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

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

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

RIN 3245–AH33

Disaster Assistance Loan Program Statutory Updates

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: SBA is amending the disaster assistance regulations to reflect changes made to the Small Business Act by several recent statutes. These changes provide two new types of disaster declaration authority and revise eligibility for the Military Reservist Economic Injury Disaster Loan (MREIDL) program. This direct final rule conforms the regulations to the Act by adopting the new statutory requirements without change.

DATES: This rule is effective June 5, 2023 without further action, unless significant adverse comment is received by May 19, 2023. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by number SBA–2023–0001 through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

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

FOR FURTHER INFORMATION CONTACT: Eric Wall, Office of Disaster Recovery and Resilience, 409 3rd St. SW, Washington, DC 20416, (202) 205–6739.

SUPPLEMENTARY INFORMATION:

I. Background

This direct final rule implements regulatory changes required by three recent laws amending the Small Business Act: The Disaster Assistance for Rural Communities Act, Public Law 117–249 (December 20, 2022); the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136 (March 27, 2020); and the National Defense Authorization Act for Fiscal Year 2020 (NDAA 2020), Public Law 116–92 (December 20, 2019). SBA has already implemented all of these statutory changes except for the new rural declaration authority authorized by the Disaster Assistance for Rural Communities Act, which requires SBA to issue implementing regulations within 120 days after enactment. The specific regulatory changes are further described below.

II. Description of Regulatory Changes

SBA is revising 13 CFR 123.3, *How are disaster declarations made?,* by adding two additional ways SBA is authorized to declare disasters. New paragraph (a)(6) describes SBA's declaration authority under the Disaster Assistance for Rural Communities Act. 15 U.S.C. 636(b)(16). Under this new authority, SBA is authorized to declare a disaster in a ''rural area'' upon request by the Governor of the State or the Chief Executive of the Indian tribal government in which the rural area is located if the following conditions are met: (1) the rural area has received a major disaster declaration from the President under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) (42 U.S.C. 5170),[1] (2) individual assistance under section 408 of the Stafford Act was not authorized for the rural area, and (3) any home, small business concern, private nonprofit organization, or small agricultural cooperative in the rural area has incurred ''significant damage.'' The Disaster Assistance for Rural Communities Act defines ''rural area'' as any county or other political subdivision of a State, the District of Columbia, or a territory or possession of the United States that is designated as a rural area by the Bureau of the Census. The Act defines ''significant damage'' as uninsured losses of 40 percent or more of the estimated fair replacement value or pre-disaster fair market value of the damaged property, whichever is lower. SBA has incorporated these new statutory definitions into new § 123.3(a)(6).

SBA is also adding paragraph (a)(7) to describe SBA's new declaration authority authorized by the CARES Act. 15 U.S.C. 636(b)(2)(D). Section 1110(f) of the CARES Act provides SBA the authority to declare an economic injury disaster following a declaration of an emergency involving Federal primary responsibility under Section 501(b) of the Stafford Act by the President. 42 U.S.C. 5191(b). When the President makes such a declaration, SBA will ''deem that such an emergency affects each State or subdivision thereof (including counties), and that each State or subdivision has sufficient economic damage to small business concerns to qualify for assistance under this paragraph and [SBA] shall accept applications for such assistance immediately.'' *See* second proviso of paragraph following 15 U.S.C. 636(b)(2)(E). This means that after the President declares an emergency involving Federal primary responsibility under Section 501(b) of the Stafford Act, SBA will immediately make an economic injury disaster declaration using this new authority. Once SBA makes this declaration, small businesses and nonprofit organizations of any size would be eligible to apply for economic injury disaster loans.

SBA is revising 13 CFR 123.4, *What is a disaster area and why is it important?,* to provide that contiguous counties are not included in the disaster area for rural disaster declarations. SBA is adopting this interpretation based on clear Congressional intent, as stated in the Senate Report to the Disaster Assistance for Rural Communities Act: ''The SBA declaration authorized under

[1] SBA notes that the Senate Report to the Disaster Assistance for Rural Communities Act states that Congress intends that SBA's rural disaster declaration authority is triggered solely in situations where the President has declared a major disaster limited to public assistance only. S. Rep. No. 117–103, Section I (May 3, 2022).

paragraph 16 of section 7(b) may not be applied to contiguous counties.'' S. Rep. No. 117–103, Section IV (May 3, 2022). When SBA makes a rural disaster declaration, physical and economic injury disaster loans will be available only in the declared disaster area, not in any counties or political subdivisions that are contiguous to the declared area.

SBA is also revising this provision to state that when SBA issues an economic injury disaster declaration in response to a determination of an emergency involving Federal primary responsibility by the President, the disaster area shall include each State or subdivision thereof (including counties) included in the President's emergency determination. If the President determines that a nation-wide emergency exists, then SBA will issue a nation-wide economic injury disaster declaration.

SBA is revising several sections in 13 CFR part 123, subpart F, *Military Reservist Economic Injury Disaster Loans,* to reflect changes made by Sec. 877 of the NDAA 2020. The NDAA 2020 expanded eligibility for Military Reservist Economic Injury Disaster Loans (MREIDLs) from reservists called to ''active duty'' to reservists called to ''active service.'' The term ''active service'' has the meaning given in 10 U.S.C. 101(d)(3) and includes both ''active duty'' and ''full time National Guard duty.'' [2] The NDAA also removed the requirement that the reservist be serving during a ''period of military conflict'' and replaced it with the requirement that the reservist be serving for a period of more than 30 consecutive days.[3]

SBA is revising 13 CFR 123.500, *Definitions,* paragraph (b) to reflect the new definition of military reservist as a member of a reserve component of the Armed Forces ordered to active service. SBA is also revising paragraph (c) to remove the definition of ''period of military conflict'' and replace it with the definition of ''active service'', as provided in the NDAA 2020.

SBA is revising 13 CFR 123.501, *Under what circumstances is our business eligible to be considered for a Military Reservist Economic Injury Disaster Loan?,* to remove the words ''active duty'' and replace them with ''active service'' in paragraph (a). SBA is also revising paragraph (c) to remove the requirement that the essential employee be called to active duty during a military conflict and replace it with the requirement that the essential employee be called to active service for a period of more than 30 consecutive days.

SBA is similarly revising 13 CFR 123.507, *Under what circumstances will SBA consider waiving the $2 million loan limit?,* to remove the requirement that the essential employee be called to active duty during a military conflict and replace it with the requirement that the essential employee be called to active service for a period of more than 30 consecutive days.

Finally, SBA is revising §§ 123.503, 123.504(a) and (f), 123.505, 123.506, 123.507, and 123.511 to remove the words ''active duty'' and replace them with ''active service.'' All of the changes to 13 CFR subpart F have already been implemented; this direct final rule merely updates the regulations to reflect current statutory requirements.

II. Justification for Direct Final Rule

Agencies typically utilize direct final rulemakings for routine, non-controversial regulatory actions that are unlikely to receive adverse comments. In direct final rulemaking, an agency publishes a final rule with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. Significant adverse comments are comments that provide strong justifications why the rule should not be adopted or for changing the rule. If the agency receives no significant adverse comment in response to the direct final rule, the rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the direct final rule and may instead issue a proposed rulemaking.

SBA has determined that the regulatory changes addressed in this direct final rulemaking are routine, non-controversial, and not likely to result in adverse comments. SBA is implementing changes required by statute and, with the exception of the rural disaster declaration authority, all of the changes are already in effect—SBA is merely updating the regulations in order to conform to the statute. In implementing the rural disaster declaration authority, SBA is adopting regulations that conform to the statute and legislative history without any extraneous interpretation. Because the changes in this rule are prescribed by statute, SBA does not expect significant adverse comments.

Compliance With Executive Orders 12866, 12988, 13132, 13175, the Congressional Review Act (5 U.S.C. 801–808), Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Orders 12866 and 13563

The Office of Management and Budget has determined that this rule is not a significant regulatory action under Executive Order 12866, and a Regulatory Impact Analysis is not required. No action is warranted for Executive Order 13563 as the rule is not significant and no Regulatory Impact Analysis is required.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect or retroactive effect.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Executive Order 13175

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.

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of

[2] ''Active duty'' is defined as full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. 10 U.S.C. 101(d)(1). The term ''full-time National Guard duty'' means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 [32 USCS §§ 316, 502, 503, 504, or 505] for which the member is entitled to pay from the United States or for which the member has waived pay from the United States. 10 U.S.C. 101(d)(5).

[3] ''Period of military conflict'' was defined as (i) a period of war declared by the Congress; (ii) a period of national emergency declared by the Congress or by the President; or (iii) a period of a contingency operation, as defined in section 101(a) of title 10, United States Code. *See* Sec. 402(a) of Public Law 106–50, (August 17, 1999).

1996, also known as the Congressional Review Act or CRA, 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. SBA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). Therefore, this rule is not subject to the 60-day restriction.

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

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

Regulatory Flexibility Act, 5 U.S.C. 601

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

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

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan mitigation, Loan programs—physical disaster (home, business).

For the reasons set forth in the preamble, the SBA amends 13 CFR part 123 as follows:

PART 123—DISASTER LOAN PROGRAM

■ 1. The authority citation for part 123 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 636(d), 657n, and 9009.

■ 2. Amend § 123.3 by revising paragraph (a) introductory text and adding paragraphs (a)(6) and (7) to read as follows:

§ 123.3 How are disaster declarations made?

(a) There are seven ways in which disaster declarations are issued which make SBA disaster loans possible:

* * * * *

(6) SBA makes a physical disaster declaration in a rural area (rural disaster declaration) upon request from the Governor of the State or the Chief Executive of the Indian tribal government in which the rural area is located. Rural area means any county or other political subdivision of a State, the District of Columbia, or a territory or possession of the United States that is designated as a rural area by the Bureau of the Census. The following conditions must be met:

(i) The President has declared a Major Disaster for the rural area, but has not authorized individual assistance; and

(ii) Any home, small business concern, private nonprofit organization, or small agricultural cooperative in the rural area has incurred significant damage. Significant damage means uninsured losses of 40 percent or more of the estimated fair replacement value or pre-disaster fair market value of the damaged property, whichever is lower.

(7) SBA makes an economic injury disaster declaration in response to a determination of an emergency involving Federal primary responsibility by the President.

* * * * *

■ 3. Revise § 123.4 to read as follows:

§ 123.4 What is a disaster area and why is it important?

Each disaster declaration defines the geographical areas affected by the disaster. Only those victims located in the declared disaster area are eligible to apply for SBA disaster loans. When the President declares a major disaster, the Federal Emergency Management Agency defines the disaster area. In major disasters, economic injury disaster loans and IDAP loans may be made for victims in contiguous counties or other political subdivisions, provided, however that with respect to major disasters which authorize public assistance only, SBA shall not make economic injury disaster or IDAP loans in counties contiguous to the disaster area. Except for rural disaster declarations (as defined in § 123.3), disaster declarations issued by SBA include contiguous counties for both physical, economic injury and, in some cases IDAP assistance. Rural disaster declarations do not include assistance for contiguous counties. Contiguous counties or other political subdivisions are those land areas which abut the land area of the declared disaster area without geographic separation other than by a minor body of water, not to exceed one mile between the land areas of such counties. When SBA issues an economic injury disaster declaration in response to a determination of an emergency involving Federal primary responsibility by the President, the disaster area shall include each State or subdivision thereof (including counties) included in the President's emergency determination.

■ 4. Amend § 123.500 by revising paragraphs (b) and (c) to read as follows:

§ 123.500 Definitions.

