeownership participants not be allowed to participate in FSS once they meet their CoP requirements.

A commenter supported the proposed rule change allowing residents at Rental Assistance Demonstration (RAD)-converted properties to participate in the FSS program. Another commenter stated that FSS authorizing documents do not fully support the intentions of the FSS program, especially in RAD-converted properties. The commenter said there is conflicting information regarding the eligibility of former PHA relocated residents within a PHA's FSS Action Plan between the continuum of RAD Notices, the 2020 FSS Renewal Notice of Funding Availability (NOFA), and HUD's proposed rule. The commenter said that the NOFA language seemed punitive to the resident and inconsistent with the program's intentions and asked that HUD consider consistent language to allow continuous resident participation so long as the PHA and post-RAD conversion owner enter into a Cooperative Agreement and that residents be allowed into the program at any time after relocation. The commenter also asked that any new residents to the RAD-converted property also have the option to enroll into FSS and that the NOFA acknowledge these as eligible families.

HUD Response: As it concerns the eligibility of HCV homeownership families (under section 8(y) of the U.S. Housing Act of 1937) to participate in FSS, HUD has considered the comments received, which are almost unanimously supportive of such participation. HUD has also determined that while section 23 of the 1937 Act prior to the Economic Growth Act amendments prevented an HCV homeownership family from participating in FSS, changes to the definition of eligible families under section 23(c)(1) as amended by the Economic Growth Act mean that participants receiving HCV homeownership assistance may also be included in this definition; the statutory definition of FSS eligible families under the Economic Growth Act includes Section 8 participants broadly rather than being limited to Section 8 rental certificate or rental voucher program participants. HUD revised § 984.101 of this rule accordingly, so that participants of the HCV homeownership option are eligible to participate in FSS. Additionally, HUD revised the definition of Section 8 programs to include multifamily assisted housing; tenant-based and project-based rental assistance under section 8(o) of the 1937 Act; the HCV homeownership option under section 8(y) of the 1937 Act; Family Unification Program (FUP) assistance under section 8(x) of the 1937 Act; and Moderate Rehabilitation for low-income families and Moderate Rehabilitation Single Room Occupancy for homeless individuals under 24 CFR part 882. Tenant-based and project-based rental assistance under section 8(o) of the 1937 Act includes any applicable special purpose voucher considered rental assistance under section 8(o) of the 1937 Act (such as FYI, VASH, and Mainstream Vouchers).

The comment about conflicting information regarding eligibility for residents at RAD-converted properties refers to the FY20 Notice of Funding Availability (NOFA). The FY20 NOFA reflects the eligibility of RAD-affected public housing residents prior to the new statute being implemented. The final rule will allow PBRA residents in RAD-converted properties to be served by PHAs with FSS appropriated funds if the PBRA owner enters into a Cooperative Agreement with the PHA and this will be reflected in future NOFOs following implementation of the final rule.

Family Self-Sufficiency (FSS) Program

A commenter stated that the definition of ''FSS program'' is established within its own jurisdiction and the language should be left as is because it gives the PHA more flexibility in defining and managing the program.

Commenters noted that the definition referred to ''a program established by a PHA or owner within its jurisdiction'' but the phrase ''within its jurisdiction'' has no applicability to owners and could be read to indicate that a PBRA owner is somehow within the jurisdiction of the local PHA, and therefore recommended deleting the phrase ''within its jurisdiction'' from this definition.

HUD Response: HUD has clarified its usage of the word ''jurisdiction'' throughout this rule. In the proposed rule, ''jurisdiction'' was sometimes used to refer to the community where a PBRA property is located. In this final rule, ''jurisdiction'' is only used when referring to a PHA's jurisdiction.

Supportive Services

A commenter stated support for HUD's clarification that PHAs are only required to coordinate the availability of supportive services, not actually provide them, but requested that HUD clarify in its definition that PHAs and owners may directly provide supportive services, such as a childcare center or health clinic. Another commenter asked if, because of this provision, PHAs should no longer provide credit and financial services, even though PHAs are supposed to be trained in them in case an FSS participant faces those obstacles. Lastly, a commenter suggested that the final rule provide the flexibility for services to be conducted onsite or virtually, due to the COVID–19 pandemic.

A commenter suggested that HUD keep intact the full list of services as distinctly listed by Congress so as not to minimize the importance of any one specific service by combining it with other services. The commenter stated that the system fails to account for achievement such as obtaining a college degree and favors an approach that moves participants quickly to employment.

A commenter asked HUD to integrate health as part of the necessary conditions that promote and advance self-sufficiency because a health condition often prevents otherwise eligible families from participating in the FSS program. Before paragraph (ix) (Other services) of the definition, the commenter suggested adding the following: ''(ix) Health management and empowerment—where available, the coordination with a Community Health Worker (CHW) as may be necessary to improve the health of the FSS participant, so long as the FSS participant consents in writing. The FSS participant may also withdraw consent, in writing, at any time.''

Another commenter questioned whether FSS families could participate in first-time homebuyer programs while they are in the FSS program and what protections would the regulations provide to protect against possible discrimination while transitioning into homeownership.

HUD Response: PHAs and owners may provide FSS services directly using non-FSS appropriated funding, in accordance with the eligible activities of those funds. The FSS program does not impose any restrictions as to the location or modality of the services.

The definition of Supportive Services in the final rule at § 984.103 includes all services as defined in the statute and adds clarifying language. Both education and employment-related supportive services are included, as in the statute. This final rule expands the definition of ''Personal welfare'' to include health, dental, mental health, and health insurance services.

FSS families may, and often do, participate in first-time homebuyer programs while they are in the FSS program. Participating in a first-time homebuyer program, receiving housing counseling services, or participating in any form of homebuyer education or advocacy program should have no adverse effect on an FSS family's participation in FSS. Participation in the FSS program would not curtail or impact in any way the protections against discrimination that cover all families.

Section 984.105: Minimum Program Size

Extension of HUD-Approved Exception (Question 2)

A number of commenters supported the proposed change to extend the duration for a HUD-approved exception to five years. A commenter suggested that an annual report should be submitted by the PHAs to HUD concerning the use of the exception. Another commenter stated that the duration of any HUD-approved exception should be left at the PHA's discretion. When a PHA submits the request for an exception, the PHA should provide a good cause for the requested timeframe since FSS participant family profiles vary between PHAs as well as local circumstances.

HUD Response: HUD appreciates the comments received in response to this question and, will keep the five-year limit on exceptions as stated in the proposed rule. In the interest of consistency in HUD's administration of the FSS program, HUD will not leave the time period of an exception up to each PHA. Under section 23 of the 1937 Act, as amended by the Economic Growth Act, HUD does not have the discretion to grant a permanent exception to the implementation of a Mandatory Program.

Proposed Changes to Minimum Program Size

A commenter opposed the proposed change to the minimum program size. A commenter disagreed with the proposal that when determining the minimum program size, the relevant figure is the total number of Public Housing units plus the total number of HCV units because even within the context of a unified FSS program, the calculation of program size for HCV participants should be calculated independently of the total number of public housing units. This commenter said that this has the potential to negatively impact the Section Eight Management Assessment Program (SEMAP) scores of PHAs that are working to comply with mandatory FSS requirements and whose current SEMAP scores derive from their performance serving HCV program participants. This commenter asked whether this change would impact current FSS obligations or would only apply to future obligations.

A commenter asked for more clarification for PHAs to accurately track their mandatory size. A commenter asked HUD to clarify whether HUD will be providing PHAs with the accurate number of required families to be served as of May 24, 2018, and whether all participants who have graduated since October 21, 1998, still reduce the May 24, 2018, mandatory number. Another commenter requested that the final rule provide additional clarification for FSS programs that reduced their size according to existing regulations because the proposed rule does not make it clear as to whether a program that reduces its program size after May 24, 2018, but before the final rule is implemented will be required to revert their program back to the size it was on May 24, 2018, or maintain its current minimum program size. The commenter recommended that HUD allow the minimum size of an FSS program to be either what it was on May 24, 2018, or the lesser amount if, as allowed by current regulations, a family graduated after May 24, 2018, and the FSS program opted not to refill that spot.

HUD Response: HUD will calculate each PHA's minimum program size as of May 24, 2018, by calculating the original minimum program size (including public housing and Section 8) and reducing that number by the number of graduations reflected in PIC since October 21, 1998, to date. HUD plans to communicate these through the Field Offices to PHAs and provide additional forthcoming guidance.

Section 984.106: Cooperative Agreements (Question 3)

Several commenters stated that the list of requirements for PHAs entering into a Cooperative Agreement with owners of multifamily properties to voluntarily make an FSS program available to the owner's assisted tenants was comprehensive. One commenter noted that the requirement is being expanded without adequate appropriations to fund the FSS program, which would create an administrative burden for PHAs taking on an additional caseload for eligible families covered under a Cooperative Agreement with owners of multifamily properties. Another commenter opposed the change stating that it makes more sense to have the staff providing direct services to the client track and be knowledgeable about their escrow account, and that having separate hands involved with service coordination and escrow tracking creates an administrative burden on staff. One commenter recommended defining the word ''serve'' and the statement ''FSS funds'' to clarify that funds cannot be used for additional service provision like activities or incentives.

HUD Response: HUD appreciates commenter feedback on the proposed list's comprehensiveness and notes that the preponderance of commenters felt it was comprehensive. HUD notes the concerns raised by a commenter regarding coordination between FSS Program Coordinators and staff who track client escrows when these functions are not performed by the same staff; however, HUD does not feel that such challenges are insurmountable, or should prevent a PHA from choosing to serve PBRA residents via Cooperative Agreement. The PBRA owner is ultimately responsible for managing the Federal funds provided through their PBRA contract, for rent calculation, and for the amounts placed in escrow and distributed to FSS families. The rule requires that the Cooperative Agreement between a PHA and an owner set forth the procedures for the sharing of escrow information between the PHA and the owner. HUD recommends that these procedures include the role of the FSS Program Coordinators. Each PHA may choose whether to enter into a Cooperative Agreement with a multifamily owner, assessing its own capacity to take on new participants by expanding the program or integrating them into their current program size. PBRA residents served by a PHA are already incorporated into the ''number of residents served'' as part of the NOFO funding process. HUD does not believe

it is necessary to define the words ''serve'' or ''FSS funds'' in the rule.

Section 984.107: FSS Award Funds Formula

Incorporation of Formula in the Final Rule

Commenters stated that HUD should incorporate a formula in the final FSS rule addressing how HUD will approach the discretionary authorities provided in 42 U.S.C. 1437u(i), created by the Economic Growth Act. The commenters encouraged HUD to specify in the final rule the other criteria which may be considered in determining eligibility for base or additional awards, which should include factors such as the planned enrollment level for a new or growing program, or the historic enrollment level for an existing program which may be experiencing a temporary dip in enrollment. One commenter stated that this requirement is mandatory, rather than discretionary.

A commenter urged HUD to detail funding formulas in the final rule, as well as address how it will approach other discretionary funding authorities to give housing providers and service coordinators a clear understanding of the funding parameters and allow them to better prepare for the future.

''Base Awards'' Threshold and Prorating the Award Amount

Commenters suggested that the Secretary use discretion, under the Economic Growth Act to determine the policy concerning awards for eligible entities serving fewer than 25 participants (the threshold for a ''base award'') and suggested that such a policy could include prorating the award amount or allowing such entities to combine programs.

A commenter suggested that HUD should clarify that the first priority encompasses only the renewal of the full costs of the same number of full-time and part-time coordinators as were funded by FSS awards in the prior year, with appropriate adjustments for local staffing costs and for year-to-year cost-of-living increases; and that the second priority encompasses all other funding requests, whether for new coordinators, incremental increases from part-time to full-time coordinators, or for existing coordinators not previously funded with FSS award funding.

Criteria for Determining Additional Awards of FSS Program Coordinator Funding

Commenters urged HUD to address its intended approach to determining awards of ''new or incremental coordinator funding'' under the second priority and urged HUD to use fair and reasonable ''general principles.'' The commenter suggested additional funds appropriated by Congress should be used for program expansion and deploying additional service coordinators.

Commenters recommended that HUD commit in the rule to implementing competitive processes that provide fair and reasonable access to funding for both programs operated by PHAs and programs operated by PBRA owners; and a reasonable balance between incremental awards for existing programs and new awards for previously unfunded programs.

HUD Response: This final rule adds the statutory funding formula in regulation. The new statute codifies the formula that HUD has used in NOFOs (previously called ''NOFAs'') for many years. All of the areas that are at HUD's discretion (criteria for funding, policy on award for eligible entities that are serving fewer than 25 participations, amounts available, etc.) in the new statute have been and will continue to be addressed in standard NOFOs. The statute provides that First Priority funding goes to FSS Program Coordinators that qualify as renewals. Beyond that, Second Priority will fund new programs or additional coordinators for renewal grantees. The distribution and priority under the Second Priority will be published in the NOFO each year. HUD has determined that it would be duplicative to publish the funding formula in both the NOFO, which is available to the public on *Grants.gov,* and also in a separate **Federal Register** Notice. Additionally, publishing the formula in a separate **Federal Register** Notice could potentially delay funding awards, and since funding is annual, it is critical that awards be made by December 31 of the year in which it was appropriated. Therefore, this final rule removes language from the proposed rule that provides that HUD will publish a separate notice in the **Federal Register**. Each year, within the bounds of the statute, the implementation of the funding award formula may change slightly to reflect best practices, lessons learned, the needs of the day, etc. All criteria for making awards are shared, in conformance with the HUD Reform Act, with the applicant community via the NOFO.

Incentives for Innovation and High Performance

Commenters said that the final rule should address HUD's implementation of new subsection (i)(6) of 42 U.S.C. 1437u(i), created at section 306(a)(11) of the Economic Growth Act, which authorizes the Secretary to reserve up to 5 percent of FSS appropriated funding for use as ''incentives for innovation and high performance.''

Commenters recommended that the authorized incentives for innovation and high performance be incorporated within a competitive funding process for allocation of funding to ''second priority'' requests for new or incremental coordinator funding. The commenters noted that the ''incentive'' funding under this section, unlike all other funding authorized in subsection (i), is not specifically restricted to use for FSS Program Coordinators, but is more flexibly defined as ''to provide support or to reward'' FSS programs; and urged HUD to provide in the final rule that it may employ this authority to provide support to innovative or high-performing FSS programs for costs other than coordinator costs, which could include the costs of IT systems, participant incentives, or other costs. Commenters recommended that HUD support programs to establish innovation, cross-sector partnerships to help strengthen the types and quality of services offered to FSS participants (such as partnerships with employers, workforce and career development programs, colleges, etc.). A commenter encouraged flexibility for program providers and the possibility of incentives that may allow them to pursue innovative efforts, which could complement the service coordinators' work and improve resident outcomes. The commenter suggested that incentive payments permitted under the rules should only be considered after renewals are fully funded.

HUD Response: HUD appreciates the comments. At the current time, HUD is focused on Priorities One and Two as stated in the Statute. If HUD chooses to avail itself of the option for Incentives for Innovation and High Performance, we will issue a separate notice. However, at this time, HUD is not including it in this final rule.

Section 984.201: Action Plan

A commenter requested that HUD state the exact ''slight changes'' it is making especially since they are not easily identifiable in section 306 of the Economic Growth Act.

HUD Response: Compared to the current regulation (24 CFR 984.201), the final rule at § 984.201: (1) Expands requirements for consultation on the FSS Action Plan, as required by section 23, as amended; (2) removes language around FSS Action Plan submission requirements for mandatory programs

(there are no new mandatory programs); (3) adds language to clarify that all voluntary programs are required to have an approved FSS Action Plan, regardless of whether they receive funding (this is not a change, just a clarification); (4) deletes references to outdated programs that no longer exist (*e.g.,* the Job Opportunities and Basic Skills Training Program under part F of title IV of the Social Security Act has been replaced by the Workforce Innovation and Opportunity Act); and (5) removes requirements for policies around ''terminating or withholding Section 8 assistance'' (as this provision has been removed per other areas of statute). In the final rule, HUD is also adding to § 984.201(d)(13) providing that optional additional information is such other information that would help HUD determine the soundness of the proposed FSS program. Examples of policies that may be included in the FSS Action Plan include:

- Policies related to the modification of goals in the ITSP;
- The circumstances in which an extension of the Contract of Participation may be granted;
- Policies on the interim disbursement of escrow, including limitations on the use of the funds (if any);
- Policies regarding eligible uses of forfeited escrow funds by families in good standing;
- Policies regarding the re-enrollment of previous FSS participants, including graduates and those who exited the program without graduating;
- Policies on requirements for documentation of goal completion;
- Policies on documentation of the household's designation of the ''head of FSS family;'' and
- Policies for providing an FSS selection preference for porting families (if the PHA elects to offer such a preference).

Section 984.202: Program Coordinating Committees (PCCs)

A commenter said they support the proposal to include service coordinators on PCCs because the committee should have a deep understanding of resident needs, and service coordinators are uniquely skilled at building relationships with residents to understand the complex challenges they may be facing and then swiftly connect them to essential resources. Another commenter agreed that the PCC should include at least one participating FSS family member and an FSS staff coordinator, and stated their agency already includes these individuals as committee members. Another commenter stated it can be difficult to have a resident participant from a FUP voucher holder group as persons housed with a FUP voucher have multiple ongoing challenges and little time for goals not closely related to their own welfare.

HUD Response: HUD appreciates these comments. The requirement is that one participant per type of rental assistance served in the FSS program must be included in the PCC—Public Housing, Housing Choice Vouchers, and/or Multifamily Housing. It is not required that each type of voucher (FUP, VASH, etc.) be represented.

Section 984.203: FSS Family Selection Procedures

A commenter objected to § 984.203(d)'s use of ''motivation'' as a factor in screening candidates, as it would reinforce negative and untrue stereotypes about families. Another commenter suggested leaving the current language regarding ''motivation'' as is to make sure everyone has an opportunity to participate in the program, and the PHA should be able to determine if a participant is motivated.

HUD Response: The original regulation and proposed rule both allowed a PHA (and owner, in the proposed rule) to screen for motivation as an option. There was no change to the original regulation in the proposed rule and HUD is not changing the final regulation as it relates to motivation as a screening factor in this final rule.

Section 984.302: FSS Funds

Two commenters stated that § 984.302(c) is somewhat ambiguous and urged HUD to revise it so that it explicitly conveys PBRA owners' eligibility to access FSS appropriated funds for independently operated FSS programs, consistent with the statutory language and intent. The commenters suggested either deleting the phrase ''including through a Cooperative Agreement in accordance with § 984.106;'' or adding at the end of the section a new phrase ''or through an independently operated PHA or PBRA FSS program.''

HUD Response: Subject to funding priorities in section 23(i)(3) and HUD appropriations, HUD may award FSS appropriated funds directly to PBRA owners operating FSS programs independently or in partnership with another PBRA owner. To clarify this, HUD revises § 984.302 to state that FSS appropriated funds may be used by an owner when it operates an FSS program ''through a Cooperative Agreement or on its own.'' As long as it is permitted in the NOFO, an owner may choose to subcontract awarded funding to another entity such as another owner or a PHA with whom the owner has a Cooperative Agreement. To ensure that there is no confusion about funding available to PBRA owners who operate an FSS program, HUD added a regulatory provision at § 887.113(a) that states that owners may *also* use residual receipts to pay for reasonable FSS program operation costs, including hiring an FSS Program Coordinator(s) for their program.

Section 984.303: Contract of Participation

A commenter said ''Seek Employment'' should include a requirement for the FSS participant and FSS Program Coordinator to certify that the participant has completed these defined activities, and that any false certification is reason for termination, because in auditing FSS files, this is often an undocumented component.

Another commenter said the new final sentence in § 984.303(b)(3) is confusing and should be rewritten as follows to provide more clarity: ''All considerations allowed for other assisted residents for repayment agreements, etc., shall also be allowed for FSS participants.'' The commenter also stated § 984.303(i) is mostly repetitive of § 984.303(b)(5). A commenter said that, to make the regulations easier to read, HUD should add the right to a hearing from § 984.303(i) to § 984.303(b)(5) and delete § 984.303(i).

HUD Response: HUD appreciates the recommendations provided by commenters for regulatory text changes to clarify requirements and streamline the regulations. HUD has revised the regulatory text in § 984.303(b)(3) as suggested by a commenter. HUD has also revised § 984.303(b)(5), which addresses the form and content of the CoP, to cross-reference § 984.303(i), which addresses actions PHAs may take for non-compliance with the CoP, instead of restating the requirements. As it concerns requiring the FSS participant and coordinator to certify that the Family has completed its defined activities and goals, under current requirements, which continue to apply under this rule, PHAs are already responsible for ensuring that the Family complies with the CoP, including the goals and activities defined in the Family's ITSP and the final rule includes an option that the PHA include in its FSS Action Plan the policies on documentation of goal completion. *See* 24 CFR 984.201(d)(13).

Allowing Any Adult Member of the FSS Family, and Not Solely the Head of Household for Rental Assistance Purposes, To Execute the CoP (Question 4)

Many commenters agreed with the proposed change. A commenter noted that allowing any adult to be head of FSS family may increase participation at their PHA. Commenters stated this is a positive change for the program that will make it easier to serve families. A commenter noted this would allow access to the FSS program where the head of household is disabled and unable to work.

A number of commenters said that the proposed change needed more revisions. One commenter suggested guidance on the number of adult members in a family that may be eligible to execute a CoP and the number of times a household can participate in the FSS program. Some commenters stated that without clarity, this could cause confusion as to who was the head of the household under various circumstances. Other commenters said there could be confusion when there are disagreements concerning the beneficiary of the escrow account.

One commenter questioned if PHAs would have discretion on the implementation of this new rule. The commenter also questioned if the head of FSS family successfully completes the FSS contract, and the Head of Household for rental assistance purposes is behind on rent or noncompliant with the lease; can the PHA hold the head of FSS family responsible? One commenter requested explicit guidance on how the proposed change would be operationalized, specifically regarding changes in household composition and distribution of escrow. The commenter further stated that the proposed change could put FSS staff in the position of having to arbitrate as to which household member is the primary FSS participant who signs the CoP. A commenter asked if the HCV Head of Household would be required to sign an addendum to the CoP that states they have designated the other adult member as the head of FSS family.

One commenter recommended that any adult family member who expresses interest in joining the FSS program, and is ultimately enrolled first, be considered the head and designated as the individual allowed to execute the contract and requested guidance on when a family fails to designate an adult family member.

A commenter noted the proposed revision seemed to be missing the following: who would receive the disbursement; what would happen if the adult family members left the assisted household; if another adult household member could enroll to participate after the Head of Household enrolled and completed FSS; and if consent from the Head of Household would be required regarding who would be entitled to escrow.

One commenter opposed the proposed change. A commenter was concerned that there could be circumstances in which this might not be advisable, such as when there is a coercive dynamic in a household relationship. Another commenter warned that if the head of FSS family is not the Head of Household, they may not have decision-making power over who gets on the lease and lives in the household, including those who may be receiving cash welfare; and therefore, the ability to graduate may be beyond the head of FSS family's control.

HUD Response: The change from only the Head of Household for rental assistance purposes being able to sign the CoP to any adult household member being eligible to sign a CoP is statutory. The final rule will reflect a change to clarify that there will be only one CoP per household at any one time. There may be an unlimited number of ITSPs for each Family. The proposed rule stated that the head of FSS family is ''as designated by the Family.'' The final rule will eliminate ''in consultation with the PHA or the owner.'' The PHA may make itself available to consult with families on this decision. HUD recognizes that financial disagreements between household members may cause significant distress, and that sometimes such conflicts rise to the level of financial abuse. However, HUD believes that as a general policy, it is in the best interests of assisted households to choose the head of FSS family that is most suitable for their individual household circumstances. While a head of FSS family who is not also the Head of Household for rental assistance purposes will not have control over some decisions, such as to who joins the household, they may still be the best choice to serve as head of FSS family; that choice should be made by the household, informed by their greater knowledge of their own circumstances. FSS Program Coordinators may provide information on resources for people experiencing abuse where appropriate. The PHA or owner may make a policy in the FSS Action Plan regarding documentation of that decision.

The escrow will be disbursed to the head of FSS family. The number of times a family can participate in the FSS program and other policies on re-enrollment have been and will remain policies to be determined at the local level. Please see the Promising Practices Guidebook for more discussion.[4] If the head of FSS family leaves the household, as with any CoP, a determination will be made regarding whether that person is eligible to graduate before they leave. If they do not graduate, as is the case now, another family member may step in as head of FSS family and continue with the CoP. While generally the Head of Household for rental assistance purposes, which may be different than the head of FSS family, would be responsible for debts incurred by the family in connection with the rental assistance program, such debts are subtracted from the escrow balance prior to disbursement of escrow at graduation.

Time Period That a Family Must Be Independent From Welfare (Questions 5, 6, and X[5])

Many commenters supported removing the 12-month requirement or changing the requirement to being independent from welfare assistance at the time of their Contract of Participation expiring or graduation instead. These commenters stated: This would lead to better outcomes, allow flexibility for clients finishing school or training; this would assist families dealing with the ''benefits cliff'' in a more gradual and welcoming manner; this would reduce the need for FSS escrow accounts to be forfeited by participants who would be otherwise eligible to receive any remaining escrow; this would ease the administrative burden for FSS staff; often the end date for being independent from welfare assistance is out of the participants' hands as they usually have transitional benefits after becoming employed; and the current 12-month period has prevented otherwise qualified participants from graduating and leads to artificially forfeiting accumulated escrow for families who are employed but had a period of time on public assistance. Commenters stated that the 12-month requirement was punitive, would needlessly frustrate families' attempt to graduate, and did not incentivize families to graduate. Many commenters supported, for the

[4] U.S. Department of Housing and Urban Development, *Administering an Effective Family Self-Sufficiency Program: A Guidebook Based on Evidence and Promising Practices, https://www.hudexchange.info/resource/5241/administering-an-effective-fss-program-guidebook/.*

[5] *Note:* This question was labeled as ''Question X'' in the proposed rule.

same reasons, allowing PHAs to set the requirement at their discretion.

Some commenters did not recommend giving PHAs discretion and requested that HUD keep this uniform to the program, while others supported PHAs having discretion while maintaining a certain maximum.

Some commenters opposed the proposed change and agreed with the 12-month requirement, seeing no issue or undue burden a PHA would experience with the timeframe. The commenters suggested that, given the confirmation requirement, effective organizations should have a data sharing agreement with the appropriate entities to determine the FSS participants' welfare assistance status regardless of the requisite time period. The commenters believed that without a timeline, there could be a lack of motivation for families to gradually become independent from welfare. The commenters stated that a participant must be free from cash assistance over a period to adjust financially to being self-sufficient and the proposed change defeats the purpose of the program. Commenters noted that the CoP can be extended to allow a participant time to become free of assistance, so this is not typically a barrier to successful program completion. The commenters added that if a participant is not free of cash assistance after seven years of participating in the program, they likely are not in a place or time in their life to become self-sufficient. A commenter suggested adding extra resources to help the families reach that 12-month goal, including PHA discretion, and warned that it would also be detrimental to external stakeholders in the long run with the possibility of having to reallocate more funds to the welfare system to continue the programs.

Some commenters supported changing the rule so that welfare independence is only required for the participating member of the family in the FSS program, not the entire household because the participation in TANF or other welfare programs should not reflect the progress and eligibility for graduation of the participating member.

Some commenters said that this should have no impact on TANF requirements. Commenters stated that TANF is not a good indicator of welfare self-sufficiency. One commenter stated that accessing TANF within a specified time should not preclude completion of the program and the emphasis on utilization of TANF is a deficit-based requirement that does little to promote self-sufficiency because families encounter a range of changing life circumstances where they may need to access TANF assistance to sustain their livelihood. Another commenter noted that after moving into the work components of the TANF program, families can continue receiving benefits for up to 24 months and there are instances where the continuation of welfare helps families offset increased costs due to a decrease in other income-based supports.

One commenter stated that some participants decide to not enroll in the program for fear of losing or being denied other benefits. The commenter suggested that the rule clearly state that the savings held in escrow is only contingently available to families and would not be counted as an asset or resource for other state or Federal benefits. A commenter stated that reducing or eliminating the time would allow for families to successfully complete the Contract and collect escrow even if a family member has needed access to TANF in the past 12 months. One commenter stated there is nothing to preclude a family from returning to TANF after graduation from FSS. A few commenters noted that the TANF (Family Investment Program (FIP)) income eligibility guidelines are so low that most working families would not be eligible for TANF benefits.

Some commenters suggested alternative time requirements, because requiring participants to be free from TANF for a full 12 months poses undue hardship for many families and leaves little room for flexibility. Commenters suggested a 3- or 6-month requirement off TANF as a reasonable timeframe that would allow participants to demonstrate stable employment and financial self-sufficiency prior to graduating from the FSS program. They added that requiring participants to maintain stable employment for 3 months rather than abstain from TANF benefits for 3 months would be a better indicator of participants' ability to demonstrate long term self-sufficiency and positive steps toward goal achievement. They urged HUD to consider revising the FSS work requirement in addition to, or in lieu of, the TANF requirement.

One commenter stated that a required time limit off TANF before program end could be beneficial if clients used their time in the program to work on the areas which are hindering them from holding down a successful position that would eliminate the need for TANF. Some commenters said the requirement to be independent from TANF should follow the same requirements as being independent from other welfare, and most participants are aware that TANF is temporary. While another commenter said that requiring participants to be TANF free should be required, and that not receiving welfare assistance is a sign of self-sufficiency and would enhance their independence from government assistance. Another commenter stated that by keeping the 12-month rule, FSS Program Coordinators can work in conjunction with TANF staff to provide transitional services to the participant.

Commenters supported the proposed change and stated that removing the 12-month requirement would decrease incentive for FSS participants from exiting the program permanently. A number of commenters stated that the application of the welfare requirement in FSS will not impact participants' decision to permanently stay off welfare. Another commenter said that removing the 12-month requirement increases FSS family access to escrow account balances that can be used for asset building activities. Two commenters answered ''no,'' saying that many of their participants are not receiving ''cash'' welfare assistance anyway.

A commenter stated FSS participants will still be required to be independent from welfare assistance at the time their CoP ends, so the incentive to be independent from welfare assistance remains without a static timeframe. A few commenters said that most participants transition off welfare assistance as they increase their income, so this is a good complement to the FSS Goals. One of these commenters said the PHA's ability to work with an individual to define ''suitable'' employment will take care of the rare exceptions.

One commenter suggested that HUD reconsider using terms such as ''incentive'' when describing the decisions a household may make regarding their receipt of welfare assistance or other forms of public assistance because this language reinforces negative and untrue stereotypes about people who receive welfare and/or housing assistance.

HUD Response: HUD thanks commenters for responses to Questions 5, 6, and X. This final rule maintains the language as it was in the proposed rule, eliminating the requirement to be independent from welfare assistance for 12 months prior to graduation. The requirement will be for the household to be independent from welfare assistance on the day of graduation. The requirement to be independent from welfare assistance in § 984.303(b)(2) will be revised to reflect that it will be a required final goal, as opposed to an interim goal. In addition to the explanation provided in the preamble to

the proposed rule, HUD is attempting to prevent a scenario when, for instance, a participant is unable to graduate because they have met all of their goals with the exception of being independent from welfare assistance for 12 months but is ineligible for an extension on their CoP. With regard to other benefits, the only other entitlement program to which FSS directly relates is TANF and it is a contingency of the HUD program that participants be free from TANF. Until the escrow funds are disbursed, they are the property of the PHA and cannot impact any eligibility of the FSS family for any benefit or entitlement. HUD cannot speak to the impact of the escrow, once disbursed, on other Federal, state, or local programs. The Internal Revenue Service has determined that escrow disbursements do not qualify as income and are not taxable and do not require a Form 1099. See: *https://www.hud.gov/sites/documents/FSSESCROWTAX_IRSOPINION.PDF.*

Section 984.303(b)(1)

Two commenters interpreted the change to § 984.303(b)(1) to mean that PHAs and owners would have the discretion to use a CoP in the form of their choosing, and supported this change, as it would enable programs to streamline the CoP, revise it to use more plain and straightforward language, and make it available in other languages besides English. The commenters recommended that HUD require all PHAs and owners to make available and to accept electronic execution of the CoP in whatever form in use. Another commenter said there needs to be some standard parameters on the wording of each Agency's CoP and perhaps each Agency's proposed CoP should be reviewed by their FSS Field Office.

HUD Response: The CoP form itself (including ITSP) will be revised as part of the Paperwork Reduction Act package that is published with the final rule. PHAs or owners may translate the CoP into any applicable language and may revise the structure of the CoP as long as the information and content included in the CoP is the same as on the HUD form. Along with producing documents in translated formats, PHAs and owners must also provide any other necessary language assistance services to ensure meaningful access for persons with limited English proficiency in compliance with Title VI of the Civil Rights Act. PHAs and owners that provide access to CoP forms in printed format or an electronic format and accept electronic submissions and signatures must ensure that such forms and procedures are language accessible and accessible with respect to the communications needs of persons with disabilities. PHAs and owners must ensure effective communication with individuals with disabilities in accordance with Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA), which includes providing the CoP form (including ITSP) in accessible formats. Furthermore, PHAs and owners must provide reasonable accommodations and modifications for individuals with disabilities consistent with applicable Federal nondiscrimination laws.

Section 984.303(b)(2): FSS Family Goals

Commenters agreed with prohibiting the PHA or owner from modifying or adding additional required activities that must be completed by every participant. According to the commenters, one of the fundamental strengths of the FSS program is its flexibility: Each participant can set and make progress toward the particular goals that matter to them and make sense in their particular situation. Commenters said that if a PHA or owner can require other mandatory goals beyond the parameters of the terms and conditions prescribed by HUD, it would serve only to curtail participation and participant success in the program. Another commenter noted that a minimum income limit from wages for FSS graduation would enhance the program. A commenter stated that any household member completing the ITSP goals would accomplish the FSS program's purpose. Another commenter recommended that only completion of ITSP goals by the head of FSS family should be evaluated for purposes of determining completion of graduation requirements including meeting the employment obligation. A commenter stated that this clarification is not new, and that it has been in the NOFA for several years. A commenter suggested that the ITSP should be updated to allow the PHA flexibility to change the format.

HUD Response: Thank you for your comments on this topic. As stated, this is a continuation of the current policy that does not allow for program-wide graduation requirements/enhancements (beyond the two required by regulation: *I.e.,* to complete the FSS program, the head of the FSS family must seek and maintain employment and the family must be independent of welfare assistance). All ITSP goals for all family members with ITSPs become part of the CoP and must be completed in order for the family to graduate. This final rule revises § 984.303(g) to clarify the requirement that all family members' ITSPs that are part of the CoP must be completed on or before the expiration of the contract term.

Regarding the ITSP format, as stated above regarding the CoP (of which the ITSP is a part), PHAs or owners may translate the ITSP into any applicable language and may revise the structure of the ITSP as long as the information and contents included in the ITSP is the same as on the HUD form. This includes translating into an electronic format and accepting electronic signatures. PHAs and owners must ensure effective communication with individuals with disabilities in accordance with the Section 504 and the ADA, which includes providing the CoP form (including ITSP) in accessible formats.

Section 984.303(b)(4): Employment Obligation

A commenter said the family member who signed the CoP should be employed at the time of Contract termination, and the PHA should also have flexibility to mandate some requirement that would support Self-Sufficiency, such as opening a savings account and saving a reasonable amount that is suitable for the family, such as saving $20 a month.

HUD Response: Any goals other than the two mandatory goals of being employed and independent from welfare assistance, such as establishing a bank account and contributing to it may be negotiated on a person-by-person basis and may not be mandated for all participants. HUD will not mandate additional requirements, as they may be unnecessary or infeasible for some families.

Section 984.303(b)(4)(iii): Suitable Employment

Two commenters said the ''suitable employment'' definition gives PHAs and owners too much authority in determining what is suitable and can be applied arbitrarily and without substantiation, leading to unequal rules across and possibly within FSS programs. The commenters recommended that the proposed language be refined such that the FSS participant defines ''suitable employment.'' The commenters believed goal setting and goal defining should be a mutual effort to include the coordinator's knowledge and expertise in the field, as well as the client's right to self-determination. Another commenter stated an expert in the field should provide the definition after a thorough assessment. A commenter asked if it was possible to include ''achieving a local living wage'' in

''Determination of Suitable Employment'' as there are several sources readily available to determine what a living wage is for communities across the U.S. One commenter suggested that HUD should consider implementing a minimum income for wages similar to the homeownership program.

HUD Response: The final rule revises paragraph (b)(4)(iii) of the proposed rule to note that the determination of suitable employment will be made ''with the agreement of the affected participant,'' so that the affected participant has input into this matter along with the PHA or owner, and that the determination will be based on the receipt of other benefits of the participant, in addition to the skills, education, and job training of that participant. When making the determination of ''suitable employment'' it is critical to be aware of how increased income may affect other benefits such as Social Security Disability, Medicare, Medicaid, etc. which may be in the best interest of the participant to keep rather than increasing income beyond eligibility limits.

Good Cause for a Contract Extension (Question 7)

Several commenters supported expanding the ''good cause'' definition to include additional circumstances, like a natural disaster, serious illness, or involuntary loss of employment, especially during the COVID–19 pandemic. One commenter recommended that the definition include any other circumstance that the PHA determines is preventing the family from achieving their goal within the five-year timeframe, on a case-by-case basis. Another commenter suggested that the definition include a natural disaster. One commenter questioned how the Health Insurance Portability and Accountability Act (HIPAA) impacted this rule, when ''serious illness'' would consider an additional circumstance for ''good cause.'' A commenter questioned how a PHA would verify ''involuntary loss of employment'' when employers are not required to disclose why an employee was terminated. One commenter noted that the definition concerning ''involuntary loss of employment'' may need to be revised, as it may not consider circumstances where individuals voluntarily leave employment based on not being able to afford increases in childcare if the FSS participant is not receiving childcare assistance. Another commenter encouraged HUD to clarify and define new circumstances to now be considered ''good cause'' to extend a family's contract. Another commenter recommended clarifying the definition to include additional circumstances, including active pursuit of a goal that furthers self-sufficiency.

One commenter opposed establishing a definition for ''good cause'' for a Contract extension, suggesting that individual circumstances should be considered and left to the PHA's discretion. One commenter suggested that reasons for ''good cause'' should be at the FSS Program Coordinator's discretion because they are familiar with the clients' needs and goals. One commenter suggested adding some language that advises that the two-year extension period is a guideline not an absolute, as every reason for an extension does not require an automatic two-year extension. Another commenter suggested that the FSS participant must have already met at least one goal to qualify for such an extension.

A commenter recommended that HUD codify that declared disasters or emergencies recognized by local, State, or Federal government should qualify as good cause categorically, instead of relying on case-by-case waivers such as the one provided for this section under PIH Notice 2020–13, PH and HCV–6: Family Self-Sufficiency (FSS) Contract of Participation: Contract Extension, dated July 2, 2020.[6]

One commenter believed the proposed definition is sufficient, and does not require any further clarification, as the examples provided communicate intent, while allowing the PHA or owner flexibility to assess on a case-by-case basis.

HUD Response: The final Contract of Participation (CoP) regulations at § 984.303(d) state that ''good cause'' to extend the CoP is determined on a case-by-case basis by the PHA or owner. HUD declines to define and limit ''good cause,'' but the final rule expands the examples of ''good cause'' to include more than circumstances beyond the participant's control, including active pursuit of a current or additional goal that will result in furtherance of self-sufficiency during the period of the extension.

The final rule has also been revised to include that the PHA or owner can grant the extension as long as the PHA or owner is consistent in its determination as to which circumstances warrant an extension. The participant must request an extension, so any information shared by the family in pursuit of that goal will be voluntarily shared. Additionally, unless the PHA or owner employs medical staff, HIPAA does not apply in this situation.

Removal of the Automatic Completion Provision (AKA ''30% Rule'') (Question 8)

Several commenters supported removing the automatic completion provision. Commenters noted that removing the automatic completion provision would lead to more consistency between programs and fairness for all participants, and that removing this provision would also be more administratively efficient because PHAs would not have to track automatic completion. One commenter noted that additional time is helpful for the FSS Program Coordinator to work with the FSS family in completing any remaining subgoals and provide additional support for maintaining the employment as well as building confidence with financial literacy so the family can positively manage the additional income. Another commenter stated it doesn't exclude the other way to graduate and provides a clear ''look at the math'' definition of graduation for cases where a family's graduation is in dispute. Some commenters stated it would allow for true independence from rental assistance when 30% of income fully covers contract rent and the family successfully leaves both the FSS and Section 8 programs.

Commenters asked for clarification on how the proposal would operate when the HAP contract is terminated after the six-month grace period after a family's last housing assistance payment is made if their goals are not met. Commenters expressed concern that the six months was not enough time for families to complete their goals. Commenters recommended that a family graduate automatically at the end of this grace period because the family has reached independence.

A commenter suggested that regulations should be established to prevent the family from reporting losses of income immediately after escrow disbursement to maintain the housing assistance or decrease tenant portion of rent.

Commenters suggested that HUD include a provision that allows for automatic graduation when an FSS participant moves to market rate housing and releases their housing subsidy under positive circumstances.

Two commenters asked HUD to clarify whether families were allowed to

[6] U.S. Department of Housing and Urban Development, *PIH Notice 2020–13 (HA), REV–1, https://www.hud.gov/sites/dfiles/OCHCO/documents/2020/13pihn.pdf.*

retain the escrow immediately after graduation.

Another commenter asked if the 30% rule is removed, will ongoing Contracts of Participation be grandfathered since the CoP does include the 30% rule as a way to graduate FSS? One commenter asked HUD to elaborate further and asked if the 30% would be replaced by a different percentage.

HUD Response: Based on the commenters' support for removal of the automatic FSS graduation provision (the 30% rule), HUD will move forward with such removal as proposed. Under HCV and PBV regulations, zero-HAP voucher families (*i.e.,* families for which no HAP payments are made), are automatically terminated from the housing assistance program 180 calendar days after the last HAP payment. Under current FSS requirements, which continue to apply under this rule, once housing assistance is terminated, FSS participation also terminates. However, Zero-HAP families may continue to escrow during this 180-day period if they have not surpassed the Low-Income threshold (80% of Area Median Income (AMI)). Also, the 180-day period gives the family and the FSS Program Coordinator time to review the ITSP and make changes, if necessary, to put the family on a path to graduation prior to the expiration of the 180-days.

Escrow Funds in the Case of Nullification (Question 9)

A number of commenters supported adding the language regarding the handling of escrow funds in the case of nullification. One commenter supported the change and noted that these situations are currently handled through a waiver process which can be time-consuming and administratively burdensome for all parties involved. One commenter questioned whether the nullification would be considered a CoP Completion or Termination for purposes of keying #8 Recertification into PIC, as these are the only two choices that are given when completing a #8 Exit for FSS Participants. Commenters suggested that the proposed rule clarify who the beneficiaries of the escrow account would be when the CoP has been nullified. One commenter noted that FSS Participants in good standing who find themselves disabled and unable to work should be able to receive the funds if there is no household member who could take over the FSS CoP and complete it to receive the family's escrow funds.

A commenter suggested this can be managed in two different ways: the CoP can be terminated and the funds can be passed on to a member in the household who was appointed by the head of FSS family, or the CoP can continue if there is an adult member in the household who can continue and fulfill the CoP, and during the enrollment period the head of FSS family should assign the person whom these funds can go to in case something such as death happens.

Commenters suggested that escrow management should be managed on a case-by-case basis, dependent upon the circumstances for nullification. Another commenter suggested that if the reason for nullification is that the family was considered ''not in good standing'' due to eviction or non-compliance with the agreement, then the escrow funds should be liquidated and belong to the PHA for funding housing repairs, unpaid rent, support for tenants in good standing, or improvements where needed. Another commenter suggested that if a CoP is nullified the PHA must document and report to HUD its reasonable efforts to discover the availability of these services.

Some commenters said that the language of the escrow distribution should allow an FSS program participant to reject the distribution in such cases where their SSA benefits would be in jeopardy by obtaining such a resource. Another commenter suggested that HUD should add language stating that following such a disbursement, the family member and/or any other household member may not re-enroll in an FSS program at a later date. Two commenters suggested allowing the ITSP or CoP to be amended rather than nullified, such as by allowing an adult member who is able and agrees to take over the CoP.