* * * * *

(b) *Military reservist* is a member of a reserve component of the Armed Forces ordered to active service.

(c) *Active service* has the meaning given in 10 U.S.C. 101(d)(3):

(1) Service on active duty; or

(2) Full-time National Guard duty.

* * * * *

■ 5. Amend § 123.501 by revising paragraphs (a) and (c) to read as follows:

§ 123.501 Under what circumstances is our business eligible to be considered for a Military Reservist Economic Injury Disaster Loan?

* * * * *

(a) It is a small business as defined in 13 CFR part 121 when the essential employee was called to active service,

* * * * *

(c) The essential employee has been called-up to active service for a period of more than 30 consecutive days,

* * * * *

■ 6. Amend § 123.507 by revising paragraph (b) to read as follows:

§ 123.507 Under what circumstances will SBA consider waiving the $2 million loan limit?

* * * * *

(b) Your small business is in imminent danger of going out of business as a result of one or more essential employees being called up to active service for a period of more than 30 consecutive days, and a loan in excess of $2 million is necessary to reopen or keep open the small business; and

* * * * *

§ 123.503, 123.504, 123.505, 123.506, 123.511 [Amended]

■ 7. In addition to the amendments set forth above, in part 123, remove the words ''active duty'' and add in their place the words ''active service'' in the following places:
■ a. Section 123.503;
■ b. Section 123.504(a) (three places) and (f);
■ c. Section 123.505 heading and text;
■ d. Section 123.506; and
■ e. Section 123.511 (two places).

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2023–08010 Filed 4–18–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 3

[Docket No. 230412–0101]

RIN 0605–AA64

Implementation of HAVANA Act of 2021

AGENCY: Department of Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: This rule implements the HAVANA Act of 2021 (the Act) for the Department of Commerce (Department). The Act provides the authority for the Secretary of Commerce and other agency heads to provide payments to certain individuals who have incurred qualifying injuries to the brain. The rule covers current and former Department employees, and dependents of current or former employees.

DATES:

Effective date: This interim final rule is effective on April 19, 2023.

Comments due date: To be assured of consideration, written comments on the interim final rule must be received no later than May 19, 2023.

ADDRESSES: Submit comments on this interim final rule through the Federal eRulemaking Portal at *https://www.Regulations.gov*, Docket No. DOC–2023–0001. All comments submitted during the comment period permitted by this document will be a matter of public record and will generally be available on the Federal eRulemaking Portal at *https://www.Regulations.gov*.

Comments may also be submitted by mail to: HAVANA Rule Comments, Attention: Anna Kelley, Rooms 1844–1846, 1401 Constitution Avenue NW, Washington, DC 20230. Any questions concerning the process for submitting comments should be submitted to Anna Kelley at 202–482–2200 or *anna.kelley@trade.gov*. The information collection form associated with this rule, Eligibility Questionnaire for HAVANA Act Patients, is available at *https://www.Regulations.gov* under Docket No. DOC–2023–0001 and at *https://www.commerce.gov/havana-act.*

FOR FURTHER INFORMATION CONTACT: Charles Cutshall, Chief Privacy Officer, at 202–482–5735 or *ccutshall@doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 2019, Congress gave authority (Pub. L. 116–94, division J, title IX, section 901) to the Department of State to pay benefits to certain individuals for injuries suffered after January 1, 2016 in the Republic of Cuba, the People's Republic of China or another foreign country designated by the Department of State, in connection with certain injuries designated by the Secretary of State. These benefits were limited to Department of State employees, their dependents and other individuals affiliated with the Department of State.

On January 1, 2021, Congress amended that law (Pub. L. 116–283, div. A, title XI, section 1110), authorizing other Federal Government agencies (such as the Department) to provide similar benefits to their own employees for those injuries. Those provisions are codified at 22 U.S.C. 2680b.

On October 8, 2021, the ''Helping American Victims Afflicted by Neurological Attacks'' (HAVANA) Act of 2021 became law (Pub. L. 117–46). In the latest Act, Congress authorized Federal Government agencies to compensate affected current employees, former employees, and their dependents for qualifying injuries to the brain. Section 3 of the HAVANA Act of 2021 removed the requirement in Public Law 116–94, division J, title IX, section 901, that the qualifying injury occur in ''the Republic of Cuba, People's Republic of China, or other foreign country designated by the Secretary of State'' for the purpose of making a payment under the HAVANA Act. The Act also requires the Department (and other agencies) to ''prescribe regulations'' implementing the HAVANA Act not later than 180 days after the effective date of the Act. This interim final rule implements the HAVANA Act of 2021.

The regulation herein applies only to current and former employees of the Department, and dependents of current or former employees, as defined in § 3.2 of this rule.

Definitions

The rule follows the definitional template provided in the HAVANA Act and its predecessors. The rule defines certain categories of individuals as employees, as well as those who are not considered employees.

The term ''covered employee'' captures Department Foreign Service and Civil Service employees (regardless of the nature of their appointment), as well as National Oceanic and Atmospheric Administration Commissioned Corps Officers and students providing voluntary services under 5 U.S.C. 3111 who, on or after January 1, 2016, became injured by a qualifying injury to the brain while they were an employee of the Department.

The term ''covered individual'' captures any former employee of the Department (including retired or separated employees) who, on or after January 1, 2016, became injured by a qualifying injury to the brain while they were an employee of the Department.

The term ''covered dependent'' captures a family member of a Department current or former employee who, on or after January 1, 2016, became injured by reason of a qualifying injury to the brain while the dependent's sponsor was an employee of the Department. For purposes of determining whether an individual is a covered dependent, the term ''family members'' includes unmarried children under 21 years of age (or certain other children) at the time of injury; parents; sisters and brothers; and spouses. Step-parents and step-siblings are included in the definition.

The definition of ''qualifying injury to the brain'' is based on current medical practices related to brain injuries. Further, the injury must have occurred in connection with certain hostile acts, including war, terrorist activity, or other incidents designated by the Secretary of State or the Secretary of Commerce, as permitted by law, and must not have been the result of the willful misconduct of the individual. The individual must have: an acute injury to the brain such as, but not limited to, a concussion, penetrating injury, or as the consequence of an event that leads to permanent alterations in brain function as demonstrated by confirming correlative findings on imaging studies (to include computed tomography scan (CT), or magnetic resonance imaging scan (MRI)), or electroencephalogram (EEG); or a medical diagnosis of a traumatic brain injury (TBI) that required active medical treatment for 12 months or more; or acute onset of new persistent, disabling neurologic

symptoms as demonstrated by confirming correlative findings on imaging studies (to include CT, MRI), EEG, physical exam, or other appropriate testing, and that required active medical treatment for 12 months or more.

In implementing this definition of ''qualifying injury to the brain,'' the Department adopts the standard set forth by the Department of State in its January 25, 2023, regulations implementing the HAVANA Act (see 88 FR 4722). With regard to these standards, this definition accounts for a variety of observable impacts to an individual, including either a concussion, a penetrating injury, or absent either of those, the ability of an appropriately certified physician to review one of a variety of forms of medical imaging evidence indicating permanent alterations in brain function. This will ensure there is some documented evidence of impact to the brain, while minimally circumscribing what that impact entails. The definition of ''qualifying injury to the brain'' will provide multiple avenues for demonstrating sustained, long-term impact to the individual. Establishing a 12-month threshold of active medical treatment is indicative of a long-term injury which the Department believes must be demonstrated prior to the awarding of benefits. For example, the Centers for Disease Control and Prevention (CDC) broadly defines chronic diseases ''as conditions that last 1 year or more and require ongoing medical attention or limit activities of daily living or both.''

The definition of ''other incident'' is a new onset of physical manifestations that cannot otherwise be explained.

Eligibility for Payments

The Department will communicate with its entire workforce to inform them of the rule, regulations, and process for requesting payment. The Department will work together with potential recipients to provide the necessary documentation to qualify for payment. The Department believes these efforts will ensure all potential requestors will be able to identify themselves to the Department and begin the process of requesting a payment. However, Form CD–350, the form associated with developing the necessary evidence to submit a claim, will also be publicly hosted on the Department's public-facing website with instructions on how to contact the Department if a requestor believes they are eligible for a HAVANA Act payment.

Section 3.3 states the conditions required before the Department will consider payments to current or former employees and dependents of current or former employees: the qualifying injury to the brain for a former employee must have occurred on or after January 1, 2016, and while the former employee was an employee of the Department; and for a dependent, the injury must have occurred on or after January 1, 2016, and while the dependent's sponsor was an employee of the Department. The Director, Office of Human Resources Management, must approve any HAVANA Act payment.

Payments will be a one-time, non-taxable, lump sum payment, based on the annual salary of an Executive Schedule III employee (*see* 5 U.S.C. 5311 *et seq.*). The payment is non-taxable pursuant to 22 U.S.C. 2680b(g). As indicated in § 3.3, in determining the amount of the payment, the Department will consider (1) the responses on Form CD–350 and (2) whether the Department of Labor, Office of Workers' Compensation Programs (DOL) has determined that the requestor has no reemployment potential, or the Social Security Administration (SSA) has approved the requestor for Social Security Disability Insurance or Supplemental Security Insurance, or the requestor's board-certified physician has certified that the individual requires a full-time caregiver for activities of daily living, as defined by the Katz Index of Independence in Activities of Daily Living.

The award thresholds are based on the annual rate of basic pay for Level III of the Executive Schedule (ES). A Base payment will be 75 percent of Level III pay and a Base Plus payment will be 100 percent of Level III pay. If the requestor meets any of the criteria listed in (2) in the paragraph immediately above, the requestor will be eligible to receive a Base Plus payment. Requestors with a documented ''qualifying injury to the brain'' but who do not meet any of the criteria listed in (2) in the paragraph immediately above will be eligible to receive a Base payment. The criteria established in (2) in the paragraph immediately above are reflective of the Department's objective of ensuring that the individuals most severely affected by anomalous health incidents (AHIs) (as indicated by a lack of reemployment potential, an inability to engage in substantial gainful activity, or the need for a full-time caregiver) receive additional payment. The specific use of the DOL or the SSA determinations is to ensure that both current and former Federal employees as well as covered dependents have access to a mechanism for this determination. The Department recognizes that criteria DOL and SSA use in their disability determinations are distinct, as well as the fact that the procedural timelines for seeking and receiving approval may be different between these agencies. The third option, that a board-certified physician certifies that the individual requires a full-time caregiver for activities of daily living (as defined by the Katz Index of Independence in Activities of Daily Living), provides an alternative mechanism for all individuals. Finally, the Department notes that if a requestor who received a Base payment later meets any of the criteria listed in (2) above, the requestor may apply for an additional payment that will be the difference between the Base and Base Plus payment. As the payments are tied to the Executive Schedule, the amounts may change over time based on increases to that Schedule.

The Department may consult with the appropriate officials in other Federal agencies to identify their current and former covered employees, and current and former dependents who reported an anomalous health incident. The Department will not process payment for employees, former employees, or dependents of current or former employees of other agencies. While payments under the HAVANA Act may be on top of other leave, disability, or workers' compensation payments the requestor is receiving or may be entitled to receive that also help augment any loss of income, the Department believes this is an appropriate additional payment. The Department also believes this amount is the most it can reasonably compensate each requestor while ensuring available funds for all expected payments. The Department also notes that, because payments are contingent on appropriated funds, all payments will be paid out on a first come, first served basis. This is also in accordance with compensation awarded by the Department of State under the HAVANA Act.

Regulatory Analysis

Administrative Procedure Act

This rule is being published as an interim final rule and is effective immediately upon publication. Because this rule is a matter relating to public benefits, it is exempt from the requirements of 5 U.S.C. 553. *See* 5 U.S.C. 553(a)(2). In particular, the provisions of sections 553(b), 553(c), and 553(d) for advance notice, opportunity for comment, and delay in the effective date do not apply. It is in the public interest for this rule to become effective as soon as practicable in order to ensure expeditious payments

to injured persons. The Department seeks comment from interested persons on the provisions of this rule and will consider all relevant comments in determining whether additional rulemaking is warranted under the provisions of the HAVANA Act.

Regulatory Flexibility Act

The Chief Counsel for Regulations for the Department certifies that this rulemaking will not have a significant impact on a substantial number of small entities. This rule applies only to certain individuals who are current and former Department employees and family members who are eligible for payments as a result of certain injuries. Therefore, the rule will provide for payments to certain individuals, and is therefore not expected to impact any small entities. As a result, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and none has been prepared.

Executive Order 12866 and Executive Order 13563

This rule has been determined to be significant under Executive Order 12866. Potential causes of AHI are being investigated but remain unknown. Given the nature of the incidents, it is difficult to accurately estimate future incidents and numbers of individuals affected. For fiscal year (FY) 2023, the Department has been authorized to spend up to $5 million to pay claims that it finds to be substantiated.

The Department has reviewed the rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and finds that the benefits of the rule (in providing mechanisms for individuals to obtain compensation for certain injuries) outweigh any costs to the public. The Department has also considered this rulemaking in light of Executive Order 13563 and affirms that this regulation is consistent with the guidance therein.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) (PRA), the information collection associated with this rule, Form CD–350, the Eligibility Questionnaire for HAVANA Act Patients, was approved by the Office of Management and Budget (OMB) for clearance under a 6-month emergency authorization under OMB Control Number 0690–0037. Form CD–350 has been uploaded to this rule's docket on *regulations.gov* (see **ADDRESSES** section above). The Department of Commerce intends to request approval for a full 3-year OMB clearance to cover the Eligibility Questionnaire for HAVANA Act Patients information collection request. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 15 CFR Part 3

Federal retirees, Government employees, Health care.

■ Accordingly, for the reasons stated in the preamble, the Department adds part 3 to subtitle A of title 15, Code of Federal Regulations, to read as follows:

PART 3—IMPLEMENTATION OF THE HAVANA ACT OF 2021

Sec.
3.1 Authority.
3.2 Definitions.
3.3 Eligibility for payments by the Department of Commerce.
3.4 Consultation with other agencies.

Authority: 22 U.S.C. 2680b.

§ 3.1 Authority.

(a) Under section 3 of the HAVANA Act of 2021 (Pub. L. 117–46), codified in 22 U.S.C. 2680b, the Secretary of Commerce or other agency heads may provide a payment for a qualifying injury to the brain to a covered employee or covered dependent, who incurred a qualifying injury to the brain on or after January 1, 2016. The authority to provide such payments is at the sole discretion of the Secretary or their designee.

(b) The regulations in this part are issued in accordance with 22 U.S.C. 2680b(i)(4) and also apply to former covered employees of the Department of Commerce and their covered dependents.

§ 3.2 Definitions.

(a) *Covered employee.* (1) An employee of the Department of Commerce who, on or after January 1, 2016, becomes injured by reason of a qualifying injury to the brain.

(2) The following are considered employees of the Department of Commerce for the purposes of this part: Department of Commerce employees in the Foreign Service, National Oceanic and Atmospheric Administration Commissioned Corps Officers, and Department of Commerce employees who meet the definition of ''employee'' set forth in 5 U.S.C. 2105(a), including students providing volunteer service under 5 U.S.C. 3111.

(3) The following are not considered employees of the Department of Commerce for purposes of this part: employees or retired employees of other agencies.

(b) *Covered dependent.* A family member of a Department of Commerce current or former employee who, on or after January 1, 2016, becomes injured by reason of a qualifying injury to the brain while the dependent's sponsor was an employee of the Department of Commerce as specified in paragraph (a)(2) of this section.

(c) *Covered individual.* A former employee of the Department of Commerce who, on or after January 1, 2016, becomes injured by reason of a qualifying injury to the brain while they were an employee of the Department of Commerce as specified in paragraph (a)(2) of this section.

(d) *Family member.* For purposes of determining ''covered dependent,'' a family member is defined as follows:

(1) Children who are unmarried and under 21 years of age at the time of the qualifying injury or, regardless of age, are unmarried and due to mental and/or physical limitations are incapable of self-support. The term ''children'' must include natural offspring, step-children, adopted children, and those under permanent legal guardianship (at least until age 18), or comparable permanent custody arrangement, of the employee or spouse or domestic partner when dependent upon and normally residing with the guardian or custodial party, and U.S. citizen children placed for adoption if a U.S. court grants temporary guardianship of the child to the employee and specifically authorizes the child to reside with the employee in the country of assignment before the adoption is finalized;

(2) Parents (including stepparents and legally adoptive parents) of the employee or of the spouse or of the domestic partner;

(3) Sisters and brothers (including stepsisters or stepbrothers, or adoptive sisters or brothers) of the employee, or of the spouse when such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, are physically and/or mentally incapable of self-support; and

(4) Spouse.

(e) *Qualifying injury to the brain.* (1) The injury must have occurred in connection with war, insurgency, hostile act, terrorist activity, or other incidents designated by the Secretary of State or the Secretary of Commerce, as permitted by law, and was not the result of the willful misconduct of the individual; and

(2) The individual must have:

(i) An acute injury to the brain such as, but not limited to, a concussion, penetrating injury, or as the consequence of an event that leads to permanent alterations in brain function as demonstrated by confirming correlative findings on imaging studies (to include computed tomography scan (CT), or magnetic resonance imaging scan (MRI)), or electroencephalogram (EEG); or

(ii) A medical diagnosis of a traumatic brain injury (TBI) that required active medical treatment for 12 months or more; or

(iii) Acute onset of new persistent, disabling neurologic symptoms as demonstrated by confirming correlative findings on imaging studies (to include CT or MRI), or EEG, or physical exam, or other appropriate testing, and that required active medical treatment for 12 months or more.

(f) *Other incident.* A new onset of physical manifestations that cannot otherwise be readily explained.

§ 3.3 Eligibility for payments by the Department of Commerce.

(a) The Department of Commerce may provide a payment to covered individuals, as defined this section, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician from the American Board of Psychiatry and Neurology (ABPN), the American Osteopathic Board of Neurology and Psychiatry (AOBNP), the American Board of Physical Medicine and Rehabilitation (ABPMR), or the American Board of Physical Medicine and Rehabilitation (AOBPMR); and occurred on or after January 1, 2016, and while the individual was a covered employee of the Department of Commerce.

(b) The Department of Commerce may provide a payment to covered employees, as defined in this section, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician from ABPN, AOBNP, ABPMR, or AOBPMR; and occurred on or after January 1, 2016, and while the employee was a covered employee of the Department.

(c) The Department of Commerce may provide a payment to a covered dependent, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician from the ABPN, AOBNP, ABPMR, or AOBMR; and occurred on or after January 1, 2016, and while the dependent's sponsor was a covered employee of the Department.

(d) Payment for a qualifying injury to the brain will be a non-taxable, one-time lump sum payment.

(e) The Department will determine the amount paid to each eligible person based on the following factors:

(1) The responses on Form CD–350, ''Eligibility Questionnaire for HAVANA Act Payments''; and

(2) Whether the Department of Labor has determined that the requestor has no reemployment potential, or the Social Security Administration has approved the requestor for Social Security Disability Insurance or Supplemental Security Insurance (SSI) benefits; or the requestor's ABPN, AOBPN, ABPMR, or AOBPMR-certified physician has certified that the individual requires a full-time caregiver for activities of daily living, as defined by the Katz Index of Independence of Daily Living.

(3) The award thresholds are based on the Level III of the Executive Schedule: Base payment will be 75 percent of Level III pay, and Base Plus payment will be 100 percent of Level III pay. If the requestor meets any of the criteria listed in paragraph (e)(2) of this section, the requestor will be eligible to receive a Base Plus payment. Requestors who are otherwise eligible for payment for a qualifying injury to the brain (defined in § 3.2(e)) but do not meet any of the criteria listed in paragraph (e)(2) of this section will be eligible to receive a Base payment. If a requestor who received a Base payment later meets any of the criteria listed in paragraph (e)(2) of this section, the requestor may apply for an additional payment that will be the difference between the Base and Base Plus payment.

(f) The Director, Office of Human Resources Management may approve payments under this section. The Office of Human Resources Management will notify individuals of the decision in writing.

(g) An appeal of a decision made by the Director, Office of Human Resources Management may be directed to the Deputy Assistant Secretary for Administration in writing. The Deputy Assistant Secretary for Administration is the final appeal authority. The Office of Human Resources Management will notify individuals of the decision in writing.

§ 3.4 Consultation with other agencies.

The Department may consult with the appropriate officials in other Federal agencies to identify their current and former covered employees, and current and former dependents who reported an anomalous health incident. The Department will not process payment for employees, former employees, or dependents of current or former employees of other agencies.

Dated: April 14, 2023.

Jeremy Pelter,

Acting Chief Financial Officer and Assistant Secretary of Commerce for Administration, U.S. Department of Commerce.

[FR Doc. 2023–08284 Filed 4–18–23; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0341]

RIN 1625–AA00

Safety Zone; Hylebos Waterway, Tacoma, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Hylebos Waterway in Tacoma, Washington. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a firefighting efforts onboard the F/V KODIAK ENTERPRISE by emergency response personnel. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Puget Sound.

DATES: This rule is effective without actual notice from April 19, 2023 through 6 p.m. April 21, 2023. For the purposes of enforcement, actual notice will be used from April 14, 2023 until April 19, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0341 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Steve Barnett, Sector Puget Sound, Waterways Management Division, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Puget Sound

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

II. Background Information and Regulatory History

On April 9, 2023, the Coast Guard issued a rulemaking creating a temporary safety zone on the navigable waters of the Hylebos Waterway in Tacoma, Washington to protect persons and vessels and the marine environment from potential hazards created by a firefighting efforts onboard the F/V KODIAK ENTERPRISE by emergency response personnel. The safety zone was effective from 6 p.m. April 9, 2023 through 6 p.m. April 14, 2023. A copy of the rulemaking that ended on April 14, 2023 is available in the docket USCG–2022–0341, which can be found using instructions in the **ADDRESSES** section. However, additional time is needed to maintain safe navigation around response equipment and responders while additional firefighting and damage assessment operations occur, and, as a result, the Coast Guard is establishing through temporary regulations a safety zone that will be in effect through April 21, 2023. 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 due to the fire onboard F/V KODIAK. Firefighting efforts are still ongoing, and several dangerous conditions exist because of those firefighting response efforts and the state of the vessel. The vessel is currently listing with diesel fuel and other pollution hazards onboard. The Coast Guard must take continued action to respond to a potential threat to public safety in the Hylebos Waterway, Tacoma, WA. The Coast Guard was unable to publish an NPRM and hold a reasonable comment period for this rulemaking due to the emergent nature to continue response operations.