Other commenters opposed the change. Commenters noted that releasing escrow funds upon nullification of the FSS CoP does not align with the FSS program's goal, and the escrow funds should remain an incentive to achieve self-sufficiency or to use towards achieving self-sufficiency. Other commenters stated that this will create an additional administrative burden to track and pay out monies for participants that have not completed the program regardless of why the CoP was nullified and will require the FSS Program Coordinator to seek out heirs in the case of a deceased single-person family.

One commenter asked how nullifying would affect performance measures. A commenter said that even with this change, HUD should ensure families have the right to be consulted about and appeal adverse determinations by a PHA or owner that unavailable supportive services are integral to the family's success.

HUD Response: The regulation will be changed in § 984.303 to reflect that the FSS family will be consulted in the determination that services are not available, before the CoP is terminated and FSS escrow is disbursed. HUD notes that this final rule removes the term ''nullification'' and related references to the CoP being ''null and void'' from the regulations and instead refers to ''terminations with FSS escrow disbursement.'' For a contract to be ''null'' or ''void'' means it has no legal validity, force, or effect. Contracts are voided in rare circumstances, such as when the contract was entered into under duress or its terms are unconscionable. This does not align with the use of ''nullification'' in the existing FSS regulations or in the proposed rule. HUD has determined there are situations when a family should receive escrow funds, even when they haven't completed the CoP. The CoP will still be ''terminated,'' but the family will get escrow funds in those situations. This preamble retains the term ''nullification'' when discussing public comments, but the term will no longer appear in HUD's FSS regulations.

This final rule does not contain language from the proposed rule that would have provided for escrow disbursement to an estate if the head of FSS family dies before a CoP is completed. Section 23 of the 1937 Act, as amended by the Economic Growth Act, states that amounts in the escrow account may be withdrawn by the participating family after the family ceases to receive income assistance under Federal or State welfare programs, upon successful performance of the obligations of the family under the contract of participation entered into by the family under subsection (d), as determined according to the specific goals and terms included in the contract, and under other circumstances in which the Secretary determines an exception for good cause is warranted. The statute states that escrows may be ''withdrawn by the *participating family.*'' An estate cannot be considered a ''participating family.'' Therefore, FSS escrow cannot be disbursed to an estate. There may be situations where there is good cause to disburse escrow to a remaining FSS family member when the head of FSS family dies. While the general rule is that the escrow is only withdrawn if the FSS family completes the CoP, the Economic Growth Act allows HUD to provide exceptions to this general rule when ''good cause is warranted.'' However, HUD cannot make a blanket finding of ''good cause'' in all cases when an FSS participant

dies before completing the CoP. There may be instances where good cause is warranted (*e.g.,* when an FSS participant is close to completing the CoP and they die), but not always (*e.g.,* when an FSS participant is a recent enrollee in the program and has not completed much of the CoP). Therefore, this final rule cannot provide for escrow disbursement any time the head of FSS family dies before a CoP is completed. Where good cause for an escrow disbursement to a family member may be warranted when the head of FSS Family dies, HUD will consider waiver requests, as has been the case prior to this rulemaking.

HUD notes that the regulations continue to provide that if the head of FSS family is unable to complete the CoP, and the family wishes, another household member may take over the CoP. The disposition of forfeited escrow funds is addressed later in this document in the discussion about Question 14.

Section 984.303(g), (h), (j), and (k)

Some commenters recommended that HUD require PHAs and owners to offer the heads of FSS families the opportunity to pause participation in the program to deal with family crises and challenges without jeopardizing their escrow. These commenters stated that under the rules of some FSS programs, families may be terminated or denied coordination services for not complying with a required engagement schedule. The commenters said they had heard feedback from FSS participants that it would be helpful to have the option to ''pause'' their participation in the FSS program, citing reasons, such as health or family crisis, that are similar to why a participant might request an extension of their participation. Under current rules, these types of challenges contribute to increased terminations. These commenters said that suspending expectations for participating in services and accumulation of escrow and extending the CoP end date by the same period of time that the participant pauses their participation, would help to strengthen program participation and graduation rates, and support participants to maximize their escrow accumulation. Another commenter stated this may be a good idea but that allowing pausing would bring up a lot of questions that would need to be addressed and clarified. A commenter recommended HUD modify § 984.303(h)(2) to be consistent with the final portability changes in § 984.306.

HUD Response: The length of the CoP is statutory. Therefore, HUD has no discretion to extend it. An initial five years (or longer, depending on the timing of the next recertification after effective date), plus a two-year extension should be long enough to cover most family circumstances, even emergencies, and ''pauses'' in pursuing education and/or employment goals. PHAs and owners also are at liberty to add goals around basic needs and crisis response, if that is what is needed and agreed to by the family. It is the purview of each PHA or owner to set goals regarding ''engagement'' with each participant. It is up to the PHA or owner to revise those goals as agreed to by the family, to respond to family needs.

As explained later in the discussion of § 984.306, this final rule revises § 984.303(h) and (k), in addition to § 984.306, to provide that if PHAs make a determination that an FSS family in good standing moves outside the jurisdiction of the PHA and continuation of the CoP after the move or completion of the CoP prior to the move is not possible, the CoP may be terminated with FSS escrow disbursement.

Additionally, this final rule revises § 984.303(j) to clarify that only non-HUD funds or non-HUD-restricted funds can be used by PHAs and owners to offer supportive services to former FSS families that have left public housing, Section 8 housing, or other assisted housing. This clarification is dictated by statute. In addition to appropriated FSS funds, PHAs and owners may use, subject to funding restrictions, public housing operating funds, public housing non-rental income, public housing section 18 proceeds, section 8 administrative fees, and PBRA residual receipts to pay for FSS coordinators. However, none of these funding sources can be used to assist families who are not public housing or section 8 participants. Therefore, to the extent a PHA or owner wishes to coordinate services for former FSS families that have left assisted housing, the PHA or owner must do so using only funding sources that are not HUD funds or HUD-restricted funds. If a PHA or owner chooses to provide service coordination to unassisted families, the PHA or owner will need to calculate the FSS coordinator's time spent on such coordination and prorate funding accordingly. Notwithstanding, PHAs or owners may permit former FSS families that have left assisted housing to attend FSS activities or functions (*e.g.,* job fairs) that predominantly serve public housing residents or section 8 participants without proration of funding.

Section 984.304: Amount of Rent Paid by FSS Family and Increases in Family Income

Changes to the Adjusted Income Threshold

Commenters supported the proposed change to the adjusted income threshold because it would allow FSS families to continue to increase their escrow accounts. A commenter stated that participants should be given maximal opportunities to acquire as much escrow as possible during their term in the program.

HUD Response: HUD thanks commenters for their feedback, and notes that these changes are statutory.

Section 984.305: FSS Escrow Account

Individual Escrow Accounts for Families

A commenter asked whether the intent of the proposed rule was that each participating family will have their own escrow account, because under § 984.305, ''each family's escrow account'' seems to be contrary to § 983.303 (a)(1): ''[t]he PHA shall deposit account funds of all families participating in PHA's FSS program in a single depository account.''

HUD Response: Escrow for all families will still be deposited in a single depository account, but accounted for separately, as demonstrated by the reference to ''each family's escrow account.'' This is not a change from the current regulation or practice.

Interim Disbursements

A commenter recommended HUD require all FSS programs to allow interim disbursements, under § 984.305(c)(2)(ii), and to permit PHAs and owners some discretion to determine the frequency and conditions by which an interim disbursement would be permitted, and that participants be entitled to a formal grievance process if their request for an interim disbursement is denied.

A commenter stated that the current economic hardship resulting from the COVID–19 pandemic demonstrated that interim disbursements from an FSS escrow account can be a powerful tool for families. The commenter suggested that in paragraph (c)(2)(ii), HUD should require all FSS programs to allow interim disbursements consistent with the rule rather than leaving this important component of the program to local discretion and make clear that families have hearing rights if a PHA or owner rejects a request for an interim disbursement. Additionally, the

commenter suggested that HUD should take the opportunity to learn from the likely increased use of interim disbursements during the pandemic to add other examples of grounds for families to receive an interim disbursement.

HUD Response: Participants are entitled to a grievance or hearing per the PHA's or owner's grievance policy as specified in the FSS Action Plan. It is a best practice to allow for interim disbursements, but HUD will not make them mandatory at this time. For further discussion of Interim Disbursements and considerations around making this policy, please see the HUD FSS Promising Practices Guidebook.[7]

Frequency of Depositing Escrow Amounts to a Family's FSS Escrow Account (Question 10)

Many commenters supported the proposed monthly escrow deposits into a family's FSS escrow account, where some are already doing it. Commenters said monthly calculating and crediting of escrow makes it easier to double check the escrow credit worksheet against the escrow deposit, prevent administrative backlog and delays in customer service for providing balance information to clients, and helps to maximize interest and the compounding effect of interest for the benefit of the FSS participant.

One commenter generally opposed monthly escrow deposits, opting for annual deposits. Another commenter said the escrow calculation does not need to be done at every re-examination, and it should be left to the coordinator's discretion as to the frequency of escrow deposits. Another commenter suggested that PHAs should have flexibility in the frequency of depositing escrow to allow for quarterly deposits. A commenter stated that smaller programs may operate sufficiently with greater flexibility in these timelines.

Commenters stated that annual statements should continue to be provided to FSS participants, and balance inquiries can be provided at any time.

A commenter stated that the statement for multi-family properties should be monthly or upon receipt of HUD rent subsidies, because that maximizes cash flow for the owner, in the event HUD rental subsidy payments are delayed.

A commenter suggested the frequency of deposits should be determined based on the client's income at the start of their program.

A commenter stated a family should be able to have limited access to their account, including limits on the amount and times the account is accessed.

HUD Response: Commenters largely supported the proposal for monthly escrow deposits and explained that this will prevent administrative backlogs and delays in customer service, as well as maximize interest for the FSS participants' benefit. HUD has determined, in consideration of the comments received, to move forward with the change as proposed. As a point of clarification, the PHA is not required to calculate the escrow amount monthly; rather, the escrow amount is re-determined at each re-examination of family income. As explained in the proposed rule's preamble, the requirement to provide an FSS escrow account report to the family, at least annually, has not changed; however, a family may inquire about their FSS escrow balance at any time.

Whether the Family's FSS Escrow Account Should Be Credited for Late Payments (Question 11)

Some commenters agreed with the proposed change that escrow accounts be credited on a monthly basis, and that if there are cases where a tenant owes a landlord or housing authority unpaid rent at the end of a term, these should be subtracted from the escrow at the time of a final escrow payout. One commenter agreed that escrow should be credited for late payments, stating that by crediting the account the program acknowledges the family's efforts to adhere to tenant obligations and is incentivizing follow through with rental payments. A commenter opposed the proposed change, stating a goal of self-sufficiency and stating that crediting late rent payments disincentivizes prompt rent payments and may negatively impact the owner and property operations. The commenter said any rent payments greater than 7 days late should not be credited to incentivize prompt rent payment.

Many commenters opposed the proposed change, stating it would be an administrative burden; that landlords generally do not inform the PHA of late payments; that the person paying rent might not be the person participating in the program; and that it does not align with the obligations of the HCV or FSS program. Commenters also said that policies should be consistent across programs, and that there are other negative consequences for late rent payments. A commenter stated that PHAs would potentially have to deposit escrow credits into FSS escrow accounts at different times every month if some households pay rent on time while others are late. The commenter said money owed by an FSS family to a PHA is already required to be deducted from the family's escrow account at the end of the FSS CoP. Commenters stated that a landlord's best course of action is to enforce their lease with the tenant if the tenant is not in compliance with any part of the lease agreement. A commenter said changing the escrow calculation to mirror re-certs or annual exams for Section 8 may cause additional work for the Housing Specialist, but still may have no bearing on whether a client is paying their rent on time, and that FSS Program Coordinators requesting the client to provide a rent payment history monthly would assist with knowing if rent is paid on time.

Commenters suggested adding language to allow FSS clients to be credited with an escrow deposit, as long as an FSS client pays their rent, even if they are late and they pay late fees.

A commenter suggested that before escrow credit disbursement, the FSS participant family should certify that there is no outstanding balance regarding paying the owner any portion of the rent to owner that is not covered by the PHA housing assistance payment. A commenter said that escrow should not be credited if a tenant does not pay rent for a month from their own funds (for example, if paid by a rental assistance agency), but agreed that upon completion of the FSS CoP any funds owed to the PHA should be deducted from the final escrow disbursement. A commenter suggested that the rule further define the parameters for when late payments would and would not impact escrow credits, as there would likely be late payments outside the participant's control and/or could be considered to have good cause. A commenter said that if an FSS family is not paying their rent on time, a more appropriate approach is referring them to financial counseling, and the PHA's certified Homeownership Counselor or a partner from the PCC committee could provide this supportive service. A commenter suggested that the proposed change should be at the PHA's discretion. The commenter further suggested that the FSS escrow should not be applied to debts owed by the participant, because escrow is received from HAP funds; if escrow is used to compensate for debts owed this reduces the housing assistance payment funding available to unassisted families who have applied for housing. Commenters suggested two payment plans for FSS families that are late on their rent: (a)

[7] *See supra* footnote 3.

The PHA or owner could work together with the family on a payment plan where the family pays the rent in small increments throughout the month; and (b) a payment plan is aligned with the days the paycheck is received.

A commenter stated that, if this provision were implemented, HUD would need to consider cases where partial rent is paid and whether that would result in a partial escrow credit or in cases where rent was paid on time but not credited to the individual's account in a timely manner. The commenter said this provision would be particularly problematic in PBRA FSS programs because escrow credits are billed to HUD one month prior to rent being due; therefore, the housing provider is already in receipt of the escrow funds before rent is even due, which could result in additional retroactive adjustments and opens the door to even further potential errors in maintaining accurate escrow balances, which is already challenging enough for FSS programs to do.

HUD Response: HUD appreciates the comments received on this issue and has determined, in consideration of such comments, not to implement a policy to stop escrow credits when the family is late in paying rent. HUD agrees with commenters that such a policy would be administratively burdensome, particularly for voucher families where the PHA is generally not the landlord and may not readily know that the family is late in paying rent, and because it would result in the PHA having to pause and resume escrow deposits for such families during the Contract term. Additionally, the rule already requires the family's FSS escrow balance to be reduced at the time of graduation by amounts owned by the FSS family for rent, or other amounts, that were due under the housing assistance program.

In response to the commenter who said ceasing escrow credits when a family is late in paying rent is a good policy because crediting late rent payments disincentives prompt rent payments, HUD appreciates this perspective. However, besides the reasons described above for not instituting this policy, HUD agrees with commenters that a more effective approach for the FSS program would be to refer such families to the supports needed to ensure that rent payments are made on time and have landlords use other mechanisms already available to them to enforce the lease.

Conducting a New Income Recertification (Question 12)

A commenter sought clarification regarding the income recertification because the FY19 NOFA removed this requirement, and it is still removed on the FY20 NOFA but is still on the current FSS CoP form. The commenter was concerned that there be consistency across the board for all program participants. Another commenter agreed with removing the 120-day requirement, as it would be less of an administrative burden.

A commenter supported decisions made at the local level in favor of local objectives and conditions. In general, the commenter noted this would not appear to be a significant issue since increases in income must be reported by households (unless the agency has a policy that states otherwise), and agencies must conduct a re-examination of income if the household has a decrease in income (unless the agency has a policy that states otherwise).

A commenter opposed the proposed change, stating it would be an administrative burden and potentially create a barrier for a family to accrue escrow, and noted that since HUD has decided to waive the 120-day requirement to ease barriers to enrollment in the program, it would be counter-productive to allow discretion.

Some commenters suggested that multifamily owners should have the same discretion as PHAs regarding this issue. Another commenter said that this change should be available across the board to all families participating in the HCV program. A commenter suggested eliminating the 120-day recertification requirement, using its MTW waiver flexibility, and believed this change strengthened the program, both administratively by eliminating the requirement of a recertification, and programmatically for the participants, by streamlining the process and creating a straight line from interest to enrollment.

Commenters suggested that the final rule remove PHA or owner discretion in deciding whether to conduct a new income examination prior to the execution of a CoP because such discretion, if exercised, would limit a household's potential to optimize the accrual of escrow and effectively reinstate the 120-day rule which was eliminated in the FY19 FSS Program Renewal NOFA. These commenters stated the pandemic crisis has further demonstrated the importance of HUD maintaining its commitment to ''ease barriers to participation'' by stating plainly in the regulation, without the housing provider's discretion, that the income and rents amounts to be used in the CoP shall be taken from the amounts on the last certification, re-examination, or interim determination in effect at the time the family enrolls in the FSS Program. The commenters said they saw significant delays for families who wanted to enroll but could not because they needed to complete an additional re-examination before enrollment. A commenter said that this requirement also creates an additional administrative burden on housing providers. Additionally, commenters said this rule makes it so that people need to re-certify even if they do not have a change in income, and sometimes housing authorities do not allow for a recertification if there was no income change.

A commenter supported HUD's proposal to lift the requirement that a PHA or owner must perform a recertification for a resident to enroll in the FSS program if it has been greater than 120 days since the resident's most recent recertification and permit the administrators of FSS programs to determine whether to use the resident's most recent annual recertification or whether to perform an additional recertification as more effective and efficient.

According to a commenter, the final rule should ensure tenants have the right to request an interim income recertification or full re-examination at the time of enrollment if their income has decreased since the last recertification.

A commenter suggested that the proposed rule should include language requiring PHAs or owners to conduct a re-examination if the family requests it based on a loss of income since the last re-examination and should make it clear that a new or recent interim rent adjustment may be relied on to determine baseline earned income.

HUD Response: Upon reviewing the Joint Explanatory Statement for FY21 Appropriations, HUD interprets the language to indicate that a policy requiring a recertification immediately prior to FSS enrollment is not consistent with Congressional intent. Thus, the regulation will be revised to require the PHA or owner, when setting a participant's baseline rent, to use the amounts on the most recent rent certification (with no discretion to do otherwise.) All standard rent certification regulations must be followed, including honoring a resident's request for a recertification due to loss of income, if that is a standard option.

Escrow Calculation (Question 13)

Several commenters supported the proposed streamlined escrow calculation, stating that removing the difference in the calculation of escrow between very low-income and low-income families should provide a degree of simplification that can be enhanced by other proposed changes in the calculation.

Commenters supported the proposed escrow calculation worksheet because they said it would be more user friendly. A commenter said the proposed change is easier, but in doing a case study against the current worksheet, the calculated outcomes are not coming up the same.

Some commenters opposed the proposed change, stating that it further complicates escrow calculations.

A commenter stated the Multifamily FSS Escrow Credit Worksheet still has escrow deducted if the family is over the very-low-income limit, and that this deduction was to be eliminated with the proposed rule. The commenter opposed the proposed change, stating that eliminating this for only HCV/PH and not PBRA is not an equitable representation of the families on the programs that are designed to mirror one another. Additionally, the commenter stated that this deduction is taken away from the maximum escrow amount versus the ''preliminary escrow credit,'' which amounts to a double penalty for increasing earned income.

A commenter suggested adding the line item from the 50058s to the spreadsheet to ease input and auditing. A commenter stated that the proposed rule provides a slightly streamlined escrow calculation, but requires users to calculate a monthly escrow cap and to obtain data to determine if the family's adjusted monthly income exceeds 80% of AMI. In addition, the commenter said that the proposed rule effectively continues to limit escrow to lower income families and provides a monthly cap, further limiting escrow potential. The commenter suggested a more streamlined escrow calculation process, where all escrow calculations are done the same way for all participants, eliminating the low-income check. The commenter stated that this would make it easier to explain to tenants and staff alike and has the benefit of offering all FSS participants the same access to escrow.

Some commenters opposed the escrow cap where the family's adjusted monthly income exceeds 80% of AMI.

A commenter suggested that the final rule contemplate the growth of wages earned specifically by the head of FSS family. Another commenter suggested the calculation should be based on the difference between the baseline and current 30% of monthly earned income, as that is the true reflection of the participants' growth in a work incentive program. A commenter suggested that the escrow calculation software should have a drop down for payment standards for the jurisdiction for which the participant resides, as many FSS Program Coordinators do not conduct recertifications. A commenter suggested a slight modification to the formula for the escrow credit worksheet, since on some calculations, under ''Calculation of Escrow'' do not round up to the nearest dollar, including the final escrow credit.

Commenters stated the FSS escrow worksheet appears to work well for some of the more challenging escrow calculation situations, but that it would need to include reference to the line item for Form 50059 and identify which lines wouldn't apply to multifamily. The commenters said it is not clear whether there is a separate escrow credit worksheet for multifamily using the proposed guidelines. The commenters suggested that the line number of Form 50058 or Form 50059 accordingly be referenced for all items entered in the escrow sheet, to reduce confusion and allow the calculation to be better automated by software. The commenters said that currently, the instructions for (8) and (11), 80% AMI and Applicable Payment Standard (for HCV families), suggest that the number be collected from an external link. The commenters further stated that if this number does not appear on Form 50058, the commenters recommended identifying another standard place from the recertification process where this number can be found to not require an external search.

HUD Response: After consideration of comments received concerning the proposed escrow calculation, HUD determined not to make changes to the proposed requirements. Without specific details concerning how some commenters found that the proposed calculation further complicated escrow calculations, HUD is unable to determine which areas of the calculation could be revised or improved. As a reminder, parts of the proposed changes were based on statutory changes (such as a very low-income family's escrow no longer capped) and the formula now incorporates other programmatic considerations not previously contemplated in the regulation (such as capping escrow for zero-HAP HCV families at the lower of the gross rent or payment standard and capping escrow for zero-HAP PBV, Mod Rehab, or Mod Rehab SRO families at the difference between the baseline monthly rent and current gross rent).

Regarding opposition to the escrow cap where the family's adjusted monthly income exceeds 80% of AMI, HUD has no discretion to modify this statutory requirement, which has been in place since the FSS program's enactment. Regarding the suggestion that the calculation should be based on the difference between the baseline and current 30% of monthly earned income, the statute requires an increase in the amount of rent paid by the family (not just an increase in earned income); therefore, HUD has no authority to change this part of the calculation. As to commenters' technical suggestions concerning the escrow calculation worksheet (*i.e.,* adding the line item from Form 50058s to the spreadsheet to ease input and auditing; rounding up to the nearest dollar; and incorporating the payment standard and 80% of AMI into the escrow calculation worksheet). HUD will consider the feasibility of these suggestions as it finalizes the escrow worksheet.

Definition of ''Good Standing'' and List of Eligible Activities for Forfeited Escrow Funds (Question 14)

Good Standing

A commenter supported establishing the definition of ''good standing'' in the regulations and not leaving it to an individual PHA or owner's discretion because the definition of good standing can vary significantly on a subjective basis, even within the same program, and is confusing and frustrating for participants. This commenter said that under these new regulations, the head of FSS family who signs the CoP may not be the Head of Household for rental assistance purposes and therefore may not be able to control compliance with a repayment agreement since it is the Head of Household for rental assistance purposes who enters into a repayment agreement. A commenter stated the language should be left as is and the PHA should be allowed to continue to define good standing.

Commenters opposed the proposed definition of ''good standing'' for unfairly penalizing families who are in current eviction proceedings. These commenters said it could exclude families facing eviction without cause. These commenters stated that some landlords initiate eviction proceedings as a means of terminating leases of voucher holders without cause. These commenters said HUD does not define

the phrase ''eviction proceedings,'' which is inherently unclear. These commenters stated that a family's compliance with FSS and HUD program requirements would not be affected simply by the landlord's initiation of an eviction action. Commenters also stated it would be unduly burdensome to PHAs and owners to have to determine whether pending eviction proceedings are likely to affect a family's standing in the FSS program.

Some commenters suggested that the final rule should clearly define ''good standing'' as families who: Are in compliance with their FSS CoP; have either satisfied or are current on any debts owed the PHA; and are in compliance with the PHA's regulations regarding participation in the HCV program, including rent and restitution payments. A commenter suggested adding language to the definition, to read: ''FSS family in good standing means, for purposes of this part, an FSS family that is not in current eviction proceedings or have open lease violations that may lead to eviction if left uncured and is otherwise in compliance with any repayment agreement and the FSS CoP.'' Commenters suggested ''good standing'' should also include participants who have documented progress towards their goals or self-sufficiency, such as communication with the FSS, coordinator, paystubs for work, class schedule if working on post-secondary education, etc. Only participants who are in ''good standing' should benefit from forfeited escrow for eligible activities. A commenter suggested that the definition of ''good standing'' should simply be any family who has not been found to be in non-compliance with FSS requirements. A commenter suggested that ''good standing'' should mean any FSS that is not in the termination process.

HUD Response: As recommended by commenters, this final rule defines ''good standing'' as an FSS family that is in compliance with their FSS CoP; has either satisfied or are current on any debts owed the PHA or owner; and is in compliance with the regulations regarding participation in the relevant rental assistance program, including rent payments.

Eligible Activities

Commenters supported the proposal to allow forfeited escrow funds to be used for FSS participants in good standing. Commenters also supported the proposed rule's definition of ''eligible activities.'' Commenters said the proposed definition would enable Coordinators and participants to access resources to address significant barriers families face in achieving their goals.

Commenters suggested that the proposed rule should add items to the eligible activities list for which forfeited escrow may be used. Commenters made the following suggestions: Childcare and citizenship costs; a catch-all that would allow PHAs to determine ''other eligible activities,'' potentially in consultation with the Secretary; staff training; educational expenses for FSS participants in good standing; items or expenses needed for self-sufficiency advancement; hosting job fairs; employment driven activities; mock interviews; counseling agencies; bus passes; obtaining or renewing state identification cards and driver's licenses; unpaid rent expenses; needed repairs or updates; food or clothing vouchers; families within the program that demonstrate the most need; gardening or recreational programs for their tenants; gas to go to a job interview; cost of interview clothing; homeownership bonus; scholarship funds; emergency funds; source for interim disbursement funds for participants who don't have escrow accrued; stipends for participants who are part of the PCC or Client Advisory Board (CAB); conferences expenses for FSS Program Coordinators; emergency medical co-pays; emergency transportation; a grant fund resource to assist participants with meeting their goals; and meaningful graduation ceremonies.

A commenter suggested using the list of allowable uses of interim escrow disbursements as a model for allowable use of forfeited funds to help program participants. Commenters stated that this is especially important now, within the context of the COVID–19 pandemic and subsequent barriers to access digital technology, which is essential to take classes and work from home or at an off-site location.

A commenter recommended that HUD explore adding incentives like gift cards or bonus escrow earnings for participants in good standing who complete big achievements (example: Graduating with a degree, paying off large debts, etc.). Another commenter suggested that for a participant to access incentives or activities funded by forfeited escrow funds, they would be required to have an existing goal or create a new goal related to the use of funding.

Commenters suggested that the proposed rule also include a list of ineligible activities and provide discretion to PHAs regarding eligible activities. Specifically, some commenters suggested that the proposed rule state that funds cannot be used for general administrative costs of PHAs or owners.

A commenter suggested that forfeited escrow should go to good standing participants who need the money for a good cause and the FSS Programs, such as: laptops or books for participants pursuing an education; car repairs for participants who need a vehicle for employment purposes; registration fees for education purposes or short-term certifications.

A commenter suggested that housing providers have a clear definition of how these funds will be used up front, perhaps in the Action Plan, to avoid subjective or discriminatory disbursement of these funds. A commenter warned that allowable activities must be equally available for all FSS participants in a given program and should not be allowed to be used as a resource for individual participants, but instead should be equally available to people consistent with the purposes of the FSS program.

A commenter also suggested that the final rule should include as safe harbor allowances: educational programs and workshops for participants, and down payment assistance for families who graduate and choose to exit subsidized housing.

A commenter stated escrow funds are HAP funds and any funds that are forfeited should be returned to HAP funds to benefit all HCV participants and applicants.

A commenter stated that the bookkeeping process for these funds must be carefully developed because PHAs do not have accounts in place to separate escrow funds assigned to participants from forfeited FSS escrow funds and asked how PHAs would account for FSS forfeitures on the balance sheet.

A commenter stated that when FSS escrows are forfeited, in the case of a Cooperative Agreement, the funds should go to the FSS administering entity (PHA or owner) and that administering entity is responsible to utilize the funds as defined as allowable uses.

HUD Response: This final rule adds ''and other costs related to achieving obligations outlined in the Contract of Participation'' to eligible activities, and ''general administrative costs of the FSS program'' to ineligible activities. HUD revised this final rule (1) to eliminate any incentive PHAs may have had not to graduate participating families so as to recapture the forfeited escrow funds and (2) to ensure forfeited funds are used to advance participants' goals and not for the overall implementation of

the FSS program. Additionally, consistent with Section 23(e)(3) of the 1937 Act, as amended by the Economic Growth Act, HUD revises the final rule to clarify that forfeited escrow accounts must be used for the benefit of FSS participants, and not for the FSS program more broadly.

Section 984.306: HCV Portability Requirements

Proposed Changes to HCV Portability Requirements (Question 15)

Several commenters supported the proposed changes to the porting requirements. A commenter opposed HUD making changes regarding portability because these provisions are not addressed in the act, and the title of the proposed rule does not mention revisions to existing regulations. A commenter recommended HUD be consistent with current program regulations and require denying portability moves use existing provisions outlined under PIH Notice 2016–09, Section (6), *Denying Family Requests* to Move, and Section (7) *Denying Family Requests to Move—Insufficient Funding.*[8]

HUD Response: While the Economic Growth Act does not specifically address portability in the FSS context, HUD exercised its authority to issue regulations to amend and clarify the existing FSS portability regulatory provisions. This regulatory section addresses portability provisions as they are applicable to the FSS program specifically and are not meant to replace portability requirements that are applicable to all HCV families (whether or not they are also participating in the FSS program). HCV portability requirements, as established in regulation at 24 CFR part 982, subpart H, and clarified in PIH Notice 2016–09, continue to apply.

HUD also took the opportunity to clarify the intersection between the family right to move from the PBV unit with continued tenant-based rental assistance (in accordance with 24 CFR 983.261) and the FSS portability requirements. While portability requirements do not apply to the PBV program, if the PBV family exercises its right to move with continued tenant-based rental assistance and is offered a tenant-based voucher, portability provisions apply. This final rule clarifies that a PBV family who has been enrolled in the FSS program for 12 months, and who exercises its right to move from the PBV unit with continued tenant-based rental assistance, may move outside of the jurisdiction of the initial PHA in accordance with portability requirements. Additionally, the PHA's discretion to allow portability moves within the 12 months following the effective date of the CoP also applies to such PBV families.

Porting of FSS Family Where Both PHAs Have FSS Programs

Commenters diverged regarding whether the receiving PHA should be required to absorb the family into its FSS program. Several commenters specifically supported encouraging or requiring the receiving PHA to absorb the porting FSS family into the receiving FSS Program, which would ease administrative burdens. Commenters suggested that receiving PHAs should be required to absorb the family if the initial PHA vouched for the family. Commenters specifically noted the burden of management of an escrow account, and the inability of most software programs to account for a family that is not in the system for rent calculation purposes, as a reason that the receiving PHA should be required to administer the escrow. Commenters stated it is especially burdensome when PHAs, especially small PHAs, must continue providing participating families with FSS assistance when the family may be two or more hours away. A commenter said that the receiving PHA would receive the credit when a family graduates even though the initial PHA did all the work. A commenter objected that it is not clear what the process is for sending and receiving escrow funds for families that port and are absorbed.

Other commenters opposed requiring the receiving PHA to enroll families that port and preferred it be left to the discretion of the receiving PHA. Commenters stated that the involved PHAs, who must work together in the portability procedure, should come to an agreement at their discretion. Commenters also asked what would happen if the receiving PHA is at full FSS capacity, especially for agencies with only a part-time position. A commenter suggested that receiving PHAs (RHAs) should be required to enroll the FSS family into their FSS program only if the initial PHA (IHA) ''vouches'' for the family.

Some commenters opposed the continuation of FSS at all when a family ports. A commenter urged HUD to allow nullification where the PHA does not or cannot absorb the voucher. This commenter noted that absorptions are not determined based on FSS determinations but on the receiving PHA's financial condition and the family size of the voucher. Another commenter stated that the goal should be to graduate families before porting if possible.

HUD Response: Some commenters stated that it should be left to the discretion of the receiving PHA (RHA) whether to enroll the ported FSS family into its FSS program. Other commenters were supportive of requiring RHAs to enroll FSS families into their FSS program HUD considered these comments and determined that lack of capacity to serve the ported FSS family (because the RHA is already serving the number of FSS families identified in its FSS Action Plan) would be a reasonable justification for a RHA to deny enrollment of the ported FSS family into its FSS program. Therefore, while the RHA would generally be required to enroll the ported FSS family into its FSS program, the RHA has discretion to make determinations concerning the family's enrollment if it lacks the capacity to manage the FSS contract. In such cases, the initial PHA (IHA) must inform the family of the potential impacts and options available to the family, as described in the regulatory text.

As to the suggestion that RHAs should be required to enroll the FSS family into their FSS program only if the IHA ''vouches'' for the family, the rule already provides that the RHA is required to enroll the FSS family into its FSS program only if the FSS family is in good standing. The final rule defines good standing as an FSS family that is in compliance with their FSS CoP; has either satisfied or are current on any debts owed the PHA; and is in compliance with the regulations regarding participation in the relevant rental assistance program, including rent payments.

In response to comments about the burden of managing an escrow account, HUD notes that in cases where the RHA is absorbing the FSS family into its HCV program, the RHA would be the one managing the escrow account and all escrow balances are transferred by the IHA to the RHA. The commenters' concern would only apply where the RHA is billing the IHA for the ported family. HUD considered these comments and determined that transferring the responsibility of managing the escrow account to the RHA may add another level of complexity to the process. The IHA's annual contributions contract (ACC) funds the escrow account in a portability billing scenario, and all HAP (including FSS escrow amounts) is provided by HUD to the IHA. Also, the

[8] U.S. Department of Housing and Urban Development, *Notice PIH 2016–09 (HA), https://www.hud.gov/sites/documents/16-09PIHN.PDF.*

IHA is responsible for reporting such escrow expenses to HUD in the Voucher Management System (VMS). Based on this, having the RHA manage the escrow account would not only require a transfer of information between agencies, but also a transfer of funds, including changes to transfer amounts each time that the escrow changes, and other complexities. In addition to this, placing the responsibility of escrow account management on the IHA in a portability billing scenario is a long-standing policy and the systems concern raised by commenters should be manageable through the modification of system specifications to match program requirements.

Another commenter suggested that the FSS contract should be nullified if the RHA does not absorb the FSS family into its voucher program. HUD disagrees with terminating the contract and disbursing FSS escrow in all instances where the RHA does not absorb the FSS family into its voucher program. Instead, the IHA must work with the family to determine whether continuation of the CoP after the move, or completion of the CoP prior to the move, is possible. As discussed below, in instances where such continuation or completion is not possible, this final rule allows CoPs to be terminated and accumulated escrow to be disbursed if an FSS family in good standing is moving for good cause, as determined by the IHA. A commenter stated that the goal should be to graduate families before porting if possible. HUD agrees that this should be the goal, however, the final rule establishes the requirements when graduation prior to the port is not possible.

FSS Family Moves To Receiving PHA That Does Not Administer an FSS Program

A commenter supported the proposal to not allow a family to continue in the IHA's FSS program when they port to an RHA that does not have an FSS program. Commenters agreed that RHAs not administering the FSS program should not have to commit to providing FSS services.

Other commenters wanted to allow IHAs to choose to let a family continue with the IHA's FSS program if the IHA chose to, or if the IHA and RHA agreed. A commenter suggested that this would be no different than staying with the IHA where the RHA does have an FSS program, as HUD proposed. A commenter stated that the IHA should continue to administer an FSS program only so that the families may keep their escrow with the IHA and work to complete their goals so they can graduate with escrow. Another commenter stated that the IHA should be required to continue with the family if the family chooses. Other commenters stated that the family should be allowed to graduate if feasible. A commenter suggested that HUD should allow the IHA and the family to work together to find a solution to remain in the program or graduate early so that the family is not punished for moving. A commenter suggested that HUD should allow graduation or termination if there are 12 or fewer months remaining on the CoP. Another commenter suggested that if an RHA does not offer the FSS program, the RHA should refer the family to a PHA that administers an FSS program or administer the program itself.

HUD Response: As explained in the proposed rule's preamble, in order for a porting family to continue in FSS, it is not only important to know whether the RHA has an FSS program. It is also critical that the PHA that administers the rental assistance must have an FSS program. If the RHA absorbs the voucher, the RHA must have an FSS program in order for the participant to continue. If the RHA administers the voucher (bills the IHA) then the IHA must have an FSS program in order for the FSS participant to continue. It would be burdensome to require any PHA that does not administer an FSS program to manage such tasks even for a small number of FSS families, especially in light of the administrative complexity of a portability move, and the shared FSS responsibilities between PHAs.

Additionally, the proposed rule already addresses the options available to the family, including modifying the FSS contract, which is already allowed under the regulation, so that the family may graduate from the FSS program prior to the move. The final rule also allows CoPs to be terminated and accumulated escrow to be disbursed if an FSS family in good standing is moving for good cause, as determined by the IHA, and where continuing the CoP after the move, or completing the CoP prior to the move, is not possible. Good cause for the move may include, but is not limited to, a housing opportunity in a lower-poverty/higher opportunity neighborhood, an employment opportunity for which the family has already obtained a job offer, the ability to be closer to family or other support network, or a move needed to protect health and safety of the family or family member. The IHA must discuss the available options with the family, including whether modification of the contract to allow for graduation prior to the move is a possibility for the family. PHAs must be consistent in their determinations of whether a family has good cause for a termination with FSS escrow disbursement and cannot allow escrow disbursement for some families but deny them for others if the families have the same or a comparable reason for moving. PHA determinations are subject to the nondiscrimination and equal opportunity requirements of the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act, which prohibit discriminatory practices and practices that have a discriminatory effect. One way a PHA can ensure consistency in determining whether there is good cause to terminate a contract with FSS escrow disbursement is to establish a written policy as to what the PHA considers to be good cause, or what factors the PHA will consider in making that determination and codifying it in the FSS Action Plan.

Non-FSS Family Moves To Receiving PHA That Does Administer an FSS Program

A commenter supported the opportunity for families to join an RHA's FSS program when they port from an IHA that does not have an FSS program. Another commenter recommended that RHAs may continue to refuse to enroll an FSS family if their program is full or does not have capacity, or to use preferences as described in their respective FSS Action Plan.

Commenters stated that HUD should not mandate that if the RHA chooses to bill the IHA, the family cannot enroll in the RHA's FSS program, and suggested that the complex issues related to porting should be worked out by the agencies involved, not HUD, if the agencies are willing and able to share responsibilities. A commenter suggested that mandating otherwise would contradict the ''choice'' component of the program.

HUD Response: The proposed rule addressed a new scenario (a non-FSS family who moved to an RHA that administers FSS). Under the proposed rule, the family could not enroll in the RHA's FSS program where the RHA was billing the IHA.

After consideration of comments received, HUD agrees that RHAs should have discretion to make determinations concerning FSS enrollment of such families. However, the billed IHA must agree to such enrollment, because the IHA would still be responsible for certain FSS tasks. If the IHA does not administer an FSS program, similar to § 984.306(c) of the rule, enrollment of

the non-FSS family in the RHA's FSS program would not be possible. This is because the IHA would be responsible for certain FSS tasks after the move (even if the family enrolls in the RHA's FSS program), and it would be burdensome to require the IHA that does not administer an FSS program to manage such tasks for a small number of FSS families, especially in light of the administrative complexity of a portability move, and the shared FSS responsibilities between PHAs.

FSS Family Moves to a New PHA and Wants To Re-Enroll

A commenter asked HUD to opine on enrollment in an RHA's FSS program, asking particularly whether a household moving in the fourth year of their FSS program should be eligible to receive their escrow payment and then re-enroll in a new five-year FSS program.

HUD Response: If the family has completed the requirements of the FSS program prior to porting, then the IHA must graduate the family. The RHA should have policies in its FSS Action Plan regarding whether families that have graduated from the FSS program may re-enroll. For more information concerning policies on re-enrollment, please see the HUD FSS Promising Practices Guidebook.[9]

Section 984.401: Reporting

Data on Curing Lease Violations

A commenter suggested that FSS Program Coordinator actions to assist participants in curing lease violations should be reported, as this information help to evaluate the efficiency of FSS programs.

HUD Response: HUD does not currently have an appropriate mechanism for reporting this information, and it is not included in the performance measures. In addition, while FSS Program Coordinators may sometimes help households resolve lease violation issues in the course of their work, this is not their primary function. Reporting and performance measurement of FSS programs will continue to focus on core FSS activities.

CoP Termination Reporting

A commenter suggested that in any case where a CoP termination occurs, an FSS administrator should note the termination date and the process used to substantiate the reason for termination, and report to HUD, along with the number of terminations as part of the routine reporting requirements.

HUD Response: A separate report of this nature would be administratively burdensome. However, the reason for exit from the program (including termination) for PIH programs is reflected on the Form HUD–50058 and further investigation may be pursued by the HUD field office on a case-by-case basis or upon monitoring review.

Section 887.101: Purpose, Scope, and Applicability

Commenters supported the proposal to extend FSS eligibility to residents of PBRA-assisted properties and extend eligibility for FSS Program Coordinator funding to independently operated PBRA FSS programs. A commenter specifically supported mirroring the regulations for multi-family programs to those in the Housing Choice Voucher Program.

Two commenters supported making the program voluntary for residents of PBRA properties. The commenters also recommended that HUD clarify that an FSS program may automatically enroll households and permit opting out of the program at any time.

HUD Response: HUD appreciates commenters' feedback and notes that extending FSS eligibility to residents of PBRA properties and eligibility for FSS Program Coordinator funding to PBRA FSS programs is permitted by section 23 of the 1937 Act, as amended by the Economic Growth Act. The proposed regulations are streamlined to apply all PIH FSS regulations to PBRA owners with the few exceptions outlined in 24 CFR part 887, which was included in the proposed rule. As stated in this preamble, all FSS programs are voluntary for participants. Administering an FSS program is voluntary for PBRA owners as well.

HUD will not make the change regarding automatic enrollment and opt out as part of this final rulemaking, but HUD appreciates the suggestion and may consider it in the future.

Section 887.105: Basic Requirements for the FSS Program

Difficult To Consult in Some Areas

One commenter stated that, under paragraph (a)(4), requiring owners to consult with a PCC may be difficult in rural or under-resourced communities or communities situated far from a public housing agency.

HUD Response: HUD recognizes that fewer service partners are available in some communities, and that smaller housing provider entities may find it more difficult to establish partnerships with service providers. However, HUD views the establishment of partnerships as an essential component of FSS, even in communities where few partners are available. Communities with few potential service partners may find effective coordination even more crucial than those with more resources, to ensure that the FSS program is making the most of every available resource. The PCC also provides an important venue for resident input on the ongoing implementation of the FSS program. HUD has kept the requirements very flexible as to how the PCC operates to avoid unnecessary burdens, allowing PCCs to be tailored to local needs and circumstances. The PCC may meet frequently or may meet only once or twice a year, depending on what the PCC feels is necessary for effective coordination. The PCC may include many partners or only a few key partners. Meetings may be held in person or remotely. HUD encourages PBRA FSS programs to join an existing PCC if possible.

Should Operate Independent of a PHA

Commenters stated that owners should be able to operate their FSS program(s) independent of any PHA and recommended that HUD remove this requirement and instead strongly encourage owners to develop an advisory group of FSS families to inform the services offered and provided as part of the FSS program.

HUD Response: Multifamily owners are not required to work with a PHA. Multifamily owners implementing an FSS program are encouraged, but not required, to work with an existing PCC. However, where a local PCC is available, they are required to work with the PCC or create their own PCC, if they prefer. Once FSS grant funds are made available to multifamily property owners, owners will be able to submit an independent NOFO application for funds to start their own FSS program. In this final rule, owners starting a voluntary FSS program, even those without FSS grant funds, are subject to the final rule. Whether or not an FSS program receives HUD FSS appropriated funding, housing providers are strongly encouraged to engage with residents and FSS participants regularly and to get their input on the property's Action Plan and ongoing implementation of the FSS program. This can be done through joining or creating a PCC, or by other means such as a resident advisory group.

Owners Should Be Allowed To Form an Action Plan

Commenters stated that § 887.105(a)(3) of the proposed rule requires that a PBRA FSS program have an Action Plan approved by HUD, as

[9] *See supra* note 3.

described in § 984.201; but § 984.201(b) of the proposed rule appears to provide authority for developing an Action Plan only to PHAs. These commenters requested that HUD clarify that owners, too, are authorized to develop Action Plans for their PBRA FSS programs.

HUD Response: All PHAs and owners are required to have an approved FSS Action Plan before implementing the program. HUD has added a clarification to the language regarding the development of Action Plans to make it clear that PBRA owners who wish to implement an FSS program are required to develop their own FSS Action Plans.

Exclusion or Inclusion of Requirements for Multifamily Assisted Housing (Question 16)

Several commenters expressed support and agreement with the exclusions and inclusions for multifamily assisted housing FSS programs. A commenter said that their current Program Coordinating Committee (PCC) includes HCV, PBV, and PH residents.

A commenter objected to HUD's reasoning to treat multifamily owners differently than PHAs in the family selection process. The commenter said that HUD states that the unequal treatment is due to the small size of the multifamily FSS programs but did not provide any figures to support or allow commenters to understand that justification.

A commenter suggested that HUD consider the same justifications which apply to exclude multifamily owners from FSS requirements, especially related to the size of the multifamily property, to small or similarly sized PHAs. The commenter stated that small PHAs are overregulated yet pose a small risk to HUD. This commenter asked HUD to request such relief to small PHAs from Congress. The commenter stated that small towns and rural areas do not have the same resources as large towns and areas. This commenter asked HUD to exclude small PHAs from the PCC requirement and the family selection process.

Some commenters stated that multifamily owners should be allowed, or should be required, to be members of the PCC, and should be allowed or required to attend regular meetings and contribute to oversight of the program.

One commenter asked if a PBRA owner can collaborate with the PHA to have one combined Action Plan.

HUD Response: HUD appreciates the feedback provided by commenters on the exclusions and inclusions for multifamily assisted housing FSS programs. HUD notes the concerns raised by commenters about the burden imposed by the regulations on small PHAs, but believes that the requirements are necessary to ensure that FSS families are well served by the program, and further notes that many of the requirements are statutory. In response to public comment, HUD has made a change in the final rule so that multifamily owners are no longer exempt from the family selection procedures in § 984.203. This section gives the owner the option of using certain selection preferences and motivational screening factors; housing providers are not required to use selection preferences or motivational screening factors, but HUD believes that as multifamily FSS programs grow in the future, they may wish to have these tools at their disposal for FSS waitlist management. This may also make it easier for an owner to operate an FSS program through a Cooperative Agreement with a PHA that uses selection preferences or motivational screening factors, by allowing them to align their family selection procedures. A PHA and PBRA owner may have a combined FSS Action Plan as long as it covers the requirements for both programs. If a housing provider chooses to establish a selection preference or use motivational screening factors, such activities are subject to Federal nondiscrimination and equal opportunity requirements.

HUD excluded multifamily owners from the requirement to create a PCC in the proposed rule because, while statutorily required for PHAs, it was not required for owners in the FSS statute. HUD believes that coordination with the type of partners that would typically make up a PCC is essential to developing an Action Plan and successfully implementing an FSS program. In particular, a PCC provides an important opportunity for input from key service partners and from FSS participants. Where an existing PCC is available, multifamily housing owners who operate FSS programs are required by this rule to consult with or join a nearby PCC or create their own PCC, either by themselves, or in conjunction with other owners. In cases where the multifamily housing owner is unable to consult with or join an existing PCC, HUD encourages owners to establish their own PCC. If the owner does not join an existing PCC or create their own, owners are strongly encouraged to choose another avenue for receiving input from their partners and FSS participants.

Section 887.107: Cooperative Agreements

Requirements for Owners Entering Into a Cooperative Agreement (Question 17)

A commenter stated the Cooperative Agreement should define reporting expectations by both the PHA and the property manager. This commenter suggested the Cooperative Agreement should also include a written data sharing agreement between the owner and PHA, or between owners. The commenter continued that appropriate release language should be added to the CoP to ensure the FSS participant is providing approval, and acknowledging said approval, for this new type of information sharing, as some states may have laws that, without written consent, may make such sharing illegal. The commenters stated that the Cooperative Agreement should have language ensuring any changes made to administering entities' Action Plan after the Cooperative Agreement is completed, includes input from the owner, and that any Action Plans should include owner's involvement under any Cooperative Agreements and certifications by the PHA to HUD as part of the HUD Action Plan approval process to ensure an owner does not get burdened by a Cooperative Agreement in which it was not involved.

A commenter said that HUD should consider the consequences to PHAs or owners who fail to comply with a Cooperative Agreement or who face unresolved disputes.

HUD Response: HUD's intention is to allow flexibility in the requirements for Cooperative Agreements, and will not require reporting expectations, data sharing agreements, or release language to be included in the Cooperative Agreement per the regulations, but will consider including these topics in guidance. In response to public comment, HUD has added a requirement that the Cooperative Agreement must include process for entities to communicate about changes in the Action Plan. If a PBRA property is being served through a Cooperative Agreement, then at least one participant with assistance through PBRA must be a member of the PCC. HUD notes the concern expressed in one comment regarding the potential consequences to PHAs or owners who fail to comply with a Cooperative Agreement or who face unresolved disputes. HUD is not a party to the Cooperative Agreements so consequences and resolutions should be addressed by the parties involved.

Technical or Technological Challenges

A commenter recommended that HUD remove #3 under Corrective Action for Failure to Meet Family Responsibilities from the FSS Contract of Participation, which allows the PHA to terminate HCV assistance where a family fails to meet responsibilities under the FSS contract.

A commenter said the proposed rule would create an administrative burden and potentially require a separate system or require software adaptations to implement these changes for the reasons below.

A number of commenters stated that the proposed change allowing the FSS head of household to be different from the HAP contract Head of Household would impact software applications that are currently designed to solely report on the Head of Household, and therefore these applications will have to be redesigned or adjusted to accommodate the required change in the Form 50058 addendum.

The FSS addendum currently requires a start and end date when completing an enrollment From 50058; a fatal error occurs when an end date is not added; this may require placing a temporary or place holder date in the addendum or creating FSS addendum adjustments; the CoP end date will need to remain blank until such time that the next recertification is completed; and this type of back and forth would not only be an administrative burden but also complicate the enrollment process and general understanding of the program for those potentially participating.

A commenter stated that all FSS programs are required to submit FSS information through PIC at least one time per year, and MTW agencies need to submit this information as an interim recertification. The commenter further stated that FSS families that may qualify for bi-annual reviews due to a disability still have an interim recertification completed yearly strictly to send FSS information through PIC. The commenter said that under the proposed rule the FSS CoP would start for those families due to a PIC reporting requirement.

A commenter said their current escrow accrual process is based on a strike point model and triggered when the enrollment Form 50058 is added, and that a work around to this process will need to be created to align with the new proposed rule.

HUD Response: HUD appreciates commenters' note regarding software changes. HUD understands that changes in program rules may necessitate changes in software to conform. HUD will review all Form 50058 flags and fatal errors and adjust based on the new regulations. Please note that an interim recertification is NOT required in order to submit an FSS Progress Report into PIC.

Opposition to the Economic Growth Act Provision Regarding the Change in Length of the Contract of Participation

A commenter opposed the provisions in the Economic Growth Act itself, and by extension, the proposed rule, that require a CoP to include a clause that each FSS family to fulfill their obligations no later than five years after the first recertification of income after the CoP's execution date. The commenter opposed the proposed change, stating that it would create unintended and arbitrary inequities in the length of time that program participants can accumulate escrow and participate in certain programs. The commenter also stated that the proposed change would result in inequities in how long households can accrue escrow.

Some commenters suggested that participants would have differing lengths of participation, whereby some participants would be given more time to accrue escrow than others, which raise fairness and equality concerns. A commenter was concerned that this change introduces varying timelines for FSS participants based on their annual recertification date, and said their programs operate on a two-year recertification cycle, meaning that some households could potentially have close to two years before their first recertification cycle, allowing for up to seven years, nine years if maximum extension were granted, to fulfill their obligations under the CoP. The commenter also said that this would allow some households more time than others based on recertification dates and allow for fewer opportunities for new FSS participants to enroll in the program as caseload sizes are limited. The commenter encouraged HUD to consider how it can implement this statute in a way that minimizes these variances.

Commenters said it may be confusing to change to five years after the first recertification of income after the execution date of the contract. A commenter stated the current regulation is easier to understand, execute, and follow.

A commenter stated the new recommendation may present errors in CoPs because if the CoP effective date is changed to the following renewal date after the CoP is signed it might create confusion. A commenter said there would be three different dates which turn out to be more information to look at, (the previous renewal date for enrollment purposes, the date they sign the CoP and then the effective CoP date which will be dated for following renewal).

A commenter stated there was no advantage in delaying the accrual of escrow until the next annual reexamination for contracts locked in after the annual re-examination. The commenter believed that the Contract should remain a 5-year contract. The expansion of extending the Contract for ''good reason'' gives the ability to the family to continue pursuing their goals if necessary, beyond the 5 years.

HUD Response: The change in the length of the Contract of Participation is statutory and therefore HUD does not have any discretion to change it. HUD reminds all FSS practitioners that, beyond any requirements of funding, PHAs may set the number of concurrent enrollments themselves. Longer CoPs do not necessarily limit new enrollments. Programs are encouraged to review the FSS Promising Practices Guidebook and consider triaging their approach to case management/coaching as opposed to a one-size fits all.

V. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and; therefore, subject to review by the Office of Management and Budget (OMB), in accordance with the requirements of the order. This rule was determined to be a ''significant regulatory action'' as defined in section 3(f) of the Executive order, but not an economically significant regulatory action, as provided under section 3(f)(1) of Executive Order 12866. Consistent with Executive Order 13563, this rule implements the streamlining requirements of section 306 and provides additional flexibility for PHAs and multifamily owners. HUD has

prepared a Regulatory Impact Analysis (RIA) that addresses the costs and benefits of the final rule. HUD's RIA is part of the docket file for this rule.

The docket file is available for public inspection on *regulations.gov* and in the Regulations Division, Office of General Counsel, Room 10276, 451 7th Street SW, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0178. HUD is updating existing information collection requirements along with this final rule. Additional requirements will become effective when the revised collection is approved by OMB.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal government, or on the private sector, within the meaning of the UMRA.

Environmental Review

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing (other than tenant-based rental assistance), rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As has been discussed in this preamble, this rule will make changes to HUD's regulations to implement the section 306 statutory changes and streamline other requirements. HUD believes this rule will overall reduce burden, including for small PHAs and multifamily owners. The burden reduction anticipated is more fully discussed in the accompanying Regulatory Impact Assessment (RIA). For these reasons, HUD determined that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) Imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive order.

List of Subjects

24 CFR Part 887

Grant programs—housing and community development, Public housing, Rent subsidies, Reporting and recordkeeping requirements

24 CFR Part 984

Grant programs—housing and community development, Grant programs—Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR chapters VIII and IX as follows:

■ 1. Add part 887 to read as follows:

PART 887—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS—FAMILY SELF-SUFFICIENCY PROGRAM

Sec.
887.101 Purpose, scope, and applicability.
887.103 Definitions.
887.105 Basic requirements of FSS programs.
887.107 Cooperative Agreements.
887.109 Housing assistance and total tenant payments and increases in family income.
887.111 FSS award funds formula.
887.113 FSS funds.

Authority: 42 U.S.C. 1437u, and 3535(d).

§ 887.101 Purpose, scope, and applicability.

(a) *Purpose.* (1) The purpose of the Family Self-Sufficiency (FSS) program is to promote the development of local strategies to coordinate the use of Department of Housing and Urban Development (HUD) assistance with public and private resources, to enable families eligible to receive HUD assistance to achieve economic independence and self-sufficiency.

(2) The purpose of this part is to implement the policies and procedures applicable to operation of an FSS program under HUD's Section 8 Housing assistance payments programs, as established under section 23 of the 1937 Act (42 U.S.C. 1437u).

(b) *Scope.* Each owner may implement an FSS program independently or by way of a Cooperative Agreement with a Public Housing Agency (PHA) or another owner. Each owner that administers an FSS program must do so in accordance with the requirements of this part.

(c) *Applicability.* This part applies to owners of multifamily rental housing properties assisted by Section 8 Housing assistance payments programs. See part 984 of this title for program regulations applicable to PHAs.

(d) *Non-participation.* Tenant participation in an FSS program is voluntary. Assistance under Section 8 Housing assistance payments programs for a family that elects not to participate in an FSS program shall not be refused, delayed or terminated by reason of such election.

§ 887.103 Definitions.

The definitions in § 984.103 of this title apply to this part, except that *eligible families* means tenant families living in multifamily assisted housing.

§ 887.105 Basic requirements of FSS programs.

(a) An FSS program that is voluntarily established under this part by an owner

must comply with the following requirements:

(1) Shall be operated in conformity with the regulations of this part and other Section 8 regulations, codified in 24 CFR parts 5, 402, 880, 881, 883, and 884, respectively, and with FSS program objectives, as described in § 984.102 of this title;

(2) Shall coordinate supportive services as defined in § 984.103 of this title;

(3) Shall have an Action Plan approved by HUD, as described in § 984.201 of this title, before operating an FSS program;

(4) When a Program Coordinating Committee (PCC), as described in § 984.202 of this title, is available, owners shall work with that PCC or shall create their own PCC, either by themselves, or in conjunction with other owners;

(5) Shall comply with the family selection procedures in § 984.203 of this title;

(6) May make available and utilize onsite facilities, as described in § 984.204 of this title;

(7) Shall comply with the FSS funds provision, as described in § 984.302(c) of this title;

(8) Shall enter into Contracts of Participation with eligible families, as described in § 984.303 of this title;

(9) Shall establish and manage FSS escrow accounts as described in § 984.305 of this title;

(10) Shall report information to HUD as described in § 984.401 of this title; and

(11) Shall be operated in compliance with applicable nondiscrimination and equal opportunity requirements including, but not limited to, those set forth in 24 CFR part 5.

(b) An owner may employ appropriate staff, including an FSS Program Coordinator, to administer its FSS program, and may contract with an appropriate organization to establish and administer parts of the FSS program.

§ 887.107 Cooperative Agreements.

(a) An owner may enter into a Cooperative Agreement with:

(1) A local PHA that operates an FSS program, pursuant to § 984.106 of this title; or

(2) Another owner that operates an FSS program, pursuant to this section.

(b) Owners that enter into a Cooperative Agreement pursuant to this part, must:

(1) Open any FSS waiting lists to all eligible families residing in the properties covered by the Cooperative Agreement.

(2) Provide periodic escrow amounts to the FSS Program Coordinator for FSS families covered by the Cooperative Agreement under this part. The Cooperative Agreement must provide that each owner is responsible for managing the escrow accounts of their participating families, including calculating and tracking of escrow in accordance with § 984.305 of this title, and set forth the procedures for the sharing of escrow information between the PHA and the owner.

(3) The Cooperative Agreement must clearly specify the terms and conditions of such agreement, including the requirements of this section, and it must include a process for PHAs and owners to communicate with each other about changes in their Action Plan.

§ 887.109 Housing assistance and total tenant payments and increases in family income.

(a) *Housing assistance payment.* The housing assistance payment for an eligible family participating in the FSS program under this part is determined in accordance with the regulations set forth in § 5.661(e) of this title.

(b) *Total tenant payment.* The total tenant payment for an FSS family participating in the FSS program is determined in accordance with § 5.628 of this title.

(c) *Increases in FSS family income.* Any increase in the earned income of an FSS family during its participation in an FSS program may not be considered as income or an asset for purposes of eligibility of the FSS family for other benefits, or amount of benefits payable to the FSS family, under any other program administered by HUD.

§ 887.111 FSS award funds formula.

The Secretary may establish a formula by which funds for administration of the FSS program are awarded consistent with 42 U.S.C. 1437u(i).

§ 887.113 FSS funds.

Owners may access funding from any residual receipt accounts for the property to cover reasonable costs associated with operation of an FSS program, including hiring an FSS Program Coordinator or coordinators for their FSS program.

■ 2. Revise part 984 to read as follows:

PART 984—SECTION 8 AND PUBLIC HOUSING FAMILY SELF-SUFFICIENCY PROGRAM

Subpart A—General

Sec.
984.101 Purpose, applicability, and scope.
984.102 Program objectives.
984.103 Definitions.
984.104 Basic requirements of the FSS program.
984.105 Minimum program size.
984.106 Cooperative Agreements.
984.107 FSS award funds formula.

Subpart B—Program Development and Approval Procedures

984.201 Action Plan.
984.202 Program Coordinating Committee (PCC).
984.203 FSS family selection procedures.
984.204 On-site facilities.

Subpart C—Program Operations

984.301 Program implementation.
984.302 FSS funds.
984.303 Contract of Participation (CoP).
984.304 Amount of rent paid by FSS family and increases in family income.
984.305 FSS escrow account.
984.306 HCV portability requirements for FSS participants.

Subpart D—Reporting

984.401 Reporting.

Authority: 42 U.S.C. 1437f, 1437u, and 3535(d).

Subpart A—General

§ 984.101 Purpose, applicability, and scope.

(a) *Purpose.* (1) The purpose of the Family Self-Sufficiency (FSS) program is to promote the development of local strategies to coordinate the use of Department of Housing and Urban Development (HUD or Department) assistance with public and private resources, to enable families eligible to receive HUD assistance to achieve economic independence and self-sufficiency.

(2) The purpose of this part is to implement the policies and procedures applicable to operation of an FSS program, as established under section 23 of the 1937 Act (42 U.S.C. 1437u).

(b) *Applicability.* This part applies to Public Housing Agencies (PHAs) administering a public housing program under section 9, a project-based and/or tenant-based assistance program under section 8(o) of the U.S. Housing Act of 1937 (1937 Act), a Housing Choice Voucher (HCV) homeownership program under section 8(y) of the U.S. Housing Act of 1937, or Section 8 Moderate Rehabilitation for low-income families and Moderate Rehabilitation Single Room Occupancy for homeless individuals under 24 CFR part 882. See part 887 of this title for program regulations applicable to owners of multifamily assisted housing.

(c) *Scope.* Each PHA that administers an FSS program must do so in accordance with the requirements of this part. See § 984.105 for more information concerning PHAs that are required to administer an FSS program.

(d) *Non-participation.* Participation in an FSS program is voluntary. A family's admission to the public housing or Section 8 programs cannot be conditioned on participation in FSS. A family's housing assistance cannot be terminated by reason of such election or due to an FSS family's failure to comply with FSS program requirements in this part.

§ 984.102 Program objectives.

The objective of the FSS program is to reduce the dependency of low-income families on welfare assistance and housing subsidies. Under the FSS program, HUD assisted families are provided opportunities for education, job training, counseling, and other forms of social service assistance, while living in assisted housing, so that they may obtain the education, employment, and business and social skills necessary to achieve self-sufficiency, as defined in § 984.103. The Department will evaluate the performance of a PHA's or owner's FSS program using a scoring system that measures criteria, such as graduation from the program, increased earned income, and program participation, as provided by HUD through a **Federal Register** notice.

§ 984.103 Definitions.

(a) The terms *1937 Act, Fair Market Rent, Head of household, HUD, Low income family, Public housing, Public Housing Agency (PHA),* and *Secretary,* as used in this part, are defined in part 5 of this title.

(b) As used in this part:

Baseline annual earned income means, for purposes of determining the FSS credit under § 984.305(b), the FSS family's total annual earned income from wages and business income (if any) as of the effective date of the FSS contract. In calculating baseline annual earned income, all applicable exclusions of income must be applied, *except for* any disregarded earned income or other adjustments associated with self-sufficiency incentives that may be applicable to the determination of annual income.

Baseline monthly rent means, for purposes of determining the FSS credit under § 984.305(b):

(i) The FSS family's total tenant payment (TTP), as of the effective date of the FSS contract, for families paying an income-based rent as of the effective date of the FSS contract; or

(ii) The amount of the flat or ceiling rent (which includes the applicable utility allowance), and including any hardship discounts, as of the effective date of the FSS contract, for families paying a flat or ceiling rent as of the effective date of the FSS contract.

Certification means a written assertion based on supporting evidence, provided by the FSS family or the PHA or owner, as may be required under this part, and which:

(i) Shall be maintained by the PHA or owner in the case of the family's certification, or by HUD in the case of the PHA's or owner's certification;

(ii) Shall be made available for inspection by HUD, the PHA or owner, and the public, as appropriate; and,

(iii) Shall be deemed to be accurate for purposes of this part, unless the Secretary or the PHA or owner, as applicable, determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

Chief executive officer (CEO) means the elected official or the legally designated official of a unit of general local government, who has the primary responsibility for the conduct of that entity's governmental affairs.

Contract of Participation (CoP) means a contract, in a form with contents prescribed by HUD, entered into between an FSS family and a PHA or owner operating an FSS program that sets forth the terms and conditions governing participation in the FSS program. The CoP includes all Individual Training and Services Plans (ITSPs) entered into between the PHA or owner and all members of the family who will participate in the FSS program, and which plans are attached to the CoP as exhibits. For additional detail, see § 984.303.

Current annual earned income means, for purposes of determining the FSS credit under § 984.305(b), the FSS family's total annual earned income from wages and business income (if any) as of the most recent re-examination of income which occurs after the effective date of the FSS contract. In calculating current annual earned income, all applicable exclusions of income will apply, including any disregarded earned income and other adjustments associated with self-sufficiency incentives or other alternative rent structures that may be applicable to the determination of annual income.

Current monthly rent means, for purposes of determining the FSS credit under § 984.305(b):

(i) The FSS family's TTP as of the most recent re-examination of income, which occurs after the effective date of the FSS contract, for families paying an income-based rent as of the most recent re-examination of income; or

(ii) The amount of the flat rent (which includes the applicable utility allowance) or ceiling rent, including any hardship discounts, as of the most recent re-examination of income which occurs after the effective date of the FSS contract, for families paying a flat rent or ceiling rent as of the most recent re-examination of income.

Earned income means income or earnings from wages, tips, salaries, other employee compensation, and self-employment. Earned income does not include any pension or annuity, transfer payments, any cash or in-kind benefits, or funds deposited in or accrued interest on the FSS escrow account established by a PHA or owner on behalf of a FSS family.

Effective date of Contract of Participation (CoP) means the first day of the month following the date in which the FSS family and the PHA or owner entered into the CoP.

Eligible families means current residents of public housing (section 9) and current Section 8 program participants, as defined in this section, including those participating in other local self-sufficiency programs.

Enrollment means the date that the FSS family entered into the CoP with the PHA or owner.

Family Self-Sufficiency (FSS) Program means the program established by a PHA within its jurisdiction or by an owner to promote self-sufficiency among participating families, including the coordination of supportive services to these families, as authorized by section 23 of the 1937 Act.

FSS escrow account (or, escrow) means the FSS escrow account authorized by section 23 of the 1937 Act, and as provided by § 984.305.

FSS escrow credit means the amount credited by the PHA or owner to the FSS family's FSS escrow account.

FSS family means a family that resides in public housing (section 9) or receives Section 8 assistance, as defined in this section, and that elects to participate in the FSS program, and whose designated adult member (head of FSS family), as determined in accordance with § 984.303(a), has signed the CoP.

FSS family in good standing means, for purposes of this part, an FSS family that is in compliance with their FSS CoP; has either satisfied or are current on any debts owed the PHA or owner; and is in compliance with the regulations in part 5 and chapters VIII and IX of this title regarding participation in the relevant rental assistance program.

FSS related service program means any program, publicly or privately sponsored, that offers the kinds of supportive services described in the

definition of ''supportive services'' set forth in this section.

FSS slots refers to the total number of families (as determined in the Action Plan for mandatory programs in § 984.105) that the PHA will serve in its FSS program.

FSS Program Coordinator means the person(s) who runs the FSS program. This may include (but is not limited to) performing outreach, recruitment, and retention of FSS participants; goal-setting and case management/coaching of FSS participants; working with the community and service partners; and tracking program performance.

FY means Federal fiscal year (starting October 1 and ending September 30, and year designated by the calendar year in which it ends).

Head of FSS family means the designated adult family member of the FSS family who has signed the CoP. The head of FSS family may, but is not required to be, the head of the household for purposes of determining income eligibility and rent.

Individual Training and Services Plan (ITSP) means a written plan that is prepared by the PHA or owner in consultation with a participating FSS family member (the person with for and whom the ITSP is being developed), and which sets forth:

(i)(A) The final and interim goals for the participating FSS family member;

(B) The supportive services to be provided to the participating FSS family member;

(C) The activities to be completed by that family member; and,

(D) The agreed upon completion dates for the goals, and activities.

(ii) Each ITSP must be signed by the PHA or owner and the participating FSS family member and is attached to, and incorporated as part of the CoP. An ITSP must be prepared for each adult family member who elects to participate in the FSS program, including the head of FSS family who has signed the CoP.

Multifamily assisted housing (also known as project-based rental assistance (PBRA)) means rental housing assisted by a Section 8 Housing Payments Program, pursuant to 24 CFR parts 880, 881, 883, 884, and 886.

Owner means the owner of multifamily assisted housing.

Program Coordinating Committee (PCC) means the committee described in § 984.202.

Section 8 means assistance provided under section 8 of the 1937 Act (42 U.S.C. 1437f). Specifically, multifamily assisted housing, as defined in this section; tenant-based and project-based rental assistance under section 8(o) of the 1937 Act; the HCV homeownership option under section 8(y) of the 1937 Act; Family Unification Program (FUP) assistance under section 8(x) of the 1937 Act; and the Section 8 Moderate Rehabilitation (Mod Rehab) for low-income families and Moderate Rehabilitation Single Room Occupancy (Mod Rehab SRO) for homeless individuals under 24 CFR part 882.

Self-sufficiency means that an FSS family is no longer receiving Section 8, public housing assistance, or any Federal, State, or local rent, homeownership subsidies, or welfare assistance. Achievement of self-sufficiency, although an FSS program objective, is not a condition for receipt of the FSS escrow account funds.

Supportive services means those appropriate services that a PHA or owner will coordinate on behalf of an FSS family under a CoP, which may include, but are not limited to:

(i) *Child care.* Child care (on an as-needed or ongoing basis) of a type that provides sufficient hours of operation and serves an appropriate range of ages;

(ii) *Transportation.* Transportation necessary to enable a participating FSS family member to receive available services, or to commute to their place(s) of employment;

(iii) *Education.* Remedial education; education for completion of high school or attainment of a high school equivalency certificate; education in pursuit of a post-secondary degree or certificate;

(iv) *Employment supports.* Job training, preparation, and counseling; job development and placement; and follow-up assistance after job placement and completion of the CoP;

(v) *Personal welfare.* Substance/alcohol abuse treatment and counseling, and health, dental, mental health and health insurance services;

(vi) *Household management.* Training in household management;

(vii) *Homeownership and housing counseling.* Homeownership education and assistance and housing counseling;

(viii) *Financial empowerment.* Training in financial literacy, such as financial coaching, training in financial management, asset building, and money management, including engaging in mainstream banking, reviewing and improving credit scores, etc.; and

(ix) *Other services.* Any other services and resources, including case management, optional services, and specialized services for individuals with disabilities, that are determined to be appropriate in assisting FSS families to achieve economic independence and self-sufficiency. Reasonable accommodations and modifications must be made for individuals with disabilities consistent with applicable Federal civil rights and nondiscrimination laws.

Unit size or size of unit refers to the number of bedrooms in a dwelling unit.

Very low-income family is defined as set out in § 813.102 of this title.

Welfare assistance means (for purposes of the FSS program only) income assistance from Federal (*i.e.,* Temporary Assistance for Needy Families (TANF) or subsequent program), State, or local welfare programs and includes only cash maintenance payments designed to meet a family's ongoing basic needs. Welfare assistance does not include:

(i) Nonrecurrent, short-term benefits that:

(A) Are designed to deal with a specific crisis or episode of need;

(B) Are not intended to meet recurrent or ongoing needs; and,

(C) Will not extend beyond four months;

(ii) Work subsidies (*i.e.,* payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(iii) Supportive services such as child care and transportation provided to families who are employed;

(iv) Refundable earned income tax credits;

(v) Contributions to, and distributions from, Individual Development Accounts under TANF;

(vi) Services such as counseling, case management, peer support, child care information and referral, financial empowerment, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support;

(vii) Amounts solely directed to meeting housing expenses;

(viii) Amounts for health care;

(ix) Supplemental Nutrition Assistance Program and emergency rental and utilities assistance;

(x) Supplemental Security Income, Social Security Disability Income, or Social Security; and

(xi) Child-only or non-needy TANF grants made to or on behalf of a dependent child solely on the basis of the child's need and not on the need of the child's current non-parental caretaker.

§ 984.104 Basic requirements of the FSS program.

(a) An FSS program established under this part shall be operated in conformity with the requirements of this part, including the Action Plan at § 984.201, and:

(1) As applicable to voucher program participants:

(i) HCV regulations at 24 CFR part 982, for HCV program participants; and

(ii) Project-based voucher (PBV) regulations at 24 CFR part 983, for PBV program participants; and

(iii) HCV Homeownership regulations at 24 CFR 982.625 through 982.643, for HCV homeownership participants;

(2) As applicable to Mod Rehab and Mod Rehab SRO participants, 24 CFR part 882;

(3) As applicable to public housing program participants, the applicable public housing regulations, including the regulations in 24 CFR parts 5, subpart F, 960, and 966; and,

(4) The applicable nondiscrimination and equal opportunity requirements including, but not limited to, those set forth in 24 CFR part 5.

(b) [Reserved]

§ 984.105 Minimum program size.

(a) *FSS program size*—(1) *Minimum program size requirement.* A PHA must operate an FSS program of the minimum program size determined in accordance with paragraph (b) of this section.

(2) *Exceptions to program operation requirement or to operate a smaller mandatory program.* Paragraph (c) of this section states when HUD may grant an exception to the program operation requirement, and paragraph (d) of this section states when an exception may be granted to operate a program that is smaller than the minimum program size.

(3) *Option to operate larger FSS program.* A PHA may choose to operate an FSS program larger than the minimum program size.

(b) *How to determine FSS minimum program size*—(1) *General requirement.* Each PHA that was required to administer an FSS program on May 24, 2018 (enactment date of the Economic Growth, Regulatory Relief, and Consumer Protection Act), shall continue to operate such program for, at a minimum, the total number of families the PHA was required by statute to serve as of May 24, 2018, subject only to the availability of sufficient amounts for housing assistance under appropriations acts and the provisions of paragraph (b)(2) of this section.

(2) *Reduction of minimum program size.* The minimum program size for a PHA's FSS program is reduced by one slot for each family from any rental assistance program (public housing or Section 8, including multifamily assisted housing) for which the PHA administers FSS under this section and that graduates from the FSS program by fulfilling its FSS CoP on or after October 21, 1998. If an FSS slot is vacated by a family that has not completed its FSS CoP obligations, the slot must be filled by a replacement family which has been selected in accordance with the FSS family selection procedures set forth in § 984.203.

(c) *Exception to program operation.* (1) Upon approval by HUD, a PHA will not be required to carry out an FSS program if the PHA provides to HUD a certification, as defined in § 984.103, that the operation of such an FSS program is not feasible because of local circumstances, which may include, but are not limited to, the following:

(i) Lack of supportive services accessible to eligible families, including insufficient availability of resources for programs under title I of the Workforce Innovation and Opportunity Act (29 U.S.C. 3111 *et seq.*);

(ii) Lack of funding for reasonable administrative costs;

(iii) Lack of cooperation by other units of State or local government; or,

(iv) Lack of interest in participating in the FSS program on the part of eligible families.

(2) A program operation exception will not be granted if HUD determines that local circumstances do not preclude the PHA from effectively operating an FSS program that is smaller than the minimum program size.

(d) *Exception to operate a smaller mandatory program.* Upon approval by HUD in its full discretion, a PHA may be permitted to operate an FSS program that is smaller than the minimum program size if the PHA requests an exception and provides to HUD a certification, as defined in § 984.103, that the operation of an FSS program of the minimum program size is not feasible because of local circumstances, which may include, but are not limited to:

(1) Decrease in or lack of supportive services available to eligible families, including insufficient availability of resources for programs under title I of the Workforce Innovation and Opportunity Act (29 U.S.C. 3111 *et seq.*);

(2) Decrease in or lack of funding for reasonable administrative costs;

(3) Decrease in or lack of cooperation by other units of State or local government; or

(4) Decrease in or lack of interest in participating in the FSS program on the part of eligible families.

(e) *Expiration of exception.* A full or partial exception to the FSS minimum program size requirement (approved by HUD in accordance with paragraph (c) or (d) of this section) expires five (5) years from the date of HUD approval of the exception. If circumstances change and a HUD-approved exception is no longer needed, the PHA is not required to effectuate the exception for the full term of the exception. If a PHA seeks to continue an exception after its expiration, the PHA must submit a new request and certification to HUD for consideration.

(f) *Review of certification records.* HUD reserves the right to examine, during its management review of the PHA, or at any time, the documentation and data that a PHA relied on in certifying to the unfeasibility of its establishing and operating an FSS program, or of operating one of less than minimum program size.

§ 984.106 Cooperative Agreements.

(a) A PHA may enter into a Cooperative Agreement with one or more owners to voluntarily make an FSS program available to the owner's multifamily assisted housing tenants.

(b) A PHA and owner that enter into a Cooperative Agreement to make an FSS program available pursuant to paragraph (a) of this section, are subject to this part and the following requirements:

(1) The PHA must open its FSS waiting list to any eligible family residing in the multifamily assisted housing covered by the Cooperative Agreement.

(2) The owner must provide, at the request of the PHA, information on escrow amounts for participating multifamily assisted housing tenants. The Cooperative Agreement must provide that the owner is responsible for managing the escrow account for participating multifamily assisted housing tenants, including calculating and tracking of escrow in accordance with § 984.305. The Cooperative Agreement must set forth the procedures that will be in place for the exchange of escrow information between the PHA and the owner.

(3) The PHA may count multifamily assisted housing families served pursuant to a Cooperative Agreement under this subpart as part of the calculation of the FSS award under §§ 984.107 and 984.302.

(4) The PHA may use FSS appropriated funds to serve multifamily assisted housing tenants subject to a Cooperative Agreement under this section.

(5) The Cooperative Agreement must clearly specify the terms and conditions of such agreement, including the requirements of this section, and it must include a process for entities for PHAs and owners to communicate with each other about changes in their Action Plan.

§ 984.107 FSS award funds formula.

The Secretary may establish a formula by which funds for administration of the FSS program are awarded consistent with 42 U.S.C. 1437u(i), which provides the following:

(a) *Base award.* A PHA or owner serving 25 or more participants in the FSS program is eligible to receive an award equal to the costs, as determined by the Secretary, of 1 full-time family self-sufficiency coordinator position. The Secretary may, by notice (including a Notice of Funding Opportunity (NOFO)), determine the policy concerning the award for an eligible entity serving fewer than 25 such participants, including providing prorated awards or allowing such entities to combine their programs under this section for purposes of employing a coordinator.

(b) *Additional award.* A PHA or owner that meets performance standards set by the Secretary is eligible to receive an additional award sufficient to cover the costs of filling an additional FSS coordinator position if such entity has 75 or more participating families, and an additional coordinator for each additional 50 participating families, or such other ratio as may be established by the Secretary based on the award allocation evaluation under section 23(i)(2)(E) of the U.S. Housing Act of 1937.

(c) *State and regional entities.* For purposes of calculating the award under this section, HUD may treat each administratively distinct part of a State or regional entity as a separate entity.

(d) *Determination of number of coordinators.* In determining whether a PHA or owner meets a specific threshold for funding pursuant to this section, the Secretary shall consider the number of participants enrolled by the PHA or owner in its FSS program as well as other criteria determined by the Secretary.

(e) *Renewals and allocation.* FSS awards shall be allocated, as established by the Secretary, in the following order of priority:

(1) *First priority.* Renewal of the full cost of all FSS coordinators in the previous year at each PHA or owner with an existing FSS program that meets applicable performance standards set by the Secretary. If this first priority cannot be fully satisfied, the Secretary may prorate the funding for each PHA or owner, as long as:

(i) Each PHA or owner that has received funding for at least 1 part-time coordinator in the prior fiscal year is provided sufficient funding for at least 1 part-time coordinator as part of any such proration; and

(ii) Each PHA or owner that has received funding for at least 1 full-time coordinator in the prior fiscal year is provided sufficient funding for at least 1 full-time coordinator as part of any such proration.

(2) *Second priority.* New or incremental coordinator funding.

(f) *Recapture or offset.* Any FSS awards allocated under this section by the Secretary in a fiscal year that have not been spent by the end of the subsequent fiscal year or such other time period as determined by the Secretary may be recaptured by the Secretary and shall be available for providing additional awards pursuant to paragraph (b) of this section, or may be offset as determined by the Secretary.

(g) *Incentives for innovation and high performance.* The Secretary may reserve up to 5 percent of the appropriated FSS funds to provide support to or reward FSS programs based on the rate of successful completion, increased earned income, or other factors as may be established by the Secretary.

Subpart B—Program Development and Approval Procedures

§ 984.201 Action Plan.

(a) *Requirement for Action Plan.* A PHA or owner must have a HUD-approved Action Plan that complies with the requirements of this section before the PHA or owner operates an FSS program, whether the FSS program is a mandatory or voluntary program.

(b) *Development of Action Plan.* The Action Plan shall be developed by the PHA or owner in consultation with the chief executive officer of the applicable unit of general local government and the Program Coordinating Committee. Consultation for the Action Plan by the PHA or owner shall also include representatives of current and prospective FSS program participants, any local agencies responsible for programs under title I of the Workforce Innovation and Opportunity Act (29 U.S.C. 3111 *et seq.*), other appropriate organizations (such as other local welfare and employment or training institutions, child care providers, financial empowerment providers, nonprofit service providers, and private businesses), and any other public and private service providers affected by the operation of the PHA's or owner's program.

(c) *Plan submission*—(1) *Voluntary program.* The PHA or owner must submit its Action Plan and obtain HUD approval of the plan before the PHA or owner carries out a voluntary FSS program, including a program that exceeds the minimum size for a mandatory program, regardless of whether the voluntary program receives HUD funding.

(2) *Revision.* Following HUD's initial approval of the Action Plan, no further approval of the Action Plan is required unless the PHA or owner proposes to make policy changes to the Action Plan or increase the size of a voluntary program; or HUD requires other changes. In such cases, the PHA or owner must submit such changes to the Action Plan to HUD for approval.

(d) *Contents of Plan.* The Action Plan shall describe the policies and procedures for the operation of a PHA's or owner's FSS program, and shall contain, at a minimum, the following information:

(1) *Family demographics.* A description of the number, size, characteristics, and other demographics (including racial and ethnic data), and the supportive service needs of the families expected to participate in the FSS program;

(2) *Estimate of participating families.* A description of the number of eligible FSS families who can reasonably be expected to receive supportive services under the FSS program, based on available and anticipated Federal, tribal, State, local, and private resources;

(3) *Eligible families from other self-sufficiency programs.* If applicable, the number of families, by program type, who are participating in other local self-sufficiency programs and are expected to agree to execute an FSS CoP;

(4) *FSS family selection procedures.* A statement indicating the procedures to be utilized to select families for participation in the FSS program, subject to the requirements governing the selection of FSS families, set forth in § 984.203. This statement must include a description of how the selection procedures ensure that families will be selected without regard to race, color, religion, sex (including actual or perceived gender identity and sexual orientation), disability, familial status, or national origin;

(5) *Incentives to encourage participation.* A description of the incentives that will be offered to eligible families to encourage their participation in the FSS program (incentives plan). The incentives plan shall provide for the establishment of the FSS escrow account in accordance with the requirements set forth in § 984.305, and other incentives, if any. The incentives plan shall be part of the Action Plan;

(6) *Outreach efforts.* A description of:

(i) The efforts, including notification and outreach efforts, to recruit FSS participants from among eligible families; and,

(ii) The actions to be taken to assure that both minority and non-minority groups are informed about the FSS program, and how this information will be made available;

(7) *FSS activities and supportive services.* A description of the activities and supportive services to be coordinated on behalf of participating FSS families and identification of the public and private resources which are expected to provide the supportive services;

(8) *Method for identification of family support needs.* A description of how the FSS program will identify the needs and coordinate the services and activities according to the needs of the FSS families;

(9) *Program termination; withholding of services; and available grievance procedures.* A description of all policies concerning termination of participation in the FSS program, or withholding of coordination of supportive services, on the basis of a family's failure to comply with the requirements of the CoP; and the grievance and hearing procedures available for FSS families;

(10) *Assurances of non-interference with rights of non-participating families.* An assurance that a family's election not to participate in the FSS program will not affect the family's admission to public housing or to the Section 8 program or the family's right to occupancy in accordance with its lease;

(11) *Timetable for program implementation.* A timetable for implementation of the FSS program, as provided in § 984.301(a)(1), including the schedule for filling FSS slots with eligible FSS families, as provided in § 984.301;

(12) *Certification of coordination.* A certification that development of the services and activities under the FSS program has been coordinated with programs under title I of the Workforce Innovation and Opportunity Act (29 U.S.C. 3111 *et seq.*), and other relevant employment, child care, transportation, training, education, and financial empowerment programs in the area, and that implementation will continue to be coordinated, in order to avoid duplication of services and activities; and

(13) *Optional additional information.* Such other information that would help HUD determine the soundness of the proposed FSS program. This may include, and is not limited to:

(i) Policies related to the modification of goals in the ITSP;

(ii) The circumstances in which an extension of the Contract of Participation may be granted;

(iii) Policies on the interim disbursement of escrow, including limitations on the use of the funds (if any);

(iv) Policies regarding eligible uses of forfeited escrow funds by families in good standing;

(v) Policies regarding the re-enrollment of previous FSS participants, including graduates and those who exited the program without graduating;

(vi) Policies on requirements for documentation for goal completion;

(vii) Policies on documentation of the household's designation of the ''head of FSS family;'' and

(viii) Policies for providing an FSS selection preference for porting families (if the PHA elects to offer such a preference).

(e) *Eligibility of a combined program.* A PHA or owner that wishes to operate a joint FSS program with a PHA or owner may combine its resources with one or more PHAs or owners to deliver supportive services under a joint Action Plan that will provide for the coordination of a combined FSS program that meets the requirements of this part.

(f) *Single Action Plan.* A PHA or owner may submit one Action Plan that covers all applicable rental assistance programs (Section 8 vouchers, PBRA, Mod Rehab, and public housing) served by the FSS program.

§ 984.202 Program Coordinating Committee (PCC).

(a) *General.* Each participating PHA (or joint FSS program) must establish a PCC whose functions will be to assist the PHA in securing commitments of public and private resources for the operation of the FSS program within the PHA's jurisdiction, including assistance in developing the Action Plan and in operating the program.

(b) *Membership*—(1) *Required membership.* The PCC must include representatives of the PHA, including one or more FSS Program Coordinators, and one or more participants from each HUD rental assistance program served by the PHA's FSS program. The PHA may seek assistance from the following groups in identifying potential PCC members:

(i) An area-wide or city-wide resident council, if one exists;

(ii) If the PHA operates in a specific public housing development, the resident council or resident management corporation, if one exists, of the public housing development where the public housing FSS program is to be carried out; or

(iii) Any other resident group, which the PHA believes is interested in the FSS program and would contribute to the development and coordination of the FSS program (such as the Resident Advisory Board or tenant association, as applicable).

(2) *Recommended membership.* Membership on the PCC may include representatives of the unit of general local government served by the PHA, local agencies (if any) responsible for carrying out programs under title I of the Workforce Innovation and Opportunity Act (29 U.S.C. 3111 *et seq.*), and other organizations, such as other State, local, or tribal welfare and employment agencies, public and private primary, secondary, and post-secondary education or training institutions, child care providers, financial empowerment organizations, nonprofit service providers, private businesses, and any other public and private service providers with resources to assist the FSS program.