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 firefighting efforts onboard F/V KODIAK ENTERPRISE.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Puget Sound (COTP) has determined that potential safety hazards exist while ongoing firefighting is taking place onboard the F/V KODIAK ENTERPRISE in the Hylebos Waterway. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while response actions are taking place.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 6 p.m. on April 14, 2023 until 6 p.m. on April 21, 2023. The safety zone will cover all navigable waters within the Hylebos Waterway in Tacoma, WA. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while firefighting operations onboard the F/V KODIAK ENTERPRISE are ongoing. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the fact that the safety zone created by this rule is limited in size and duration. Critical vessel traffic will be able to safely transit through this safety zone with permission from the COTP or designee. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only as long as necessary for response operations that will prohibit entry or departure from the Hylebos Waterway, Tacoma, WA. 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 available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 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, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T13–0341 to read as follows:

§ 165.T13–0341 Safety Zone; Hylebos Waterway, Tacoma, WA.

(a) *Location.* The following area is a safety zone: from the entrance to the Hylebos Waterway to the Turning Basin in Tacoma, WA.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Puget Sound in the enforcement of the safety zone.

(c) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no persons or vessels may enter or remain in the safety zone created in this unless authorized by the Captain of the Port or their designated representative. For permission to enter the safety zone, contact the on-scene designated representative or Joint Harbor Operations Center via VHF CH16 or at 206–217–6002. Those in the safety zone must comply with all lawful orders or directions given to them by the Captain of the Port or their designated representative.

(d) *Enforcement period.* This section will be enforced from 6 p.m. April 14, 2023 until 6 p.m. on April 21, 2023, unless an earlier end is announced via Broadcast Notice to Mariners on VHF–FM marine channel 16.

Dated: April 14, 2023.

Y. Moon,

Captain, U.S. Coast Guard, Acting Captain of the Port Sector Puget Sound.

[FR Doc. 2023–08387 Filed 4–18–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

[Docket No. FWS–R7–ES–2022–0025; FXES111607MRG01–212–FF07CAMM00]

RIN 1018–BG05

Marine Mammals; Incidental Take of Northern Sea Otters During Specified Activities; the Gulf of Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972, as amended, and its implementing regulations, we, the U.S. Fish and Wildlife Service, finalize incidental take regulations that facilitate the authorization of nonlethal, incidental, unintentional take by harassment of small numbers of northern sea otters during marine construction and pile driving in the Gulf of Alaska coastal waters. Take may result from marine construction and pile-driving activities. This rule is effective for 5 years from the date of issuance.

DATES: This rule is effective May 19, 2023, through May 19, 2028.

ADDRESSES: You may view this rule, the associated final environmental assessment, finding of no significant impact (FONSI), comments received, and other supporting material at *https://www.regulations.gov* under Docket No. FWS–R7–ES–2022–0025, or these documents may be requested as described under **FOR FURTHER INFORMATION CONTACT**.

Information Collection Requirements: This final rule is effective on the date set forth in **DATES**. We will, however, accept and consider all public comments concerning the information collection requirements received in response to this final rule. Written comments and suggestions on the information collection requirements may be submitted at any time to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, by email to *info_coll@fws.gov;* or by mail to 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803. Please reference ''OMB

Control Number 1018–BD63/0070'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Sierra Franks, U.S. Fish and Wildlife Service, MS 341, 1011 East Tudor Road, Anchorage, AK 99503, by email at *R7mmmregulatory@fws.gov* or by telephone at 907–268–0577. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

In accordance with the Marine Mammal Protection Act (MMPA) of 1972, as amended, and its implementing regulations, we, the U.S. Fish and Wildlife Service (Service, USFWS, or we), finalize incidental take regulations (ITR) that facilitate the authorization of nonlethal, incidental, unintentional take by harassment of small numbers of northern sea otters (*Enhydra lutris kenyoni;* hereafter ''otter,'' ''otters,'' or ''sea otters'') during marine construction and pile-driving activities in coastal waters surrounding eight United States Coast Guard (USCG) facilities in the Gulf of Alaska. This rule will be effective for 5 years from the date of issuance.

This rule sets forth permissible methods of incidental nonlethal taking, mitigation measures to ensure the least practicable adverse impacts upon this species, its habitat, and the availability of this species for subsistence uses, and requirements for monitoring and reporting. This rule is based on our findings that the total takings of sea otters during pile driving and marine construction activities will impact only small numbers of animals, will have a negligible impact on this species, and will not have an unmitigable adverse impact on the availability of this species for subsistence use by Alaska Natives. We base our findings on data from research on this species; potential and documented effects on this species from similar activities; information regarding the natural history and conservation status of sea otters; and data reported from Alaska Native subsistence hunters. We also prepared an environmental assessment (EA) in accordance with National Environmental Policy Act (NEPA) requirements for this rulemaking and, after consideration of public comments, made a finding of no significant impact (FONSI).

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1371(a)(5)(A)) gives the Secretary of the Interior (Secretary) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens (as defined in title 50 of the Code of Federal Regulations (CFR) in part 18 at § 18.27(c)) engaged in a specified activity (other than commercial fishing) in a specified geographic region. The Secretary has delegated authority for implementation of the MMPA to the Service. According to the MMPA, the Service shall allow this incidental taking if we make findings that the total of such taking for the 5-year regulatory period:

(1) is of small numbers of marine mammals of a species or stock;

(2) will have a negligible impact on such species or stock; and

(3) will not have an unmitigable adverse impact on the availability of these species or stock for taking for subsistence use by Alaska Natives.

If the requisite findings are made, we issue regulations that set forth the following, where applicable:

(a) permissible methods of taking;

(b) means of effecting the least practicable adverse impact on the species or stock and its habitat and the availability of the species or stock for subsistence uses; and

(c) requirements for monitoring and reporting of such taking by harassment, including, in certain circumstances, requirements for the independent peer review of proposed monitoring plans or other research proposals.

If final regulations allowing such incidental taking are issued, we may then subsequently issue Letters of Authorization (LOA), upon request, to authorize incidental take during the specified activities.

The term ''take'' means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362(13)). ''Harassment'' means any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (the MMPA defines this as ''Level A harassment''), or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (the MMPA defines this as ''Level B harassment'') (16 U.S.C. 1362(18)).

The USCG's activities may result in the incidental taking of sea otters. The MMPA does not require the USCG to obtain incidental take authorization prior to engaging in activities that may incidentally take these marine mammals; however, any such taking that occurs without authorization is a violation of the MMPA.

Summary of Request and the Proposed Rule

The Service first received a petition requesting ITRs from the USCG on July 2, 2021. The Service sent requests for additional information on August 12, September 13, and November 10, 2021, and February 10, 2022. We received updated versions of the petition for rulemaking on October 14, 2021, January 18, 2022, and February 28, 2022; the version received on the latter date was determined to be adequate and complete. Several revisions were made involving animal presence, ensonified areas, number of days of operations, and mitigation and monitoring protocols. Geospatial files of the work sites were received on December 3, 2021. The Service used the February 2022 information and December 2021 spatial files for analyses.

Based on our analyses, we published a proposed rule for these ITRs on August 15, 2022 (87 FR 50041). The preamble to the proposed rule provided information on several issues, including the following topics:

- sea otter biology and stocks within the specified region;
- potential impacts to sea otters arising from the specified activities, including effects of underwater and airborne sounds, vessel presence, effects to prey, reactions of sea otters to anthropogenic activities, and consequences of disturbance;
- potential impacts of the specified activities on subsistence uses of sea otters;
- the definitions of incidental take under the MMPA as well as definitions of ''negligible impact,'' ''unmitigable adverse impact,'' ''small numbers,'' and ''least practicable adverse impact'';
- methods of analyzing and estimating take by harassment;
- critical assumptions of the analyses; and
- a breakdown of incidental take by harassment at each location within the specified region.

Please see the August 15, 2022 (87 FR 50041), proposed rule for further background information related to this rulemaking action.

Description of the Regulations

These regulations facilitate the authorization of nonlethal, incidental, unintentional take of small numbers of sea otters that may result from the proposed activities based on standards set forth in the MMPA. They would not authorize or ''permit'' activities. The regulations include:

(1) Permissible methods of nonlethal taking;

(2) Measures designed to ensure the least practicable adverse impact on sea otters and their habitat, and on the availability of this species for subsistence uses; and

(3) Requirements for monitoring and reporting.

Description of Letters of Authorization (LOA)

An LOA is required to conduct activities pursuant to an ITR. Under these ITRs, the USCG may request LOAs for the authorized nonlethal, incidental, Level B harassment of sea otters. Requests for LOAs must be consistent with the activity descriptions and mitigation and monitoring requirements of the ITR and be received in writing at least 30 days before the activity is to begin. Requests must include (1) an operational plan for the activity; (2) a digital geospatial file of the project footprint, (3) a site-specific marine mammal monitoring and mitigation plan that specifies the procedures to monitor and mitigate the effects of the activities on sea otters, and, if necessary, (4) Plans of Cooperation (described below). Once this information has been received, we will evaluate each request and issue the LOA if we find that the level of taking will be consistent with the findings made for the total taking allowable under the ITR. We must receive an after-action report on the monitoring and mitigation activities within 90 days after the LOA expires. For more information on requesting and receiving an LOA, refer to 50 CFR 18.27.

Description of Plans of Cooperation (POC)

A POC is a documented plan describing measures to mitigate potential conflicts between planned project activities and subsistence hunting. The circumstances under which a POC must be developed and submitted with a request for an LOA are described below.

To help ensure that the USCG's activities do not have an unmitigable adverse impact on the availability of the species for subsistence hunting opportunities, requests for an LOA under this ITR must provide the Service documentation of communication and coordination with Alaska Native communities potentially affected by the proposed activity and, as appropriate, with representative subsistence hunting and co-management organizations, such as the Alaska Sea Otter and Steller Sea Lion Commission. If Alaska Native communities or representative subsistence hunting organizations express concerns about the potential impacts of project activities on subsistence activities, and such concerns are not resolved during this initial communication and coordination process, then a POC must be developed and submitted with the applicant's request for an LOA. In developing the POC, the USCG will further engage with Alaska Native communities and/or representative subsistence hunting organizations to provide information and respond to questions and concerns. The POC must provide adequate measures to ensure that project activities will not have an unmitigable adverse impact on the availability of sea otters for subsistence uses.

Description of the Specified Geographic Region

The specified geographic region covered by these ITRs (USCG ITR region (figure 1)) encompasses Gulf of Alaska (GOA) coastal waters, including State waters, within 2 kilometers (km) (~1.25 miles (mi)) of eight USCG facilities within the USCG Civil Engineering Unit Juneau Area of Responsibility. These facilities are: Base Kodiak, Moorings Seward, Moorings Valdez, Moorings Cordova, Moorings Sitka, Station Juneau, Moorings Petersburg, and Base Ketchikan.

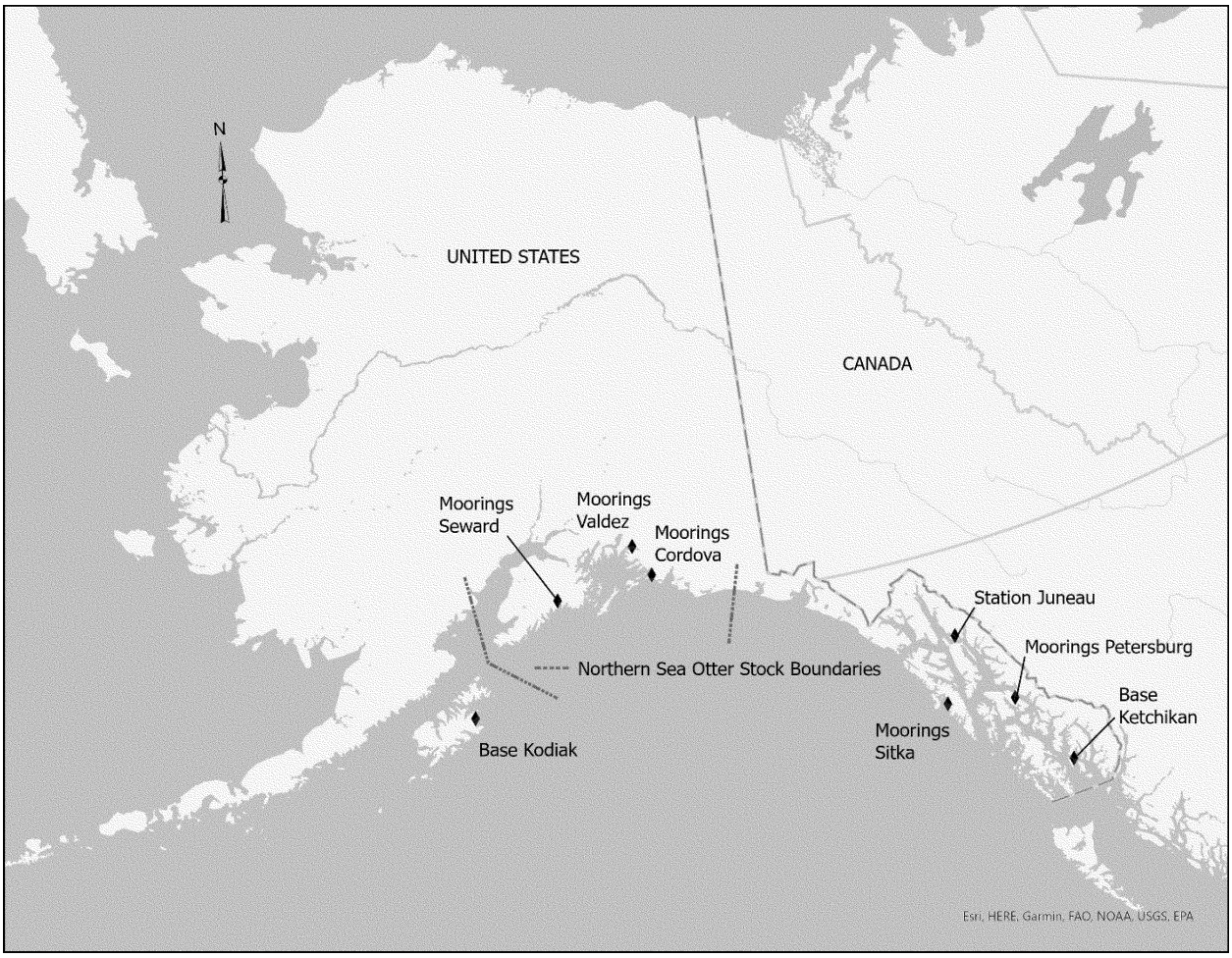

Figure 1. Map of Alaska showing USCG facilities at which proposed work is to take place. The base map image is the intellectual property of Esri and is used herein under license. Copyright © 2020 Esri and its licensors. All rights reserved.

Description of Specified Activities

The USCG will perform maintenance activities that will include pile repair (*i.e.,* sleeve or jacket replacement), pile replacement (including removal and installation), and deck repair and replacement to maintain safe berthing for operating vessels. The in-water work will include impact pile driving of timber, steel, and concrete piles, vibratory installation and extraction of timber, steel, and concrete piles, down-the-hole drilling, power washing of piles, use of an underwater hydraulic chainsaw, and pile clipping. The USCG will also conduct above-water maintenance activities, such as power washing of decks, fender repair (camel replacement, chain replacement, utility handlers), and replacement of rub strips and ladder supports.

Detailed descriptions of the proposed work are provided in the applicant's *Request for ITRs for Programmatic Maintenance, Repair, and Replacement Activities* (February 2022) and the *Marine Mammal Monitoring and Mitigation Plan* (January 2022). These documents can be obtained from the locations described above in **ADDRESSES**.

Sum of Harassment From All Sources

The USCG will conduct pile driving and marine construction activities over the GOA during a period of 5 years following the effective date of the final rule. A summary of total numbers of estimated takes by Level B harassment during the duration of the project by season and take category is provided in table 1. Ensuing paragraphs address impacts to each affected stock of northern sea otters.

TABLE 1—SUMMARY BY PROJECT SITE AND STOCKS OF SEA OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE, SEA OTTERS IN LEVEL B HARASSMENT ENSONIFICATION AREA, FOR SINGLE-YEAR OPERATIONS AND OVER THE 5-YEAR DURATION OF THE ITR

Location	Number of otters (single year)	Number of exposures (single year)	Number of otters (5 years)	Number of exposures (5 years)
Kodiak	1	5	5	25
Total Southwest Alaska stock	1	5	5	25
Seward	2	5	2	5
Valdez	8	8	40	40
Cordova	35	210	35	210
Total Southcentral Alaska stock	45	223	77	255
Sitka	6	30	30	150
Juneau	3	30	15	150
Petersburg	10	40	50	200
Ketchikan	4	40	20	200
Total Southeast Alaska stock	23	140	115	700
Total all stocks	*69*	*368*	*197*	*980*

In a single year, we estimate five instances of take by Level B harassment of one northern sea otter from the Southwest Alaska stock due to behavioral responses or Temporary Threshold Shift (TTS) associated with noise exposure. Over the 5-year duration of these ITRs, we estimate 25 instances of take by Level B harassment of 5 northern sea otters from the Southwest Alaska stock due to behavioral responses or TTS associated with noise exposure. Although multiple instances of harassment of otters are possible, we anticipate that these events will result in only temporary changes in behavior and will not have significant consequences for the health, reproduction, or survival of affected animals. We do not anticipate these events to cause any injuries or rise to the level of Level A harassment.

In a single year, we estimate 223 instances of take by Level B harassment of 45 northern sea otters from the Southcentral Alaska stock due to behavioral responses or TTS associated with noise exposure. Over the 5-year duration of these ITRs, we estimate 255 instances of take by Level B harassment of 77 northern sea otters from the Southcentral Alaska stock due to behavioral responses or TTS associated with noise exposure. Although multiple instances of harassment of otters are possible, these events are likely to result in only temporary changes in behavior. As such, these events are unlikely to have significant consequences for the health, reproduction, or survival of affected animals and, therefore, would not rise to the level of an injury or Level A harassment.

In a single year, we estimate 140 instances of take by Level B harassment of 23 northern sea otters from the Southeast Alaska stock due to behavioral responses or TTS associated with noise exposure. Over the 5-year duration of these ITRs, we estimate 700 instances of take by Level B harassment of 115 northern sea otters from the Southeast Alaska stock due to behavioral responses or TTS associated with noise exposure. Although an estimated 700 instances of harassment of 115 otters are possible, these events are likely to result in only temporary changes in behavior. As such, these events are unlikely to have significant consequences for the health, reproduction, or survival of affected animals and, therefore, would not rise to the level of an injury or Level A harassment.

Determinations and Findings

Small Numbers

For our small numbers determination, we considered whether the estimated number of northern sea otters to be subjected to incidental take is small relative to the population size of the species or stock.

1. The Southwest, Southcentral, and Southeast Alaska stocks of northern sea otters range well beyond the boundaries of the specified geographic area. Meanwhile, the USCG's specified activities would impact only a small fraction of the specified geographic area. We therefore expect that only a small proportion of animals from each stock could occur proximate enough to the USCG's activities to experience any effects.

2. We estimate the USCG's proposed activities in the specified geographic region during the 5-year period of this ITR will result in take by Level B harassment of no more than:

- One sea otter from the Southwest Alaska stock, representing 0.000 percent of the best available estimate of that stock (USFWS 2020) (1 ÷ 51,382 ≈ 0.00000);
- 45 sea otters from the Southcentral Alaska stock, representing 0.208 percent of the best available estimate that stock (Esslinger et al. 2021) (45 ÷ 21,617 = 0.00208); and
- 23 sea otters from the Southeast Alaska stock, representing 0.087 percent of the best available estimate of that stock (Eisaguirre et al. 2021) (23 ÷ 26,347 = 0.000873).

Based on these numbers, we find that the USCG's specified activities projects will take only a small number of animals from each affected stock of northern sea otters.

We note ongoing litigation concerning a separate, recently issued, ITR in which plaintiffs assert that the Service's ''small numbers'' analysis must aggregate the number of animals anticipated to be taken in each year contemplated by the ITR and compare that multiyear number to the population estimate applicable to 1 year. While we disagree with this approach, for the sake of providing the applicant with regulatory certainty pending resolution of that litigation, we further analyze the ''small numbers'' question using this alternative approach and estimate the incidental take of:

- 5 sea otters from the Southwest Alaska stock, representing 0.01 percent of the best available estimate of that

stock (USFWS 2020) (5 ÷ 51,382 = 0.00010);

• 77 sea otters from the Southcentral Alaska stock, representing 0.356 percent of the best available estimate of that stock (Esslinger et al. 2021) (77 ÷ 21,617 = 0.00356); and

• 115 sea otters from the Southeast Alaska stock, representing 0.437 percent of the best available estimate of that stock (Eisaguirre et al. 2021) (115 ÷ 26,347 = 0.004363).

These alternative numbers also support our finding that the USCG's specified activities will take only a small number of animals from each affected stock of northern sea otters.

Conclusion

Therefore, we determine that the USCG's activities will take by Level B harassment only small numbers of the Southwest, Southcentral, and Southeast Alaska stocks of northern sea otters because: (1) Only a small proportion of the Southwest, Southcentral, and Southeast Alaska stocks of northern sea otters will overlap with the areas where the specified activities will occur; and (2) for each stock, the number of sea otters anticipated to be harassed is small relative to the population size of the stock.

Negligible Impact

For our negligible impacts determination, we considered the following:

1. The applicant will implement monitoring requirements and mitigation measures designed to reduce the potential impacts of their operations on sea otters.

2. The distribution and habitat use patterns of sea otters indicate that relatively few sea otters will occur in the specified areas of activity at any particular time and, therefore, few sea otters are likely to be affected. The potential for stock-wide effects resulting from exposure to and disturbance from the specified activities is further reduced by the relatively small area of the specified activities compared to the range of the Southwest, Southcentral, and Southeast Alaska stocks of northern sea otters.

3. The documented impacts of previous anthropogenic activities on sea otters, taking into consideration cumulative effects, suggests that the types of activities analyzed for this ITR will have minimal effects and will be short-term, temporary behavioral changes.

4. The Service does not anticipate any lethal or injurious harassment take that would remove individual sea otters from the population. Nor does the Service anticipate any impacts that would hinder or prevent their successful reproduction or successful rearing. Incidental harassment events are anticipated to be limited to human interactions that lead to short-term behavioral disturbances. These disturbances would not affect the rates of recruitment or survival for sea otter stocks. This ITR does not facilitate the authorization of injurious or lethal take, and we do not anticipate any such take will occur.

We also considered the specific congressional direction in balancing the potential for a significant impact with the likelihood of that event occurring. The specific congressional direction that justifies balancing probabilities with impacts follows:

If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low, but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information (53 FR 8474, March 15, 1988; 132 Cong. Rec. S 16305 (October 15, 1986)).

We reviewed the effects of the pile driving and marine construction on sea otters, including impacts from insertion and removal of piles, socket drilling, and underwater use of tools. Based on our review of these potential impacts, past monitoring reports, and the biology and natural history of sea otters, we conclude that the anticipated incidental take from the USCG's specified activities would not affect the rates of recruitment or survival for the Southwest, Southcentral, and Southeast Alaska stocks of northern sea otters, and would have a negligible impact on each of those stocks.