(c) *Alternative committee.* The PHA may, in consultation with the chief executive officer of the unit of general local government served by the PHA and one or more residents of each HUD-assisted program served by the FSS program, utilize an existing entity as the PCC if the membership of the existing entity consists, or will consist of, the individuals identified in paragraph (b)(1) of this section, and it may also include individuals from the same or similar organizations identified in paragraph (b)(2) of this section.

§ 984.203 FSS family selection procedures.

(a) *Preference in the FSS selection process.* A PHA has the option of selecting eligible families for up to fifty (50) percent of its FSS slots in accordance with a written policy, provided in the PHA's FSS Action Plan, who have one or more family members currently enrolled in an FSS related service program or on the waiting list for such a program. The PHA may limit the selection preference given to participants in, and applicants for, FSS related service programs to one or more eligible FSS related service programs. A PHA that chooses to exercise the selection preference option must include the following information in its Action Plan:

(1) The percentage of FSS slots, not to exceed fifty (50) percent of the total number of FSS slots, for which it will give a selection preference;

(2) The FSS related service programs to which it will give a selection preference to the programs' participants and applicants; and

(3) The method of outreach to, and selection of, families with one or more

members participating in the identified programs.

(b) *Selection among families with preference.* The PHA may use either of the following to select among applicants on the FSS waiting list with the same preference status:

(1) Date and time of application to the FSS program; or,

(2) A drawing or other random choice technique.

(c) *FSS selection without preference.* For those FSS slots for which a selection preference is not applicable, the FSS slots must be filled with eligible families in accordance with an objective selection system, such as a lottery, the length of time living in subsidized housing, or the date the family expressed an interest in participating in the FSS program. The objective system to be used by the PHA must be described in the PHA's Action Plan.

(d) *Motivation as a selection factor*—(1) *General.* A PHA may screen families for interest, and motivation to participate in the FSS program, provided that the factors utilized by the PHA are those which solely measure the family's interest and motivation to participate in the FSS program.

(2) *Permissible motivational screening factors.* Permitted motivational factors include requiring attendance at FSS orientation sessions or preselection interviews and assigning certain tasks which indicate the family's willingness to undertake the obligations which may be imposed by the FSS CoP. Any tasks assigned shall be those which may be readily accomplishable by the family, based on the family members' educational level, capabilities, and disabilities, if any. Reasonable accommodations and modifications must be made for individuals with disabilities, including, *e.g.,* mobility, manual, sensory, speech, mental, intellectual, or developmental disabilities, consistent with applicable Federal civil rights and nondiscrimination laws.

(3) *Prohibited motivational screening factors.* Prohibited motivational screening factors include the family's educational level, educational or standardized motivational test results, previous job history or job performance, credit rating, marital status, number of children, or other factors, such as sensory or manual skills, and any factors which may result in the exclusion, application of different eligibility requirements, or other discriminatory treatment or effect on the basis of race, color, national original, sex (including actual or perceived gender identity and sexual orientation), religion, familial status, or disability.

§ 984.204 On-site facilities.

Each PHA or owner may, subject to the approval of HUD, make available and utilize common areas or unoccupied dwelling units in properties owned by the entity to provide or coordinate supportive services under any FSS program.

Subpart C—Program Operations

§ 984.301 Program implementation.

(a) *Voluntary program implementation.* Unless otherwise required under a funding notice, there is no deadline for implementation of a voluntary program. A voluntary program, however, may not be implemented before the requirements of § 984.201 have been satisfied.

(b) *Program administration.* A PHA may employ appropriate staff, including a service coordinator or FSS Program Coordinator to administer its FSS program, and may contract with an appropriate organization to establish and administer all or part of the FSS program, including the FSS escrow account, as provided by § 984.305.

§ 984.302 FSS funds.

(a) *Public housing program.* Subject to 42 U.S.C. 1437g, 24 CFR part 990, and appropriations by Congress, PHAs may use funds provided under 42 U.S.C. 1437g to cover reasonable and eligible administrative costs incurred by PHAs in carrying out the FSS program.

(b) *Section 8 program.* Subject to 42 U.S.C. 1437f, 24 CFR part 982, and appropriations by Congress, PHAs may use the administrative fees paid to PHAs for costs associated with operation of an FSS program.

(c) *FSS funds.* FSS funds associated with operation of an FSS program are established by the Congress and subject to appropriations. FSS appropriated funds will be awarded to and used by PHAs or owners for costs associated with families who are enrolled in an FSS program under this part, including when an owner operates an FSS program through a Cooperative Agreement or on its own.

§ 984.303 Contract of Participation (CoP).

(a) *General.* Each eligible family that is selected to participate in an FSS program must enter into a CoP with the PHA or owner that operates the FSS program in which the family will participate. There will be no more than one CoP at any time for each family. There may be an ITSP for as many members of the family as wish to participate. The CoP shall be signed by a representative of the PHA or the owner and the head of FSS family, as designated by the family. This head of FSS family does not have to be the same as the official head of household for rental assistance purposes.

(b) *Form and content of contract*—(1) *General.* The CoP, which incorporates the ITSP(s), shall set forth the principal terms and conditions governing participation in the FSS program. These include the rights and responsibilities of the FSS family and of the PHA or owner, the services to be provided to, and the activities to be completed by, each adult member of the FSS family who elects to participate in the program.

(2) *FSS family goals.* The ITSP, incorporated in the CoP, shall establish specific interim and final goals by which the PHA or owner, and the family, measures the FSS family's progress towards fulfilling its obligations under the CoP and becoming self-sufficient. For any FSS family that is a recipient of welfare assistance at the outset of the CoP or that receives welfare assistance while in the FSS program, the PHA or owner must establish as a final goal for each FSS participant that every member of the family become independent from welfare assistance before the expiration of the term of the CoP, including any extension thereof. Also, see the employment obligation described in paragraph (b)(4) of this section. Aside from the goals specifically required in this section, PHAs or owners must work with each participant to establish realistic and individualized goals and may not include additional mandatory goals or mandatory modifications of the two mandatory goals.

(3) *Compliance with lease terms.* The CoP shall provide that one of the obligations of the FSS family is to comply with the terms and conditions of the respective public housing or Section 8 lease. However, all considerations allowed for other assisted residents for repayment agreements, etc., shall also be allowed for FSS participants.

(4) *Employment obligation*—(i) *Minimum requirement.* Although all members of the FSS family may seek and maintain suitable employment during the term of the contract, only the head of FSS family shall be required under the CoP to seek and maintain suitable employment during the term of the contract and any extension thereof.

(ii) *Seek employment.* The obligation to seek employment means searching for jobs, applying for employment, attending job interviews, and otherwise following through on employment opportunities.

(iii) *Determination of suitable employment.* A determination of

suitable employment shall be made by the PHA or owner, with the agreement of the affected participant, based on the skills, education, job training, and receipt of other benefits of the household member, and based on the available job opportunities within the jurisdiction served by the PHA or in the community where the PBRA property is located.

(5) *Consequences of noncompliance with the contract.* The CoP shall specify the consequences of noncompliance with the CoP as described in paragraph (i) of this section.

(c) *Contract of Participation term.* The CoP shall state that each FSS family will be required to fulfill CoP obligations no later than 5 years after the first re-examination of income after the execution date of the CoP.

(d) *Contract of Participation extension.* The PHA or owner shall, in writing, extend the term of the CoP for a period not to exceed two (2) years for any FSS family that requests, in writing, an extension of the contract, provided that the PHA or owner finds that good cause exists for granting the extension. The family's written request for an extension must include a description of the need for the extension. Extension of the CoP will entitle the FSS family to continue to have amounts credited to the family's FSS escrow account in accordance with § 984.304. As used in this paragraph (d), *good cause* means:

(1) Circumstances beyond the control of the FSS family that impede the family's ability to complete the CoP obligations, as determined by the PHA or owner, such as a serious illness or involuntary loss of employment;

(2) Active pursuit of a current or additional goal that will result in furtherance of self-sufficiency during the period of the extension (*e.g.,* completion of a college degree during which the participant is unemployed or under-employed, credit repair towards being homeownership ready, etc.) as determined by the PHA or owner; or

(3) Any other circumstance that the PHA or owner determines warrants an extension, as long as the PHA or owner is consistent in its determination as to which circumstances warrant an extension.

(e) *Unavailability of supportive services*—(1) *Good-faith effort to replace unavailable services.* If a social service agency fails to deliver the supportive services identified in an FSS family member's ITSP, the PHA or owner shall make a good faith effort to obtain these services from another agency.

(2) *Assessment of necessity of services.* If the PHA or owner is unable to obtain the services from another agency, the PHA or owner shall reassess the family member's needs and determine whether other available services would achieve the same purpose. If other available services would not achieve the same purpose, the PHA or owner and the family shall determine whether the unavailable services are integral to the FSS family's advancement or progress toward self-sufficiency. If the unavailable services are:

(i) Determined not to be integral to the FSS family's advancement toward self-sufficiency, the PHA or owner shall revise the ITSP to delete these services, and modify the CoP to remove any obligation on the part of the FSS family to accept the unavailable services, in accordance with paragraph (f) of this section; or,

(ii) Determined to be integral to the FSS family's advancement toward self-sufficiency, the PHA or owner shall terminate the CoP and follow the requirements in paragraph (k) of this section regarding FSS escrow disbursement.

(f) *Modification.* The PHA or owner and the FSS family may mutually agree to modify the CoP with respect to the ITSP and/or the contract term in accordance with paragraph (d) of this section, and/or designation of the head of FSS family. Modifications must be in writing.

(g) *Completion of the contract.* The CoP is considered to be completed, and a family's participation in the FSS program is considered to be concluded when the FSS family has fulfilled all of its obligations under the CoP, including all family members' ITSPs, on or before the expiration of the contract term, including any extension thereof.

(h) *Termination of the contract.* The CoP shall be terminated if the family's housing assistance is terminated in accordance with HUD requirements. The CoP may be terminated before the expiration of the contract term, and any extension thereof, by:

(1) Mutual consent of the parties;

(2) The failure of the FSS family to meet its obligations under the CoP without good cause. This includes an FSS family who has moved out of multifamily assisted housing and families receiving tenant-based assistance under section 8(o) of the 1937 Act who fail to comply with the contract requirements because the family has moved outside the jurisdiction of the PHA, and the PHA has not determined that there is good cause terminate the CoP with FSS escrow disbursement in accordance with paragraph (k)(1)(iii) of this section;

(3) The family's withdrawal from the FSS program;

(4) Such other act as is deemed inconsistent with the purpose of the FSS program; or

(5) Operation of law.

(i) *Option to terminate FSS participation or withhold the coordination of supportive service assistance.* The PHA or owner may withhold the coordination of supportive services or terminate the FSS family's participation in the FSS program, if the PHA or owner determines, in accordance with the FSS Action Plan hearing procedures, that the FSS family has failed to comply without good cause with the requirements of the CoP in accordance with this section.

(j) *Transitional supportive service assistance.* A PHA or owner may continue to offer to a former FSS family that has completed its CoP, appropriate coordination of those FSS supportive services needed to become self-sufficient if the family still resides in public housing or Section 8 housing. If the family no longer resides in public housing, Section 8, or other assisted housing, then a PHA or owner may continue to coordinate supportive services for a former FSS family that completed its CoP using only funding sources that are not HUD funds or HUD-restricted funds.

(k) *Termination with FSS escrow disbursement.* (1) The CoP is will be terminated with FSS disbursement when:

(i) Services that the PHA or owner and the FSS family have agreed are integral to the FSS family's advancement towards self-sufficiency are unavailable, as described in paragraph (e) of this section;

(ii) The head of the FSS family becomes permanently disabled and unable to work during the period of the contract, unless the PHA or owner and the FSS family determine that it is possible to modify the contract to designate a new head of the FSS family; or

(iii) An FSS family in good standing moves outside the jurisdiction of the PHA (in accordance with portability requirements at § 982.353 of this chapter) for good cause, as determined by the PHA, and continuation of the CoP after the move, or completion of the CoP prior to the move, is not possible. PHAs must be consistent in their determinations of whether a family has good cause for a termination with FSS escrow disbursement under this paragraph (k).

(2) Upon termination of a CoP pursuant to paragraph (k)(1) of this

section, escrow funds must be handled consistent with § 984.305.

§ 984.304 Amount of rent paid by FSS family and increases in family income.

(a) *Amount of rent paid by FSS family.* The amount of rent paid by an FSS family is determined in accordance with the requirements of the applicable housing assistance program as specified in paragraphs (a)(1) and (2) of this section.

(1) *Public housing program: Calculation of total tenant payment.* Total tenant payment for an FSS family participating in the FSS program is determined in accordance with the regulations set forth in 24 CFR part 5, subpart F.

(2) *Section 8 programs: Calculation of rent.* (i) For the HCV program, rent is determined in accordance with 24 CFR part 982, subpart K; and

(ii) For the PBV program, rent is determined in accordance with 24 CFR part 983, subpart G.

(b) *Increases in FSS family income.* Any increase in the earned income of an FSS family during its participation in an FSS program may not be considered as income or an asset for purposes of eligibility of the FSS family under any other program administered by HUD.

§ 984.305 FSS escrow account.

(a) *Establishment of FSS escrow account*—(1) *General.* The PHA or owner shall deposit the FSS escrow account funds of all families participating in an FSS program into a single interest-bearing depository account. The PHA or owner must deposit the FSS escrow account funds in one or more of the HUD-approved investments. The depository account may be part of the PHA's or owner's overall accounts or a separate account, as long as it is in compliance with paragraph (a)(2) of this section. During the term of the CoP, the FSS escrow account credit amount shall be determined in accordance with paragraph (b) of this section at each re-examination of income occurring after the effective date of the CoP. Such escrow credit amount must be deposited each month by the PHA or owner to each family's FSS escrow account within the PHA's or owner's depository account.

(2) *Accounting for FSS escrow account funds*—(i) *Accounting records.* The total of the combined FSS escrow account funds will be supported in the accounting records by a subsidiary ledger showing the balance applicable to each FSS family.

(ii) *Proration of investment income.* The investment income for funds in the FSS escrow account must be prorated and credited to each family's FSS escrow account based on the balance in each family's FSS escrow account at the end of the period for which the investment income is credited.

(iii) *Reduction of amounts due by FSS family.* If the FSS family has not paid the family contribution towards rent, or other amounts, if any, due under the public housing or Section 8-assisted lease, the balance in the family's FSS account shall be reduced by that amount (as determined by the owner or reported by the owner to the PHA in the Section 8(o) programs) at the time of final disbursement of FSS escrow funds in accordance with paragraph (c) of this section. If the FSS family has been found to have under-reported income after the baseline annual earned income was set, the amount credited to the FSS escrow account will be based on the income amounts originally reported by the FSS family. If the FSS family is found to have under-reported income in the re-examination used to set the baseline, the escrow for the entire period of the CoP will be re-calculated using the correct income to set the baseline and then calculate subsequent escrow amounts.

(3) *Reporting on FSS escrow account.* Each PHA or owner will be required to make a report, at least once annually, to each FSS family on the status of the family's FSS escrow account. At a minimum, the report will include:

(i) The balance at the beginning of the reporting period;

(ii) The amount of the family's rent payment that was credited to the FSS escrow account, during the reporting period;

(iii) Any deductions made from the account at the time of final disbursement of FSS escrow funds (see paragraphs (a)(2)(iii) and (c) of this section) for amounts due the PHA or owner;

(iv) The amount of interest earned on the account during the year; and

(v) The total in the account at the end of the reporting period.

(b) *FSS credit*—(1) *Determining the family's baseline information.* When determining the family's baseline annual earned income and the baseline monthly rent amounts for purposes of computing the FSS escrow credit, the PHA or owner must use the amounts on the family's last income re-examination.

(2) *Computation of amount.* The FSS credit amount shall be the lower of:

(i) Thirty (30) percent of one-twelfth (1/12) (*i.e.,* two and a half (2.5) percent) of the amount by which the family's current annual earned income exceeds the family's baseline annual earned income; or

(ii) The increase in the family's monthly rent. The increase in the family's monthly rent shall be the lower of:

(A) The amount by which the family's current monthly rent exceeds the family's baseline monthly rent;

(B) For HCV families, the difference between the baseline monthly rent and the current gross rent (*i.e.,* rent to owner plus any utility allowance) or the payment standard, whichever is lower; or

(C) For PBV, Mod Rehab, including Mod Rehab SRO, and PBRA families, the difference between the baseline monthly rent and the current gross rent (*i.e.,* rent to owner or contract rent, as applicable, plus any utility allowance).

(3) *Ineligibility for FSS credit.* FSS families who are not low-income families (*i.e.,* whose adjusted annual income exceeds eighty (80) percent of the area median income) shall not be entitled to any FSS credit.

(4) *Cessation of FSS credit.* The PHA or owner shall not make additional credits to the FSS family's FSS escrow account:

(i) When the FSS family has completed the CoP, as described in § 984.303(g);

(ii) When the CoP is terminated; or

(iii) During the time an HCV family is in the process of moving to a new unit, in accordance with HCV program requirements in part 982 of this title, and is not under a lease.

(c) *Disbursement of FSS escrow account funds*—(1) *General.* The amount in an FSS escrow account in excess of any amount owed to the PHA or owner by the FSS family, as provided in paragraph (a)(2)(iii) of this section, shall be paid to the head of FSS family when the CoP has been completed as provided in § 984.303(g), and if, at the time of contract completion, the head of FSS family submits to the PHA or owner a certification, as defined in § 984.103, that to the best of his or her knowledge and belief, no member of the FSS family is a recipient of welfare assistance.

(2) *Disbursement before expiration of contract term.* (i) If the PHA or owner determines that the FSS family has fulfilled its obligations under the CoP before the expiration of the contract term, and the head of FSS family submits a certification that, to the best of his or her knowledge, no member of the FSS family is a recipient of welfare assistance, the amount in the family's FSS escrow account, in excess of any amount owed to the PHA or owner by the FSS family, as provided in

paragraph (a)(2)(iii) of this section, shall be paid to the head of FSS family.

(ii) If the PHA or owner determines that the FSS family has fulfilled certain interim goals established in the CoP and needs a portion of the FSS escrow account funds for purposes consistent with or in support of the CoP, such as completion of higher education (*i.e.,* college, graduate school), job training, or to meet start-up expenses involved in creation of a small business, the PHA or owner may, at the PHA's or owner's sole discretion, disburse a portion of the funds from the family's FSS escrow account to assist the family in paying those expenses. Unless the interim disbursement was made based on fraudulent information from the family, the family is not required to repay such interim disbursements if the family does not complete the CoP.

(3) *Disbursement in cases of termination of the CoP with disbursement of escrow.* The PHA or owner must disburse to the family its FSS escrow account funds in excess of any amount owed to the PHA or owner by the FSS family, as provided in paragraph (a)(2)(iii) of this section, under circumstances in which HUD has determined good cause is warranted. HUD determines that there is good cause when a CoP is terminated in accordance with § 984.303(k). Therefore, if the CoP is terminated in accordance with § 984.303(k), the PHA or owner must disburse to the family its FSS escrow account funds in excess of any amount owed to the PHA or owner by the FSS family, as provided in paragraph (a)(2)(iii) of this section, as of the effective date of the termination of the contract.

(4) *Verification of family certification.* Before disbursement of the FSS escrow account funds to the family, the PHA or owner may verify that the FSS family is no longer a recipient of welfare assistance by requesting copies of any documents which may indicate whether the family is receiving any welfare assistance and by contacting welfare agencies.

(d) *Succession of FSS escrow account.* If the head of FSS family ceases to reside with other family members in the public housing or the Section 8-assisted unit, the remaining members of the FSS family, after consultation with the PHA or owner, shall have the right to take over the CoP or designate another family member to receive the funds in accordance with paragraph (c) of this section.

(e) *Use of FSS escrow account funds for homeownership.* An FSS family may use disbursed FSS escrow account funds, in accordance with § 984.305(c), after final disbursement for the purchase of a home, including the purchase of a home under one of HUD's homeownership programs, or other Federal, State, or local homeownership programs, unless such use is prohibited by the statute or regulations governing the particular homeownership program.

(f) *Forfeiture of FSS escrow account funds*—(1) *Conditions for forfeiture.* Amounts in the FSS escrow account shall be forfeited upon the occurrence of the following:

(i) The CoP is terminated, as provided in § 984.303(h); or,

(ii) The CoP is completed by the family, as provided in § 984.303(g), but the FSS family is receiving welfare assistance at the time the CoP term expires, including any extension thereof.

(2) *Treatment of forfeited FSS escrow account funds.* FSS escrow account funds forfeited by the FSS family must be used by the PHA or owner for the benefit of the FSS participants.

(i) Specifically, such funds may be used for the following eligible activities:

(A) Support for FSS participants in good standing, including, but not limited to, transportation, child care, training, testing fees, employment preparation costs, and other costs related to achieving obligations outlined in the CoP;

(B) Training for FSS Program Coordinator(s); or

(C) Other eligible activities as determined by the Secretary.

(ii) Such funds may not be used for salary and fringe benefits of FSS Program Coordinators; general administrative costs of the FSS program, for housing assistance payments (HAP) expenses or public housing operating funds; or any other activity determined ineligible by the Secretary.

§ 984.306 HCV portability requirements for FSS participants.

(a) *Initial period of CoP*—(1) *First 12 months.* During the first 12 months after the effective date of the FSS CoP, an FSS family may not move outside the jurisdiction of the PHA that first enrolled the family in the FSS program. However, the PHA may approve an FSS family's request to move outside of its jurisdiction under portability (in accordance with § 982.353 of this chapter) during this period. This paragraph (a)(1) applies to a former PBV family who received tenant-based rental assistance in accordance with § 983.261 of this chapter and exercised their right to move.

(2) *After the first 12 months.* After the first 12 months of the FSS CoP, the FSS family with a tenant-based voucher may move outside the initial PHA jurisdiction under portability regulations (in accordance with § 982.353 of this chapter). This paragraph (a)(2) applies to former PBV families who received tenant-based rental assistance in accordance with § 983.261 of this chapter and exercised their right to move.

(b) *An FSS family moves to the jurisdiction of a receiving PHA that administers an FSS program.* (1) Whether the receiving PHA bills the initial PHA or absorbs the FSS family into its HCV program, the receiving PHA must enroll an FSS family in good standing in its FSS program; unless

(i) The receiving PHA is already serving the number of FSS families identified in its FSS Action Plan and determines that it does not have the resources to manage the FSS contract; or

(ii) The receiving PHA and the initial PHA agree to the FSS family's continued participation in the initial PHA's FSS program. Prior to the PHAs agreeing to the continued participation, the initial PHA must determine that the relocating FSS family has demonstrated that, notwithstanding the move, it will be able to fulfill its responsibilities under the initial or a modified CoP at its new place of residence. For example, the FSS family may be able to commute to the supportive services specified in the CoP, or the family may move to obtain employment as specified in the contract.

(2) Where continued FSS participation is not possible in accordance with paragraph (b)(1) of this section, the initial PHA must clearly discuss the options that may be available to the family, depending on the family's specific circumstances, which may include, but are not limited to, modification of the FSS contract, termination of the FSS contract and forfeiture of escrow, termination with FSS escrow disbursement in accordance with § 984.303(k)(1)(iii), or locating a receiving PHA that has the capacity to enroll the family into its FSS program.

(c) *An FSS family moves to the jurisdiction of a receiving PHA that does not administer an FSS program.* If the receiving PHA does not administer an FSS program, the FSS family may not continue participation in the FSS program. The initial PHA must clearly discuss the options that may be available to the family, depending on the family's specific circumstances, which may include, but are not limited to, modification of the FSS contract, termination with FSS escrow disbursement in accordance with § 984.303(k)(1)(iii), termination of the FSS contract and forfeiture of escrow, or

locating a receiving PHA that administers an FSS program.

(d) *Single FSS escrow account.* Regardless of whether the FSS family remains in the FSS program of the initial PHA or is enrolled in the FSS program of the receiving PHA, the family will have only one FSS escrow account. If the receiving PHA is billing the initial PHA, the account will be maintained by the initial PHA. If an FSS family will be absorbed by the receiving PHA, the initial PHA will transfer the family's FSS escrow account funds to the receiving PHA and the receiving PHA will maintain the funds in its FSS account.

(e) *FSS program termination; loss of FSS escrow account.* (1) If an FSS family relocates to another jurisdiction, as provided under this section, and is unable to fulfill its obligations under the CoP (or any modifications thereto), the PHA, which is a party to the CoP, must terminate the FSS family from the FSS program, and the family's FSS escrow account will be forfeited. Termination of FSS program participation and forfeiture of FSS escrow must be used only as a last resort, after the PHA determines, in consultation with the family, that the family would be unable to fulfill its obligations under the CoP after the move, that the current CoP cannot be modified to allow for graduation prior to porting, and that the current CoP cannot be terminated with FSS escrow disbursement in accordance with § 984.303(k)(1)(iii). When termination is the only option, the PHA must clearly notify the family that the move will result in the loss of escrow funds.

(2) In the event of forfeiture of the family's FSS escrow account funds, the FSS escrow account funds will revert to the PHA maintaining the FSS escrow account for the family.

(f) *Contract of Participation (CoP).* (1) If the FSS family enrolls in the receiving PHA's FSS program pursuant to this section, the receiving PHA will enter into a new CoP with the FSS family for the term remaining on the contract with the initial PHA. The initial PHA will terminate its CoP with the family.

(2) If the FSS family remains in the FSS program of the initial PHA, pursuant to this section, the CoP executed by the initial PHA will remain as the contract in place.

(g) *New FSS enrollment into the receiving PHA's FSS program*—(1) *Billing.* If the receiving PHA bills the initial PHA, the receiving PHA may, consistent with the receiving PHA's FSS enrollment policies, enroll a family that was not an FSS participant at the initial PHA into its FSS program, provided that the initial PHA manages an FSS program and agrees to such enrollment. If the receiving PHA bills the initial PHA, but the initial PHA does not manage an FSS program, the family may not enroll in the receiving PHA's FSS program.

(2) *Absorption.* If the receiving PHA absorbs the family into its HCV program, the receiving PHA may, consistent with the receiving PHA's FSS enrollment policies, enroll a family that was not an FSS participant at the initial PHA into its FSS program.

Subpart D—Reporting

§ 984.401 Reporting.

Each PHA or owner that carries out an FSS program shall submit to HUD, in the form prescribed by HUD, a report regarding its FSS program. The report shall include the following information:

(a) A description of the activities carried out under the program;

(b) A description of the effectiveness of the program in assisting families to achieve economic independence and self-sufficiency, including the number of families enrolled and graduated and the number of established escrow accounts and positive escrow balances;

(c) A description of the effectiveness of the program in coordinating resources of communities to assist families to achieve economic independence and self-sufficiency; and

(d) Any recommendations by the PHA or owner or the appropriate local Program Coordinating Committee for legislative or administrative action that would improve the FSS program and ensure the effectiveness of the program.

Marcia L. Fudge,

Secretary.

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Part III

Library of Congress

U.S. Copyright Office

37 CFR Parts 201, 220, et al.

Copyright Claims Board: Active Proceedings and Evidence; Final Rule

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201, 220, 222, 224, 225, 226, 227, 228, 229, 230, 231, 232, and 233

[Docket No. 2021–8]

Copyright Claims Board: Active Proceedings and Evidence

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

ACTION: Final rule; request for comments.

SUMMARY: The U.S. Copyright Office is issuing a final rule establishing procedures governing active proceedings before the Copyright Claims Board and post-determination procedures. The final rule provides requirements regarding procedural practice, scheduling, conferences, discovery, written testimony, hearings, settlement, default and failure to prosecute, records, post-determination procedures, conduct of parties and limits on the number of claims that can be brought. The final rule also describes the procedures for ''smaller claims'' and solicits public comments on these regulations.

DATES: Effective June 16, 2022. Written comments must be received no later than 11:59 p.m. Eastern Time on November 14, 2022.

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

FOR FURTHER INFORMATION CONTACT: Megan Efthimiadis, Assistant to the General Counsel, by email at *meft@copyright.gov,* or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

The Copyright Alternative in Small-Claims Enforcement (''CASE'') Act of 2020 [1] directs the Copyright Office (''Office'') to establish the Copyright Claims Board (''CCB''), an alternative forum to Federal court in which parties may seek resolution of copyright disputes that have a total monetary value of $30,000 or less.[2] The CCB is designed to be accessible to *pro se* parties without formal legal training and others with little exposure to copyright law.[3] The Office published a notification of inquiry (''NOI'') asking for public comments on the CCB's operations and procedures.[4] A subsequent notice of proposed rulemaking (''NPRM'') proposed regulations to govern active proceedings before the CCB and post-determination review, including on the CCB's management of parties (*i.e.,* joinder, dismissal, default, failure to prosecute, party conduct, and numerical limits on cases that parties may bring); management of proceedings (*i.e.,* scheduling orders, amending pleadings, claim consolidation, settlement, hearings, ''smaller'' claims, and records); evidence and discovery (*i.e.,* written testimony, protective orders, interrogatories, requests for admission, document production, discovery disputes, and sanctions); and post-determination rehearing and the Register's review.[5]

This final rule marks the completion of all regulations required for the CCB to begin operations, but the Office expects to exercise its regulatory authority to promulgate additional CASE Act regulations going forward as it deems necessary. As noted in its CASE Act NOI, the Office has deferred exercising its regulatory authority on certain topics until a later date.[6] For topics that the Office has already addressed by regulation, it will be monitoring how those regulations are functioning as the CCB starts hearing claims, including, for example: Whether the limitations on proceedings should be adjusted; whether the discovery regulations strike the right balance between allowing necessary access to information and being too burdensome; and whether hearing attendance limitations should be eased. Further, as with its other services,[7] the Office will periodically review and potentially adjust any CASE Act-related fees. Additionally, the CASE Act requires the Office to conduct a future study on the CCB's operations,[8] which will likely prompt additional discussions regarding both regulatory and legislative changes. Finally, as further discussed below, the Office is soliciting additional public comments on its final regulations governing ''smaller claims.''

The Copyright Alliance et al. urged the Office to ''consider adopting the CASE Act implementing regulations on an interim basis at this stage'' and postpone issuing final rules, or plan to publish another notice of inquiry seeking public comment on the efficacy of the rules after a year.[9] While the Office declines to follow this suggestion, it understands the desire to provide additional feedback on whether the regulations are functioning as intended. The Office therefore encourages the public to provide any feedback regarding the CASE Act's regulations and operations at any time via the Office's *ex parte* meeting process,[10] so that the Office has the opportunity to promptly address any unforeseen issues.

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

[2] *See, e.g.,* H.R. Rep. No. 116–252, at 18–20 (2019); S. Rep. No. 116–105, at 7–8 (2019). Note, the CASE Act legislative history cited is for H.R. 2426 and S. 1273, the CASE Act of 2019, a bill nearly identical to the CASE Act of 2020. *See* H.R. 2426, 116th Cong. (2019); S. 1273, 116th Cong. (2019). In developing the CASE Act, Congress drew on model legislation in the Office's 2013 policy report, *Copyright Small Claims* (2013), *https://www.copyright.gov/docs/smallclaims/usco-smallcopyrightclaims.pdf* (''*Copyright Small Claims*''). Congress also incorporated the Office's report and supporting materials into the statute's legislative history. H.R. Rep. No. 116–252, at 19; S. Rep. No. 116–105, at 2.

[3] *See, e.g.,* H.R. Rep. No. 116–252, at 18–20; S. Rep. No. 116–105, at 7–8.

[4] 86 FR 16156 (Mar. 26, 2021). Comments received in response to the March 26, 2021 NOI are available at *https://www.regulations.gov/document/COLC-2021-0001-0001/comment.*

[5] 86 FR 69890 (Dec. 8, 2021). The Office has also published separate notices and final rules implementing other aspects of the CASE Act. 86 FR 21990 (Apr. 26, 2021) (proposing regulations for expedited copyright registrations of works at issue in CCB proceedings, and a Freedom of Information Act (''FOIA'')-conforming amendment); 86 FR 49273 (Sept. 2, 2021) (proposing regulations for libraries and archives to opt out of CCB proceedings, and for parties to opt out of related class actions); 86 FR 53897 (Sept. 29, 2021) (proposing regulations regarding initial stages of CCB proceedings); 86 FR 74394 (Dec. 30, 2021) (proposing regulations regarding party representation by law students and representation of business entities); 86 FR 46119 (Aug. 18, 2021) (final rule concerning expedited registration and technical update to FOIA regulations); 87 FR 12861 (Mar. 8, 2022) (partial final rule establishing regulations for designating agents for service of process); 87 FR 13171 (Mar. 9, 2022) (final rule establishing regulations concerning library and archives opt-outs and class actions); 87 FR 16989 (Mar. 25, 2022) (final rule establishing regulations for initiating proceedings and related procedures).

[6] 86 FR 16156, 16165.

[7] *See, e.g.,* 85 FR 9374 (Feb. 19, 2020) (final rule establishing adjusted fees for services).

[8] Public Law 116–260, sec. 212(d), 134 Stat. at 2199–2200.

[9] Copyright Alliance et al. Initial Comments at 9.

[10] Guidelines for *ex parte* meetings are available at *https://www.copyright.gov/about/small-claims/related-rulemakings.html.*

II. Discussion of Final Rule

A. Overview

The CASE Act's legislative history states that the Office should establish a process that is ''accessible especially for *pro se* parties and those with little prior formal exposure to copyright laws.'' [11] Congress acknowledged that ''federal court is effectively inaccessible to copyright owners seeking redress for claims of relatively low economic value, especially individual creators of limited resources,'' [12] and sought to ensure ''that copyright interests without high expected damages have some mode of enforceability.'' [13] The Office anticipates that many CCB parties will appear *pro se* (*i.e.,* without an attorney). In establishing the procedures to govern CCB proceedings, the Office is always guided by the CASE Act's goal to improve access to justice in copyright disputes by providing a simpler, yet fair alternative to Federal litigation.

In response to the NPRM, the Office received comments that articulated specific suggestions on CCB practices and procedures.[14] Commenters urged the Office to strike a proper balance between two vital goals: Minimizing the complexities of Federal litigation practice that can deter parties from bringing and defending copyright claims, while establishing procedural safeguards so that each participant can fairly develop and prosecute or defend its case.[15] Some commenters voiced concerns that the proposed regulations might be both too complex in certain respects [16] and too vague in others,[17] either of which could create problems, particularly for *pro se* parties. As a result, the proposed regulations could put *pro se* parties at a disadvantage in proceedings against more sophisticated parties or representatives. The Office carefully reviewed the proposed rules with these comments in mind. As a result, the Office has made amendments to simplify the regulatory language while ensuring that sufficient procedural safeguards are in place to protect all parties.[18]

Some commenters cautioned that the Office should minimize complexity not only in the regulatory language but also in the substance of the rules. The Copyright Alliance et al. contended that ''the primary problem is not that the *language* used in the regulations is complex, but rather that the procedures set forth in the regulations are extremely complex.'' [19] Similarly, the MPA and RIAA jointly commented that ''[c]omplex rules and procedures, and extensive discovery, are simply not necessary or appropriate for the type of cases that will be litigated in CCB, where the universe of relevant documents and information will typically be quite limited.'' [20] Some individuals expressed concern that the complexity of the proposed regulations is contrary to the intended purpose of the CCB [21] and may foreclose their ability to utilize it.[22] These commenters urged the Office to simplify the process so that it is more accessible to individuals.[23] The Authors Guild ''emphasize[d] the importance of keeping the CCB process simple and easily navigable for individual creators who often make a living juggling several jobs and lack the knowledge or resources to manage the demands of a complicated legal process,'' and feared that the ''proposed rule's complexity and the use of legalese undermines the very purpose of the CCB and will deter pro se parties from using the CCB.'' [24]

The Office has addressed these concerns in the final rule, where possible. Some proposed procedures were simplified or eliminated, and the Office has revised the proposed rules in several respects to reduce the parties' procedural and knowledge burdens, as discussed below. However, CASE Act proceedings will still require sufficient information and evidence sharing to ensure just determinations. Proof in copyright cases is typically fact-dependent.[25] Because the proceedings must be fundamentally fair to both claimants and respondents, all parties must have a reasonable opportunity to develop and submit the facts bearing on their claims and defenses. To provide a fair opportunity for presentation of the evidence, the procedures must allow for some degree of complexity in those situations where complexity is inherent in the factual context. Commenters also raised concerns about procedural complexities outside of the discovery process.[26] The Office has sought to further streamline and simplify procedural requirements throughout the proceedings where appropriate, while seeking to ensure that the procedures will be fair to all parties and address the various situations that may occur.

While most claims heard by the CCB will likely be fairly straightforward, the Office also must anticipate less straightforward claims and has promulgated regulations to accommodate both types. Even commenters asking for simpler rules recognized that certain circumstances would require more detailed regulations.[27]

[11] H.R. Rep. No. 116–252, at 17; *see also* S. Rep. No. 116–105, at 9–10.

[12] H.R. Rep. No. 116–252, at 19 (quoting *Copyright Small Claims* at 8).

[13] *Id.*

[14] Comments in response to the NPRM are available at *https://www.regulations.gov/document/COLC-2021-0007-0001/comment.* References to comments responding to the NPRM are by party name (abbreviated where appropriate), followed by ''Initial NPRM Comments'' or ''Reply NPRM Comments,'' as appropriate.

[15] Amazon.com, Inc. (''Amazon'') Initial NPRM Comments at 2; Engine Initial NPRM Comments at 2.

[16] Authors Guild Initial NPRM Comments at 1–2; Anonymous I Initial NPRM Comments at 1; Anonymous II Initial NPRM Comments at 1; Copyright Alliance et al. Initial NPRM Comments at 8; H Smith Initial NPRM Comments; Engine Initial NPRM Comments at 5; Motion Picture Assoc., Inc. (''MPA'') & Recording Industry Assoc. of Am., Inc. (''RIAA'') Initial NPRM Comments at 2–3; Music Creators of N. Am. Reply NPRM Comments at 3; Science Fiction & Fantasy Writers of Am., Inc. (''SFWA'') Reply NPRM Comments at 2.

[17] Engine Initial NPRM Comments at 2, 5–6, 7–8; Public Knowledge Initial NPRM Comments at 3; Southlaw Ent. Initial NPRM Comments; Verizon Initial NPRM Comments at 1–2; SFWA Reply NPRM Comments at 2–5.

[18] *See* Authors Guild Initial NPRM Comments at 2.

[19] Copyright Alliance et al. Reply NPRM Comments at 7.

[20] MPA & RIAA Initial NPRM Comments at 3.

[21] H. Smith Initial NPRM Comments at 1; Anonymous I Initial NPRM Comments at 1.

[22] H. Smith Initial NPRM Comments at 1; Anonymous I Initial NPRM Comments at 1; Anonymous II Initial NPRM Comments at 1.

[23] H. Smith Initial NPRM Comments at 1; Anonymous I Initial NPRM Comments at 1; Anonymous II Initial NPRM Comments at 1.

[24] Authors Guild Initial NPRM Comments at 1.

[25] *See, e.g., Three Boys Music Corp.* v. *Bolton,* 212 F.3d 477, 481 (9th Cir. 2000) (''Absent direct evidence of copying, proof of infringement involves fact-based showings that the defendant had 'access' to the plaintiff's work and that the two works are 'substantially similar.' '') (*quoting Smith* v. *Jackson,* 84 F.3d 1213, 1218 (9th Cir. 1996)); *Peter Pan Fabrics, Inc.* v. *Martin Weiner Corp.,* 274 F.2d 487, 489 (2d Cir. 1960) (''The test for infringement of a copyright is of necessity vague. . . . Decisions must . . . inevitably be ad hoc.'').

[26] *E.g.,* Authors Guild Initial NPRM Comments at 3 (commenting that allowing third-party intervention ''could add an additional level of complication that a pro se party likely will not have the legal knowledge or wherewithal to address in a response''); *id.* at 4 (noting the Office should ''consider simplifying these rules [related to sanctions]''); Copyright Alliance et al. Initial NPRM Comments at 9 (encouraging the Office to ''focus on ways to scale back on the requirements''); MPA & RIAA Initial NPRM Comments at 4–5 (''The NPRM's proposed rules for smaller claims are much too complex and allow much too much discovery''; proposing a smaller-claims system with ''*no* discovery or motion practice permitted'').

[27] *E.g.,* Copyright Alliance et al. Initial NPRM Comments at 19 (proposing new requirement that parties certify, after a proceeding is over, their return or disposal of any discovery material received from other parties); *id.* at 20 (urging the Office to add a provision giving parties an opportunity to object before CCB removes confidentiality designation from any material); *id.* at 23 (proposing that the Office add a procedure allowing parties to seek leave to submit additional testimony or evidence after a hearing on the merits); Copyright Alliance et al. Reply NPRM Comments at 8 (''We . . . strongly urge the Office to *simplify the*

Continued

In addition to the regulations themselves, the Office intends to take many steps to help parties manage the process with or without legal counsel. A CCB Handbook, which will be available on the *CCB.gov* website and written in easy-to-understand language, will be a primary resource for parties navigating all aspects of CCB proceedings. The CCB Handbook was described in the NPRM and the Office received no comments critical of the proposal. The Authors Guild urged the Office to ''invest heavily in developing a clear and easy to use handbook,'' which ''should spell out in plain language all the procedures that a party would need to follow to bring or defend a claim in the CCB, so that parties to proceedings can refer just to the handbook without having to look up and understand the regulations.'' [28] While the statute and regulations govern CCB proceedings as a legal matter, the Authors Guild's comment accurately sums up the Office's guiding purpose in developing a CCB Handbook that can serve as a more convenient guide for all parties.[29] The CCB Handbook will be updated, as needed, based on interested parties' feedback.[30] And as the regulations note, it will not override any existing statute or regulation.

Additional information on *CCB.gov* will provide details about each stage of a CCB proceeding. In addition, a user-friendly electronic filing system (''eCCB'') will simplify filings by walking the parties through each step of the claim, response, and counterclaim process, with prompts to help them fully present their positions, and by providing fillable forms for situations that may arise throughout the proceeding. Copyright Claims Attorneys and other CCB staff will be available to further guide parties through any difficulties that they encounter.

B. Management of Parties

1. Joinder and Intervention

The CASE Act requires dismissal of a claim for the failure to join a necessary party.[31] The NPRM proposed a process for parties to bring the failure to join a necessary party to the CCB's attention and for non-parties to seek to intervene in the claim.[32] Except as noted below, the final rule makes no substantive revisions to what was proposed.

The Authors Guild commented that requests for joinder, consolidation, and intervention could be too complicated for *pro se* parties to address.[33] It opposed allowing intervention by third parties and suggested that, if a necessary party seeks to join a proceeding, ''the CCB should simply schedule a conference to advise the parties that a third party has requested to join, explain the consequences of a joinder, and get both parties' consent before allowing the joinder.'' [34]

The Office recognizes that concepts of joinder and necessary parties, as well as intervention, may be difficult for *pro se* parties to understand. The final rule simplifies the procedure for resolving a request to intervene by having such requests and any response filed via a simple form on eCCB. The CCB then may hold a conference to discuss the proposed intervention with the parties to the proceeding and the party seeking to intervene. If the party requesting intervention is found to be a ''necessary'' party, the claims will be dismissed if the parties do not consent to its addition or intervention.

2. Voluntary Withdrawal and Dismissal

Parties may voluntarily dismiss their own claims or counterclaims without prejudice before a response is filed.[35] Under the final rule, a claim or counterclaim cannot be voluntarily dismissed after a response, but the claimant or counterclaimant may request to withdraw the claim and the CCB will have discretion, with input from the parties, to dismiss the claim with or without prejudice. Factors to be considered by the CCB in exercising its discretion include the point in the proceedings at which the dismissal is requested and whether dismissal without prejudice is in the interests of justice.[36] Several commenters expressed support for the proposed rule, which provided for this discretion.[37] The Authors Guild suggested that ''[t]he proposed Handbook should explain what 'with prejudice' and 'without prejudice' mean in plain English.'' [38] The Office agrees, and will include such explanations in the CCB Handbook.