Least Practicable Adverse Impacts

We evaluated the practicability and effectiveness of mitigation measures based on the nature, scope, and timing of the specified activities; the best available scientific information; and monitoring data during previously conducted activities in the specified geographic region. We determine that the mitigation measures included within the USCG's request will ensure least practicable adverse impacts on sea otters.

In evaluating what mitigation measures are appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses, we considered the manner and degree to which the successful implementation of the measures are expected to achieve this goal. We considered the nature of the potential adverse impact being mitigated (likelihood, scope, range), the likelihood that the measures will be effective if implemented, and the likelihood of effective implementation. We also considered the practicability of the measures for applicant implementation (*e.g.,* cost, impact on operations). We assessed whether any additional, practicable requirements could be implemented to further reduce effects but did not identify any.

To reduce the potential for disturbance from acoustic stimuli associated with the activities, the USCG has proposed mitigation measures, including the following:

• Using the smallest diameter piles practicable while minimizing the overall number of piles;

• Using block cushions or pile caps to reduce transmission of sounds from pile-driving into the water column;

• Conducting activities that may produce in-water sound as close to low tide as possible;

• Development of a marine mammal monitoring and mitigation plan;

• Establishment of shutdown and monitoring zones;

• Visual mitigation monitoring by designated Protected Species Observers (PSO);

• Limiting in-water activity to daylight hours;

• Site clearance before startup;

• Soft-start procedures; and

• Shutdown procedures.

These measures are further specified under § 18.149, *Mitigation.*

The USCG considered using bubble curtains to dampen underwater sounds produced during planned activities. This was deemed to be impracticable based on safety concerns arising from the presence of contaminated sediments and unexploded ordnance at the work sites. The Service has not identified any additional (*i.e.,* not already incorporated into the USCG's request or, in the case of block cushions, agreed to in subsequent communication) mitigation or monitoring measures that are practicable and would further reduce potential impacts to sea otters and their habitat.

Impact on Subsistence Use

The USCG's specified activities will occur at existing USCG facilities located

in developed areas where firearm use is largely prohibited. The USCG's specified activities will not preclude access to any known harvest areas, and we do not anticipate that these activities will otherwise reduce the availability of sea otters for harvest. We therefore make a finding that the USCG's anticipated harassment will not have an unmitigable adverse impact on the availability of any stock of northern sea otters for taking for subsistence uses. In making this finding, we considered the timing and location of the proposed activities and the timing and location of subsistence harvest activities in the area of the proposed project.

Monitoring and Reporting

The purposes of the monitoring requirements are to document and provide data for assessing the effects of specified activities on sea otters; to ensure that take is consistent with that anticipated in the small numbers, negligible impact, and subsistence use analyses; and to detect any unanticipated effects on the species. Monitoring plans include steps to document when and how sea otters are encountered and their numbers and behaviors during these encounters. This information allows the Service to measure encounter rates and trends and to estimate numbers of animals potentially affected. To the extent possible, monitors will record group size, age, sex, reaction, duration of interaction, and closest approach to the project activity.

Monitoring activities will be summarized and reported in a formal report each year. The USCG must submit a final monitoring report to us no later than 90 days after the expiration of the LOA. We will base each year's monitoring objective on the previous year's monitoring results. We will require an approved plan for monitoring and reporting the effects of pile driving and marine construction activities on sea otters prior to issuance of an LOA. We will require approval of the monitoring results for continued operation under the LOA.

We find that these monitoring and reporting requirements to evaluate the potential impacts of planned activities will ensure that the effects of the activities remain consistent with the rest of the findings.

Summary of Changes From the Proposed Rule

In preparing these final regulations for the incidental take of sea otters, we reviewed and considered comments and information from the public concerning our proposed rule published in the **Federal Register** on August 15, 2022 (87 FR 50041). We also reviewed and considered comments and information from the public concerning our draft EA. We are finalizing these regulations with the following changes from our proposed rule: (1) The addition of POCs to the procedures to obtain an LOA in § 18.145, (2) the addition of sound-dampening cushion blocks or pile caps to mitigation measures pursuant to communication with the USCG wherein the USCG clarified its intent to adopt this mitigation measure, and (3) the addition of information collection requirements in § 18.152.

Summary of and Response to Comments and Recommendations

During the public comment period, we requested written comments from the public on the proposed ITR as well as the draft EA. The comment period opened August 15, 2022, and closed September 14, 2022. We received four comment submissions; these included comments on the proposed rule and the draft EA as well as a number of publications and other documents submitted in support of those comments.

Response to Comments

Comment 1: One commenter stated that the Service failed to consider the potential for take by Level A harassment as we did not disclose the size of the area that may be ensonified to levels capable of causing Level A harassment, nor did we estimate how many animals could be present in this area. The commenter further stated that the Service determined that sea otters would not be affected by sounds at these levels because they could escape the area and because they spend much of their time with their heads above water.

Response: The Service disagrees. For activities that may generate sound levels capable of eliciting Level A harassment, the sound isopleths appeared in the proposed rule for these ITRs published August 15, 2022 (87 FR 50041), in the maps and summary tables for each site. The Service described otters' escape response as part of the review of literature regarding documented reactions of sea otters to vessels and noise; we did not use this information to assess the level of risk of exposure of sea otters to underwater sounds. The Service does not consider the amount of time that otters spend with their head above water as a reason to use in-air noise criteria. Instead, we use the larger underwater sound isopleth radii to estimate the number of animals exposed to sounds generated by activities that generate both in-water and in-air sounds. The Service has determined that this is a more conservative approach to assess the impacts of these sound sources.

We concluded that, because the sound isopleth radii for Level A harassment are all smaller than the 20-meter (m) shutdown zone prescribed in the mitigation measures, exposure of sea otters to sounds that may cause Level A harassment is not anticipated. Further, no coverage for take by Level A harassment was requested by the USCG.

Comment 2: One commenter stated that the effects of underwater noise on sea otters could not be assessed as sea otter hearing is not fully understood and that criteria for Level A harassment had not been set by the National Marine Fisheries Service (NMFS).

Response: The Service agrees that a better understanding of sea otter hearing and reactions to sounds would improve our ability to analyze potential effects of anthropogenic activity. At this time, the best available syntheses of studies of sea otter hearing, behavioral response to sounds, and suggested criteria for acoustic threshold shift and injury are presented in Southall et al. 2019 and 2021. We used the thresholds established for ''Other Marine Carnivores'' to inform our estimates of exposure of sea otters to sounds that could result in harassment, which we consider the best available scientific evidence. This is similar to the approach taken by NMFS to set criteria for their trust species, *i.e.,* cetaceans, seals, and sea lions.

Comment 3: One commenter stated that the estimated incidental take did not constitute a small number under the MMPA because the total take will not have a negligible impact.

Response: The Service disagrees. The ''small numbers'' and ''negligible impact'' findings are made independently. Information on the definitions of small numbers and negligible impact can be found above in *Background* and in the same section in the proposed rule for these ITRs published August 15, 2022 (87 FR 50041).

Comment 4: One commenter stated that the Service should not make decisions regarding impacts to sea otters based on the outdated 2014 stock assessment reports (SAR) and should wait until updated SARs become available.

Response: The Service disagrees. As presented in the proposed rule for these ITRs published August 15, 2022 (87 FR 50041), to evaluate potential effects to sea otters, we used both the 2014 SARs and the most recently available population estimates based on surveys

conducted since the finalization of the 2014 SARs (Eisaguirre et al. 2021; Esslinger et al. 2021; USFWS 2020). We consider this information the best available scientific evidence.

Comment 5: One commenter stated that authorizing take would be inappropriate given that population dynamics of sea otters indicated that sea otters are not thriving and that threats to sea otters are increasing, particularly pathogens.

Response: The Service disagrees. The most recent data concerning sea otter populations and threats were used to evaluate potential impacts to sea otters. No removals of sea otters are authorized, and we expect that the effects of the planned activities upon individual sea otters will be minor. We do not expect such take to have effects at the stock or population level. We find that the authorized taking would have a negligible impact on each stock of sea otters, even when cumulative effects from other factors are considered.

Comment 6: One commenter stated that the Service's NEPA analysis failed to consider cumulative impacts from the effects of MMPA authorizations for other projects, or cumulative impacts arising from both direct and indirect results of climate change.

Response: The Service disagrees. The draft EA addresses cumulative effects resulting from changes in environment arising from climate change as well as anthropogenic activities, including coastal development and industrial activity. Given the temporary nature of the effects to the behavior and distribution of individual sea otters that could potentially result from the activities covered by these and other ITRs, the Service does not see evidence supporting the notion that authorizing the Level B harassment of a small number of sea otters will appreciably contribute to detrimental cumulative effects.

Required Determinations

National Environmental Policy Act

We have prepared an environmental assessment in accordance with the NEPA (42 U.S.C. 4321 *et seq.*). We have concluded that authorizing the nonlethal, incidental, unintentional take by Level B harassment of up to 5 incidental takes of 5 sea otters from the Southwest Alaska stock, 255 incidental takes of 77 sea otters from the Southcentral Alaska stock, and 700 incidental takes of 115 otters from the Southeast Alaska stock in Alaska during activities conducted by the USCG and its subcontractors during the regulatory period would not significantly affect the quality of the human environment, and that the preparation of an environmental impact statement for this incidental take authorization is not required by section 102(2) of NEPA or its implementing regulations. A copy of the EA and the Service's FONSI can be obtained from the locations described in **ADDRESSES**.

Endangered Species Act

Under the Endangered Species Act (ESA) (16 U.S.C. 1536(a)(2)), all Federal agencies are required to ensure the actions they authorize are not likely to jeopardize the continued existence of any threatened or endangered species or result in destruction or adverse modification of critical habitat. The planned activities occur within the range of Southwest Alaska, Southcentral Alaska, and Southeast Alaska stocks of northern sea otters. The first of these, the Southwest Alaska stock, is listed as threatened under the ESA, whereas the Southcentral Alaska and Southeast Alaska stocks are not listed under the ESA. Prior to issuance of this ITR, the Service conducted intra-Service consultation under section 7 of the ESA on our issuance of an ITR. These evaluations and findings are available on the Service's website at *https://ecos.fws.gov/ecp/report/biological-opinion.*

Government-to-Government Coordination

It is our responsibility to communicate and work directly on a Government-to-Government basis with federally recognized Alaska Native Tribes and organizations in developing programs for healthy ecosystems. We seek their full and meaningful participation in evaluating and addressing conservation concerns for protected species. It is our goal to remain sensitive to Alaska Native culture, and to make information available to Alaska Natives. Our efforts are guided by the following policies and directives:

(1) *The Native American Policy of the Service* (January 20, 2016);

(2) the *Alaska Native Relations Policy of the U.S. Fish and Wildlife Service* (currently in draft form; see 87 FR 66255, November 3, 2022);

(3) *Executive Order 13175* (January 9, 2000);

(4) *Department of the Interior Secretary Orders 3206* (June 5, 1997), *3225* (January 19, 2001), *3317* (December 1, 2011), *3342* (October 21, 2016), and *3403* (November 15, 2021), including *Director's Order 227* (September 8, 2022);

(5) the *Alaska Government-to-Government Policy* (a departmental memorandum issued January 18, 2001); and

(6) the *Department of the Interior's policies on consultation with Alaska Native Tribes and organizations* (November 30, 2022).

We have evaluated possible effects of the planned activities on federally recognized Alaska Native Tribes and organizations. The Service has determined that, due to this project's locations and activities, the Tribal organizations and communities across the Gulf of Alaska, as well as relevant Alaska Native Claims Settlement Act (ANCSA) corporations, will not be impacted by this project. Regardless, the Service has contacted Tribal organizations in neighboring communities, as well as relevant ANCSA corporations, to inform them of the availability of this authorization and offer them the opportunity to consult.

Regulatory Planning and Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules for a determination of significance. The OMB has designated this rule as not significant.

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

The OIRA bases its determination of significance upon the following four criteria: (a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government; (b) Whether the rule will create inconsistencies with other Federal agencies' actions; (c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations

of their recipients; and (d) Whether the rule raises novel legal or policy issues.

Expenses will be related to, but not necessarily limited to: the development of applications for LOAs; monitoring, recordkeeping, and reporting activities conducted during project operations; development of activity- and species-specific marine mammal monitoring and mitigation plans; and coordination with Alaska Natives to minimize effects of operations on subsistence hunting. Realistically, costs of compliance with this rule are minimal in comparison to those related to actual marine construction operations. The actual costs to develop the petition for promulgation of regulations and LOA requests do not exceed $200,000 per year, short of the ''major rule'' threshold that would require preparation of a regulatory impact analysis.

Congressional Review Act

We have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Congressional Review Act. The rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

We have determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The USCG, and their contractors conducting pile driving and marine construction activities in the GOA, are the only entities subject to these ITRs. Therefore, neither a regulatory flexibility analysis nor a small entity compliance guide is required.

Takings Implications

This rule does not have takings implications under Executive Order 12630 because it facilitates the authorization of nonlethal, incidental, but not intentional, take of sea otters by pile driving and marine construction and, thereby, exempts these companies from civil and criminal liability as long as they operate in compliance with the terms of their LOAs. Therefore, a takings implications assessment is not required.

Federalism Effects

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132. The MMPA gives the Secretary of the Interior and, by delegation, the Service the authority and responsibility to protect sea otters.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform

The Departmental Solicitor's Office has determined that this regulation does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This final rule contains a collection of information we submitted to the OMB. All information collections require approval under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB previously reviewed and approved the information collection requirements associated with incidental take of marine mammals and assigned OMB Control Number 1018–0070 (expires January 31, 2024).

While the new regulations in 50 CFR part 18, subpart L, pertain only to the incidental taking of northern sea otters (while engaged in activities associated with or in support of marine construction activities in the Gulf of Alaska), the below listed information collections approved by the OMB also included previously existing requirements associated with the incidental taking of polar bears (*Ursus maritimus*), Pacific walruses (*Odobenus rosmarus divergens*), and northern sea otters in Alaska brought into compliance with the PRA.

The Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), imposed, with certain exceptions, a moratorium on the taking of marine mammals. Section 101(a)(5)(A) of the MMPA directs the Secretary of the Interior to allow, upon request by citizens of the United States, the taking of small numbers of marine mammals incidental to specified activities (other than commercial fishing) if the Secretary makes certain findings and prescribes specific regulations that, among other things, establish permissible methods of taking. This is a nonform collection. Respondents must comply with the regulations at 50 CFR 18.27, which outline the procedures and requirements for submitting a request. Specific regulations governing authorized incidental take of marine mammal activities are contained in 50 CFR part 18, subparts J (incidental take of polar bears and Pacific walruses in the Beaufort Sea), K (incidental take of northern sea otters in the Cook Inlet), and L (incidental take of northern sea otters in the Gulf of Alaska). These regulations provide the applicant with a detailed description of information that we need to evaluate the proposed activity and determine if it is appropriate to issue specific regulations and, subsequently, LOAs. We use the information to verify the findings required to issue incidental take regulations, to decide if we should issue an LOA, and (if an LOA is issued) what conditions should be included in the LOA. In addition, we analyze the information to determine impacts to polar bears, Pacific walruses, northern sea otters, and the availability of those marine mammals for subsistence purposes of Alaska Natives. The OMB approved the below listed revisions to existing and new reporting and/or recordkeeping requirements identified below:

(1) *Addition of New Subpart*—With this final rule, we added a new subpart, 50 CFR part 18, subpart L (U.S. Coast Guard), for a period of 5 years effective from the date of final issuance of these ITRs. This new subpart does not require new information collections beyond those contained in this submission, which were previously approved by OMB. The addition of subpart L does, however, require an adjustment to the previously approved burden for the application, reporting, and recordkeeping burden requirements.

(2) We also revised the previously approved ''Onsite Monitoring and Observation Reports'' information collection to split it into three separate information collections to more accurately account for burden for the various components under this specific section of the regulations:

a. *In-Season Monitoring (Activity Progress Reports)* (50 CFR

18.127(a)(1))—Activity progress reports. Holders of an LOA must:

- Notify the Service at least 48 hours prior to the onset of activities;
- Provide the Service weekly progress reports of any significant changes in activities and/or locations; and
- Notify the Service within 48 hours after ending of activities.

b. *In-Season Monitoring (Polar Bear Observation Reports)* (50 CFR 18.127(a)(3))—Holders of an LOA must report, within 48 hours, all observations of polar bears and potential polar bear dens, during any industry activity. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the Service). Information in the observation report must include, but is not limited to:

- Date, time, and location of observation;
- Number of polar bears;
- Sex and age of polar bears (if known);
- Observer name and contact information;
- Weather, visibility, sea state, and sea-ice conditions at the time of observation;
- Estimated closest distance of polar bears from personnel and facilities;
- Industry activity at time of sighting;
- Possible attractants present;
- Polar bear behavior;
- Description of the encounter;
- Duration of the encounter; and
- Mitigation actions taken.

c. *Notification of LOA Incident Report* (50 CFR 18.127(b))—Holders of an LOA must report, as soon as possible, but within 48 hours, all LOA incidents during any industry activity. An LOA incident is any situation when specified activities exceed the authority of an LOA, when a mitigation measure was required but not enacted, or when injury or death of a marine mammal occurs. Reports must include:

- All information specified for an observation report;
- A complete detailed description of the incident; and
- Any other actions taken.

In addition to the revisions described above, we are bringing the following existing regulatory requirements contained in part 18 not previously approved by OMB under the PRA into compliance:

(1) *Mitigation—Interaction Plan* (50 CFR 18.126(a)(1)(iii))—All holders of an LOA must have an approved polar bear safety, awareness, and interaction plan on file with the Service's Marine Mammals Management Office and onsite and provide polar bear awareness training to certain personnel. Interaction plans must include:

- The type of activity and where and when the activity will occur (*i.e.,* a summary of the plan of operation);
- A food, waste, and other ''bear attractants'' management plan;
- Personnel training policies, procedures, and materials;
- Site-specific walrus and polar bear interaction risk evaluation and mitigation measures;
- Polar bear avoidance and encounter procedures; and
- Polar bear observation and reporting procedures.

(2) *Mitigation—3rd-Party Notifications* (50 CFR 18.126(a)(2) and (e)(1))—All applicants for an LOA must contact affected subsistence communities and hunter organizations to discuss potential conflicts caused by the activities and provide the Service documentation of communications as described in § 18.122.

(3) *Mitigation—Requests for Exemption Waivers* (50 CFR 18.126(c)(4))—Exemption waivers to the operating conditions in 50 CFR 18.126(c) may be issued by the Service on a case-by-case basis, based upon a review of seasonal ice conditions and available information on walrus and polar bear distributions in the area of interest.

(4) *Mitigation—Plan of Cooperation* (50 CFR 18.126(e)(2))—When appropriate, a holder of an LOA will be required to develop and implement a Service-approved POC. The POC must include a description of the procedures by which the holder of the LOA will work and consult with potentially affected subsistence hunters and a description of specific measures that have been or will be taken to avoid or minimize interference with subsistence hunting of walruses and polar bears and to ensure continued availability of the species for subsistence use. The Service will review the POC to ensure that any potential adverse effects on the availability of the animals are minimized. The Service will reject POCs if they do not provide adequate safeguards to ensure the least practicable adverse impact on the availability of walruses and polar bears for subsistence use.

We also renewed the existing reporting and/or recordkeeping requirements identified below:

(1) *Application for Regulations*—Regulations at 50 CFR part 18 require the applicant to provide information on the activity as a whole, which includes, but is not limited to, an assessment of total impacts by all persons conducting the activity. Applicants can find specific requirements in 50 CFR part 18, subparts J, K, and L. These regulations provide the applicant with a detailed description of information that we need to evaluate the proposed activity and determine whether to issue specific regulations and, subsequently, LOAs. The required information includes:

- A description of the specific activity or class of activities that can be expected to result in incidental taking of marine mammals.
- The dates and duration of such activity and the specific geographical region where it will occur.
- Based on the best available scientific information, each applicant must also provide:

—An estimate of the species and numbers of marine mammals likely to be taken by age, sex, and reproductive conditions;

—The type of taking (*e.g.,* disturbance by sound, injury or death resulting from collision, etc.) and the number of times such taking is likely to occur;

—A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks likely to be affected by such activities;

—The anticipated impact of the activity upon the species or stocks; and

—The anticipated impact of the activity on the availability of the species or stocks for subsistence uses.

- The anticipated impact of the activity upon the habitat of the marine mammal populations and the likelihood of restoration of the affected habitat.
- The availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and, where relevant, on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. (The applicant and those conducting the specified activity and the affected subsistence users are encouraged to develop mutually agreeable mitigating measures that will meet the needs of subsistence users.)
- Suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species through an analysis of the level of taking or impacts and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity.
- Suggested means of learning of, encouraging, and coordinating research opportunities, plans, and activities

relating to reducing such incidental taking from such specified activities, and evaluating its effects.

- Applicants must develop and implement a site-specific (or umbrella plan addressing site-specific considerations), Service-approved marine mammal monitoring and mitigation plan to monitor and evaluate the effectiveness of mitigation measures and the effects of activities on marine mammals and the subsistence use of these species.
- Applicants must also provide trained, qualified, and Service-approved onsite observers to carry out monitoring and mitigation activities identified in the marine mammal monitoring and mitigation plan.

This information is necessary for the Service to anticipate the impact of the activity on the species or stocks and on the availability of the species or stocks for subsistence uses. Under requirements of the MMPA, we cannot authorize a take unless the total of all takes will have a negligible impact on the species or stocks and, where appropriate, will not have an unmitigable adverse impact on the availability of the species or stocks for subsistence uses. These requirements ensure that applicants are aware of related monitoring and research efforts they can apply to their situation, and that the monitoring and reporting that we impose are the least burdensome to the applicant.

(2) *Final Monitoring Report*—The results of monitoring and mitigation efforts identified in the marine mammal monitoring and mitigation plan must be submitted to the Service for review within 90 days of the expiration of an LOA. Upon request, final report data must be provided in a common electronic format (to be specified by the Service). Information in the final (or annual) report must include, but is not limited to:

- Copies of all observation reports submitted under the LOA;
- A summary of the observation reports;
- A summary of monitoring and mitigation efforts including areas, total hours, total distances, and distribution;
- Analysis of factors affecting the visibility and detectability of walruses and polar bears during monitoring;
- Analysis of the effectiveness of mitigation measures;
- Analysis of the distribution, abundance, and behavior of walruses and/or polar bears observed; and
- Estimates of take in relation to the specified activities.

(3) *Requests for Letters of Authorization (LOA)*—LOAs, which may be issued only to U.S. citizens, are required to conduct activities pursuant to any specific regulations established. Once specific regulations are effective, the Service will, to the maximum extent possible, process subsequent requests for LOAs within 30 days after receipt of the request by the Service. All LOAs will specify the period of validity and any additional terms and conditions appropriate for the specific request. Issuance of LOAs will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations.