3. Default and Failure To Prosecute

a. Default Determinations

The CASE Act provides that the CCB may enter a default determination if ''the respondent has failed to appear or has ceased participating in the proceeding.'' [39] Under the proposed rule, respondents that do not respond to CCB deadlines will receive an opportunity to cure the first two times they miss a deadline without cause. After the third missed deadline, the CCB may proceed to a default judgment in its discretion without giving an opportunity to cure. This rule is designed to prevent respondents from taking advantage of the CCB proceedings to obtain what would amount to unlimited extensions of deadlines without seeking permission. Several commenters ''commend[ed] the Office for developing a default procedure that balances the interests of the parties.'' [40] Commenters took different views about the CCB's discretion to commence default proceedings without providing the respondent another missed-deadline warning after a third missed deadline, and whether the CCB could consider defenses *sua sponte* on behalf of defaulted respondents, as discussed below.

Public Knowledge disapproved of the provision authorizing the CCB to begin default proceedings at its discretion

procedures proposed in the NPRM''); SFWA Reply NPRM Comments at 2 (commenting that ''many writers and other creators will almost certainly be bewildered by the CCB's rules and procedures''); *id.* at 6 (proposing that standardized interrogatories and document requests should be tailored ''for different media, formats, and kinds of publication. For example, publication has different meanings for different media.'').

[28] Authors Guild Initial NPRM Comments at 2; *see also* Copyright Alliance et al. Initial NPRM Comments at 9–10 (urging Office to ''create a handbook for parties that is *significantly* less complex than the regulations, easy to understand, and easy to follow'').

[29] *See also* Copyright Alliance et al. Reply NPRM Comments at 7 (anticipating the Handbook ''will be an invaluable tool for pro se parties'').

[30] *See* Authors Guild Initial NPRM Comments at 2 (recommending that the Handbook be developed with input from stakeholders who represent potential parties before the CCB).

[31] 17 U.S.C. 1506(f)(3)(A).

[32] 86 FR 69890, 69906 (proposed 37 CFR 222.13(a)–(b)).

[33] Authors Guild Initial NPRM Comments at 2–3.

[34] *Id.* at 3.

[35] 17 U.S.C. 1506(q)(1)–(2).

[36] 86 FR 69890, 69907 (proposed 37 CFR 222.16(b)). While the concept of ''the interests of justice'' is subjective and will vary based upon the circumstances of a particular request to withdraw a claim, the Office does not understand the term to include withdrawal of a claim because a claimant wishes to seek higher damages in Federal court after discovery has been completed in a CCB proceeding.

[37] *See* Sergey Vernyuk Initial NPRM Comments at 1 (''I agree with this approach because it avoids harassment where a claimant files a claim and then dismisses it once a defense is mounted, only to reassert it later.''); Am. Intell. Prop. L. Assoc. (''AIPLA'') Initial NPRM Comments at 1–2 (''Post-response voluntary dismissals should generally be with prejudice, to protect the interests of respondents and reduce the chance of abuse or gamesmanship. . . . [But] the CCB should retain discretion to permit voluntary dismissal without prejudice where it is in the interests of justice.''); SFWA Reply NPRM Comments at 2 (''SFWA supports the amount of discretionary judgment accorded to the CCB, particularly with regard to granting dismissals without prejudice.'').

[38] Authors Guild Initial NPRM Comments at 3.

[39] 17 U.S.C. 1506(u).

[40] AIPLA Initial NPRM Comments at 2; *see also* Sergey Vernyuk Initial NPRM Comments at 1; Engine Initial NPRM Comments at 3; SFWA Reply NPRM Comments at 2.

without further warning notices after a respondent misses three deadlines without good cause.[41] Copyright Alliance et al. disagreed with Public Knowledge and approved of the proposed rule, commenting that the CCB ''has to draw the line at some point and cannot continue to reward a party that makes a practice of ignoring deadlines with extension after extension.'' [42] As the Office explained in the NPRM, ''[t]his provision is aimed at encouraging timely participation and preventing respondents from repeatedly using the default provisions as a backdoor extension for deadlines.'' [43] The final regulation spells out in greater detail the procedural steps leading up to a default determination and the steps taken after a request to vacate a default determination.

Public Knowledge also argued that the CCB should not ''allow default judgments based merely on Claimant testimony,'' which it contended would be ''without any substantive evidence to support the claim,'' and with ''no opposing party to refute their testimony.'' [44] Yet as Copyright Alliance et al. noted in reply, testimony *is* evidence.[45] When a respondent fails to appear after multiple notices, or ceases to participate by missing multiple deadlines, the statute states that the CCB ''shall require the claimant to submit relevant evidence and other information in support of the claimant's claim and any asserted damages'' and determine whether that evidence supports a finding of default.[46] Public Knowledge's position would leave the CCB powerless to fulfill that statutory authority. The implementing regulations provide extensive safeguards against defaults and give a respondent the opportunity to oppose the claimant's testimony upon default.

Engine suggested that the Office should ''require the CCB to consider common defenses (such as noninfringement, innocent infringement, fair use, and licensure) *sua sponte* in each case, including before entering a default judgment and awarding damages.'' [47] In the default context, that comment is broadly consistent with the proposed rule that ''the Board shall consider whether the respondent has a meritorious defense.'' [48] In contrast, Copyright Alliance et al. urged the CCB to refrain from invoking any defenses on behalf of defaulted respondents, stating, ''the Office must recognize a clear distinction between permitting CCAs [Copyright Claims Attorneys] to assist parties in properly articulating their own legal arguments versus allowing the Board or the CCAs to provide legal advice to the parties or invoke arguments and defenses on their behalf, essentially becoming advocates for one party.'' [49] Copyright Alliance et al. further contended that the CASE Act provision regarding defaults ''does *not* include raising a defense that has not been properly raised by a respondent.'' [50] However, the statute is not so absolute. Moreover, Federal courts are permitted to deny judgments in a plaintiff's favor on default when a meritorious defense is present,[51] and the legislative history indicates that the CCB ''has both more statutory authority and a greater obligation to scrutinize the merits of a claim'' [52] when default is sought. ''In cases where the respondent is absent, the Board is expected to carefully scrutinize the available evidence . . . and consider applicable affirmative defenses such as fair use, where warranted by the circumstances of the case.'' [53] Furthermore, the statute requires that the CCB only issue relief after a default if the claimant's submissions ''are sufficient to support a finding in favor of the claimant under applicable law.'' [54] By definition, if there is a clear defense to the case on the face of the submissions, there cannot be evidence sufficient to support a finding for the claimant. The Office is mindful that the CCB must maintain impartiality, as Copyright Alliance et al. insists,[55] but that does not preclude it from requiring claimants to show that their claims can withstand relevant defenses present on the face of the claims. AIPLA proposed that, if the CCB determines that a defaulting respondent has a meritorious defense, the rules should permit the claimant to submit evidence relevant to the defense.[56] The Office has implemented this suggestion and, under the final rule, before the CCB finds for a defaulting respondent, it will provide the claimant with a tentative ruling and an opportunity to address it, including through the submission of further evidence.

b. Failure To Prosecute

The Copyright Alliance et al. observed that the proposed regulations allow respondents to cure default after ''multiple missed deadlines,'' but have no equivalent provision for claimants to cure a failure to prosecute.[57] The Office agrees that a similar procedure should be included for a claimant's failure to prosecute and has added this to the final rule.

4. Bad-Faith Conduct

Parties and their representatives appearing before the CCB who engage in bad-faith conduct may be required to pay an award of reasonable costs and attorney's fees.[58] Upon repeated bad-faith acts in CCB proceedings, parties and their representatives may be barred from participating in further proceedings for a year and have pending proceedings dismissed.[59] The proposed rule set forth procedures for the CCB to address bad faith *sua sponte* or upon a party's allegations, providing opportunities for the accused to respond in writing and at a conference. Commenters supported the proposed regulation on bad-faith conduct. For instance, ''SFWA strongly supports the [Office's] proposed rules in section 232.3, which go a considerable way to protecting writers and legitimate publishers from being preyed upon by unscrupulous copyright trolls who file meritless claims and counterclaims falsely asserting that they represent the true owner of the copyright.'' [60] Several commenters specifically approved the provision allowing the CCB to temporarily bar those who repeatedly

[41] Public Knowledge Initial NPRM Comments at 3–4; *see* 86 FR 69890, 69913 (proposed 37 CFR 227.1(d)).

[42] Copyright Alliance et al. Reply NPRM Comments at 10.

[43] 86 FR 69890, 69892.

[44] Public Knowledge Initial NPRM Comments at 4–5.

[45] Copyright Alliance et al. Reply NPRM Comments at 11 (citing proposed 37 CFR 227.2, 222.14(b)).

[46] 17 U.S.C. 1506(u)(1).

[47] Engine Initial NPRM Comments at 4.

[48] 86 FR 69890, 69913 (proposed 37 CFR 227.3(a)).

[49] Copyright Alliance et al. Reply NPRM Comments at 9; *see also* MPA & RIAA Initial NPRM Comments at 8–9.

[50] Copyright Alliance et al. Reply NPRM Comments at 9–10 (discussing 17 U.S.C. 1506(u)).

[51] *See, e.g., Gunnells* v. *Teutul,* 392 F. Supp. 3d 451, 453–54 (S.D.N.Y. 2019) (noting that courts should look at whether there is a ''meritorious defense'' before granting default judgment and deciding that copyright claims appeared to be outside the statute of limitations); *Pierson* v. *Gamer World News Entm't, Inc.,* Case No. CV 18–10137–CJC (KSxx), 2019 WL 8064255, *3–4 (C.D. Cal. Sept. 20, 2019) (denying default judgment and ordering plaintiff to show cause why copyright infringement claim should not be dismissed based on the doctrine of fair use).

[52] H.R. Rep. No. 116–252, at 24.

[53] *Id.* at 24–25.

[54] 17 U.S.C. 1506(u)(1).

[55] Copyright Alliance et al. Initial NPRM Comments at 14.

[56] AIPLA Initial NPRM Comments at 2 (discussing proposed 37 CFR 222.7(3)(a)); *see* 86 FR 69890, 69913.

[57] Copyright Alliance et al. Initial NPRM Comments at 16 (discussing proposed 37 CFR 227.1(d), 228.2); *see* 86 FR 69890, 69913–14.

[58] 17 U.S.C. 1506(y)(2).

[59] *Id.* at 1506(y)(3).

[60] SFWA Reply NPRM Comments at 2–3; *see also* Verizon Initial NPRM Comments at 1 (''We commend the Office for their commitment to prevent abuse.'').

act in bad faith from participating in further proceedings.[61]

The Copyright Alliance et al. proposed that the definition of ''bad-faith conduct'' should be explicit that it encompasses any action taken in support of a claim, counterclaim, or defense.[62] The Office adopts this suggestion in the final rule. The Office also adopts Copyright Alliance et al.'s proposal to add the term ''before the CCB'' to the final rule, to make clear that its penalties apply to those who repeatedly act in bad faith before the CCB, and not necessarily elsewhere.[63] The Office also agrees with, and adopts, the Copyright Alliance et al.'s suggestion to clarify in the final rule that the penalties for repeated acts of bad faith may include a bar to not only ''initiating proceedings,'' but also ''participating'' in any capacity.[64]

The Copyright Alliance et al. also commented that ''the regulations should clearly articulate what is necessary to constitute a showing of bad-faith conduct.'' [65] The Office does not consider the suggestion practical, as it cannot now anticipate every form in which misconduct may manifest itself in a CCB proceeding, and the CCB's ability to respond to such misconduct should be in its discretion.[66] Instead, the CCB Handbook will provide illustrative examples of bad-faith conduct to help participants avoid such conduct.

The Copyright Alliance et al. urged that ''anyone accused of bad-faith conduct before the CCB should be notified of such accusation and given an opportunity to explain and defend their actions before a finding of bad-faith conduct is officially made and recorded.'' [67] The proposed rule (and the final regulation) expressly provides an opportunity for parties and representatives accused of bad-faith conduct to respond, whether the accusation comes from another party or the CCB on its own initiative.[68] Copyright Alliance et al. expressed concern over whether that opportunity would be available if ''the proceeding does not mature into an active case before the Board, or the case has otherwise been dismissed.'' [69] Whether before, during, or after an active proceeding, an accusation of bad faith will trigger an opportunity to respond.[70]

Amazon approved of the proposed regulation allowing the CCB to consider prior bad acts when assessing bad faith conduct and proposed that the rule should go further and mandate such consideration.[71] The CCB will have the discretion to consider the relevant indicia of bad faith as it may arise. The Office does not believe it is appropriate to determine in advance what it must consider in any particular case.

Verizon suggested that the penalty of barring a party or representative who has acted in bad faith from initiating claims for a year, ''while a good start, is not sufficient. Such a rule may send the wrong message that a party is free to act in bad faith at least once a year with no consequences.'' [72] Verizon proposed stronger ''consequences up to and including, a ban on all future participation at the CCB.'' [73] The CASE Act prescribes the penalty available for a bad faith determination.[74] Moreover, the Office does not agree that parties are ''free to act in bad faith at least once a year,'' because other penalties, including the awarding of attorney's fees, are available to the CCB to impose after even a single act of misconduct.[75]

The NPRM included a request for comments on whether the Office should publish a list of bad-faith actors barred from CCB proceedings, but the proposed rule did not include such a list ''because the Office believes that such a list would be unduly harsh, especially for non-attorneys.'' [76] Several commenters advocated for this,[77] but the Office remains wary of the impact of a public bad-faith list and does not consider it necessary at this time. The determinations of the CCB will be available to the public,[78] and the eCCB will allow for searches of information about parties and attorneys appearing before the CCB, including any orders related to bad faith.

Finally, a few commenters raised specific concerns about the formatting and timing of filings raising or responding to assertions of bad faith.[79] The Office addresses these comments in the final rule as part of a broader revision of the regulations addressing the procedures for filing requests before the CCB, discussed below. These revisions specify the formatting and timing of party submissions to establish consistency and streamline the proceedings.

C. Management of Proceedings

1. Limitations on Proceedings

The Office is authorized to limit ''the permitted number of proceedings each year by the same claimant . . . in the interests of justice and the administration of the Copyright Claims Board.'' [80] Congress explained that this power ''functions as both a docket management tool for the Board and as protection against abusive conduct.'' [81] In the NPRM, the Office proposed limiting claimants to 10 proceedings filed in any 12-month period, and to limit private attorneys or law firms representing claimants to 40 proceedings in any 12-month period.[82] The Office invited comments ''as to whether these limitations strike the proper balance between the interests of the parties and the efficient management of the CCB's work.'' [83]

[61] Copyright Alliance et al. Initial NPRM Comments at 17–18 (''This is an important mechanism for protecting claimants and respondents from attorneys whose previous history of bad-faith conduct might put them in jeopardy.''); Amazon Initial NPRM Comments at 3 (''Amazon supports the Proposed Rule. In particular, Amazon believes the Office's suggestion for a historical review of the accused party's past legal claims is crucial.''); SFWA Reply NPRM Comments at 3 (''SFWA also agrees with AIPLA on the proposal to bar attorneys who have engaged in bad-faith conduct from representing parties before the CCB for the specified time periods.''); *see* 86 FR 69890, 69916–17 (proposed 37 CFR 232.4).

[62] Copyright Alliance et al. Initial NPRM Comments at 16; *see also* SFWA Reply NPRM Comments at 3 (approving Copyright Alliance et al.'s proposed definition of bad-faith conduct); *see, e.g.,* Engine Initial NPRM Comments at 8 (''[I]t is important to recognize that a substantial portion of abusive intellectual property assertion occurs through demand letters that are sent before any complaint is filed.'').

[63] Copyright Alliance et al. Initial NPRM Comments at 18; *see* 86 FR 69890, 69916 (proposed 37 CFR 232.4(a)).

[64] Copyright Alliance et al. Initial NPRM Comments at 18; *see* 86 FR 69890, 69916 (proposed 37 CFR 232.4(d)).

[65] Copyright Alliance et al. Initial NPRM Comments at 17.

[66] *See generally* Verizon Initial NPRM Comments at 1 (anticipating that participants ''will inevitably seek creative ways to abuse the CCB processes'').

[67] Copyright Alliance et al. Initial NPRM Comments at 17.

[68] *See* 86 FR 69890, 69916 (proposed 37 CFR 232.3(b)).

[69] Copyright Alliance et al. Initial NPRM Comments at 17.

[70] *See* 86 FR at 69916 (proposed 37 CFR 232.3(b)–(c)).

[71] Amazon Initial NPRM Comments at 3–4 (referring to proposed 37 CFR 232.4(c)); *id.* at add. at A–38.

[72] Verizon Initial NPRM Comments at 1–2.

[73] *Id.* at 2.

[74] 17 U.S.C. 1506(y)(3).

[75] *Id.* at 1506(y)(2).

[76] 86 FR 69890, 69894.

[77] AIPLA Initial NPRM Comments at 2; Verizon Initial NPRM Comments at 2; SFWA Reply NPRM Comments at 3.

[78] 17 U.S.C. 1503(a)(1)(I), 1506(b).

[79] *See* Amazon Initial NPRM Comments at 3 n.8 (''the Office should clarify'' whether the page limit is for single- or double-spaced filings); *id.* at add. at A–24; Authors Guild Initial NPRM Comments at 4 (recommending extending the timeline to respond).

[80] 17 U.S.C. 1504(g).

[81] H.R. Rep. No. 116–252, at 31; *see* 86 FR 69890, 69917 (proposed 37 CFR 233.2(a)) (prescribing rules pertaining to maximum number of CCB proceedings filed by a party).

[82] 86 FR 69890, 69917 (proposed 37 CFR 233.2(a)).

[83] *Id.* at 69896.

Multiple commenters commended the proposed regulation. Engine commented, ''[w]e strongly support the Office's attention to trying to prevent abuse of the CCB process, and appreciate the proposal to cap the number of CCB proceedings that a party may bring in any twelve-month period to ten cases. This rule, and the limit on private attorneys and law firms representing claimants in no more than forty CCB proceedings in any twelve-month period, are useful ideas to help curb abuse of the CCB.'' [84] Verizon also expressed its support, stating, ''[w]e commend the Office for their commitment to prevent abuse,'' and cautioning that ''bad actors could circumvent the yearly case cap [through] multiple corporate structures designed to handle smaller batches of cases.'' [85]

Some commenters supported the imposition of limitations, but disagreed with certain aspects of the Office's proposed rule. For example, while SFWA supported limitations on the number of actions each year, it took the position that it would be unfair to count cases where a respondent opted out.[86] The Copyright Alliance et al. also argued that the limits should only apply to active proceedings.[87]

The Office understands why commenters suggested that case limits be restricted only to active cases, but it finds the suggestion impractical. While active proceedings require more of the CCB's resources, every new claim requires the CCB's compliance review. This compliance review process requires several steps, including possible communication with the claimant before the claim is approved for service.[88]

Further, a limitation on the number of filed claims is more easily managed. At the time of filing, it is impossible to determine when or if the case may become active. Some cases may become active several months after they are filed. A limitation on only active proceedings would leave claimants and attorneys in limbo during this time regarding whether they have met their filing limit. By contrast, Copyright Claims Attorneys, parties, and representatives will be able to readily determine how many claims a party or attorney has filed in the preceding year by conducting a search on eCCB.

To address commenters' concern that a claimant's limit may be exhausted without a single proceeding becoming active, the Office has raised the number of cases that may be filed by each claimant per year. The final rule raises the limit to 30 proceedings in a 12-month period. The Copyright Alliance et al. commented that, because respondents can opt out, the 10-proceeding limit could ''prevent a claimant that has never had a single case heard by the Board from bringing additional cases for the remainder of the year.'' [89] Raising the limit will not eliminate that possibility, but it will create many more opportunities for claims to be resolved on the merits by CCB determinations.

Some commenters, while supporting the limits on a claimant's filings, challenged the authority of the Office to limit the number of cases filed by attorneys, as compared to claimants. The Copyright Alliance et al. argued that ''the Office lacks the authority to establish a limitation on the number of cases filed by attorneys.'' [90] AIPLA commented that the limits on attorneys and law firms are ''inappropriate'' because, among other reasons, they ''would impair claimants' ability to retain counsel of their choice.'' [91] AIPLA proposed that the limit on counsel, if imposed, should be ''applied on a per-attorney, not per-firm, basis.'' [92]

Several sections of the CASE Act authorize the Office and the CCB to limit the number of claims both to avoid abusive conduct and to ensure the CCB can operate in a timely and efficient manner. For example, the Act provides the CCB the authority to dismiss claims if the number or complexity of the claims exceed what ''the Copyright Claims Board could reasonably administer.'' [93] In another part of the Act, the Register is directed to issue regulations that will ''provide for the efficient administration of the Copyright Claims Board, and for the ability of the Copyright Claims Board to timely complete proceedings.'' [94] The statute expressly contemplates that the Register will adopt ''mechanisms to prevent harassing or improper use of the Copyright Claims Board by any party'' [95] and the CASE Act's legislative history notes the risk of abuse by vexatious claimants.[96] In promulgating these rules, the Office has given this topic close attention.

The Office believes that these stated goals of the CASE Act are best served by imposing reasonable limits on the number of proceedings that both claimants and counsel may bring. These limits will minimize the potential for abusive behavior—which can occur either by a party or counsel—and will ensure that the CCB can manage and conduct its proceedings effectively. Thousands of copyright infringement lawsuits are filed in Federal court each year, with the 6,209 filed in 2018 setting a new record.[97] The Office expects that a portion of those litigation matters will instead be filed as claims in the CCB once it commences operations, and that copyright owners heretofore dissuaded from enforcement by the prohibitive costs of litigation will bring additional claims before the CCB.[98] Permitting a handful of claimants or attorneys to monopolize the CCB's resources with multiple filings would deny others the equitable opportunity to advance claims. Setting limits promotes the ''efficient administration'' of the CCB,[99] within the meaning of the statute, because it will maximize the number of claimants to whom the CCB can provide services. The Office is not persuaded otherwise by AIPLA's comment that limitations on counsel ''would impair claimants' ability to retain counsel of their choice.'' [100] The CCB is an extension, not a contraction, of available tribunals for certain copyright claims. The right to retain counsel does not confer a right for that chosen counsel to appear in every forum. The Office therefore does not believe the limitation impinges on the right to choose counsel. A claimant set on working with an attorney or law firm that has reached the annual maximum will be free to bring the claim instead in a Federal court or

[84] Engine Initial NPRM Comments at 7.

[85] Verizon Initial NPRM Comments at 1. The Office notes that under the final rule, actions taken to circumvent the limit may be subject to penalties as bad-faith conduct. *See* 86 FR 69890, 69917 (proposed 37 CFR 233.2(b)).

[86] SFWA Reply NPRM Comments at 3.

[87] Copyright Alliance et al. Initial NPRM Comments at 10. The Copyright Alliance et al. also suggested a higher limit should be applied to ''smaller claims.'' *Id.* The Office will not set a separate case filing limit for smaller claims at this time, but will monitor the CCB's experience with smaller claims to determine if any future changes are needed.

[88] 37 CFR 224.1(c).

[89] Copyright Alliance et al. Initial NPRM Comments at 10.

[90] *Id.* at 11.

[91] AIPLA Initial NPRM Comments at 2.

[92] *Id.* at 3.

[93] 17 U.S.C. 1506(f)(3)(C).

[94] *Id.* at 1510(a)(1).

[95] *Id.*

[96] *See* S. Rep. No. 116–105, at 8.

[97] U.S. Courts, *Just the Facts: Intellectual Property Cases—Patent, Copyright, and Trademark* (Feb. 13, 2020), *https://www.uscourts.gov/news/2020/02/13/just-facts-intellectual-property-cases-patent-copyright-and-trademark.*

[98] *See Copyright Small Claims* at 8–9 (''[T]he number of infringement actions actually filed in federal court likely significantly underrepresents the number of cases that copyright owners would choose to bring if they were able.'').

[99] 17 U.S.C. 1510(a)(1).

[100] AIPLA Initial NPRM Comments at 2.

wait until the attorney can file the case before the CCB at a future time.[101]

AIPLA also raised a concern that ''enforcement of such a limit [on representatives] could unduly prejudice innocent claimants. . . . [C]laimants who pay the filing fee and file proceedings that count against their limit should not have their claims dismissed or rejected because a lawyer or firm exceeded its limit. Rather, the CCB could require withdrawal or substitution of counsel.'' [102] The Office agrees, and articulates a procedure in the final regulation in which, if an attorney or law firm files a new claim that exceeds its limit, that attorney or law firm must withdraw. The CCB may then issue a stay of proceedings for 60 days to allow the claimant to find substitute counsel or proceed *pro se,* which may be extended for good cause. The final rule also provides that a claim that exceeds a claimant's limit will be dismissed without prejudice.

AIPLA commented that ''[a] firm with hundreds of attorneys should not be subject to the same limit as a sole practitioner,'' [103] and Copyright Alliance et al. commented that the limit on attorneys and law firms ''fails to account for the variation in size from one firm to another (for example, an international law firm employing thousands of attorneys should be permitted to bring far more than 40 cases annually).'' [104] After considering the comments regarding the proposed limitations, the Office has made adjustments in the final rule. The Office is increasing the limit on law firms to 80 filed proceedings in a 12-month period, while maintaining the limit of 40 per attorney.

Finally, the Office understands that it may benefit from the experience of seeing how these limitations on parties, attorneys, and firms work in practice. Accordingly, the Office will review and revisit the propriety of all limitations set for the number of filings permitted by parties, attorneys, and firms as necessary after seeing the types of filings it receives and considering the CCB's workload.

2. Applicability of Federal Rules of Civil Procedure and Federal Rules of Evidence

Some commenters criticized the proposed rule as too closely modeled on the Federal Rules of Civil Procedure and the Federal Rules of Evidence.[105] SFWA asserted that ''it is imperative that the proposed rules grant more flexibility than the Federal Rules of Evidence and the Federal Rules of Civil Procedure, particularly in light of the number of non-lawyers who can be expected to represent themselves in CCB claims.'' [106] This continues to be a goal of the Office as well. The Office drafted the CCB's procedures to be considerably more flexible, accessible, and permissive than in Federal court.[107] The Office has reviewed the proposed rules in light of the comments about complexity and made further changes to tailor them to the needs of CCB parties, including removing all references to the Federal Rules of Civil Procedure and the Federal Rules of Evidence apart from stating that the CCB is not bound by those rules.

3. Written Requests and Other Filings

While the CASE Act generally prohibits the ''formal motion practice'' [108] that is at the heart of Federal civil procedure,[109] parties may ''make requests to the Copyright Claims Board to address case management and discovery issues.'' [110] Commenters proposed that the CCB streamline and make the form of such requests more consistent. The Authors Guild advised against ''unnecessary formatting requirements, such as page limits, font, and indent sizes,'' and recommended word limits instead.[111] Copyright Alliance et al. suggested that the Office ''focus on consistency,'' setting a single formatting requirement for all party submissions, with each limited to either 5, 10, or 15 pages, and with the timelines for submissions plainly set forth.[112] In response to these comments, the Office has revised the regulations governing the formatting and timing of party submissions.

The final rule streamlines written requests by the parties into three tiers, with the majority falling under the first two tiers, which simply require use of a fillable form on eCCB subject to a character limit. All requests in tier one will be subject to a 4,000 character limit with a 7-day response time, and all party requests in tier two will be submitted through a 10,000 character limit with a 14-day response time. Accordingly, participants in eCCB proceedings will not have to worry about page limits, fonts, formatting, or different response times for the majority of requests and responses. Tier three is for more substantial written submissions (for example, party statements), which will also be uploaded to eCCB. With respect to tier three submissions, the Office has made changes to standardize the formatting, page limits, and response times in the final rule, where possible.

4. Scheduling Order

Under the proposed rule, requests to modify a proceeding's scheduling order could be made orally or by letter and an objecting party would have three days to file a response after service of a letter request. However, the rule was silent about the timing of a response to an oral request, and Copyright Alliance et al. requested clarification.[113] When an oral request is made at a hearing or conference, any other party may respond orally at that time or request a reasonable amount of time to submit a written response. In the final rule, any written submissions related to modification of the scheduling order will fall into the fillable form tier system.

5. Amending Claims and Counterclaims

Under the proposed rule, amended claims or counterclaims would be subject to compliance review by a Copyright Claims Attorney, and amending a claim after service would be prohibited without leave of the CCB.[114] The only comments to address this rule supported it.[115] In the final rule, the

[101] The statute distinguishes ''an attorney'' who may represent a party from ''a law student'' who may do so instead. 17 U.S.C. 1506(d). Accordingly, the limitation on parties and attorneys does not apply to law students, law clinics, or *pro bono* legal services organization with a connection to the participating law student's law school.

[102] AIPLA Initial NPRM Comments at 2.

[103] *Id.* at 3.

[104] Copyright Alliance et al. Initial NPRM Comments at 11.

[105] MPA & RIAA Initial NPRM Comments at 2–3; Copyright Alliance et al. Initial NPRM Comments at 8, 9; Authors Guild Initial NPRM Comments at 2.

[106] SFWA Reply NPRM Comments at 4.

[107] *See* 86 FR 69890, 69890 (noting the Office's decision to not adopt Rules 19 and 20 of the Federal Rules of Civil Procedure).

[108] 17 U.S.C. 1506(m).

[109] *See* Fed. R. Civ. P. 6, 11, 12, 25, 50, 56, 59, 60, 62.1.

[110] 17 U.S.C. 1506(m)(1).

[111] Authors Guild Initial NPRM Comments at 2.

[112] Copyright Alliance et al. Initial NPRM Comments at 9; *see also* Sergey Vernyuk Initial NPRM Comments at 2 (proposing consistent formatting requirements for documents prepared for submission to the CCB).

[113] Copyright Alliance et al. Initial NPRM Comments at 20 (discussing proposed 37 CFR 225.1(b)).

[114] *See* 86 FR 69890, 69905 (proposed 37 CFR 222.11).

[115] Amazon Initial NPRM Comments at 6; SFWA Reply NPRM Comments at 4. Amazon proposed adding language to the regulation that would make explicit that a party may seek the CCB's leave for ''amendments after the opt-out period has expired.'' Amazon Initial NPRM Comments at add. at A–4. The Office sees no need for revision because that was already the effect of the proposed regulation. *See* 86 FR 69890, 69905 (proposed 37 CFR 222.11(d)).

Office is also prohibiting amendments to claims during the opt-out period. The Office believes that allowing claim amendments during the opt-out period would require additional compliance review and service, and cause undue administrative difficulty, delay, and burdens on respondents.

In the final rule, written submissions related to requests for leave to amend claims will fall into the fillable form tier system. The final rule also clarifies that a claim or counterclaim may be freely amended if it is found to be noncompliant as part of the Board's compliance review. However, if a request for leave to amend is granted, then the pleading may only be amended as identified in the request.

6. Consolidation and Severance

The NPRM proposed that proceedings that involve the same parties or arise out of the same facts and circumstances may be consolidated for purposes of conducting discovery, submitting evidence, or holding hearings, but not for purposes of CCB determinations and any damages award.[116] Regarding severance, the NPRM noted that in ordinary circumstances, Copyright Claims Attorneys likely will be able to identify during their compliance review instances where multiple claims involving disparate facts and circumstances have been asserted, and can require that the claimant separate out these unrelated claims.[117] However, the Office also proposed a rule permitting the CCB to sever proceedings with respect to some or all parties, claims, and issues where it becomes evident that a proceeding includes distinct claims involving disparate facts and circumstances that would be inappropriate to resolve in a single proceeding.[118]

Commenters expressed concern about these provisions. The Authors Guild cautioned that *pro se* parties might not know how to respond to a request to sever or consolidate proceedings, and urged that claims be consolidated or severed only by authority of the CCB.[119] AIPLA and SFWA expressed concerns about the impact that severance and consolidation would have on the CASE Act's caps on damages.[120] In light of these comments and concerns expressed by commenters cautioning against perceived complexities in the proposed rules as a whole,[121] and following a review of the statutory framework regarding consolidation and severance, the Office has concluded that the proposed rule is redundant in light of other provisions in the statute.

The CASE Act prohibits a claimant from combining more than one claim in a single proceeding unless all of the claims ''arise out of the same allegedly infringing activity or continuous course of infringing activities and do not, in the aggregate, result in the recovery of such claim or claims for damages that exceed the [CASE Act's monetary damages] limitations.'' [122] Hence, a proceeding initiated by a claimant that includes multiple claims involving disparate facts and circumstances would not survive compliance review, and the claimant would be required to file separate proceedings for each of the claims. Because the statute already provides a mechanism to address the issues that the proposed rule on severance would have addressed, the final rule does not include such a provision.

In contrast, the provision permitting consolidation will permit the CCB to achieve efficiencies in managing multiple proceedings filed by a claimant against the same respondent when those proceedings arise out of the same facts and circumstances. In such cases, the CCB may consolidate matters such as discovery, the submission of evidence, and hearings, while rendering separate determinations for each proceeding. Because consolidation only combines certain procedural steps and does not actually join the claims into a single proceeding, the existing caps on damages for each proceeding will continue to apply. The Office is mindful of the concern expressed by the Authors Guild that *pro se* parties may not know how to respond to a request to sever or consolidate proceedings [123] and, consistent with the Authors Guild's recommendation, has retained the language reserving the authority to consolidate proceedings to the CCB.

7. Settlement

Commenters generally supported the proposed rule on settlement conferences,[124] while proposing certain procedural and textual amendments. The NPRM requested comments concerning the role of the Copyright Claims Officer who presides over a settlement conference, specifically concerning that Officer's role in a final determination.[125] AIPLA commented, ''parties are more likely to participate in settlement discussions if the Officer presiding over the settlement conference is not deciding the merits. We believe the Office's proposed structure, in which the Officer presiding over settlement discussions is recused from the final decision except to break a tie, is permitted under the plain language of the statute.'' [126] Copyright Alliance et al. favored the proposal that the presiding settlement Officer would serve only as a tiebreaker in the final determination, adding that the ''Officer should be permitted to review the record and sit in on hearings, etc., but should not be permitted to actively participate in the discussions in any manner that might influence the independence of the remaining two Officers.'' [127] The Office agrees, and the final rule incorporates the commenters' suggestions. The final rule provides for the recusal of the Officer who presides over a settlement conference unless required as a tiebreaker in the final determination.

The proposed rule provided that the CCB ''shall encourage voluntary settlement between the parties of any claims or counterclaims,'' [128] and the Office solicited comments ''on whether the CCB should be able to order a settlement conference where it sees a possible benefit to holding a conference even where one or more parties object.'' [129] SFWA cautioned against ''mandating settlement conferences where there is extreme animosity or a significant power imbalance between parties.'' [130] Verizon urged that the settlement process should ''be done on a fully voluntary and mutually agreeable basis,'' and ''urge[d] the Office to exercise caution regarding the notion of 'encouraging' settlements to ensure the CCB process is not converted from an adjudicatory body into a settlement collection process.'' [131] The legislative history is explicit that the CASE Act ''reflects an intent to encourage compromise and settlement'' and is

[116] 86 FR 69890, 69905–06 (proposed 37 CFR 222.12).

[117] *Id.* at 69897.

[118] *Id.*

[119] Authors Guild Initial NPRM Comments at 3.

[120] AIPLA Initial NPRM Comments at 3; SFWA Reply NPRM Comments at 4. *See* 17 U.S.C. 1504(e)(1)(A)(ii) (caps on statutory damages for infringement claims per work infringed); *id.* at 1504(e)(1)(D) (cap on total damages per proceeding).

[121] *See supra* note 18.

[122] 17 U.S.C. 1504(c)(6).

[123] *See* Authors Guild Initial NPRM Comments at 3.

[124] *See* SFWA Reply NPRM Comments at 5 (''[W]e believe the proposed rules are sensible and straightforward.''); AIPLA Initial NPRM Comments at 3 (''We commend the Office's desire to encourage voluntary settlement.'').

[125] 86 FR 69890, 69898.

[126] AIPLA Initial NPRM Comments at 3.

[127] Copyright Alliance et al. Initial NPRM Comments at 19.

[128] 86 FR 69890, 69907 (proposed 37 CFR 222.17(a)).

[129] *Id.* at 69898.

[130] SFWA Reply NPRM Comments at 5.

[131] Verizon Initial NPRM Comments at 2.

''designed to promote compromise.'' [132] Indeed, AIPLA specifically ''commend[ed] the Office's desire to encourage voluntary settlement.'' [133] Nevertheless, mindful of commenters' concerns, the Office is modifying the rule's text to state that the CCB shall ''facilitate,'' and not ''encourage,'' settlement. This is consistent with the statutory text, under which facilitating settlement is one of the Copyright Claims Officers' express functions.[134]

Under the proposed rule, before parties participate in a settlement conference, they are required to email their position statements to the presiding Copyright Claims Officer and, if the parties agree, the parties shall ''serve'' their statements on the other participating parties.[135] Upon a suggestion by the Authors Guild,[136] the Office changes the language of the provision from ''serve'' to ''send,'' to clarify that formal service is not required when the parties exchange settlement statements.

8. Records and Publication

The CCB's final determinations will be made available on a publicly-accessible website, and the statute directs the Office to establish regulations related to the publication of other records and information.[137] As stated in the NPRM, the ''proposed rule seeks to balance public access with the confidentiality interests of the parties.'' [138]

The NPRM also noted that the CCB will generally create hearing transcripts through ''standard speech to text transcript technology that is available with the CCB's videoconferencing system,'' and invited comments on ''whether such informal raw transcripts, which may contain various errors, should be added to the official record.'' [139] The Copyright Alliance et al. commented ''that hearing transcripts should not be made public as a part of the official record.'' [140] Sergey Vernyuk favored making the transcripts available to promote transparency.[141] At this time, the Office does not believe that publishing the uncorrected transcripts is advisable, given the potential for errors, although the parties will have the ability to request and pay for an official reporter. The Office may reevaluate this position over time based on further experience and review of the transcripts.

The final rule limits attendance at hearings to the parties and their representatives, except with leave of the CCB.[142] While Sergey Vernyuk proposed making hearings open to the public by default and ''seal[ed]'' only with leave,[143] the Office is concerned that the virtual nature of CCB proceedings may pose technological or security concerns if they are fully open to the public. The Office will consider reevaluating the issue in the future.

D. Discovery and Evidence

In the NPRM, the Office proposed a discovery process intended to be a streamlined, easy-to-use system that offered standardized discovery requests. Several commenters supported the Office's proposed system of standardized discovery. For example, AIPLA wrote that it ''believes that the proposed approach to written discovery is sound and supports the establishment of standard interrogatories and document requests. . . . These procedures will go a long way towards making discovery manageable for *pro se* claimants and respondents.'' [144] Amazon, the Authors Guild, and SFWA all submitted similar comments supporting the Office's proposed use of limited, standardized discovery.[145] Engine added that the ''CCB-issued interrogatories and document requests . . . go some way towards addressing our concerns about the early disclosure of relevant evidence and combatting discovery abuse.'' [146]

Some commenters considered the scope of discovery too broad under the proposed regulations. MPA and RIAA commented that, if the CASE Act is ''implemented without significant cabining, the discovery rules for CCB would result in significant burdens for litigants to propound, respond to, and dispute discovery, overwhelming the amount in dispute, undermining the effectiveness of the system, and leading both potential claimants and respondents to opt out.'' [147] Copyright Alliance et al. stated that ''the discovery process should be limited by requiring that all discovery requests, including requests for production of documents, be: (i) Narrowly targeted; (ii) highly likely to result in the production of evidence that is directly relevant to the claims and defenses; and (iii) serve the goal of efficient resolution of the case in light of the nature of the claims and defenses and the amount in dispute.'' [148]

The Office has carefully reviewed its proposed regulations with these comments in mind. It has made changes to the regulations regarding interrogatories and document requests to ensure that the scope of allowed discovery is not overly extensive. The Office believes that the final rule provides for a discovery process that is properly tailored to assist in resolving claims before the CCB, and is substantially narrower than what the Federal rules allow. In addition, on a case-by-case basis, parties will need to show good cause to conduct additional discovery. Moreover, a party concerned that the scope of discovery is too broad may raise the issue during the pre-discovery conference held in each case, identifying any of the standard requests that may be overly burdensome or not relevant.

When the Office proposed a small-claims system for copyright, it suggested that ''the parties likely will not have access to extensive discovery and will instead be limited to presenting the most critical evidence. Cases will be developed using abbreviated procedures, in shorter time frames, in order to simplify and speed the process.'' [149] The Office believes that the proposed regulations serve this vision. It has endeavored to establish a process that, while streamlined, is also just.[150] Commenters generally recognized this important balance, and as stated above,

[132] H.R. Rep. No. 116–252, at 24.

[133] AIPLA Initial NPRM Comments at 3.

[134] 17 U.S.C. 1503(a)(1)(F), 1506(r)(1)(A); *see also id.* at 1502(b)(3)(A)(iii) (requiring that one Copyright Claims Officer shall have experience in alternative dispute resolution).

[135] 86 FR 69890, 69907–08 (proposed 37 CFR 222.17(d)).

[136] Authors Guild Initial NPRM Comments at 3.

[137] 17 U.S.C. 1506(t)(3).

[138] 86 FR 69899.

[139] *Id.*

[140] Copyright Alliance et al. Initial NPRM Comments at 22.

[141] Sergey Vernyuk Initial NPRM Comments at 1.

[142] 86 FR 69890, 69915 (proposed 37 CFR 229.1(c)).

[143] Sergey Vernyuk Initial NPRM Comments at 1.

[144] AIPLA Initial NPRM Comments at 4.

[145] Amazon commented, ''[t]he Office's proposed mechanisms, including standardized discovery requests and limitations on the production of electronically stored information ('ESI'), will promote an efficient and inexpensive discovery process in CCB proceedings. . . . Amazon strongly supports the use of CCB-issued interrogatories and document requests, and limited requests for admissions.'' Amazon Initial NPRM Comments at 4 (footnote omitted). The Authors Guild, ''applaud[ed] the use of standard forms for discovery requests'' and ''strongly agree[d] with the use of standard interrogatories and standard document requests.'' Authors Guild Initial NPRM Comments at 4. SFWA ''strongly approve[d] of standardized interrogatories and RFPs.'' SFWA Reply NPRM Comments at 6.

[146] Engine Initial NPRM Comments at 5.

[147] MPA & RIAA Initial NPRM Comments at 5.

[148] Copyright Alliance et al. Initial NPRM Comments at 15.

[149] *Copyright Small Claims* at 103.

[150] As the Office previously stated, ''[a]ny system to adjudicate small claims must grapple with the nature and amount of discovery to be permitted. . . . [T]he broad availability of discovery and related frustration of discovery-related disputes are significant factors in the timing and expense of federal litigation. At the same time, it is difficult to resolve a dispute fairly without access to relevant information.'' *Id.* at 124.

supported the idea of standardized discovery.[151]

Standardized discovery has the key benefit of reducing the burden on parties to develop their own discovery requests, particularly for those parties appearing *pro se.* At the same time, it must be broad enough to capture common issues that will arise in the majority of proceedings. But that does not mean that all such requests are appropriate for every claim, and additional limitations on the scope of discovery may be called for in some circumstances. Where this is the case, a party should bring this to the CCB's attention in a conference.

The Authors Guild requested that the CCB notify parties that they have a duty to update information they provide in response to interrogatories and to disclose responsive documents no longer in their possession.[152] As currently drafted, the regulation both imposes a duty to update and obligates parties ''to preserve all material documents.'' [153] These duties will be addressed in the CCB Handbook and in the parties' pre- and post-discovery conferences.

The Authors Guild also suggested that the CCB ''should give reminders for deadlines.'' [154] The Office considers the request impracticable for discovery-related deadlines that will be triggered by exchanges between the parties outside of eCCB, but is working to have eCCB send out email reminders related to certain deadlines that require a filing.

AIPLA noted that it ''supports the requirement that parties meet and confer regarding [discovery] disputes, before raising the issue with the CCB,'' but warned that the requirement should not become a means for parties ''to avoid disputes by failing to meet and confer.'' [155] A party's failure to confer will not prevent the CCB from addressing discovery disputes when needed. The final rule provides that parties whose reasonable efforts to confer are frustrated can explain the steps taken to resolve the dispute before seeking CCB assistance when requesting a conference.

The proposed rule required parties to certify discovery responses, and the final rule clarifies the scope of certification. The producing party must certify that interrogatory responses are accurate and truthful, and that documents produced are genuine and unaltered, to the best of that party's knowledge. The Authors Guild asked the Office to provide the specific wording of the required certification in the CCB Handbook and on CCB forms.[156] The Office agrees, and plans on providing certification language in the CCB Handbook. The Office also intends to create forms for responding to standard interrogatories, and expects to include the certification.

Amazon supported the certification requirement and suggested further requiring parties to certify that they have reviewed the CCB's standard protective order, and that any materials they designate as confidential fit the protective order's definition of ''confidential.'' [157] To keep the required certification easy to use and understand by all parties, the Office is not inclined to make it more complicated or include a reference to protective orders that will only be present in certain cases.[158] However, the Office notes that protective order violations may constitute bad-faith conduct.

As noted above, in response to the comments received, the Office has conducted a complete review of all of the discovery regulations to ensure they are narrowly tailored and to make them more understandable to the general public. Specific changes that have been adopted are discussed below. Guidance will also be available to the parties through the Copyright Claims Attorneys, and the CCB Handbook will have detailed easy-to-understand instructions about the discovery process.

1. Protective Orders

The Office is incorporating commenters' amendments to the proposed rule on protective orders. Amazon proposed that the categories of discovery material subject to designation as ''confidential'' should include advertising plans not previously disclosed to the public.[159] Amazon also proposed a regulatory revision specifying that parties ''must'' (rather than ''are expected to'') attempt to resolve disputes over confidentiality designations before bringing such disputes to the CCB.[160] The Office understands the benefits of having parties first discuss these issues directly before engaging with the CCB. At the same time, the Office is sensitive to the expertise imbalance that could occur when, for example, one party is represented and one party is *pro se.* The Copyright Alliance et al. urged that the proposed rule, which allowed the CCB to unilaterally de-designate materials labeled ''confidential,'' should provide the affected party a chance to object beforehand.[161] The final rule makes each of these requested amendments, and the CCB will be tasked with ensuring that the protective order procedures are not misused when one party is *pro se.*

2. Interrogatories

As noted above, commenters generally favored the CCB's use of standard form interrogatories.[162] SFWA proposed that the interrogatories ''should be standardized for different media, formats, and kinds of publication.'' [163] The Office does not believe that multiple versions of standardized interrogatory requests are required at this time, but will consider the adoption of different versions in the future. Under the final rule, parties that require media-specific discovery may request it under the process for additional discovery.

Engine raised a concern that the language in the standard interrogatories, as summarized in the proposed regulation, might be ''difficult enough to parse[ ] for attorneys'' and ''unclear for pro se parties who are encountering the discovery process for the first time.'' [164] The Office has reviewed the proposed rule and made some simplifying revisions. Further, the Office notes that the rule describes the interrogatory categories, but does not include their final text. The actual interrogatory forms will adopt easy-to-understand language, and the Office intends to provide instructional materials, *e.g.,* through the CCB Handbook, to guide the parties.

Engine also commented that section 512(f) misrepresentation claims are likely to require more and different interrogatories than a standard CCB misrepresentation discovery would provide, and, in particular, ''[t]he CCB-

[151] *See, e.g.,* Engine Initial NPRM Comments at 6 (''efforts to streamline the discovery process . . . [should] not come at the expense of parties gaining access to the information they need to make their case'').

[152] Authors Guild Initial NPRM Comments at 4 (discussing proposed 37 CFR 225.2(f) & 225.4(f)(4)).

[153] 86 FR 69890, 69912 (proposed 37 CFR 225.4(f)(5)).

[154] Authors Guild Initial NPRM Comments at 3.

[155] AIPLA Initial NPRM Comments at 4 (discussing proposed 37 CFR 225.5(a)); *see* 86 FR 69890, 69912.

[156] Authors Guild Initial NPRM Comments at 4.

[157] Amazon Initial NPRM Comments at 4, add. at A–15.

[158] *See* 86 FR 69890, 69908 (proposed 37 CFR 222.18(a)) (noting that protective orders only apply ''[a]t the request of any party'').

[159] Amazon Initial NPRM Comments at 4 n.19, add. at A–12.

[160] *Id.* at add. at A–13.

[161] Copyright Alliance et al. Initial NPRM Comments at 20.

[162] *See* AIPLA Initial NPRM Comments at 4; Amazon Initial NPRM Comments at 4; Authors Guild Initial NPRM Comments at 4; Engine Initial NPRM Comments at 5; SFWA Reply NPRM Comments at 6.

[163] SFWA Reply NPRM Comments at 6.

[164] Engine Initial NPRM Comments at 5.

issued interrogatories for [section] 512(f) cases, as they are currently phrased, are unlikely to capture the full range of evidence that a claimant would need to prove subjective bad faith.'' [165] It proposed ''eliminating the good cause requirement for an initial number of additional discovery requests in [section] 512(f) claims.'' [166] The Office does not agree that this exception to the standard discovery rules is necessary. If a party asserting or responding to a section 512(f) claim believes that it needs additional information that is not captured by the standard misrepresentation interrogatories, it may make a request to propound further interrogatories under the provisions pertaining to additional discovery.

Sergey Vernyuk requested a definition or further explanation of which documents count as ''material.'' [167] A ''material'' document is one that could be used to prove or disprove a fact that is in dispute in a proceeding and may have influence on the outcome of the proceeding. As the universe of ''material'' documents is unlimited, rather than put forward any sort of list in the regulations, the Office intends to provide guidance to *pro se* parties and provide examples in the CCB Handbook.

Finally, SFWA also proposed that the Office make the interrogatories ''available for comment separately so that individual creator groups can fine tune them for maximum clarity.'' [168] The Office appreciates the interest and will welcome feedback once the forms are final and publicly available, but finds that an additional round of public comment would be impractical as the CCB is due to commence operations shortly.

3. Requests for Admission

The CASE Act specifically refers to ''written requests for admission, as provided in regulations established by the Register of Copyrights.'' [169] This is a standard form of discovery in Federal civil litigation.[170] The NPRM proposed limiting parties to ten requests for admission, with compound requests barred.[171] Some commenters, however, strongly advocated for eliminating them from CCB proceedings entirely.[172]

MPA and RIAA commented that requests for admission (''RFAs'') are ''prone to use of tendentious language by both the propounder of the RFA as well as the responding party, resulting in semantic battles between sophisticated attorneys that are unlikely to advance the adjudication of a copyright small-claims matter. . . . Drafting and responding to RFAs would consume significant time, and likely for little benefit.'' [173] The MPA and RIAA also voiced ''serious doubts that many *pro se* litigants, either claimants or respondents, would be able to engage in meaningful exchange of RFAs and responses—or engage in motion practice to resolve potential disputes about them.'' [174] The Authors Guild opined that requests for admission ''could prove to be a trap for pro se parties litigating against sophisticated parties.'' [175] Likewise, Copyright Alliance et al. opposed the use of requests for admission on grounds of the complexity and burden.[176]

Some commenters did not object to the use of requests for admission in CCB discovery, and one strongly supported including them on a limited basis. Sergey Vernyuk agreed with the Office's decision not to provide standard forms, leaving the content of the requests up to the parties.[177] AIPLA considered the Office's proposed ten-request limit ''reasonable,'' [178] and Amazon ''strongly support[ed] . . . limited requests for admission.'' [179]

The Office finds the comments requesting the elimination of requests for admission persuasive and believes that the elimination from the ordinary case would significantly streamline discovery without substantially affecting parties' ability to develop the facts. The final rule classifies requests for admission as a form of additional discovery that the CCB may allow ''on a limited basis'' and ''for good cause shown.'' [180] They will not be available as ''of right,'' and requesting parties must provide the specific RFAs they seek to propound and show good cause for each. These restrictions are consistent with suggestions by the commenters who opposed the use of RFAs.[181]

4. Production of Documents

Some commenters, including some who approved of the CCB-issued standardized discovery requests,[182] contended that specific document requests described in the proposed rule are too broad. The NPRM proposed requiring parties responding to infringement claims or counterclaims to produce ''documents related to'' revenues, profits, and deductible expenses ''directly related to the sale or use of the allegedly infringing material.'' [183] To ''safeguard against overbroad and potentially irrelevant discovery related to this type of financial information,'' Amazon suggested that infringement respondents instead should be required to produce only ''documents sufficient to show'' those matters, arguing that the NPRM version of the request ''may result in unintended and burdensome discovery.'' [184] The Office agrees that this is a reasonable limitation and the final rule reflects the change.

Some commenters proposed excluding certain categories of documents from the standardized requests. These proposals have not been adopted in the final rule. For example, Copyright Alliance et al. commented that ''a party should not be entitled to discovery related to past licensing fees assessed by a copyright owner.'' [185] The Office believes that a copyright owner's licensing practices, and the licensing history of the infringed work and similar works, may be relevant to determining damages. Discovery of such relevant evidence should not be categorically excluded.

For misrepresentation claims, Amazon recommended that respondents should be required to produce only ''documents sufficient to show'' the truth or falsity of representations made in the notification or counter-notification, rather than all ''[d]ocuments pertaining to'' those matters, which could ''result in

[165] *Id.* at 6–7.

[166] *Id.* at 7.

[167] Sergey Vernyuk Initial NPRM Comments at 2.

[168] SFWA Reply NPRM Comments at 6.

[169] 17 U.S.C. 1506(n).

[170] *See* Fed. R. Civ. P. 36.

[171] 86 FR 69890, 69911 (proposed 37 CFR 225.3(a)–(b)).

[172] *See* Authors Guild Initial NPRM Comments at 4; Copyright Alliance et al. Initial NPRM Comments at 15; MPA & RIAA Initial NPRM Comments at 6–7.

[173] MPA & RIAA Initial NPRM Comments at 6.

[174] *Id.* at 6–7.

[175] Authors Guild Initial NPRM Comments at 4.

[176] Copyright Alliance et al. Initial NPRM Comments at 15.

[177] Sergey Vernyuk Initial NPRM Comments at 1 (citing 86 FR 69890, 69900).

[178] AIPLA Initial NPRM Comments at 4.

[179] Amazon Initial NPRM Comments at 4.

[180] 17 U.S.C. 1506(n)(1).

[181] *See* MPA & RIAA Initial NPRM Comments at 7; Copyright Alliance et al. Initial NPRM Comments at 15.

[182] *See* Amazon Initial NPRM Comments at 4 (supporting standardized interrogatories and document requests).

[183] 86 FR 69890, 69911 (proposed 37 CFR 225.4(c)(5)).

[184] Amazon Initial NPRM Comments at 5, add. at A–22.

[185] Copyright Alliance et al. Initial NPRM Comments at 15 n.6; *see also* MPA & RIAA Initial NPRM Comments at 5 (stating that discovery ''should not extend to *other* transactions in which either party may have engaged, even if they are similar to the case at bar'').

overbroad, irrelevant, and burdensome discovery.'' [186] The Office believes the proposed change could be read to permit a respondent to produce only exculpatory documents ''sufficient to show'' that its statements were true, while withholding documents that support the misrepresentation claim. However, to limit the universe of potentially responsive documents, the Office revises the rule to ''[d]ocuments directly pertaining to'' truth or falsity.

''[T]o make clear that parties are permitted to withhold privileged documents,'' Copyright Alliance et al. proposed that the Office should revise the proposed rule on the standard production of documents by excluding documents ''privileged or protected from disclosure.'' [187] The Office is concerned that introducing such legal terminology may prove counter-productive, especially when dealing with *pro se* parties, but the Office recognizes the importance of the attorney-client privilege. The final rule specifies that confidential communications between a party and its counsel reflecting or seeking legal advice related to the merits of the proceeding shall be considered privileged categorically and need not be produced. Parties seeking to withhold other types of documents must first seek and receive leave of the CCB.

MPA and RIAA contended that two provisions in the proposed rule (requiring production of ''[a]ll documents related to damages'' and ''[a]ll other documents of which the party is reasonably aware that conflict with the party's claims or defenses'') ''seem to encompass large volumes of documents that are *not* directly related to the dispute itself.'' [188] While the Office considers both categories of documents relevant, it also recognizes that other categories in the proposed rule cover the same subject matter.[189] Thus, it is removing the broad category ''[a]ll documents related to damages'' from the final rule and narrowing the other request by adding the phrase ''in the proceeding'' to the request for documents that conflict with the party's claims or defenses.

Commenters raised concerns about the scope of a party's obligation to search for responsive documents and electronically stored information (*e.g.,* email) to produce in discovery, with Amazon stating that such searches should not be of the documents of any of the party's agents, employees, representatives, or others acting on the party's behalf without limitation, but rather those whom the party reasonably believes would or should have responsive documents.[190] In the final rule, the Office has limited the files that must be searched to files in the party's possession or under their control, to the files of any of the party's agents, employees, representatives, or others acting on the party's behalf ''who the party reasonably believes may have responsive documents.''

The Office disagrees with Amazon's suggestion that the rule should state that ''parties are *not* required to run custodial email searches to locate responsive documents.'' [191] If a party reasonably believes that responsive documents are in its possession or under its control, including in emails and computer files, it must conduct a reasonable search. For that reason, the Office also disagrees with MPA and RIAA's position that ''[s]earches for responsive documents should be limited to the responding party itself,'' and should not reach the files of its ''agents, employees, representatives, or others acting on the party's behalf.'' [192] If a third party's files are under the party's control, they are not inaccessible, and the efficient resolution of CCB claims will require reasonable searches for the limited universe of documents subject to production. The final rule also establishes an explicit reasonable investigation standard for discovery responses.

The Copyright Alliance et al. noted that the proposed rule, which set out a baseline expectation for manual searches of electronically stored information ''that are easily accomplished by a layperson,'' [193] appeared to prohibit parties from conducting more extensive searches.[194] The Office never intended its rule to prohibit parties who want to conduct such searches from doing so. Adopting Copyright Alliance et al.'s suggestion, the Office revises the rule to provide that such searches ''need not,'' rather than ''shall not,'' exceed that baseline. The Copyright Alliance et al. further noted that the proposed rule treats document productions that ''include large amounts of irrelevant or duplicative material,'' [195] commonly referred to as ''document dumps,'' [196] as acts of ''per se 'bad faith.' '' [197] Copyright Alliance et al. suggested that the CCB should retain the discretion to make determinations of bad faith ''in light of all relevant context.'' [198] The Office agrees, and the final rule modifies the proposed regulation by providing that such voluminous productions ''may,'' rather than ''shall,'' constitute bad-faith conduct.

5. Depositions

Depositions will not be permitted in CCB proceedings. Testimony is primarily submitted in written form and oral testimony is presented only at a hearing conducted before the CCB.[199] Commenters asked the Office to make the prohibition of depositions explicit [200] and the final rule does so.

6. Expert Disclosure

The statute provides that ''in exceptional cases,'' the CCB may permit ''expert witness testimony . . . for good cause shown.'' [201] The proposed rule adds that ''[t]he use of expert witnesses in proceedings before the Board is highly disfavored and requests shall be rarely granted'' and provides that the CCB will grant a request ''only in exceptional circumstances and upon a showing that the case cannot fairly proceed without the use of the expert.'' [202] Some commenters proposed requiring parties to disclose any intent to use an expert witness at an early stage in the proceeding, whether in the claim or before the response.[203] If adopted, the proposal would let parties weigh the costs of retaining rebuttal experts at a

[186] Amazon Initial NPRM Comments at 5, add. at A–23; 86 FR 69890, 69911 (proposed 37 CFR 225.4(e)(2)).

[187] Copyright Alliance et al. Initial NPRM Comments at 22 (discussing proposed 37 CFR 225.4(a)).

[188] MPA & RIAA Initial NPRM Comments at 6; 86 FR 69890, 69911 (proposed 37 CFR 225.4(a)(2)–(3)).

[189] *See* 86 FR 69890, 69911 (proposed 37 CFR 225.4(b)(7), (c)(5)).

[190] Amazon Initial NPRM Comments at 4–5, add. at A–23 (discussing proposed 37 CFR 225.4(f)(1)–(2)), MPA & RIAA Initial NPRM Comments at 6 (discussing proposed 37 CFR 225.4(f)(2)); *see* 86 FR at 66911–12 (proposed 37 CFR 225.4(f)(1)–(2)).

[191] Amazon Initial NPRM Comments at 4–5, add. at A–23.

[192] MPA & RIAA Initial NPRM Comments at 6 (discussing proposed 37 CFR 225.4(f)(2)); *see also* 86 FR 69890, 66912 (proposed 37 CFR 225.4(f)(2)).

[193] 86 FR at 66912 (proposed 37 CFR 225.4(f)(2)(i)).

[194] Copyright Alliance et al. Initial NPRM Comments at 21–22.

[195] 86 FR 69890, 66912 (proposed 37 CFR 225.4(f)(3)).

[196] *See id.* at 66901.

[197] Copyright Alliance et al. Initial NPRM Comments at 16.

[198] *Id.*

[199] 17 U.S.C. 1506(o)(2), (p).

[200] MPA & RIAA Initial NPRM Comments at 7; Copyright Alliance et al. Initial NPRM Comments at 15; *cf.* Amazon Initial NPRM Comments at 5–6, add. at A–15 (noting that ''depositions are generally not permitted in small claims courts around the country and are a costly discovery tool'' and requesting that the Office clarify that they only are permitted ''upon a showing of good cause'').

[201] 17 U.S.C. 1506(o)(2).

[202] 86 FR 69890, 69909 (proposed 37 CFR 225.1(e)).

[203] MPA & RIAA Initial NPRM Comments at 7–8; Copyright Alliance et al. Initial NPRM Comments at 21.

stage when opting out or voluntarily dismissing would still be viable alternatives. However, the Office considers the proposed requirement impractical. The CCB will rarely, if ever, allow expert testimony. In all likelihood, parties will rarely request it, considering the typical costs of experts compared to the maximum damages recoverable.[204] Moreover, a party often will not know if it needs an expert until it sees the other side's evidence. Accordingly, although expert testimony will rarely be allowed, the intention to request it need not be disclosed at the beginning of CCB proceedings.

7. Written Testimony

Commenters requested that the CCB provide parties with ''instructions about how to draft written testimony and what should be included.'' [205] The Office intends to provide such guidance in the CCB Handbook, and takes note of the specific topics that commenters suggested for inclusion.

The Office is making two changes to the proposed regulations on written testimony to make the process more accessible to *pro se* parties. First, parties are provided 15 additional days (45 total) to file response testimony and 7 additional days (21 total) to file reply testimony.[206] Second, the Office is streamlining the proposed regulations by omitting certain provisions regarding witness sponsorship of documentary evidence,[207] as these are overly burdensome and other regulatory provisions suffice to ensure authentication.[208] The Office will also be creating forms that will make the submission of materials with party statements easier.

E. Hearings

Noting that the statute appears to require virtual hearings, although permitting ''alternative arrangements'' for submission of physical or other nontestimonial evidence that cannot be presented virtually,[209] the Office solicited comments on whether the statute can be read to allow an in-person hearing when all parties request it and can attend.[210] Two commenters opined that the statute does not appear to permit such hearings, beyond the limited situations it specifically describes.[211] Another commenter ''agree[d] with the Office's proposal that in-person hearings be permitted if requested by all parties,'' but did not cite any statutory authority for this position.[212] The final rule provides for virtual proceedings, except as expressly described in the statute. Recognizing that the CCB is a new tribunal which has not yet held a hearing, the Office does not take a position at this time regarding whether, in exceptional circumstances, additional in-person proceedings may be permissible.

The proposed rule stated that ''[c]onferences may be held by one or more Officers.'' [213] At the same time, the Office solicited comments in the NPRM on whether it is authorized to have Copyright Claims Attorneys conduct non-substantive hearings to streamline the proceedings.[214] Two comments addressed the point. AIPLA commented that it believes such a procedure is permissible, and added, ''[a]ll parties should retain the right to have any given conference held by an Officer.'' [215] The Copyright Alliance et al. commented ''that there should be a presumption that those conferences will be held by Officers, however Copyright Claims Attorneys should be permitted to hold those conferences if deemed necessary to ensure that proceedings are 'streamlined.' '' [216]

The Office makes no changes to the final rule with respect to this subject. It concludes that the statute clearly describes the duties of the Copyright Claims Officers and those of the Copyright Claims Attorneys.[217] Among other duties, Officers shall: (1) Determine the claims and defenses asserted by the parties; (2) rule on ''scheduling, discovery, evidentiary, and other matters''; (3) conduct hearings and conferences; and (4) make damage awards.[218] At the same time, the CASE Act authorizes the Attorneys ''[t]o provide assistance to the Copyright Claims Officers in the administration of the duties of those Officers under'' the statute and ''[t]o provide assistance to members of the public with respect to the procedures and requirements of the [CCB].'' [219] The Office is of the view that 17 U.S.C. 1503(a)(2)(A) and (B) provide flexibility as to how the Attorneys may assist the Officers and communicate with the public, including parties, regarding the ''procedures and requirements'' of the CCB. For example, the Attorneys may communicate with the parties regarding administrative, scheduling, or logistical matters, allowing such nonsubstantive matters to be resolved more quickly. If the Attorney's communication with the parties reveals an unresolved substantive issue or dispute, the issue will be referred to an Officer and a conference may be scheduled.

The proposed regulation would have barred post-hearing submissions of additional testimony or evidence ''unless at the Board's specific request.'' [220] The Copyright Alliance et al. proposed allowing such submissions with leave of the CCB.[221] The Office agrees and adopts the proposed amendment.

The Authors Guild argued against requiring *pro se* parties to conduct direct or cross examinations of testifying witnesses and suggested that the CCB conduct the questioning of witnesses instead.[222] The Office notes that no parties are required to ask questions of witnesses, but it does not think parties should be denied this option just because they appear *pro se.* As described earlier, the Office envisions that any questioning of witnesses during hearings will be significantly less formal than in Federal court proceedings. *Pro se* parties will not be expected to master, or indeed have any familiarity with, evidentiary rules concerning the questioning of witnesses. Officers also will take an active role in managing hearings and will have the ability to ask their own questions of witnesses to ensure that testimony is fully developed.

The Copyright Alliance et al. criticized the proposed rule's references to direct examination, cross-examination, redirect examination, and witness impeachment as inappropriately reliant on Federal

[204] *See generally Fharmacy Records* v. *Nassar,* 729 F. Supp. 2d 865, 874, 879 (E.D. Mich. 2010) (awarding defendant costs of $10,325 for expert musicologist and $18,142.57 for computer forensics expert in copyright case), *aff'd,* 465 F. App'x 448 (6th Cir. 2012).

[205] Copyright Alliance et al. Initial NPRM Comments at 22; *see also* Authors Guild Initial NPRM Comments at 3 (''The proposed Handbook should explain exactly what should be provided in the written testimony, including documentary evidence and witness and party statements, in addition to providing lists of topics, sample documents, and forms.'').

[206] *See* 86 FR 69890, 69906 (proposed 37 CFR 222.14(a)).

[207] *See id.* (proposed 37 CFR 222.14(b)(1)(ii), (b)(2)(iv)).

[208] *See id.* at 69909 (proposed 37 CFR 225.1(a)(1)).

[209] 17 U.S.C. 1506(c)(2).

[210] 86 FR 69890, 69902–03.

[211] Copyright Alliance et al. Initial NPRM Comments at 22; SFWA Reply NPRM Comments at 6.

[212] AIPLA Initial NPRM Comments at 4.

[213] 86 FR 69890, 69905 (proposed 37 CFR 222.10(b)(2), (b)(8), (c)).

[214] *Id.* at 69896.

[215] AIPLA Initial NPRM Comments at 3.

[216] Copyright Alliance et al. Initial NPRM Comments at 18.

[217] 17 U.S.C. 1503(a)(1), (a)(2).

[218] *Id.* at 1503(a)(1)(A), (C), (E), (G)(i).

[219] *Id.* at 1503(a)(2)(A)–(B).

[220] 86 FR 69890, 69907 (proposed 37 CFR 222.15(f)).

[221] Copyright Alliance et al. Initial NPRM Comments at 23.

[222] Authors Guild Initial NPRM Comments at 3.

procedures and too procedurally complex for *pro se* parties.[223] The Office is modifying the final rule to clarify that CCB hearings will not mirror Federal courtroom practices and procedures. For example, questioning during hearings will be significantly less formal and regimented than Federal hearings and trials. The CCB Handbook will also greatly help CCB participants through the process. In addition, unlike in Federal court, Copyright Claims Officers will guide participants through the process of a hearing, including how to submit witness testimony. The final rule therefore provides, using less legal jargon, that parties may ask questions of witnesses, and eliminates the provision on formal objections to evidence during a hearing. Due to the CCB proceeding's nature and the likelihood that there may be *pro se* participants on one or both sides, the Office does not believe that such a process is necessary and might be disruptive to proceedings or allow represented participants to take advantage of *pro se* participants.

AIPLA commented, ''[a]bsent justification, parties should not be permitted in CCB proceedings to rely on documents in their case-in-chief that they failed to produce during discovery. Even if not produced in discovery, such documents should be permitted in rebuttal, consistent with federal district court practice.'' [224] The comment is generally consistent with the proposed rule.[225] However, to streamline the procedures, minimize legalese, and accommodate parties who may not be familiar with formal rules of evidence, the Office is modifying the final rule to provide in more direct terms that exhibits not submitted in written testimony may not be used at a hearing without leave of the CCB.

F. Post-Determination Review

The proposed rule included procedures related to the two levels of review of final CCB determinations described in the statute: Reconsideration by the CCB and review by the Register of Copyrights.[226] The Office received no comments related to requests for reconsideration, and implements those regulations in the form proposed in the NPRM.

The statute provides that a party may request review by the Register of Copyrights if the CCB denies that party's request for reconsideration.[227] It does not expressly state whether the non-requesting party, if it loses the reconsideration request, may request the Register's review.[228] The NPRM did not provide a process for the non-requesting party to seek the Register's review after reconsideration. The Office invited comment on this issue.[229]

Two commenters responded.[230] AIPLA approved of not allowing such review, stating, ''[o]ne purpose of the Act is to provide a simple and speedy process. . . . [P]ost-determination proceedings should be kept to a minimum. The best way to give effect to the statute as written, while keeping post-determination proceedings to a minimum, is to restrict the Register's review to a party losing a request for reconsideration.'' [231] On the other hand, Sergey Vernyuk questioned the fairness in denying the ability to seek the Register's review to a party who initially received a favorable determination only to have it reversed on reconsideration.[232] He proposed that a non-requesting party that loses on reconsideration could seek reconsideration itself, ''and if that second reconsideration request is denied . . . then at that point both parties had sought reconsideration and can thus seek the Register's review.'' [233]

The Office agrees that it would be unfair if a party who had initially prevailed, but subsequently finds itself on the losing side after a request for reconsideration, had no recourse. Under the statute, the CCB's determination after granting reconsideration constitutes an ''amended final determination.'' [234] The Office concludes that the party that opposed the initial request for reconsideration may request reconsideration or amendment by the CCB of the amended final determination.[235] If that party is unsuccessful before the CCB, it may then request review by the Register.

AIPLA further commented that ''the proposed filing fee of $300 is appropriate for Register review. The amount is both affordable and high enough to discourage prolonging proceedings.'' [236] There were no contrary comments. The Office is maintaining the proposed fee.

G. Additional Considerations

1. Data Collection

Engine recommended that the Office collect and make available data sets, in a transparent and anonymized fashion, including statistics on the number of cases filed, defaulting respondents, opt-outs, waivers of service of process, ''how often defaulting respondents later try to correct their default and either opt-out or participate,'' and ''the type and amount of damages awards made.'' [237] Engine asserted that collecting data could assist the Office in developing procedures that are fair to all parties and that prevent abuse, including enabling the Office to identify which, if any, categories of respondents may be misusing the default process.[238] As one of the four overarching goals in Copyright Office's recently released *Strategic Plan 2022–2026,* the Office intends to ''enhance the development and use of data as an evidentiary foundation for policymaking and to improve measurements of organizational performance, and will make more data easily accessible to both internal and external audiences.'' [239] Consistent with this goal, the CCB will be tracking data relevant to its operations internally and, while the scope of that data collection is still undetermined, the Office will ultimately issue a public report on the CCB that will likely include data related to its operations.

2. Other Issues

The Copyright Alliance et al. pointed out that the proposed regulation inconsistently referred to ''attorneys'' as either included in, or distinct from, ''parties.'' [240] The Office has clarified references in the final rule, made other modest revisions for the purpose of

[223] Copyright Alliance et al. Initial NPRM Comments at 8.

[224] AIPLA Initial NPRM Comments at 4.

[225] *See* 86 FR 69890, 69909 (proposed rule 37 CFR 222.19(e)) (''Exhibits not submitted as part of written testimony may be shown to a witness on cross-examination or redirect examination only for the purposes of impeachment or rehabilitation. Copies of such exhibits must be distributed to the Board and other parties before being shown, unless the Board directs otherwise.'').

[226] *Id.* at 69915 (proposed 37 CFR pts. 230, 231); *see* 17 U.S.C. 1506(w)–(x).

[227] 17 U.S.C. 1506(x).

[228] *Id.; see also* 86 FR 69890, 69903.

[229] 86 FR 69890, 69903.

[230] Sergey Vernyuk Initial NPRM Comments at 2; AIPLA Initial NPRM Comments at 5.

[231] AIPLA Initial NPRM Comments at 5.

[232] Sergey Vernyuk Initial NPRM Comments at 2.

[233] *Id.*

[234] 17 U.S.C. 1506(w).

[235] *Cf. id.* at 1506(x) (providing that when the Register reviews a final determination and remands it to the CCB for reconsideration ''and for issuance of an amended final determination. Such amended final determination shall not be subject to further consideration or review'' by the CCB or the Register).

[236] AIPLA Initial NPRM Comments at 5.

[237] Engine Initial NPRM Comments at 8.

[238] *Id.* at 5.

[239] U.S. Copyright Office, *Strategic Plan 2022–2026,* 9 (Jan. 2022), *https://www.copyright.gov/reports/strategic-plan/USCO-strategic2022-2026.pdf.*

[240] Copyright Alliance et al. Initial NPRM Comments at 18. Under the CASE Act, ''party'' is defined to mean both a party and a party's attorney, as applicable. .'' 17 U.S.C. 1501(3).

clarity, and corrected typographical errors.

H. Smaller Claims

The CASE Act provides that the Register shall establish regulations to provide for the determination of ''smaller claims,'' *i.e.,* claims in which total damages sought do not exceed $5,000.[241] Such smaller claims must be determined by not fewer than one Copyright Claims Officer.[242] The Office issued proposed rules governing smaller claims in its NPRM, including provisions limiting discovery to ''standard interrogatories, requests for admission, and the standard production of document requests provided by the CCB,'' prohibiting expert testimony, and prohibiting hearings.[243] The Office also asked for comments addressing whether the proposed rule struck ''a proper balance between streamlining the [CCB's] process while providing the procedural protections available to other claims before the CCB.'' [244]

SFWA supported the proposed rule.[245] MPA and RIAA and the Copyright Alliance et al. advocated for further streamlined procedures, especially for eliminating standard discovery in smaller claims proceedings.[246] MPA and RIAA stated that ''permitting even the standard types of discovery in these 'smaller' cases is too much; the costs involved with propounding, responding to, and potentially disputing discovery matters through motion practice, would quickly exceed the maximum $5,000 in dispute.'' [247] The Copyright Alliance et al. suggested that ''[e]liminating discovery would make the [smaller] claims process much more attractive to claimants seeking damages awards of less than $5,000 and to respondents who would be much more amenable to participating in the small claims process (and not opting out) if there was no discovery.'' [248] The Copyright Alliance et al., however, would allow for discovery in smaller claims proceedings ''upon a showing of good cause or where the CCB [O]fficers need to ask questions to complete the record and make a determination,'' though it would limit this discovery to ''only a few specific items that are relevant, probative, and likely to impact the outcome of the case.'' [249]

On review, the Office agrees that a more expedited and less formal process is appropriate for smaller claims. The final rule streamlines the smaller claims process by using written submissions and informal conferences to minimize party burdens and by allowing the presiding Officer to take a more active role in case management. Discovery will be significantly limited, if allowed at all. The extent of any discovery will typically be addressed at an initial conference, which will take the place of the pre-discovery conference held in non-smaller claims proceedings. The smaller claims proceeding will also allow for a party position statement, a merits conference to discuss the evidence and the issues presented, a tentative finding of facts by the presiding Officer, the opportunity for parties to respond to those findings, and a final determination. Additional details about these steps are provided below.

The initial conference will allow a presiding Officer to discuss the claims and defenses with the parties and to determine whether any discovery beyond the evidence appended to the claim and response should be required. Consistent with the Copyright Alliance et al.'s suggestion,[250] any request for the production of information or documents that the presiding Officer may approve will be narrowly tailored to the issues raised in the proceeding and highly likely to lead to production of relevant evidence. In addition, the presiding Officer will ensure that such request will not result in an undue burden on any party. Parties will provide the requested evidence to each other, along with any additional evidence they intend to use to support their claims and defenses.

After the exchange of evidence between the parties, each party shall file the evidence it wishes the presiding Officer to consider and may submit a written statement outlining its position, as well as statements from witnesses. These written statements are the only submissions allowed—no responsive statements will be permitted. Further, parties may not submit expert testimony for consideration. The presiding Officer will then hold a merits conference, at which the parties and the Officer will fully discuss the claims, counterclaims, defenses, and evidence. Each party will have an opportunity to respond to the evidence and any other submissions provided by the other party. The Officer may also hear from and question any witnesses present at the conference. After this, the Officer will issue preliminary findings of fact to which each party will have an opportunity to respond. The Officer will have the discretion to hold another conference, if necessary. After considering any responses to the preliminary findings of fact, the Officer will issue a final determination.

In addition to these important changes, the final rule clarifies procedures related to the timing of the smaller claims election, requesting a smaller claims proceeding, and the content of the initial and second notice in a smaller claims proceeding. The Copyright Alliance et al. sought clarification about the consequences of a smaller claims respondent filing a counterclaim for damages above the smaller claims limit.[251] Under the final rule, a counterclaim for damages above the smaller claims limit is not permitted. A respondent who is not content with a counterclaim limited to $5,000 may decline to use the smaller claims track and either use the standard proceeding by bringing a separate claim against the original claimant or bring the claim to Federal court.

Further, the rule makes clear that a claimant may change its election from proceeding as a smaller claim proceeding to a standard proceeding (or from a standard proceeding to a smaller claim proceeding) before service of the initial notice. If the claimant makes such an election, it must request an updated initial notice before serving the notice on a respondent.[252]

Finally, the final rule clarifies that when a claimant elects a smaller claims proceeding, the initial notice and second notice to the respondent will differ in some respects from the notices issued with standard claims. Smaller claims notices will indicate that the

[241] 17 U.S.C. 1506(z).

[242] *Id.*

[243] 86 FR 69890, 69898–99, 69912–13 (Dec. 8, 2021).

[244] *Id.* at 69898–99.

[245] SFWA Reply NPRM Comments at 5.

[246] MPA & RIAA Initial NPRM Comments at 3–5; Copyright Alliance et al. Initial NPRM Comments at 12–13.

[247] MPA & RIAA Initial NPRM Comments at 4.

[248] Copyright Alliance et al. Initial NPRM Comments at 12.

[249] *Id.* at 12.

[250] *See id.* (stating that discovery, when permitted, ''should be limited to only a few specific items that are relevant, probative, and likely to impact the outcome of the case'').

[251] *Id.* at 20.

[252] The Copyright Alliance et al. stated that ''section 1506(q) of the Copyright Act gives the claimant the ability to change its mind, dismiss the claim without prejudice, and refile the claim under the procedures for standard small claims if it decides that discovery is necessary.'' *Id.* at 12. The Office disagrees with any suggestion that 17 U.S.C. 1506(q) provides an independent basis for a claimant to voluntarily dismiss a claim after a respondent files a response. Section 1506(q) only allows a claimant to voluntarily dismiss a claim before a respondent files a response. *See* 17 U.S.C. 1506(q). Section 222.17(c) of the regulations governs voluntary dismissal of claims after a response is filed and only allows for voluntary dismissal without prejudice when either the CCB determines that such dismissal would be in the interests of justice or if the parties agree in writing.

claim is a smaller claim and provide a brief explanation of the procedural differences between smaller claims and standard claims. While the Office intended to provide such information under its authority to ''[i]nclude any additional information'' in the initial or second notices,[253] it makes sense to make this requirement explicit in its regulations.

The Office believes that its updated, streamlined procedure for smaller claims substantially addresses commenters' concerns, will provide a clear alternative to both the CCB's standard proceeding and to Federal litigation, and will ultimately incentivize claimants to use the CCB's smaller claims procedures where appropriate. While this updated rule is a logical outgrowth of the NOI, NPRM, and public comments, the Office is offering the public the opportunity to submit additional comments on the smaller claims final regulations so it can determine whether they strike the proper balance between streamlining the smaller claims process and providing sufficient procedural protections to all parties.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 220

Claims, Copyright, General.

37 CFR Parts 222, 224, and 225 Through 233

Claims, Copyright.

Final Regulations

For the reasons stated in the preamble, the U.S. Copyright Office amends chapter II, subchapters A and B, of title 37 Code of Federal Regulations, to read as follows:

Subchapter A—Copyright Office and Procedures

PART 201—GENERAL PROVISIONS

■ 1. The general authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

* * * * *

■ 2. In § 201.3, in table 4 to paragraph (g), add paragraph (g)(3) to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Section and the Copyright Claims Board.

* * * * *

(g) * * *

TABLE 4 TO PARAGRAPH (g)

Copyright claims board fees	Fees ($)
* * * * *	
(3) Filing fee for review of a final CCB determination by the Register	300

Subchapter B—Copyright Claims Board and Procedures

■ 3. Revise part 220 to read as follows:

PART 220—

GENERAL PROVISIONS

Sec.
220.1 Definitions.
220.2 Authority and functions.
220.3 Copyright Claims Board Handbook.
220.4 Timing.
220.5 Requests, responses, and written submissions.

Authority: 17 U.S.C. 702, 1510.

§ 220.1 Definitions.

For purposes of this subchapter:

(a) *Active proceeding* denotes a claim in which the claimant has filed proof of service and the respondent has not, within the sixty day opt-out period, submitted an opt-out notice to the Copyright Claims Board (Board).

(b) *Authorized representative* means a person, other than legal counsel, who is authorized under this subchapter to represent a party before the Board.

(c) *Bad-faith conduct* occurs when a party pursues a claim, counterclaim, or defense for a harassing or other improper purpose, or without a reasonable basis in law or fact. Such conduct includes any actions taken in support of a claim, counterclaim, or defense and may occur at any point during a proceeding before the Board, including before a proceeding becomes an *active proceeding.*

(d) *Default determination* is a *final determination* issued as part of the default procedures set forth in 17 U.S.C. 1506(u) when the respondent does not participate in those procedures.

(e) *Final determination* is a decision that concludes an *active proceeding* before the Board and is binding only on the participating parties. A *final determination* generally assesses the merits of the claims in the proceeding, except when issued to dismiss a claimant's claims for failure to prosecute.

(f) *Initial notice* means the notice described in 17 U.S.C. 1506(g) that is served on a respondent in a Board proceeding along with the claim.

(g) *Second notice* means the notice of a proceeding sent by the Board as described in 17 U.S.C. 1506(h).

(h) *Standard interrogatories* are written questions provided by the Board that a party in an *active proceeding* must answer as part of discovery.

(i) *Standard requests for the production of documents* are written requests provided by the Board requiring a party to provide documents, other information, or tangible evidence as part of discovery in an *active proceeding.*

§ 220.2 Authority and functions.

The Copyright Claims Board (Board) is an alternative forum to Federal court in which parties may voluntarily seek to resolve certain copyright-related claims regarding any category of copyrighted work, as provided in chapter 15 of title 17 of the United States Code. The Board's proceedings are governed by title 17 of the United States Code and the regulations in this subchapter.

§ 220.3 Copyright Claims Board Handbook.

The Copyright Claims Board may issue a handbook explaining the Board's practices and procedures. The handbook may be viewed on, downloaded from, or printed from the Board's website. The handbook will not override any existing statute or regulation.

§ 220.4 Timing.

When the start or end date for calculating any deadline set forth in this subchapter falls on a weekend or a Federal holiday, the start or end date shall be extended to the next Federal workday. Any document subject to a deadline must be either submitted to the Board's electronic filing system (eCCB) by 11:59 p.m. Eastern Time on the date of the deadline or dispatched by the date of the deadline.

§ 220.5 Requests, responses, and written submissions.

(a) *Requests and responses submitted through fillable form.* Unless this subchapter provides otherwise or the Board orders otherwise, documents listed under this subsection shall be submitted through a fillable form on eCCB and shall comply with the following requirements:

(1) *Tier one requests and responses.* Requests and responses to requests which are identified under this subsection shall be filed through the fillable form on eCCB and be limited to 4,000 characters. Any party may submit a response to a request identified in this subsection within seven days of the filing of the request. The Board may deny such a request before the time to

[253] 37 CFR 222.3(a)(16), 222.4(a)(16).

submit a response expires, but the Board will not grant a request before the time to submit a response expires, unless the request is consented to by all parties. There shall be no replies from a party that submits a request, absent leave of the Board. Tier one requests and responses shall include:

(i) Requests to amend a scheduling order and responses to such requests under § 222.11(d)(2) of this subchapter;

(ii) Requests for a general conference or discovery conference (those not involving a dispute) and responses to such requests under § 222.11(c), § 225.1(c), or § 226.4(g) of this subchapter;

(iii) Statements as to damages under § 222.15(b)(3) of this subchapter;

(iv) Requests for a hearing under § 222.16(c) of this subchapter;

(v) Requests to withdraw claims or counterclaims under § 222.17 of this subchapter;

(vi) Requests for a settlement conference and responses to such requests under § 222.18(b)(2) of this subchapter;

(vii) Requests to stay proceedings for settlement discussions or requests to extend the stay of proceedings for settlement discussions, and responses to such requests, under § 222.18(f) of this subchapter;

(viii) Joint requests for a dismissal under § 222.18(g) of this subchapter;

(ix) Requests for the standard protective order under § 222.19(a) of this subchapter;

(x) Requests to remove a confidentiality designation and responses to such requests under § 222.19(a)(5) of this subchapter;

(xi) Requests for a custom protective order under § 222.19(b) of this subchapter;

(xii) Requests to use not previously submitted evidence at a hearing and responses to such requests under § 222.20(d) of this subchapter;

(xiii) Requests to modify the discovery schedule and responses to such requests under § 225.1(b) of this subchapter;

(xiv) Requests to withhold additional documents as privileged and responses to such requests under § 225.3(g) of this subchapter;

(xv) Requests to issue a notice regarding a missed deadline or requirement and responses to such requests under § 227.1(a) or § 228.2(a) of this subchapter;

(xvi) Responses to a Board-issued notice regarding a missed deadline in the default context under § 227.1(c) of this subchapter;

(xvii) Responses to a Board-issued notice regarding a missed deadline in the failure to prosecute context under § 228.2(c)(2) of this subchapter;

(xviii) Requests to designate an official reporter for a hearing and responses to such requests under § 229.1(d) of this subchapter;

(xix) Requests to withdraw representation under § 232.5 of this subchapter; and

(xx) Requests not otherwise covered under § 220.5(d).

(2) *Tier two requests and responses.* Requests and responses to requests which are identified under this subsection shall be filed through the fillable form on eCCB and be limited to 10,000 characters, not including any permitted attachments. Any party may file a response within 14 days of the filing of the request or the order to show cause. The Board may deny a request before the time to submit a response expires, but the Board will not grant a request before the time to submit a response expires, unless the request is consented to by all parties. There shall be no replies from a party that submits a request, absent leave of the Board. Tier two requests and responses shall include:

(i) Requests to amend pleadings and responses to such requests under § 222.12(d)(2) of this subchapter;

(ii) Requests to consolidate and responses to such requests under § 222.13(c) of this subchapter;

(iii) Requests to intervene by a third party and responses to such requests under § 222.14(c) of this subchapter;

(iv) Requests to dismiss for unsuitability and responses to such requests under § 224.2(c) of this subchapter;

(v) Requests for additional discovery under § 225.4(a)(4) of this subchapter. Such requests must enter each specific additional discovery request (*e.g.,* the specific interrogatories, document requests or requests for admission sought) within the fillable form;

(vi) Responses to requests for additional discovery under § 225.4(a)(4) of this subchapter;

(vii) Requests to serve requests for admission and responses to requests to serve requests for admission under § 225.4(c) of this subchapter;

(viii) Requests to be able to present an expert witness and responses to such requests under § 225.4(b)(2) of this subchapter;

(ix) Requests for a conference to resolve a discovery dispute under § 225.5(b) of this subchapter. Such requests must attach any inadequate interrogatory responses or inadequate request for admission responses and may attach communications related to the discovery dispute or documents specifically discussed in the request related to the inadequacy of the document production;

(x) Responses to requests for a conference to resolve a discovery dispute under § 225.5(b) of this subchapter. Such responses may attach communications related to the discovery dispute or produced documents specifically pertinent to the dispute;

(xi) Requests for sanctions and responses to such requests under § 225.5(e)(1) of this subchapter;

(xii) Requests for a third-party to attend a hearing and responses to such requests under § 229.1(c) of this subchapter;

(xiii) Responses to an order to show cause regarding *bad-faith conduct* under § 232.3(b)(1) of this subchapter;

(xiv) Requests for a conference related to alleged *bad-faith conduct* and responses to such requests under § 232.3(b)(2) of this subchapter;

(xv) Responses to an order to show cause regarding a pattern of *bad-faith conduct* under § 232.4(b)(1) of this subchapter; and

(xvi) Requests for a conference related to a pattern of alleged *bad-faith conduct* and responses to such requests under § 232.4(b)(2) of this subchapter.

(b) *Tier three: Uploaded written submissions.* (1) Unless the Board orders otherwise, written submissions not identified as tier one or tier two requests and responses under this section shall be uploaded to eCCB (with the exception of settlement statements under § 222.18(d) of this subchapter), shall comply with the applicable page limitations and response times set forth in this subchapter for such documents, and shall—

(i) Include a title;

(ii) Include a caption;

(iii) Be typewritten;

(iv) Be double-spaced, except for headings, footnotes, or block quotations, which may be single-spaced;

(v) Be in 12-point type or larger; and

(vi) Include the typed or handwritten signature of the party submitting the document.

(2) Documents considered tier three submissions shall include:

(i) Direct party statements and response party statements under § 222.15(b)(3) of this subchapter;

(ii) Reply party statements under § 222.15(c)(3) of this subchapter;

(iii) Settlement position statements under § 222.18(d) of this subchapter;

(iv) Requests to reconsider determinations to dismiss for unsuitability and responses to such requests under § 224.2(b)(2) of this subchapter;

(v) Smaller claims position statements under § 226.4(d)(2)(ii) of this subchapter;

(vi) Responses to smaller claims Board-proposed findings of fact under § 226.4(e)(1);

(vii) Claimant written direct party statement in support of default under § 227.2(a) of this subchapter;

(viii) Claimant response to Board determination after default that evidence is insufficient to find for claimant under § 227.3(a)(2) of this subchapter;

(ix) Response to notice of proposed *default determination* under § 227.4(a) of this subchapter;

(x) Requests to vacate a *default determination* and responses to such requests under § 227.5(c) of this subchapter;

(xi) Request to vacate a dismissal for failure to prosecute and responses to such requests under § 228.2(e) of this subchapter;

(xii) Requests for reconsideration under § 230.2 of this subchapter;

(xiii) Responses to requests for reconsideration under § 230.3 of this subchapter;

(xiv) Requests for review by the Register of Copyrights under § 231.2 of this subchapter; and

(xv) Responses to requests for review by the Register of Copyrights under § 231.3 of this subchapter.

(c) *Replies.* Other than written testimony submitted pursuant to § 222.15 of this subchapter, replies to any responses to requests or written submissions shall not be permitted, unless otherwise provided for in this subchapter or permitted by the Board.

(d) *Other requests and responses.* Any requests to the Board not specified in this part can be submitted by filing a request not otherwise covered under paragraph (a)(1) of this section. Depending on the nature of the request, the Board shall advise the parties whether the request is permitted and, if so, if and by when the response must be filed.

PART 222—PROCEEDINGS

■ 4. The authority citation for part 222 continues to read as follows:

Authority: 17 U.S.C. 702, 1510.

■ 5. Add § 222.1 to read as follows:

§ 222.1 Applicability of the Federal Rules of Civil Procedure and Federal Rules of Evidence.

The rules of procedure and evidence governing proceedings before the Copyright Claims Board (Board) are set forth in this subchapter. The Board is not bound by the Federal Rules of Civil Procedure or the Federal Rules of Evidence.

■ 6. In § 222.3:

■ a. In paragraph (a)(15), remove ''and'';

■ b. Redesignate paragraph (a)(16) as paragraph (a)(17); and

■ c. Add a new paragraph (a)(16).

The adition reads as follows:

§ 222.3 Initial notice.

(a) * * *

(16) In the case of a proceeding in which the claimant has requested under § 222.2(c)(1) that the proceeding be conducted as a smaller claim under 37 CFR part 226, include a statement that the proceeding shall be conducted as a smaller claim and a brief explanation of the differences between smaller claims proceedings and other proceedings before the Board; and

* * * * *

■ 7. Amend § 222.4 as follows:

■ a. In paragraph (a)(15), remove ''and'';

■ b. Redesignate paragraph (a)(16) as paragraph (a)(17); and

■ c. Add a new paragraph (a)(16).

The addition reads as follows:

§ 222.4 Second notice.

(a) * * *

(16) In the case of a proceeding in which the claimant has requested under § 222.2(c)(1) that the proceeding be conducted as a smaller claim under 37 CFR part 226, include a statement that the proceeding shall be conducted as a smaller claim and a brief explanation of the differences between smaller claims proceedings and other proceedings before the Board; and

* * * * *

■ 8. Amend § 222.8 by revising paragraph (f) to read as follows:

§ 222.8 Response.

* * * * *

(f) *Failure to file response.* A failure to file a response within the required timeframe may constitute a default 17 U.S.C. 1506(u), and the Board may begin proceedings in accordance with part 227 of this subchapter.

■ 9. Amend § 222.10 by revising paragraph (d) to read as follows:

§ 222.8 Response to counterclaim.

* * * * *

(d) *Failure to file counterclaim response.* A failure to file a counterclaim response within the timeframe required by this section may constitute a default under 17 U.S.C. 1506(u), and the Board may begin default proceedings under part 227 of this subchapter.

■ 10. Add §§ 222.11 through 222.20 to read as follows:

Sec.

* * * * *

222.11 Scheduling order.
222.12 Amending pleadings.
222.13 Consolidation.
222.14 Additional parties.
222.15 Written testimony on the merits.
222.16 Hearings.
222.17 Withdrawal of claims; dismissal.
222.18 Settlement.
222.19 Protective orders; personally identifiable information.
222.20 Evidence.

§ 222.11 Scheduling order.

(a) *Timing.* Upon receipt of the second payment of the filing fee set forth in § 201.3(g) of this subchapter and after completion of the 14-day period specified in the Board's order pursuant to § 222.7, the Board shall issue an initial scheduling order through eCCB, subject to § 222.7(b)(1).

(b) *Content of initial scheduling order.* The scheduling order shall include the dates or deadlines for:

(1) Filing of a response to the claim by the respondent;

(2) A pre-discovery conference with a Copyright Claims Officer (Officer) to discuss case management, including discovery, and the possibility of resolving the claims and any counterclaims through settlement;

(3) Service of responses to *standard interrogatories;*

(4) Service of documents in response to *standard requests for the production of documents;*

(5) Requests for leave to seek additional discovery;

(6) Close of discovery;

(7) A post-discovery conference with an Officer to discuss further case management, including the possibility of resolving the claims and any counterclaims through settlement; and

(8) Filing of each party's written testimony and responses, pursuant to § 222.15.

(c) *Conferences.* In addition to those identified in paragraph (b) of this section, the Board may hold additional conferences, at its own election or at the request of any party. Requests for a conference and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter. All conferences shall be held virtually.

(d) *Amended scheduling order.* The Board may amend the initial scheduling order—

(1) Upon the clearance of a counterclaim by a Copyright Claims Attorney pursuant to § 224.1(c)(1) of this subchapter, to add a deadline for the service of a response by a claimant to a counterclaim and to amend other previously scheduled dates in the prior scheduling order;

(2) Upon request of one or more of the parties to an *active proceeding* submitted through eCCB. Requests to amend the scheduling order and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter;

(3) As necessary to adjust the schedule for conferences or hearings or the staying of the proceeding;

(4) As necessary to facilitate settlement pursuant to § 222.18; or

(5) Upon its own initiative in the interests of maintaining orderly administration of the Board's docket.

§ 222.12 Amending pleadings.

(a) *Amendments before service.* A claimant who has been notified pursuant to § 224.1(c)(2) of this subchapter that a claim does not comply with the applicable statutory and regulatory requirements may freely amend any part of the claim as part of an amended claim filed under 17 U.S.C. 1506(f)(1)(B). A claimant who has been notified pursuant to § 224.1(c)(1) of this subchapter that a claim has been found to comply with the applicable statutory and regulatory requirements may freely amend the claim once as a matter of course prior to service. Any claim that is amended shall be submitted for compliance review under § 224.1(a) of this subchapter.

(b) *Amendments during the opt-out period.* A claimant may not amend a claim during the opt-out period for any respondent.

(c) *Amendment of counterclaim before response.* A counterclaimant may freely amend its counterclaim once as a matter of course prior to filing of the response to the counterclaim. The filing of any amended counterclaim shall suspend the time for responding to the counterclaim and the counterclaim shall be submitted for compliance review under § 224.1(a) of this subchapter. A counterclaimant who has been notified pursuant to § 224.1(c)(2) of this subchapter that a counterclaim does not comply with the applicable statutory and regulatory requirements may amend any part of the counterclaim as part of an amended counterclaim filed under 17 U.S.C. 1506(f)(2). The counterclaim respondent shall file a response to the amended counterclaim within 30 days following compliance review approval of the amended counterclaim.

(d) *All other amendments.* In all other cases, a party may amend its pleading only with the Board's leave. If the Board grants leave, any amendment shall be submitted for a compliance review under § 224.1(a) of this subchapter.

(1) *Time to respond.* Unless the Board orders otherwise or as otherwise covered by this subchapter, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 30 days after the Board's notification that the amended pleading is compliant, whichever is later.

(2) *Procedure for request for leave to amend.* The party seeking leave to amend must submit a request to the Board setting forth the reasons why an amended pleading is appropriate. Requests for leave to amend and any responses thereto shall follow the procedures set forth in § 220.5(a)(2) of this subchapter.

(3) *Standard for granting leave to amend.* In determining whether to grant leave to amend a pleading, the Board shall grant leave if justice so requires after considering whether any other party will be prejudiced if the amendment is permitted (including the impact the amendment might have on a respondent's right to opt out of the proceeding), whether the proceedings will be unduly delayed if the amendment is permitted, and whether the basis for the amendment reasonably should have been known to the amending party before the pleading was served or during the time period specified in paragraph (a) of this section, along with any other relevant considerations. If leave is granted, it shall only be granted regarding the specific amendments described in the request.

§ 222.13 Consolidation.

(a) *Consolidation.* If a claimant has multiple *active proceedings* against the same respondent or that arise out of the same facts and circumstances, the Board may consolidate the proceedings for purposes of conducting discovery, submitting evidence to the Board, or holding hearings. Consolidated proceedings shall remain separate for purposes of Board determinations and any damages awards.

(b) *Timing.* The Board may consolidate proceedings at any time upon its own authority or following consideration of a request by any party, with reasonable notice and opportunity to be heard provided to all affected parties.

(c) *Procedure.* The party seeking consolidation must submit a request to the Board setting forth the reasons for the request, requesting a conference with the Board and the parties from each affected case, and providing the Board with the docket numbers for each affected proceeding. Requests for consolidation and any responses thereto shall follow the procedures set forth in § 220.5(a)(2) of this subchapter.

(d) *Standard for granting request.* In determining whether to grant a request to consolidate, the Board shall balance the need for and benefits of consolidation with the timeliness of the request and whether any undue prejudice has resulted from the delay in making the request.

§ 222.14 Additional parties.

(a) *When applicable.* A necessary party is a person or entity whose absence would prevent the Board from according complete relief among existing parties, or who claims an interest related to the subject of the proceeding such that reaching a determination in the proceeding may impair or impede that person's or entity's ability to protect that interest as a practical matter, or in whose absence an existing party would be subject to a substantial risk of incurring double, multiple, or inconsistent obligations because of that interest.

(b) *Failure to join a necessary party.* At any time, any party who believes in good faith that a necessary party has not been joined, and therefore the case is unsuitable for Board proceedings, may file a request according to the procedures set forth in §§ 220.5(a)(2) and 224.2(c) of this subchapter. Any party opposing the request may file a response according to the procedures set forth in §§ 220.5(a)(2) and 224.2(c). If the Board determines that a necessary party has not been joined, it shall dismiss the proceeding without prejudice as unsuitable for CCB proceedings pursuant to § 224.2.

(c) *Intervention of a necessary party.* At any time, a third party seeking to intervene on the ground(s)s that it is a necessary party may file a request setting forth the reasons for the request and requesting a conference with the Board. Requests to intervene and any responses thereto shall follow the procedures set forth in § 220.5(a)(2) of this subchapter. After evaluating the parties' submissions, the Board may hold a conference between the parties to the proceeding and the intervening party to address the request.

(d) *Board determination.* (1) If the Board determines that the intervening party is not a necessary party, it shall deny the request and resume the proceeding, unless all parties agree that the party should be joined.

(2) If the Board determines that the intervening party is a necessary party, it shall—

(i) Permit the intervening party to join the proceeding, if no party indicated

that it opposed the request to intervene; or

(ii) Dismiss the proceeding without prejudice, if any party indicated that it opposed the request to intervene.

§ 222.15 Written testimony on the merits.

(a) *Timing.* After the close of discovery and by the times specified within the scheduling order, any party asserting a claim or counterclaim shall file written direct testimony in support of that claim or counterclaim. Any party responding to a claim or counterclaim shall file written response testimony within 45 days following the date of service of written direct testimony. Any party who asserted a claim or counterclaim may file written reply testimony within 21 days following the date of service of written response testimony. All written testimony shall be uploaded to eCCB.

(b) *Direct and response testimony.* Written direct and response testimony shall consist of documentary evidence and a party statement, and may include witness statements.

(1) *Documentary evidence.* (i) Documentary evidence must be accompanied by a statement that lists each submitted document and provides a brief description of each document and how it bears on a claim or counterclaim; and

(ii) Direct or response documentary evidence shall only include documents that were served on opposing parties pursuant to the scheduling order, absent leave from the Board, which shall be granted only for good cause.

(2) *Witness statements.* A witness statement must—

(i) Be sworn under penalty of perjury by the witness;

(ii) Be detailed as to the substance of the witness's knowledge and must be organized into numbered paragraphs; and

(iii) Contain only factual information based on the witness's personal knowledge and may not contain legal argument.

(3) *Party statement.* A party statement—

(i) Shall set forth the party's position as to the key facts and damages, as well as any position as to the law;

(ii) Need not have a table of contents or authorities;

(iii) Shall be limited to 12 pages, other than any optional table of contents or authorities, and shall meet the requirements set forth in § 220.5(b) of this subchapter;

(iv) For a claimant or counterclaimant seeking damages for copyright infringement, shall include a statement as to whether the party is electing to seek statutory damages or actual damages and any profits. Alternatively, at any stage of the proceedings, either before or after the submission of written testimony, a claimant or counterclaimant may submit a statement following the procedures set forth in § 220.5(a)(1) of this subchapter indicating the election of the form of damages. This election may be changed at any time up until *final determination* by the Board; and

(v) For a respondent or counterclaim respondent, may include a statement as to whether, if found liable on a claim or counterclaim, the party would voluntarily agree to an order to cease or mitigate any unlawful activity. Such an election must be made, or changed if made earlier, no later than the filing of the respondent's or counterclaim respondent's party statement, or at a hearing if one is ordered by the Board. Such an election may be considered in appropriate cases by the Board in determining an amount of damages, if any, pursuant to 17 U.S.C. 1504. Such a statement will not be considered by the Board in any way in making its determination as to liability, and shall be considered only as to damages.

(c) *Reply testimony.* Written reply testimony must be limited to addressing or rebutting specific evidence set forth in written response testimony. Written reply testimony may consist of documentary evidence, witness statements, and a party statement as set forth in this paragraph (c).

(1) *Documentary evidence.* In addition to the requirements of paragraph (b)(1) of this section, documentary evidence presented by a party as part of written reply testimony must be limited to documentary evidence required to contradict or rebut specific evidence that was presented in an opposing party's written response testimony and shall not include any documentary evidence previously presented as part of the submitting party's direct testimony.

(2) *Witness statements.* In addition to the requirements of paragraph (b)(2) of this section, a reply witness statement must be limited to facts not previously included in that witness's prior statement, and must be limited to facts that contradict or rebut specific evidence that was presented in an opposing party's written response testimony.

(3) *Party statement.* A party statement in reply must be limited to rebutting or addressing an opposing party's written response testimony and may not include any discussion of the facts, the law, or damages that was included in that party's direct party statement. A reply party statement shall meet the requirements set forth in § 220.5(b) of this subchapter and must be limited to seven pages.

(d) *Certification.* All written testimony submitted to the Board must include a certification by the party submitting such testimony that it is accurate and truthful.

(e) *Request for hearing.* Any party may include in a party statement a request for a hearing on the merits before the Board, consistent with § 222.16.

(f) *No additional filing.* Following filing of any written reply testimony, no further written testimony or evidence may be submitted to the Board, unless at the specific request of the Board or with the Board's leave, or as appropriate at a hearing on the merits ordered by the Board.

§ 222.16 Hearings.

(a) *Timing.* In any action, the Board may hold a hearing following submission of each party's written direct, response, and reply testimony if it determines that such a hearing is appropriate or advisable. The Board may decide to hold a hearing on its own initiative or after consideration of a request for a hearing from any party.

(b) *Virtual hearings.* All hearings shall be held virtually and may be recorded as deemed necessary by the Board.

(c) *Requesting a hearing.* A request for a hearing on the merits of a case may be included in a party statement, pursuant to § 222.15(e), but may also be submitted following the procedures set forth in § 220.5(a)(1) of this subchapter no later than 7 days after the date by which reply testimony may be submitted under § 222.15(a). The Board, in its sole discretion, shall choose whether to hold a hearing, and may elect to hold a hearing absent a request from a party.

(d) *Content of request.* Any request in a party statement for a hearing on the merits of a case shall consist of a short statement providing the reasons why the party believes the request should be granted.

(e) *Scheduling order.* When the Board determines that a hearing on the merits of a case is appropriate, it will issue an amended scheduling order setting forth the date of the hearing and deadlines for any additional evidence requested by the Board or for a pre-hearing conference, if applicable.

(f) *Close of evidence.* Following a hearing on the merits of a case, no additional written testimony or evidence may be submitted to the Board unless at the Board's specific request or with leave of the Board for good cause shown.

§ 222.17 Withdrawal of claims; dismissal.

(a) *General.* A party may request to withdraw its own claim or counterclaim by filing a written request with the Board seeking withdrawal, and therefore dismissal. Such written request shall consist of a brief statement seeking dismissal and shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

(b) *Withdrawal before a response.* If the written request is received before a response to the claim or counterclaim is filed with the Board, the Board shall dismiss the claim or counterclaim without prejudice, unless all parties agree in a written stipulation filed with the Board that the claim or counterclaim shall be dismissed with prejudice.

(c) *Withdrawal after a response.* If the written request is received after a response to the claim or counterclaim is filed with the Board, the Board shall issue a *final determination* dismissing the claim or counterclaim with prejudice, unless the Board determines in the interests of justice that such dismissal shall be without prejudice or all parties agree in a written stipulation filed with the Board that the claim or counterclaim shall be dismissed without prejudice.

(d) *Effect of dismissal.* Dismissal of a claim or counterclaim under this section will not affect remaining claims or counterclaims in the proceeding.

§ 222.18 Settlement.

(a) *General.* The Board shall facilitate voluntary settlement between the parties of any claims or counterclaims. The appropriateness of a settlement conference, at a minimum, shall be raised by the Board at the pre-discovery and post-discovery conferences set forth in § 222.11(b).

(b) *Requesting a settlement conference*—(1) *Timing.* At any point in an *active proceeding,* some or all of the parties may jointly request a conference with an Officer to facilitate settlement discussions.

(2) *Form and content of request.* The request can be made orally at any Board conference or it can be made in writing. If made in writing, the request shall consist of a brief statement requesting a settlement conference and indicating which parties join in the request. Parties may also include a request to stay the proceedings while settlement discussions are ongoing. Granting a request for a stay shall be at the Board's discretion. Requests for a settlement conference and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

(c) *Scheduling settlement conference.* If the request for a settlement conference, and any request for a stay, is jointly made among the parties, or if no party files a response within seven days of the date of service of the request, the Board shall schedule a settlement conference with all parties subject to the request. If one or more parties files a response, upon consideration of the objections and whether any claims or counterclaims may be resolved with only the consenting parties in attendance, the Board may schedule a conference with some or all parties.

(d) *Settlement proceedings.* Three days prior to a settlement conference, each party participating in the conference shall submit a position statement to the presiding Officer by email and, when there is agreement among the parties, send such statement to the other participating parties outside of eCCB. The position statement shall not exceed five pages, and shall attach no more than 20 pages of exhibits, absent leave of the presiding Officer, although leave shall not be necessary should the page limit be exceeded due to an exhibit being a necessary agreement or contract. Settlement statements shall meet the requirements set forth in § 220.5(b) of this subchapter, but shall not be filed on eCCB. The statement must set forth:

(1) A brief overview of the facts and contentions;

(2) The relief sought, including the amount of damages, if any;

(3) Whether or to what extent the alleged wrongful conduct is currently taking place; and

(4) Any prior attempts at resolution, including any offers or counteroffers made to the other party.

(e) *Recusal of presiding Officer.* The Officer presiding over the settlement conference shall not participate in rendering a determination in the proceeding, unless the other Officers cannot reach a consensus as to the determination. The presiding Officer may review the record and attend any hearing that is held but shall not actively participate in the hearing or any substantive discussion among the Officers concerning the proceeding or the determination, except that such discussions may be allowed once it is known that the other Officers cannot reach a consensus as to the determination.

(f) *Stay of proceeding.* To provide the parties with an opportunity to pursue settlement and negotiate any resulting settlement agreement, the Board in its discretion may stay the proceeding for a period of 30 days concurrently with an order scheduling a settlement conference, at the time of or following the settlement conference, or at the request of the parties. The parties may request an extension of the stay in good faith to facilitate ongoing settlement discussions. Requests to stay or extend a stay of the proceeding and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter. If a settlement has not been reached at the time the stay, or any extension thereof, has expired, the Board shall issue an amended scheduling order to govern the remainder of the proceeding.

(g) *Settlement agreement.* If some or all parties reach a settlement, such parties may submit to the Board a joint request to dismiss some or all of the claims and counterclaims. The parties may include a request that the Board adopt some or all of the terms of the settlement in its *final determination.* Joint requests for dismissal shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

(h) *Effect of settlement agreement.* Upon receipt of a joint request to dismiss claims due to settlement, the Board shall dismiss the claims or counterclaims contemplated by the agreement with prejudice, unless the parties have included in their request that the claims or counterclaims shall be dismissed without prejudice. If the parties have requested that the Board adopt some or all of the terms of the settlement in its *final determination,* the Board may issue a *final determination* incorporating such terms unless the Board finds them clearly unconscionable.

§ 222.19 Protective orders; personally identifiable information.

(a) *Standard protective order.* At the request of any party, the Board's standard protective order, as described in this section, shall govern all discovery material exchanged during the proceeding to protect against improper use or disclosure. Requests for a standard protective order shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

(1) *Standard of use.* Discovery material received from another party may be used only in connection with the proceeding, and all copies must be returned or disposed of within 30 days of a determination or dismissal, or within 30 days of the exhaustion of the time for any review or appeal of the Board's *final determination,* whichever is later.

(2) *Confidentiality.* Discovery material may be designated as ''confidential'' only if the party reasonably and in good faith believes that it consists of:

(i) Bona fide confidential financial information previously not disclosed to the public;

(ii) Bona fide confidential and non-obvious business plans, product development information, or advertising or marketing plans previously not disclosed to the public;

(iii) Any information of a truly personal or intimate nature regarding any individual not known by the public; or

(iv) Any other category of information that the Board grants leave to designate as ''confidential.''

(3) *Case-by-case basis.* Parties must make confidentiality determinations on a document-by-document basis and shall not designate as ''confidential'' all discovery material produced in bulk.

(4) *Submitting confidential information.* Confidential discovery materials, or references to or discussions of confidential discovery materials in other documents, may be submitted to the Board by either filing them under seal or redacting the confidential document. If filed under seal, the confidential document must be accompanied by a redacted copy that may be included in the public record.

(5) *Determination of confidentiality by the Board.* After notice and an opportunity for the designating party to respond, the Board in its discretion may remove a confidentiality designation from any material on its own initiative or upon consideration of a request from a party. Parties must attempt to resolve disputes over confidentiality designations before bringing such disputes to the Board. Requests to remove a confidentiality designation and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

(b) *Custom protective orders.* Custom protective orders negotiated by the parties are disfavored. The parties may request that the Board enter a custom protective order that has been negotiated by the parties and that may provide for additional protections for highly sensitive materials. Such a request must be accompanied by a stipulation between the parties that explains the need for such a custom protective order and shall follow the procedures set forth in § 220.5(a)(1) of this subchapter. The custom protective order must be attached as an exhibit to the request. The Board may in its discretion decide whether to grant the parties' request for a custom protective order.

(c) *Personally identifiable information.* Regardless of whether discovery material has been designated as ''confidential,'' parties must redact social security numbers, taxpayer identification numbers, birth dates, health information protected by law, the names of any individuals known to be minors, and financial account numbers from any public filings.

(d) *Violations of protective order.* Violations of a protective order may constitute *bad-faith conduct* pursuant to § 232.3 of this subchapter.

§ 222.20 Evidence.

(a) *Admissibility.* All evidence that is relevant and not unduly repetitious or privileged shall be admissible. Evidence which has authentication or credibility issues will have its weight discounted accordingly. The Board reserves the right to discount evidence or not admit evidence with serious credibility issues entirely, or to request clarification from a party.

(b) *Examination of witnesses.* All witnesses testifying at a hearing before the Board shall be required to take an oath or affirmation before testifying. At a hearing, any member of the Board may administer oaths and affirmations, ask questions of any witness, and each party shall have the opportunity to ask questions of each witness and the other parties. The Board shall manage the conduct of the hearing and may limit the number of witnesses or scope of questioning.

(c) *Exhibits in hearing*—(1) *Submission.* Unless they are specifically excluded by the Board's own initiative or due to the Board's ruling on an objection raised by a party, all documents submitted by the parties through their statements submitted under § 222.15 shall be deemed admitted and marked as exhibits in the same order as presented through the documentary evidence a party submitted with the party statement. To the extent additional documents are allowed by the Board at a hearing on the merits, such evidence may also be presented as exhibits to all parties and marked by the presenting party starting with the next number after the exhibits attached to the party's document statement.

(2) *Summary exhibits.* The contents of voluminous documentary evidence which cannot be conveniently examined at the hearing may be presented in the form of a chart, summary, or calculation. Absent leave of the Board, evidence supporting the summary exhibit must have been produced to the other parties in discovery and admitted as exhibits, and the summary exhibit must be disclosed to the other parties in the proceeding at least seven days before the hearing.

(d) *New exhibits for use in cross-examination or redirect examination.* Exhibits not submitted as part of written testimony may not be used at a hearing without leave of the Board. Leave to use such exhibits may be requested before or during the hearing. Requests to use an exhibit not submitted as part of written testimony and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

PART 224—REVIEW OF CLAIMS BY OFFICERS AND ATTORNEYS

■ 11. The authority citation for part 224 continues to read as follows:

Authority: 17 U.S.C. 702, 1510.

■ 12. Amend § 224.2 by revising paragraphs (b) and (c) to read as follows:

§ 224.2 Dismissal for unsuitability.

* * * * *

(b) *Dismissal by the Board for unsuitability.* (1) If, upon recommendation by a Copyright Claims Attorney as set forth in paragraph (a) of this section or at any other time in the proceeding upon the request of a party or on its own initiative, the Board determines that a claim or counterclaim should be dismissed for unsuitability under 17 U.S.C. 1506(f)(3), the Board shall issue an order stating its intention to dismiss the claim without prejudice.

(2) Within 30 days following issuance of an order under paragraph (b) of this section, the claimant or counterclaimant may request that the Board reconsider its determination of unsuitability. If the proceeding is active, the respondent or counterclaim respondent may file a response within 30 days following filing of the claimant's request. A request or response made under this paragraph shall not exceed 7 pages and shall meet the requirements set forth in § 220.5(b) of this subchapter.

(3) Following the expiration of the time for the respondent or counterclaim respondent to submit a response, the Board shall render its final decision whether to dismiss the claim for unsuitability.

(c) *Request by a party to dismiss a claim or counterclaim for unsuitability.* At any time, any party who believes that a claim or counterclaim is unsuitable for determination by the Board may file a request that shall not exceed five pages providing the basis for such belief. An opposing party may file a response within 14 days setting forth the basis for such opposition to the request. A request or response made under this paragraph shall meet the requirements set forth in § 220.5(a)(2) of this subchapter.

■ 13. Part 225 is added to read as follows:

PART 225—DISCOVERY

Sec.
225.1 General practices.
225.2 Standard interrogatories.
225.3 Standard requests for the production of documents.
225.4 Additional discovery.
225.5 Disputes and sanctions.

Authority: 17 U.S.C. 702, 1510.

§ 225.1 General practices.

(a) *Standard discovery practice.* Except as otherwise provided in this section, discovery in proceedings before the Copyright Claims Board (Board) shall be limited to the methods set forth in this part and shall use the standard forms provided on the Board's website. Discovery responses and documents shall be served on the other parties in accordance with § 222.5(e) of this subchapter and shall not be filed with the Board unless as part of written testimony or as needed in support of other filings.

(1) *Certifications.* All discovery material exchanged among the parties must include a certification by the party submitting such material.

(i) For responses to interrogatories or any requests for admission permitted by the Board, the certification shall affirm that the responses are accurate and truthful to the best of the submitting party's knowledge.

(ii) For the production of documents, the certification shall affirm that the produced documents are genuine and unaltered to the best of the producing party's knowledge.

(2) *Form of requests to Board.* Requests to the Board related to discovery may be raised to the Board during a conference or by written request, as set forth in this section.

(3) *Reasonable investigation.* Parties shall make a reasonable investigation under the circumstances to adequately respond to discovery requests.

(b) *Timing of discovery.* The exchange of discovery material shall take place at the times and within the deadlines specified by the scheduling order. The Board may modify the discovery deadlines set forth in the scheduling order at the request of any party upon a showing of good cause or on its own initiative. Such requests may be made orally during a conference with the Board or by written request. Written requests for modification of a discovery deadline and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

(c) *Conferences.* The Board shall hold a pre-discovery conference and a post-discovery conference, as set forth in § 222.11(b) of this subchapter. The Board may hold additional conferences to manage discovery and resolve any disputes, at its own election or at the request of any party. Requests for a discovery conference not involving a dispute and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter. Requests for a discovery conference involving a dispute and any responses thereto shall follow the procedures set forth in § 220.5(a)(2). Such conferences may be held by one or more Copyright Claims Officers. Conferences shall be held virtually.

(d) *Documents.* As used in this part, the term ''document'' shall refer to any tangible piece of information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form, whether in written or electronic form, an object, or otherwise. The Board shall read this definition broadly so that there is a comprehensive production of materials by each side needed to fairly decide matters before the Board, so long as that production can be easily accomplished by a layperson.

§ 225.2 Standard interrogatories.

(a) *General.* Parties in an *active proceeding* shall use the set of *standard interrogatories* provided on the Board's website. *Standard interrogatories* shall consist of information pertaining to:

(1) The identity of witnesses whom the parties plan to use in the proceeding, including contact information for the witnesses, if known, and a brief description of the subject matter on which they may testify;

(2) The identity of any other individuals who may have material information related to the claims or defenses, including contact information for the individuals, if known;

(3) Any agreement or other relationship between the parties relevant to the claim;

(4) Any harm suffered or damages sought; and

(5) Any materially responsive documents that the party is aware exist or once existed, but are not in the possession of that party.

(b) *For a party asserting infringement.* In addition to paragraph (a) of this section, the *standard interrogatories* for a party asserting an infringement claim or responding to a claim for non-infringement shall consist of information pertaining to:

(1) The allegedly infringed work's copyright registration, to the extent such information differs from or adds to information provided in the claim;

(2) For works requiring copyright formalities, the extent the allegedly infringed work complied with such copyright formalities;

(3) The party's ownership of the copyright in the allegedly infringed work;

(4) Publication of the allegedly infringed work;

(5) The creation date and creation process for the allegedly infringed work, including whether the work is a joint or derivative work or was created through employment or subject to an agreement;

(6) Where the allegedly infringed work is a derivative work, the preexisting elements in the work, including ownership of those preexisting elements, and rights to use those preexisting elements;

(7) A description of how the party believes the alleged infringer gained access to the allegedly infringed work;

(8) The basis for the party's belief that the opposing party's activities constitute infringement of the allegedly infringed work;

(9) The discovery of the opposing party's alleged infringement by the party;

(10) A description of any harm suffered and, to the extent known, a calculation of the damages requested by the party as a result of the alleged infringement; and

(11) Any attempts by the party to cause the infringement to be ceased or mitigated prior to bringing the claim.

(c) *For a party asserting non-infringement.* In addition to the information in paragraph (a) of this section, the *standard interrogatories* for a party responding to an infringement claim or asserting a claim for non-infringement shall consist of information pertaining to:

(1) The party's ownership of the copyright in the allegedly infringing material;

(2) The dissemination history of the allegedly infringing material;

(3) The creation date and creation process for the allegedly infringing material, including whether any allegedly infringing work is a joint or derivative work or was created through employment or subject to an agreement;

(4) Where the allegedly infringing material is a derivative work, the preexisting elements in the work, including ownership of those preexisting elements, and rights to use those preexisting elements;

(5) Any information indicating that the party alleging infringement does not own a copyright in the allegedly infringed work;

(6) All defenses to infringement asserted by the party and a detailed basis for those defenses. Defenses listed in timely answers and timely updated answers to the *standard interrogatories* shall be considered by the Board and will not require an amendment of the response to an infringement claim or an amendment of a claim for non-infringement;

(7) The basis for any other reasons the party believes that its actions do not constitute infringement;

(8) Any continued use or dissemination of the allegedly infringing material; and

(9) For a party responding to infringement claims or counterclaims, the revenues and profits the party has received that are directly related to the sale or use of the allegedly infringing material, as well as the deductible expenses directly related to that sale or use, and any elements of profit for that sale or use that the party believes are attributable to factors other than the copyrighted work.

(d) *For a party asserting misrepresentation.* In addition to the information in paragraph (a) of this section, the *standard interrogatories* for a party asserting a claim of misrepresentation under 17 U.S.C. 512(f) shall consist of information pertaining to:

(1) The notification or counter notification that allegedly contained a misrepresentation;

(2) The identity of the internet service provider to which the notification or counter notification was sent;

(3) Identification and a description of any communications with the internet service provider, the parties, or others related to the notification or counter notification at issue;

(4) The basis for the party's belief that the notification or counter notification included a misrepresentation; and

(5) The harm, including a description and calculation of damages, caused by the alleged misrepresentation.

(e) *For a party responding to misrepresentation claims.* In addition to the information in paragraph (a) of this section, the *standard interrogatories* for a party responding to a claim of misrepresentation under 17 U.S.C. 512(f) shall consist of information pertaining to:

(1) All defenses asserted to the misrepresentation claim and the basis for those assertions. Defenses listed in timely answers and timely updated answers to the *standard interrogatories* shall be considered by the Board and will not require an amendment of the response;

(2) The basis for any other reasons the party believes that its statement did not constitute a misrepresentation; and

(3) Identification and a description of any communications with the internet service provider, the parties, or others related to the notification or counter notification at issue.

(f) *Duty to update.* A party has an obligation to update its interrogatory responses and serve updated responses on the other parties as soon as practicable after the discovery of new or updated information.

§ 225.3 Standard requests for the production of documents.

(a) *General.* Parties in an *active proceeding* shall use the relevant set of *standard requests for the production of documents* provided on the Board's website. *Standard requests for the production of documents* shall include copies of:

(1) All documents the party is likely to use in support of its claims or defenses;

(2) All other documents of which the party is reasonably aware that conflict with the party's claims or defenses in the proceeding;

(3) All documents referred to in, or that were used in preparing, any of the party's responses to *standard interrogatories;* and

(b) *For a party asserting infringement.* In addition to the information in paragraph (a) of this section, the *standard requests for the production of documents* for a party asserting an infringement claim or responding to a claim for non-infringement shall include copies of:

(1) The work claimed to be infringed, its copyright registration, and all correspondence with the Copyright Office regarding that registration;

(2) The allegedly infringing material, if reasonably available;

(3) Where the allegedly infringed work is a derivative work, documents showing the preexisting works used and related to ownership of and rights to use those preexisting elements;

(4) Documents related to the allegedly infringing material, including communications about the allegedly infringing material;

(5) Documents showing or negating the ownership or rights of the party claiming infringement in the works at issue, including agreements showing the ownership or transfer or rights in the works;

(6) Documents sufficient to show the damages suffered by the party as a result of the alleged infringement; and

(7) Documents showing attempts by the party to cause the cessation or mitigation of infringement prior to bringing the claim.

(c) *For a party asserting non-infringement.* In addition to the information in paragraph (a) of this section, the *standard requests for the production of documents* for a party responding to an infringement claim or asserting a claim for non-infringement shall include copies of:

(1) The allegedly infringing material;

(2) Documents related to the allegedly infringed work, including communications regarding the allegedly infringed work;

(3) Documents related to the creation of the allegedly infringing material, including documents showing or negating rights to use the allegedly infringing material; and

(4) For a party responding to infringement claims or counterclaims, documents sufficient to show the revenues and profits the party has received directly related to the sale or use of the allegedly infringing material, as well as the deductible expenses directly related to that sale or use, and the elements of profit for that sale or use that the party believes are attributable to factors other than the copyrighted work.

(d) *For a party asserting misrepresentation.* In addition to the information in paragraph (a) of this section, the *standard requests for the production of documents* for a party asserting a claim of misrepresentation under 17 U.S.C. 512(f) shall include copies of:

(1) The notification or counter notification at issue;

(2) Communications with the internet service provider concerning the notification or counter notification at issue;

(3) Documents directly pertaining to the truth or falsity of any representations made in the notification or counter notification; and

(4) Documents sufficient to show the damages suffered by the party as a result of the alleged misrepresentation.

(e) *For party responding to misrepresentation claims.* In addition to the information in paragraph (a) of this section, *the standard requests for the production of documents* for a party responding to a claim of misrepresentation under 17 U.S.C. 512(f) shall include copies of:

(1) Communications with the internet service provider concerning the notification or counter notification at issue; and

(2) Documents directly pertaining to the truth or falsity of any

representations made in the notification or counter notification.

(f) *Document searches and productions*—(1) *General.* Each party shall have an obligation to conduct a reasonable search for any responsive documents of any files in its possession or under its control, including the files of any of the party's agents, employees, representatives, or others acting on the party's behalf who the party reasonably believes may have responsive documents.

(2) *Electronically stored information.* Documents responsive to the *standard requests for the production of documents,* or any additional requests permitted by the Board, including electronically stored information (ESI), including emails and computer files. A reasonable search under the circumstances shall include the ESI of the party and the party's agents, employees, representatives, or others acting on the party's behalf who the party reasonably believes may have responsive documents, except that—

(i) ESI searches need not exceed manual searches that are easily accomplished by a layperson; and

(ii) Parties need not conduct searches that would reasonably require the assistance of third parties, such as a document vendor that the party would have to hire to assist with or accomplish document collection or storage.

(3) *Voluminous productions.* Responses to document requests that include large amounts of irrelevant or duplicative material are prohibited and may constitute *bad-faith conduct.*

(4) *Duty to update.* A party has an obligation to preserve all material documents and to update its production of documents by providing to the other parties any documents it later finds responsive to the Board's *standard requests for the production of documents* or any other document requests allowed by the Board as soon as practicable after the discovery of such documents.

(g) *Privileged documents.* Confidential communications with external counsel or in-house counsel reflecting or seeking legal advice related to the merits of the proceeding shall be considered privileged and need not be produced or logged. Parties must seek leave of the Board to withhold additional documents as privileged by filing a request with the Board. Requests to withhold additional documents as privileged and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

§ 225.4 Additional discovery.

(a) *Requests for additional discovery.* Any party may request additional discovery within the deadlines set forth in the scheduling order.

(1) *Allowable discovery.* Except for the standard discovery provided in this part, any additional discovery requested must be narrowly tailored to the issues at hand, not covered by the standard discovery set forth in this part, highly likely to lead to the production of information relevant to the core issues of the matter, and not result in an undue burden on the party responding to the request.

(2) *Standard for additional discovery.* The Board will grant a request for additional discovery upon a showing of good cause. In considering a request for additional discovery, the Board shall balance the needs and circumstances of the case against the burden of additional discovery on any party, along with the amount in dispute and the overall goal of efficient resolution of the proceeding.

(3) *Consent from parties.* Prior to filing a request for additional discovery, the requesting party should make reasonable efforts to secure the consent of, or a compromise with, the other party regarding the proposed additional discovery request.

(4) *Form of request.* Requests for additional discovery and any responses thereto shall follow the procedures set forth in § 220.5(a)(2) of this subchapter. Unless otherwise specified in this section, a request for additional discovery must—

(i) Specifically indicate the type of additional discovery requested and the information sought, including the specific requests themselves;

(ii) Set forth in detail the need for the request; and

(iii) Indicate whether the other parties consent or object to the request.

(b) *Requests for expert witnesses.* An expert witness may be used in a proceeding only with leave of the Board. The use of expert witnesses in proceedings before the Board is highly disfavored and requests shall be rarely granted.

(1) *Standard for permitting expert witnesses.* The Board shall grant a request by a party to introduce an expert witness only in exceptional circumstances and upon a showing that the case cannot fairly proceed without the use of the expert. In considering a request for an expert witness, the Board shall balance the needs and circumstances of the case, and whether the request is made by one party or jointly among the parties, against the burden that permitting the expert testimony would impose on any other party, the costs to the opposing party of retaining a rebuttal witness, the amount in dispute, and the overall goal of efficient resolution of the proceeding. If the Board grants a request by a party to introduce an expert witness, an opposing party shall have the opportunity to introduce a rebuttal expert witness as a matter of course within an appropriate amount of time set by the Board. The Board will set a schedule for the service of the expert report and any rebuttal report and will adjust the dates in the existing scheduling order as needed.

(2) *Form of request.* Requests for an expert witness and any responses thereto shall follow the procedures set forth in § 220.5(a)(2) of this subchapter. The request must specifically indicate the topics of the expert's proposed testimony, the name of the proposed expert, and the anticipated cost of retaining the expert, and must set forth the basis and justifications for the request, and indicate whether the other parties consent or object to the request.

(3) *Form of expert testimony.* Any expert testimony permitted by the Board shall be submitted along with the offering party's written direct or response testimony in the form of an expert statement. An expert statement must—

(i) Be sworn under penalty of perjury by the expert witness;

(ii) Be organized into numbered paragraphs;

(iii) Be detailed as to the substance of the expert's opinion and the basis and reasons therefor;

(iv) Disclose the facts or data considered by the expert witness in forming the expert witness's opinions;

(v) Describe the expert witness's qualifications, including a list of all publications authored and speaking engagements in the previous 10 years;

(vi) Include a list of all other cases in which the expert witness testified as an expert at trial or by deposition during the previous four years; and

(vii) Include a statement of the compensation to be paid for the study and testimony in the case.

(4) *Unauthorized expert testimony.* Any expert testimony that is introduced in any way without the Board's express permission shall be stricken by the Board and shall not be considered in the Board's determination.

(c) *Requests for admission.* Requests for admission may be served in a proceeding only with leave of the Board. Requests for admission are disfavored and requests to serve requests for admission may only be granted at the Board's discretion upon a showing of good cause. A request to serve requests

for admission, and any responses, shall follow the procedures set forth in paragraph (a) of this section.

(1) *Subject matter.* Requests for admission may pertain to:

(i) Facts, the application of law to fact, or opinions about either; and

(ii) The genuineness of any described documents, a copy of which must be attached to the request for admission.

(2) *Form of requests for admission.* Each matter must be separately stated in a request for admission in a numbered paragraph. Compound requests for admission shall not be permitted.

(3) *Responses to requests for admission.* A response to a request for admission must be served by the time specified by the Board. A matter admitted is conclusively established unless the Board, on request and for good cause shown, permits the admission to be withdrawn or amended. If a matter is not admitted, the answer must specifically deny it or state in detail why the responding party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter, and when good faith requires that a party qualify an answer or deny only part of a matter, the answer must specify the part admitted and qualify or deny the rest. The responding party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable investigation and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(4) *Failure to respond.* A matter is not automatically admitted if a party fails to respond to a request for admission within the required timeframe. However, the Board may deem it admitted in the Board's discretion subject to the Board's power to apply adverse inferences to discovery violations under 17 U.S.C. 1506(n)(3) according to the procedures set forth in § 225.5.

(d) *Depositions.* Depositions shall not be permitted in proceedings before the Board.

§ 225.5 Disputes and sanctions.

(a) *Obligation to attempt resolution.* Parties shall attempt in good faith to resolve any discovery disputes without the involvement of the Board. A party must confer with an opposing party in an attempt to reach a resolution prior to raising any discovery dispute with the Board.

(b) *Request for conference to resolve dispute.* If an attempt to resolve a discovery dispute fails, the party seeking discovery may file a request for a conference with the Board. Requests for conference to resolve a discovery dispute and any responses thereto shall follow the procedures set forth in § 220.5(a)(2) of this subchapter. The request may attach communications related to the discovery dispute or documents specifically discussed in the request related to the inadequacy of the document production and shall:

(1) Describe the dispute;

(2) State that party's position with respect to the dispute;

(3) Explain the attempts made to resolve the dispute without the involvement of the Board; and

(4) Attach any inadequate interrogatory responses or inadequate request for admission responses.

(c) *Determination by Board.* Following receipt of the request and any response, the Board may schedule a conference to address the discovery dispute in its discretion. One or more Officers may participate in the conference. During or following the conference, or, if no conference is held, after the Board reviews the request and any responses, the Board shall issue an order resolving the discovery dispute and, in the event of a decision in favor of the aggrieved party, setting a deadline for compliance.

(d) *Failure to comply with order.* If a party fails to timely comply with the Board's discovery order, the party seeking discovery may send a notice to the noncompliant party giving the noncompliant party 10 days to comply. If the noncompliant party fails to comply within 10 days of receipt of the notice, the aggrieved party may file a request for sanctions with the Board.

(e) *Sanctions*—(1) *Form of request for sanctions.* A request for sanctions and any response thereto shall be uploaded to eCCB and shall meet the requirements set forth in § 220.5(a)(2) of this subchapter. A request for sanctions shall attach the relevant and allegedly inadequate discovery responses already provided by the opposing party, except for disputes pertaining to responses to document requests, and shall set forth the basis for the request.

(2) *Standard for granting request.* Following receipt of a request for sanctions and any response from the opposing party, the Board may hold a conference to address the request for sanctions. In the Board's sole discretion and upon good cause shown, sanctions may be imposed if the opposing party is found to be noncompliant with the Board's discovery order.

(3) *Relief.* Sanctions imposed for noncompliance with a discovery order of the Board may include an adverse inference with respect to the disputed facts directly related to the discovery in question against the noncompliant party.

(4) *Implications for award of attorneys' fees and costs.* The Board may consider the assessment of discovery sanctions when considering the awarding of attorneys' fees and costs during a *final determination.*

■ 14. Part 226 is added to read as follows:

PART 226—SMALLER CLAIMS

Sec.
226.1 General.
226.2 Requesting a smaller claims proceeding.
226.3 Effect of counterclaims on a smaller claims proceeding.
226.4 Nature of a smaller claims proceeding.

Authority: 17 U.S.C. 702, 1510.

§ 226.1 General.

When total monetary relief sought in a claim does not exceed $5,000 (exclusive of attorneys' fees and costs), the claimant may choose to have the proceeding adjudicated under the procedures set forth in this part. The provisions of 37 CFR parts 220, 221, 223, 224, 227, 228, 229, 230, 231, 232, 233, and 234 and 37 CFR 222.1 through 222.10, 222.17, and 222.19 shall also apply to proceedings adjudicated under this part and no other procedures other than those set forth in this part shall apply, unless the Copyright Claims Board (Board) decides in its discretion that such application or non-application would not be in the interest of justice.

§ 226.2 Requesting a smaller claims proceeding.

A claimant may request consideration of a claim under the smaller claim procedures in this part at the time of filing a claim. The claimant may change its choice as to whether to have its claim considered under the smaller claim procedures at any time before service of the *initial notice.* If the claimant changes its choice, but the *initial notice* has already been issued, the claimant shall request reissuance of the *initial notice* indicating the updated choice. Once the claimant has served the *initial notice* on any respondent, the claimant may not amend its choice without consent of the other parties and leave of the Board.

§ 226.3 Effect of counterclaims on a smaller claims proceeding.

Where a claimant has chosen to proceed via a smaller claims proceeding, a respondent only may assert a counterclaim that seeks total monetary relief of $5,000 or less (exclusive of attorneys' fees or costs).

Any permissible counterclaims asserted by a respondent shall be adjudicated under the procedures set forth in this part.

§ 226.4 Nature of a smaller claims proceeding.

(a) *Proceeding before a Copyright Claims Officer.* A smaller claims proceeding shall be heard by one Copyright Claims Officer (Officer). One of the three Officers shall hear smaller claims proceedings on a rotating basis at the Board's discretion.

(b) *Initial scheduling order.* Upon confirmation that a proceeding has become active and the claimant has paid the second payment of the filing fee set forth in 37 CFR 201.3(g), and after completion of the 14-day period specified in the Board's order pursuant to § 222.7 of this subchapter, the Board shall issue an initial scheduling order that shall include the dates or deadlines for filing of a response to the claim and any counterclaims by the respondent and an initial conference with the Officer presiding over the proceeding. The Board or presiding Officer may issue additional scheduling orders or amend the scheduling order at its own discretion or upon request of a party pursuant to § 222.11(d) of this subchapter.

(c) *Initial conference*—(1) *In general.* An initial conference will take the place of the pre-discovery conference held in non-smaller claims proceedings. During the initial conference, the presiding Officer shall explain the steps of the proceeding, and the parties shall discuss the nature of the claims and any counterclaims and defenses as well as the possibility of settlement with the presiding Officer. While the presiding Officer in a smaller claims proceeding may discuss settlement with the parties, if a separate settlement conference is held, that settlement conference shall be held before an Officer who is not the presiding Officer.

(2) *Discovery.* During the initial conference, the presiding Officer shall discuss with the parties whether additional documents and information beyond any materials attached to the claim and response are necessary to reach a determination. Any order requiring documents or information to be produced shall be narrowly tailored to the merits of the proceeding and highly likely to lead to the production of information relevant to the core issues of the matter and not result in an undue burden on any party. If the presiding Officer determines that such documents and information are necessary, the presiding Officer shall order the parties to serve such documents and information on each other and set the date for such service to be accomplished.

(d) *Merits conference*—(1) *Timing of merits conference.* During or following the initial conference, the presiding Officer shall schedule a conference to further discuss the merits of the case.

(2) *Submission of materials before merits conference.* No later than 14 days before the merits conference, each party—

(i) Shall file with the presiding Officer evidence it wishes to be considered for the presiding Officer to decide the case as well as any evidence requested by the presiding Officer. All such evidence must have been served on the other parties to the proceeding before such filing, unless the evidence was received from the other side;

(ii) May submit a written statement that set forth its positions as to the claims, defenses, and any counterclaims, along with any damages sought and the types of damages sought. Such written statement shall follow the procedures set forth in § 220.5(b) of this subchapter and shall be limited to seven pages. No written responses shall be permitted; and

(iii) May submit witness statements that comply with § 222.15(b)(2) of this subchapter. No later than seven days before the merits conference, an opposing party may request that the witness whose statement was submitted appear at the merits conference so that the party may ask the witness questions relating the witness's testimony. The failure of a witness to appear in response to such a request shall not preclude the presiding Officer from accepting the statement, but the presiding Officer may take the inability to question the witness into account when considering the weight of the witness's testimony.

(3) *Failure to submit evidence.* If a party fails to submit evidence in accordance with the presiding Officer's request, or submits evidence that was not served on the other parties or provided by the other side, the presiding Officer may discuss such failure with the parties during the merits conference or may schedule a separate conference to discuss the missing evidence with the parties. The presiding Officer shall determine an appropriate remedy, if any, for the failure to submit evidence in accordance with the presiding Officer's request, including but not limited to drawing an adverse inference with respect to disputed facts, pursuant to 17 U.S.C. 1506(n)(3), if it would be in the interests of justice.

(4) *Conduct of merits conference.* During the merits conference, each party shall have an opportunity to address the materials submitted by any other party and to present their position on the claims, defenses, and any counterclaims, along with any damages sought, if any, to the presiding Officer. The presiding Officer may also ask questions to any party or any witness.

(e) *Proposed findings of fact.* Following the merits conference, the presiding Officer shall prepare proposed findings of fact and shall serve the proposed findings of fact on each party. The proposed findings of fact shall include any adverse inference that the presiding Officer is considering applying due to a failure to submit evidence pursuant to paragraph (d)(3) of this section. Within 21 days from the date the proposed findings of fact are served—

(1) *Response to proposed findings of fact.* Any party may submit a written response to the proposed written findings of fact, including any adverse inferences identified by the presiding Officer. Such written response shall follow the procedures set forth in § 220.5(b) and be limited to five pages. Such written responses may not reference or attach any evidence that was not previously filed, unless the presiding Officer grants leave to do so. If the presiding Officer grants leave to reference or attach additional evidence, the other parties shall be provided an opportunity to respond to the new evidence in writing or during a conference;

(2) *Statement as to damages.* To the extent the claimant or counterclaimant has not already made an election as to whether it is seeking actual damages or statutory damages, a claimant or counterclaimant seeking damages shall file a statement, which may be included in its response to the proposed findings of fact, as to whether the party is seeking statutory damages or actual damages and any profits. This election may be changed at any time up until a *final determination;* and

(3) *Statement as to voluntary agreement to stop or mitigate unlawful activities.* A respondent or counterclaim respondent may inform the presiding Officer, at any time up to and including the merits conference, that if found liable on a claim or counterclaim, it would voluntarily agree to an order to cease or mitigate the unlawful activity. Such an election may be considered in appropriate cases by the presiding Officer in determining an amount of damages, if any, pursuant to 17 U.S.C. 1504. Such information will not be considered by the presiding Officer in

any way in making its determination as to liability, and shall be considered only as to damages.

(f) *Final determinations.* (1) After considering the information and arguments provided by the parties during the merits conferences and any other conferences ordered by the presiding Officer, along with any submissions filed by the parties, the presiding Officer shall issue a *final determination.*

(2) If, as described in § 227.1 of this subchapter, a respondent fails to appear or participate in a proceeding brought under the procedures set forth in this part, the presiding Officer shall transfer the proceedings to proceed under the rules governing default proceedings under part 227 of this subchapter, which may result in a *default determination* or dismissal of the claim. If proceedings continue under the rules governing default proceedings under part 227, any *default determination* must be issued by no fewer than two Officers. If the respondent cures a missed deadline or requirement, as described under § 227.1(c) of this subchapter, the proceeding shall resume under the procedures set forth in this part and the presiding Officer shall issue a revised scheduling order, if necessary.

(g) *Additional conferences.* In its discretion or upon the request of any party, the presiding Officer may hold additional conferences, including to manage the conduct of the proceeding, address disputes between the parties, settlement and engage in further discussion of the claims, counterclaims, or defenses and supporting evidence. Requests for a conference and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

(h) *No expert testimony.* Parties may not submit expert testimony for consideration. Any expert testimony submitted shall be disregarded by the assigned Officer.

■ 15. Part 227 is added to read as follows:

PART 227—DEFAULT

Sec.

227.1 Failure by respondent or counterclaim respondent to appear or participate in proceeding.
227.2 Submission of evidence by claimant or counterclaimant in support of default determination.
227.3 Notice of proposed default determination.
227.4 Opportunity for respondent or counterclaim respondent to submit evidence.
227.5 Issuance of determination.

Authority: 17 U.S.C. 702, 1510.

§ 227.1 Failure by respondent or counterclaim respondent to appear or participate in proceeding.

(a) *Notice of missed deadline or requirement.* If a respondent or counterclaim respondent fails to file a response or fails, without justifiable cause, to meet any filing deadline or other requirement set forth in the scheduling order or other order, upon notice of a party or by its own initiative, the Copyright Claims Board (Board) may issue a notice to the respondent or counterclaim respondent following the missed deadline or requirement. Requests to issue a notice regarding a missed deadline or requirement and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

(b) *Contents of default notice*—(1) *First default notice.* A notice issued under this section shall inform the respondent or counterclaim respondent that failure to participate in the proceeding may result in the Board entering a *default determination* against the respondent or counterclaim respondent, including dismissal of any counterclaims asserted by the defaulting respondent, and shall explain the legal effects of a *default determination.* The notice shall provide the respondent or counterclaim respondent with 30 days from the date of the notice to cure the missed deadline or requirement. The notice shall be issued to the respondent or counterclaim respondent through eCCB, as well as by mail and all known email addresses.

(2) *Second default notice.* If the respondent or counterclaim respondent has failed to respond within 15 days after the first notice of the pendency of the *default determination,* the Board shall send a second notice to the respondent or counterclaim respondent according to the procedures set forth in paragraph (b)(1) of this section. Such notice shall attach the first notice and shall remind the respondent or counterclaim respondent that it must cure the missed deadline or requirement within 30 days from the date of the first notice.

(c) *Response to notice.* If the respondent or counterclaim respondent cures the missed deadline or requirement within the time specified by the notice, the proceeding shall resume and the Board shall issue a revised scheduling order, if necessary. If the respondent or counterclaim respondent fails to timely cure but submits a response that indicates an intent to re-engage with the proceeding pursuant to the procedures set forth in § 220.5(a)(1) of this subchapter, the Board shall consider the response and either provide the respondent or counterclaim respondent with additional time to meet the deadline or proceed with the *default determination* process. If the respondent or counterclaim respondent fails to cure the missed deadline or requirement within the time specified by the notice and does not otherwise respond to the notice, the Board shall require the claimant or counterclaimant to submit evidence in support of a *default determination,* as set forth in § 227.2.

(d) *Multiple missed deadlines.* A respondent or counterclaim respondent may cure a missed deadline according to the procedure set forth in this section at least twice without default being issued. If the respondent or counterclaim respondent misses a third deadline in the scheduling order without good cause, the Board may, in its discretion, proceed directly to requiring submission of evidence to proceed with a *default determination* as set forth in § 227.2.

§ 227.2 Submission of evidence by claimant or counterclaimant in support of default determination.

(a) *General.* If a respondent or counterclaim respondent fails to appear or ceases to participate in the proceeding and the Board elects to proceed to a *default determination,* the Board shall require the claimant or counterclaimant to submit written direct testimony, as set forth in § 222.15(b) of this subchapter.

(b) *Additional evidence.* Following submission of the claimant's or counterclaimant's written testimony in support of a *default determination,* the Board shall consider the claimant's or counterclaimant's submissions and may request any additional evidence from the claimant or counterclaimant within the claimant's or counterclaimant's possession.

§ 227.3 Notice of proposed default determination.

(a) *Consideration of evidence.* Following submission of evidence by the claimant or counterclaimant, as set forth in § 227.2, the Board shall review such evidence and shall determine whether it is sufficient to support a finding in favor of the claimant or counterclaimant under applicable law. As part of its review, the Board shall consider whether the respondent or counterclaim respondent has a meritorious defense. If the Board finds the evidence sufficient to support a finding in favor of the claimant or counterclaimant, it shall determine the

appropriate relief and damages, if any, to be awarded.

(1) If the Board determines that the evidence is sufficient to support a finding in favor of the claimant or counterclaimant, the Board shall prepare a proposed *default determination.*

(2) If the Board determines that the evidence is insufficient to support a finding in favor of the claimant or counterclaimant, the Board shall prepare a proposed determination dismissing the proceeding without prejudice and shall provide written notice of such proposed determination to the claimant or counterclaimant. The claimant or counterclaimant may submit a response to the proposed determination within 30 days of the date of the notice of proposed determination. Such response shall follow the procedures set forth in § 220.5(b) of this subchapter and be limited to seven pages. After considering any response from the claimant or counterclaimant, the Board shall either maintain its proposed determination and dismiss the proceeding without prejudice or determine that the evidence is sufficient to support a finding in favor of the claimant or counterclaimant and prepare a proposed *default determination.*

(b) *Proposed default determination.* The proposed *default determination* shall include a finding in favor of the claimant or counterclaimant and the damages awarded, if any. The proposed *default determination* shall also include dismissal of any counterclaims asserted by the defaulting respondent.

(c) *Notice to respondent or counterclaim respondent.* The Board shall provide written notice to the respondent or counterclaim respondent of the pendency of the *default determination* and the legal significance of the *default determination,* including any liability for damages, if applicable, as set forth in 17 U.S.C. 1506(u)(2). The notice shall be accompanied by the proposed *default determination* and shall provide the respondent or counterclaim respondent 30 days, beginning on the date of the notice, to submit any evidence or other information in opposition to the proposed *default determination.*

§ 227.4 Opportunity for respondent or counterclaim respondent to submit evidence.

(a) *Response to notice by respondent or counterclaim respondent.* The respondent or counterclaim respondent may submit in writing any evidence or information in opposition to the proposed *default determination* within 30 days of the issuance of the proposed *default determination* absent an extension of that time by the Board. The form of that response shall follow the procedures for written response testimony under § 222.15(b) of this subchapter. If the respondent or counterclaim respondent fails to timely submit evidence but submits a response that indicates an intent to submit evidence in opposition to the proposed *default determination,* the Board shall consider the response and either provide the respondent or counterclaim respondent with additional time to submit evidence or proceed with issuing the *default determination.*

(b) *Response to respondent's or counterclaim respondent's submissions.* If the respondent or counterclaim respondent provides any evidence or other information in response to the notice of the pending *default determination,* the other parties to the proceeding shall be provided an opportunity to address such a submission by following the procedures for written reply testimony under § 222.15(c) of this subchapter within 21 days of the respondent's submission.

(c) *Hearings.* The Board may hold a hearing related to *default determinations* at its discretion.

§ 227.5 Issuance of determination.

(a) *Determination after respondent or counterclaim respondent submits evidence.* If the respondent or counterclaim respondent provides evidence or information as set forth in § 227.4, the Board shall consider all submissions, including any responses to the respondent's or counterclaim respondent's submission. The Board then shall maintain or amend its proposed *default determination.* The resulting determination shall not be a *default determination* and instead shall be a *final determination.* The respondent or counterclaim respondent may not challenge such determination under 17 U.S.C. 1508(c)(1)(C) and may only request reconsideration pursuant to 17 U.S.C. 1506(w) and the procedures set forth in part 230 of this subchapter.

(b) *Determination after respondent or counterclaim respondent fails to respond to notice.* If the respondent or counterclaim respondent fails to respond to the notice of pending *default determination,* the Board shall issue the proposed *default determination* as a *final determination.* The respondent or counterclaim respondent may only challenge such determination to the extent permitted under 17 U.S.C. 1508(c) or the procedures set forth in paragraph (c) of this section.

(c) *Vacating a default determination.* If additional proceedings have not been initiated under 17 U.S.C. 1508(c), the respondent or counterclaim respondent may request in writing that the *default determination* be vacated and provide the reasons why the decision should be vacated. A request to vacate the *default determination* must be filed within 30 days of the determination, shall be no more than 12 pages, and shall meet the requirements set forth in § 220.5(b) of this subchapter; and a response to that request must be filed within 30 days of the request to vacate, shall be no more than 12 pages, and shall meet the requirements set forth in § 220.5(b). The Board may vacate the *default determination* in the interests of justice.

■ 16. Part 228 is added to read as follows:

PART 228—CLAIMANT'S FAILURE TO PROCEED

Sec.
228.1 Claimant or counterclaimant's failure to complete service.
228.2 Claimant or counterclaimant's failure to prosecute.

Authority: 17 U.S.C. 702, 1510.

§ 228.1 Claimant or counterclaimant's failure to complete service.

(a) *Failure to serve a respondent who is not a necessary party.* If a claimant fails to timely complete service on a respondent who is not a necessary party, pursuant to § 222.14 of this subchapter, the Copyright Claims Board (Board) shall dismiss that respondent from the proceeding without prejudice. The proceeding shall continue against any remaining respondents.

(b) *Failure to serve a respondent who is a necessary party.* If a claimant fails to timely complete service on a respondent who is a necessary party, pursuant to § 222.14 of this subchapter, the Board shall dismiss the proceeding without prejudice.

(c) *Complete failure to serve respondents.* For a claim to proceed, a claimant must complete service on at least one respondent. If a claimant does not timely file any proof of service, the Board shall dismiss the proceeding without prejudice.

§ 228.2 Claimant or counterclaimant's failure to prosecute.

(a) *General.* If a claimant or counterclaimant fails to proceed in an *active proceeding* without justifiable cause, as demonstrated by a failure to meet any filing deadline or requirement set forth in the scheduling order or other order, upon request of a party or on its own initiative, the Board shall issue a notice following the missed deadline or

requirement. Requests to issue a notice regarding a missed deadline or requirement and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

(b) *Contents of failure to prosecute notice.* (1) A notice issued under paragraph (a) of this section shall inform the claimant or counterclaimant that failure to proceed in the proceeding may result in the Board issuing a determination dismissing the claimant's or counterclaimant's claims, including an award of attorneys' fees and costs where appropriate, and shall explain the legal effects of such a determination. The notice shall provide the claimant or counterclaimant with 30 days, beginning on the date of the notice, to respond to the notice and meet the missed deadline or requirement. The notice shall be issued to the claimant or counterclaimant by mail and all known email addresses.

(2) If the claimant or counterclaimant has failed to respond 15 days after the notice of the failure to proceed, the Board shall send a second notice to the claimant or counterclaimant according to the procedures set forth in paragraph (b)(1) of this section. Such notice shall attach the first notice and shall remind the claimant or counterclaimant that it must respond and meet the missed deadline or requirement within 30 days from the date of the first notice.

(c) *Response to failure to prosecute notice.* (1) If the claimant or counterclaimant cures the missed deadline or requirement within the time specified by the notice, the proceeding shall resume and the Board shall issue a revised scheduling order, if necessary.

(2) If the claimant or counterclaimant fails to cure the missed deadline or requirement within the time specified by the notice but submits a response that indicates an intent to re-engage with the proceeding pursuant to the procedures set forth in § 220.5(a)(1) of this subchapter, the Board shall consider the response and either provide the claimant or counterclaimant with additional time to cure the missed deadline or requirement or issue a determination dismissing the claims or counterclaims.

(3) If the claimant or counterclaimant fails to cure the missed deadline or requirement within the time specified by the notice and does not otherwise respond to the notice, the Board shall issue a determination dismissing the claims or counterclaims.

(d) *Determination dismissing claims or counterclaims.* A determination dismissing the claims or counterclaims for failure to proceed in the *active proceeding* shall be with prejudice and shall include an award of attorneys' fees and costs pursuant to § 232.3 of this subchapter, if appropriate. The claimant or counterclaimant may only challenge such determination to the extent permitted under 17 U.S.C. 1508€ or the procedures set forth in paragraph(e) of this section.

(e) *Vacating a determination dismissing claims or counterclaims.* If additional proceedings have not been initiated under 17 U.S.C. 1508(c), the claimant or counterclaimant may request in writing that the determination be vacated and provide the reasons supporting the request. A request to vacate the determination must be filed within 30 days of the determination, shall be no more than 12 pages, and shall meet the requirements set forth in § 220.5(b) of this subchapter; and a response to that request must be filed within 30 days of the request to vacate, shall be no more than 12 pages, and shall meet the requirements set forth in § 220.5(b). The Board may vacate the determination of dismissal in the interests of justice.

(f) *Multiple missed deadlines.* A claimant or counterclaimant may cure a missed deadline according to the procedure set forth in this section at least twice without dismissal for failure to prosecute. If the claimant or counterclaimant misses a third deadline in the scheduling order without good cause, the Board may, in its discretion, proceed directly to issuing a determination dismissing the claims or counterclaims for failure to proceed under paragraph (d) of this section.

■ 17. Part 229 is added to read as follows:

PART 229—RECORDS AND PUBLICATION

Sec.
229.1 Access to records and proceedings.
229.2 Record certification.

Authority: 17 U.S.C. 702, 1510.

§ 229.1 Access to records and proceedings.

(a) *Official written record.* Submissions by parties to a proceeding and documents issued by the Copyright Claims Board (Board) shall constitute the official written record.

(b) *Access to record.* Any member of the public may inspect the official written record through eCCB, except any materials that have been marked confidential pursuant to § 222.19 of this subchapter.

(c) *Attendance at hearing.* Attendance at a Board hearing, including virtual hearings, is limited to the parties to the proceeding, including any legal counsel or *authorized representatives,* and any witnesses, except with leave of the Board. The Board may order that a witness be excluded from a hearing except when a question is directed to the witness. A request for attendance may be made in writing. Requests for a third-party non-witness to attend a hearing and any responses thereto shall follow the procedures set forth in § 220.5(a)(2) of this subchapter.

(d) *Hearing transcript.* The Board may cause a transcript of a hearing to be made by using an official reporter or any technology that is available to the Board. At the request of any party, the Board may designate an official reporter to attend and transcribe a hearing or to prepare a transcript from a recording of a hearing. Requests to designate an official reporter and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter. The requesting party or parties shall pay the reporter directly for the cost of creating an official transcript.

§ 229.2 Record certification.

Upon a written request to the Records Research and Certification Section of the U.S. Copyright Office pursuant to 37 CFR 201.2(1), and payment of the appropriate fee pursuant to 37 CFR 201.3, the Board will certify the official record of a proceeding.

■ 18. Part 230 is added to read as follows:

PART 230—REQUESTS FOR RECONSIDERATION

Sec.
230.1 General.
230.2 Request for reconsideration.
230.3 Response to request.
230.4 No new evidence.
230.5 Determination.

Authority: 17 U.S.C. 702, 1510.

§ 230.1 General.

This part prescribes rules pertaining to procedures for reconsideration of a *final determination* issued by the Copyright Claims Board (Board). A party may request reconsideration according to the procedures in this part if the party identifies a clear error of law or fact material to the outcome or a technical mistake.

§ 230.2 Request for reconsideration.

Upon receiving a *final determination* from the Board, any party may request that the Board reconsider its determination. Such a request must be filed within 30 days of the determination, shall be no more than 12 pages, and shall meet the requirements set forth in § 220.5(b) of this subchapter. The request must identify a clear error

of law or fact that was material to the outcome or a technical mistake. The request shall not merely repeat any oral or written argument made to the Board as part of the proceeding but shall be specific as to the purported error or technical mistake that is the subject of the request. For the purposes of this section, the term *final determination* shall include an amended *final determination.*

§ 230.3 Response to request.

A party opposing a request for a reconsideration may file a response to the request within 30 days of the date of service of the request. Such response shall be no more than 12 pages and shall meet the requirements set forth in § 220.5(b) of this subchapter.

§ 230.4 No new evidence.

Evidence that was not previously submitted to the Board as part of written testimony or at a hearing or in response to a specific request for evidence from the Board shall not be submitted as part of a request for reconsideration or a response to a request, except where the party demonstrates, through clear and convincing evidence, that the evidence was not available to that party in the exercise of reasonable diligence prior to the submission of written testimony or prior to the hearing.

§ 230.5 Determination.

After the filing of response papers or after the time for a party opposing the request for reconsideration to file a response has elapsed, the Board shall consider the request and any response and shall either deny the request for reconsideration or issue an amended *final determination.* The Board will base its decision on the party's written submissions.

■ 19. Part 231 is added to read as follows:

PART 231—REGISTER'S REVIEW

Sec.
231.1 General.
231.2 Request for Register's review.
231.3 Response to request for Register's review.
231.4 No new evidence.
231.5 Standard of review.
231.6 Determination.

Authority: 17 U.S.C. 702, 1510.

§ 231.1 General.

This part prescribes rules pertaining to procedures for review by the Register of Copyrights of a *final determination* by the Copyright Claims Board (Board). A party whose request for reconsideration has been denied under § 230.5 of this subchapter may seek review of the *final determination* by the Register of Copyrights not later than 30 days after a request for reconsideration has been denied in whole or in part.

§ 231.2 Request for Register's review.

A party may not file for review of the Board's *final determination* by the Register of Copyrights unless it has first filed, and had denied, a request for reconsideration. Where the Board has denied a request for reconsideration, the party who requested reconsideration may request review of the *final determination* by the Register of Copyrights. Such a request must be filed within 30 days of the denial of a request for reconsideration, shall be no more than 12 pages, and shall meet the requirements set forth in § 220.5(b) of this subchapter. The request must include the reasons the party believes there was an abuse of discretion in denying the request for reconsideration. The request must be accompanied by the filing fee set forth in 37 CFR 201.3(g)(3).

§ 231.3 Response to request for Register's review.

A party opposing the request for review may file a response to the request for review within 30 days of the date of service of the request. Such response shall be no more than 12 pages and shall meet the requirements set forth in § 220.5(b) of this subchapter. The request must include the reasons the party believes there was no abuse of discretion in denying the request for reconsideration. No reply filings shall be permitted.

§ 231.4 No new evidence.

Evidence that was not previously submitted to the Board as part of written testimony or at a hearing or in response to a specific request for evidence from the Board shall not be submitted as part of a request for review or a response to a request for review.

§ 231.5 Standard of review.

The Register's review shall be limited to consideration of whether the Board abused its discretion in denying reconsideration of the determination.

§ 231.6 Determination.

After the filing of response papers or after the time for a party opposing the request for review to file a response has elapsed, the Register shall consider the request and any response and shall either deny the request for review or remand the proceeding to the Board for reconsideration of issues specified in the remand and for issuance of an amended *final determination.* The Register will base such a decision on the party's written submissions.

■ 20. Part 232 is added to read as follows:

PART 232—PARTY CONDUCT

Sec.
232.1 General.
232.2 Representations to the Board.
232.3 Bad-faith conduct.
232.4 Bar on initiating and participating in claims.
232.5 Legal counsel and authorized representative conduct.

Authority: 17 U.S.C. 702, 1510.

§ 232.1 General.

(a) For purposes of this part, a *participant* includes all parties, including any legal counsel or other *authorized representatives* participating in CCB proceedings.

(b) All *participants* shall act with the utmost respect for others and shall behave ethically and truthfully in connection with all submissions and appearances before the Copyright Claims Board (Board).

§ 232.2 Representations to the Board.

By submitting materials or advocating positions before the Board, a *participant* certifies that to the best of the *participant's* knowledge, information, and belief, formed after a reasonable inquiry under the circumstances:

(a) It is not being presented for any improper purpose;

(b) Any legal contentions are made in good faith based on the *participant's* reasonable understanding of existing law;

(c) Any factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(d) Any denials of factual contentions have evidentiary support or, if specifically so identified, are reasonably based on belief or a lack of information.

§ 232.3 Bad-faith conduct.

(a) *General.* The Board shall award costs and attorneys' fees as part of a determination where it is established that a *participant* engaged in *bad-faith conduct,* unless such an award would be inconsistent with the interests of justice.

(b) *Allegations of bad-faith conduct*—(1) *On the Board's initiative.* On its own, and prior to a *final determination,* the Board may order a *participant* to show cause why certain conduct does not constitute *bad-faith conduct.* Within 14 days, the *participant* accused of *bad-faith conduct* shall file a response to this

order, which shall follow the procedures set forth in § 220.5(a)(2).

(2) *On a party's initiative.* A party that in good faith believes that a *participant* has engaged in *bad-faith conduct,* may file a request for a conference with the Board, describing the alleged *bad-faith conduct* and attaching any relevant exhibits. Requests for a conference concerning allegations of *bad-faith conduct* and any responses thereto shall follow the procedures set forth in § 220.5(a)(2) of this subchapter.

(c) *Establishing bad-faith conduct.* After the response of an accused *participant* has been filed under paragraph (b) of this section, or the time to file such a response has passed, the Board shall either make a determination that no *bad-faith conduct* occurred or schedule a conference concerning the allegations.

(d) *Determining the award.* A determination as to any award of attorneys' fees and costs due to *bad-faith conduct* shall be made as part of the *final determination.* In determining whether to award attorneys' fees and costs due to *bad-faith conduct,* and the amount of any such award, the Board shall consider the requests and responses submitted, any arguments on the issue, and the accused *participant's* behavior in other Board proceedings. Such an award shall be limited to an amount of not more than $5,000, unless—

(1) The adversely affected party appeared *pro se* in the proceeding, in which case the award shall be limited to costs in an amount of not more than $2,500; or

(2) Extraordinary circumstances are present, such as a demonstrated pattern or practice of *bad-faith conduct,* in which case the Board may award costs and attorneys' fees in excess of the limitations in this section.

§ 232.4 Bar on initiating and participating in claims.

(a) *General.* A *participant* that has been found to have engaged in *bad-faith conduct* on more than one occasion within a 12-month period shall be subject to the penalties set forth in paragraph (d) of this section.

(b) *Allegations of multiple instances of bad-faith conduct*—(1) *On the Board's initiative.* On its own, and at any point during a proceeding, the Board may order a *participant* to show cause why certain conduct engaged in on more than one occasion within a 12-month period does not constitute a pattern of *bad-faith conduct.* Within 14 days, such *participant* shall file a response to this order, which shall follow the procedures set forth in § 220.5(a)(2) of this subchapter.

(2) *On a party's initiative.* A party that in good faith believes that a *participant* has engaged in *bad-faith conduct* before the Board on more than one occasion within a 12-month period, may file a request for a conference with the Board at any point after a proceeding has been initiated. Such a request shall describe the alleged instances of *bad-faith conduct,* include the CCB case numbers for any other instances of *bad-faith conduct* if known, and attach any relevant exhibits. Such a request filed by a respondent before the time to opt out of the proceeding has expired shall not operate as a waiver of that respondent's right to opt out of the proceeding. Requests for a conference concerning allegations of a pattern of *bad-faith conduct* and any responses thereto shall follow the procedures set forth in § 220.5(a)(2) of this subchapter.

(c) *Establishing a pattern of bad-faith conduct.* After an accused *participant's* response has been filed under paragraph (b) of this section, or the time to file such a response has passed, the Board shall either make a determination that the *participant* has not engaged in *bad-faith conduct* before the Board on more than one occasion within a 12-month period, or shall schedule a conference concerning the allegations. An award of attorneys' fees or costs against an accused party, pursuant to § 232.3, within the prior 12 months shall establish an instance of *bad-faith conduct* within the requisite time period. The Board may consider other evidence of *bad-faith conduct* by the accused *participant* that did not result in an award of attorneys' fees or costs pursuant to § 232.3, including but not limited to, claims that did not proceed because they were reviewed by a Copyright Claims Attorney and found to be noncompliant or where proceedings were initiated but the respondent opted out.

(d) *Penalties.* In determining whether to bar a *participant* from initiating claims or a legal counsel or *authorized representative* from participating on a party's behalf, the Board shall consider the requests and responses submitted by the parties, any arguments on the issue, and the accused *participant's* behavior in other Board proceedings. The Board shall issue its determination in writing. If the Board determines that the accused *participant* has engaged in *bad-faith conduct* on more than one occasion within a 12-month period, such determination shall include:

(1) A provision that the accused *participant* be barred from initiating a claim, or in the case of a legal counsel or *authorized representative,* barred from participating on a party's behalf, before the Board for a period of 12 months beginning on the date on which the Board makes such a finding;

(2) In the case of a pattern of *bad-faith conduct* by a party, dismissal without prejudice of any proceeding commenced by that claimant or respondent or by the legal counsel or *authorized representative* on behalf of a party that is still pending before the Board at the time the finding is made, except that an *active proceeding* shall be dismissed only if the respondent to that proceeding provides written consent to the dismissal; and

(3) In the case of a pattern of *bad-faith conduct* by a legal counsel or *authorized representative,* a provision that the representative be barred from representing any party before the Board for a period of 12 months beginning on the date on which the Board makes such a finding. In deciding whether the legal counsel or *authorized representative* shall be barred from representing other parties in already pending proceedings, the Board may take into account the hardship to the parties represented by the sanctioned representative. If a legal counsel or *authorized representative* is barred from further representing a party in a pending claim, the Board will consider requests from that party asking the Board to amend the scheduling order or issue a stay of the pending action to allow that party to find other representation. Whether to amend the scheduling order or issue a stay shall be at the Board's discretion.

§ 232.5 Legal counsel and authorized representative conduct.

(a) *Notices of appearance.* If a party elects to be represented by legal counsel or other *authorized representative* in a proceeding, such legal counsel or *authorized representative,* other than the legal counsel or *authorized representative* who filed the claim on the claimant's behalf, must file a request to link their eCCB user account to the case and to the party or parties in that case whom they represent. The legal counsel or *authorized representative* must make sure that their eCCB user account accurately contains the legal counsel's bar number in a State in which the legal counsel has been admitted to practice (if applicable), and the legal counsel or *authorized representative's* mailing address, email address, and telephone number. If a legal counsel or *authorized representative* wishes to withdraw its representation, the legal counsel or *authorized representative* must file a Request to Withdraw Representation.

(b) *Bar admissions.* A legal counsel must be a member in good standing of the bar of the highest court of a State, the District of Columbia, or any territory or commonwealth of the United States. A law student representative must qualify under regulations governing law student representation of a party set forth in part 234 of this subchapter. The legal counsel or *authorized representative* must file with the Board a written statement under penalty of perjury that the legal counsel or *authorized representative* is currently qualified and is authorized to represent the party on whose behalf the legal counsel or *authorized representative* appears.

(c) *Disbarred legal counsel.* Any legal counsel who has been disbarred by any Federal court, a court of any State, the District of Columbia, or any territory or commonwealth of the United States shall not be allowed to represent a party before the Board. If a legal counsel in any proceeding active or pending before the Board is disbarred, the legal counsel must report the disbarment to the Board and withdraw representation from any proceeding.

(d) *Duties toward the Board and the parties.* A legal counsel or *authorized representative* has a duty of candor and impartiality toward the Board, and a duty of fairness toward opposing parties. In assessing whether a legal counsel has breached its duties, the Board shall consider the rules of professional conduct of the District of Columbia and the State in which the legal counsel practices.

(e) *Penalties for violation.* Any legal counsel or *authorized representative* found to be in violation of any of the rules of conduct as set forth in this section, or who is otherwise found to be behaving unethically or inappropriately before the Board, may be barred from representing parties in proceedings before the Board for a period of twelve months.

■ 21. Part 233 is added to read as follows:

PART 233—LIMITATION ON PROCEEDINGS

Sec.

233.1 General.
233.2 Limitation on proceedings.
233.3 Temporary limitations on proceedings.

Authority: 17 U.S.C. 702, 1510.

§ 233.1 General.

This part prescribes rules pertaining to the management of the Copyright Claims Board's (Board's) docket and prevention of abuse of the Board's proceedings.

§ 233.2 Limitation on proceedings.

(a) *Maximum number of proceedings.* The number of Copyright Claims Board proceedings that may be filed by a claimant and the number of proceedings a solo practitioner or law firm may file on behalf of claimants in any 12-month period shall be limited in accordance with this section. A proceeding shall count toward the numerical limitation as soon as it is filed, regardless of how the proceeding is resolved, whether it is found to be noncompliant under § 224.1 or unsuitable under § 224.2 of this subchapter, voluntarily dismissed, or fails to become active due to a respondent's opt-out. Neither amendments to a claim, nor counterclaims filed in response to a claim shall count as additional claims in determining whether the limit has been reached. The following limitations shall apply:

(1) A claimant, including a corporate claimant's parents, subsidiaries, and affiliates, shall file no more than 30 proceedings in any 12-month period.

(2) A sole practitioner shall file no more than 40 CCB proceedings on behalf of claimants in any 12-month period.

(3) A law firm shall file no more than 80 CCB proceedings on behalf of claimants in any 12-month period.

(b) *Circumvention of limit.* If a claimant files a claim in excess of the limitation set forth in paragraph (a)(1) of this section, such claim shall be dismissed without prejudice. If a sole practitioner or legal counsel associated with a law firm files a claim in excess of the limitation set forth in paragraph (a)(2) or (3) of this section, the legal counsel or law firm at issue shall be ordered to withdraw from the proceeding and the Board may stay the proceeding for 60 days, which may be extended for good cause shown, for the claimant to retain new legal counsel. It may be considered *bad-faith conduct* under § 232.3 for a party to take any action for the sole purpose of avoiding the limitation on the number of proceedings that may be filed as set forth in this section.

(c) *Law students, law clinics, and pro bono legal services.* The limitations in this section do not apply to law students or a law clinic or *pro bono* legal services organization with a connection to the participating law student's law school.

§ 233.3 Temporary limitations on proceedings.

(a) *Moratorium on new claims.* If the Board has determined that the number of pending cases before it has overwhelmed the capacity of the Board, the Board may impose a temporary stay on the filing of claims. The Board shall publish an announcement of that determination on its website, stating the effective date of the stay, and the duration of the stay, not to exceed six months.

(b) *Exception to moratorium.* If a claimant's statute of limitations under 17 U.S.C. 1504(b) is about to expire during the stay issued under paragraph (a) of this section, the claimant may file a claim on or before the statutory deadline accompanied by a declaration under penalty of perjury stating that the statute of limitations will expire during the stay and setting forth facts in support of that conclusion. If the Board determines that the statute of limitations likely will expire during the stay based on the facts set forth in the declaration, the Board shall hold the claim in abeyance and conduct a compliance review following the end of the stay.

Dated: May 9, 2022.

Shira Perlmutter,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

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Part IV

The President

Proclamation 10394—Remembering the 1,000,000 Americans Lost to COVID–19

Federal Register
Vol. 87, No. 95
Tuesday, May 17, 2022

Presidential Documents

Title 3—

The President

Proclamation 10394 of May 12, 2022

Remembering the 1,000,000 Americans Lost to COVID–19

By the President of the United States of America

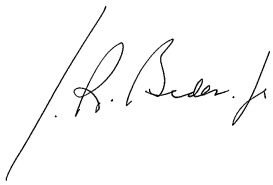
A Proclamation

Today, we mark a tragic milestone: one million American lives lost to COVID–19. One million empty chairs around the dinner table. Each an irreplaceable loss. Each leaving behind a family, a community, and a Nation forever changed because of this pandemic. Jill and I pray for each of them.

As a Nation, we must not grow numb to such sorrow. To heal, we must remember. We must remain vigilant against this pandemic and do everything we can to save as many lives as possible. In remembrance, let us draw strength from each other as fellow Americans. For while we have been humbled, we never give up. We can and will do this together as the United States of America.

In memory of the one million American lives lost to COVID–19 and their loved ones left behind, I hereby order, by the authority vested in me by the Constitution and laws of the United States, that the flag of the United States shall be flown at half-staff at the White House and on all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset May 16, 2022. I also direct that the flag shall be flown at half-staff for the same period at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of May, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



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S. 812/P.L. 117–124
To direct the Secretary of State to develop a strategy to regain observer status for Taiwan in the World Health Organization, and for other purposes. (May 13, 2022; 136 Stat. 1202)

S. 3059/P.L. 117–125
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