(4) *Onsite Monitoring and Observation Reports* (See revision section above.)—The regulations also require that each holder of an LOA submit a monitoring report indicating the nature and extent of all takes of marine mammals that occurred incidentally to the specific activity. Since the inception of incidental take authorizations for polar bears, Pacific walruses (walruses), and northern sea otters (otters), we have required monitoring and reporting during oil and gas industry activities. The purpose of monitoring and reporting requirements is to assess the effects of industrial activities on polar bears, walruses, and otters to ensure that take is minimal to marine mammal populations, and to detect any unanticipated effects of take. The monitoring focus has been site-specific, area-specific, or population-specific. Site-specific monitoring measures animal-human encounter rates, outcomes of encounters, and trends of animal activity in the industrial areas, such as polar bear numbers, behavior, and seasonal use. Area-specific monitoring includes analyzing animal spatial and temporal use trends, sex/age composition, and risk assessment to unpredictable events, such as oil spills. Population-specific monitoring includes investigating species' life-history parameters, such as population size, recruitment, survival, physical condition, status, and mortality.

(5) *Polar Bear Den Detection Report*—Holders of an LOA seeking to carry out onshore activities in known or suspected polar bear denning habitat during the denning season must make efforts to locate occupied polar bear dens within and near proposed areas of operation. They may use any appropriate tool, such as forward-looking infrared imagery and/or polar bear scent-trained dogs, in concert with denning habitat maps along the Alaskan coast. In accordance with 50 CFR 18.128(b)(1) and (b)(2), LOA holders must report all observed or suspected polar bear dens to us prior to the initiation of activities. We use this information to determine the appropriate terms and conditions in an individual LOA in order to minimize potential impacts and disturbance to polar bears.

Holders of an LOA seeking to carry out onshore activities during the denning season (November–April) must conduct two separate surveys for occupied polar bear dens in all denning habitat within 1.6 km (1 mi) of proposed activities using aerial infrared (AIR) imagery. Further, all denning habitat within 1.6 km (1 mi) of areas of proposed seismic surveys must be surveyed three separate times with AIR technology.

Flight crews will record and report environmental parameters including air temperature, dew point, wind speed and direction, cloud ceiling, and percent humidity, and a flight log will be provided to the Service within 48 hours of the flight.

Title of Collection: Incidental Take of Marine Mammals During Specified Activities, 50 CFR 18.27 and 50 CFR part 18, subparts J, K, and L.

OMB Control Number: 1018–0070.

Form Numbers: None.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals/households, private sector (oil and gas industry companies), State/local/Tribal governments, and Federal Government.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Non-Hour Burden Cost: $200,000 (associated with the polar bear den detection survey and report).

Type of action	Number of annual respondents	Number of responses each	Total annual responses	Average completion time (hours)	Total annual burden hours
Incidental Take of Marine Mammals—Application for Regulations:					
Reporting—Private Sector	3	1	3	20	450
Recordkeeping—Private Sector				130	
Reporting—Government	2	1	2	20	300
Recordkeeping—Government				130	
Requests—Letters of Authorization:					
Reporting—Private Sector	15	4	60	8	1,440
Recordkeeping—Private Sector				16	
Reporting—Government	5	4	20	8	480
Recordkeeping—Government				16	
Final Monitoring Report:					
Reporting—Private Sector	15	4	60	8	1,440
Recordkeeping—Private Sector				42	
Reporting—Government	5	4	20	8	480
Recordkeeping—Government				42	
Polar Bear Den Detection Report (50 CFR 18.126(b)(1)(iv)):					
Reporting—Private Sector	4	1	4	8	200
Recordkeeping—Private Sector				42	
In-season Monitoring—Activity Progress Reports (50 CFR 18.127(a)(1)) *NEW (Revised):*					
Reporting—Private Sector	1	1	1	.5	1
Recordkeeping—Private Sector				.5	
Reporting—Government	1	1	1	.5	1
Recordkeeping—Government				.5	
In-season Monitoring—Polar Bear Observation Reports (50 CFR 18.127(a)(3)) *NEW (Revised):*					
Reporting—Private Sector	15	4.5	68	.25	85
Recordkeeping—Private Sector				1	
Reporting—Government	1	7	7	.25	9
Recordkeeping—Government				1	
Notification of LOA Incident Report (50 CFR 18.127(b)) *NEW (Revised):*					
Reporting—Private Sector	2	1	2	.25	2
Recordkeeping—Private Sector				.5	
Reporting—Government	1	1	1	.25	1
Recordkeeping—Government				.5	
Mitigation—Interaction Plan (50 CFR 18.126(a)(1)(iii)) *NEW (Existing):*					
Reporting—Private Sector	12	1	12	2	96
Recordkeeping—Private Sector				6	
Reporting—Government	3	1	3	2	24
Recordkeeping—Government				6	
Mitigation—3rd Party Notifications (50 CFR 18.126(a)(2) and (e)(1)) *NEW (Existing):*					
Reporting—Private Sector	12	3	36	1	72
Recordkeeping—Private Sector				1	
Reporting—Government	3	3	9	1	18
Recordkeeping—Government				1	
Mitigation—Requests for Exemption Waivers (50 CFR 18.126(c)(4)) *NEW (Existing):*					
Reporting—Private Sector	1	1	1	1	2
Recordkeeping—Private Sector				1	
Reporting—Government	1	1	1	1	2
Recordkeeping—Government				1	
Mitigation—Plan of Cooperation (50 CFR 18.126(e)(2)) *NEW (Existing):*					
Reporting—Private Sector	1	1	1	10	40
Recordkeeping—Private Sector				30	
Reporting—Government	1	1	1	10	40

Type of action	Number of annual respondents	Number of responses each	Total annual responses	Average completion time (hours)	Total annual burden hours
Recordkeeping—Government				30	
Totals	104		313		5,183

On August 15, 2022, we published a proposed rule (87 FR 50041) soliciting comments on this collection of information for 60 days, ending on October 14, 2022. No comments on this collection of information were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(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) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Energy Effects

Executive Order 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This rule provides exceptions from the MMPA's taking prohibitions for entities engaged in specified pile driving and marine construction activities in the specified geographic region. These specified activities are unrelated to the oil and gas industry or any other energy-related industry. Therefore, this rule is not expected to significantly affect energy supplies, distribution, or use and does not constitute a significant energy action. No statement of energy effects is required.

References

For a list of the references cited in this rule, see Docket No. FWS–R7–ES–2022–0025, available at *https://www.regulations.gov.*

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons set forth in the preamble, the Service amends part 18, subchapter B of chapter 1, title 50 of the Code of Federal Regulations as set forth below.

PART 18—MARINE MAMMALS

■ 1. The authority citation of 50 CFR part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart L, consisting of §§ 18.142 through 18.152, to read as follows:

Subpart L—Nonlethal Taking of Marine Mammals Incidental to Pile Driving and Marine Construction Activities in the Gulf of Alaska

Sec.

§18.142 Specified activities covered by this subpart.

Regulations in this subpart apply to the nonlethal incidental, but not intentional, take, as defined in § 18.3 and under section 3 of the Marine Mammal Protection Act (16 U.S.C. 1371 *et seq.*), of small numbers of northern sea otters (*Enhydra lutris kenyoni;* hereafter ''sea otters'') by the U.S. Coast Guard (hereafter ''USCG'' or ''the applicant'') while engaged in activities associated with or in support of marine construction activities in the Gulf of Alaska. The applicant is a U.S. citizen as defined in § 18.27(c).

§ 18.143 Specified geographic region where this subpart applies.

(a) The specified geographic region encompasses areas within 2 kilometers (km) (~1.25 miles (mi)) of eight USCG facilities within the USCG Civil Engineering Unit, Juneau Area of Responsibility. These facilities are: Base Kodiak, Moorings Seward, Moorings Valdez, Moorings Cordova, Moorings Sitka, Station Juneau, Moorings Petersburg, and Base Ketchikan.

(b) The geographic area of the incidental take regulations (ITRs) in this subpart includes all Alaska State waters within the areas listed in paragraph (a) of this section as well as all adjacent rivers, estuaries, and coastal lands where sea otters may occur.

§ 18.144 Dates this subpart is in effect.

Regulations in this subpart are effective from May 19, 2023, until May 19, 2028.

§ 18.145 Procedure to obtain a Letter of Authorization (LOA).

(a) The applicant must submit the request for authorization to the U.S. Fish and Wildlife Service (Service) Alaska Region Marine Mammals Management Office (MMM), MS 341, 1011 East Tudor Road, Anchorage, Alaska, 99503, or by email at *r7mmmregulatory@fws.gov,* at least 30 days prior to the start of the planned activity.

(b) The request for an LOA must comply with the requirements set forth in §§ 18.149 through 18.151 and must include the following information:

(1) An operational plan for the activity;

(2) A digital geospatial file of the project footprint, including sound isopleths;

(3) A site-specific marine mammal monitoring and mitigation plan that specifies the procedures to monitor and mitigate the effects of the activities on sea otters; and

(4) When appropriate, a plan of cooperation, which is a documented plan that describes measures to mitigate potential conflicts between planned project activities and subsistence hunting.

§ 18.146 How the Service will evaluate a request for an LOA.

(a) The Service will evaluate each request for an LOA to determine if the proposed activity is consistent with the analysis and findings made for the regulations in this subpart. Depending on the results of the evaluation, we may issue the LOA, add further conditions, or deny the LOA.

(b) Once issued, the Service may withdraw or suspend an LOA if the project activity is modified in a way that undermines the results of the previous evaluation, if the conditions of the regulations in this subpart are not being substantially complied with, or if the taking allowed is or may be having more than a negligible impact on the affected stock of sea otters or an unmitigable adverse impact on the availability of sea otters for subsistence uses.

(c) The Service will make decisions concerning withdrawals of an LOA, either on an individual or class basis, only after notice and opportunity for public comment in accordance with § 18.27(f)(5). The requirement for notice and public comment will not apply should we determine that an emergency exists that poses a significant risk to the well-being of the species or stocks of sea otters.

§ 18.147 Authorized take allowed under an LOA.

(a) To incidentally take sea otters pursuant to the regulations in this subpart, the USCG must apply for and obtain an LOA in accordance with §§ 18.27(f) and 18.145. The applicant is a U.S. citizen as defined in § 18.27(c).

(b) An LOA allows for the nonlethal, incidental, but not intentional take by harassment of sea otters during activities specified in § 18.142 within the Gulf of Alaska ITR region described in § 18.143.

(c) Each LOA will set forth:

(1) Permissible methods of incidental take;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(d) Issuance of the LOA(s) must be based on a determination that the level of take will be consistent with the findings made for the total allowable take under the regulations in this subpart.

§ 18.148 Prohibited take under an LOA.

(a) Except as otherwise provided in this subpart, prohibited taking is described in § 18.11 as well as: intentional take, lethal incidental take of sea otters, and any take that fails to comply with this subpart or with the terms and conditions of an LOA.

(b) If project activities cause unauthorized take, the applicant must take the following actions:

(1) Cease activities immediately (or reduce activities to the minimum level necessary to maintain safety) and report the details of the incident to the Service MMM at 1–800–362–5148 (business hours) within 48 hours; and

(2) Suspend further activities until the Service has reviewed the circumstances, determined whether additional mitigation measures are necessary to avoid further unauthorized taking, and notified the applicant that project activities may resume.

§ 18.149 Mitigation.

(a) *Mitigation measures for all LOAs.* The applicant, including all personnel operating under the applicant's authority (or ''operators,'' including contractors, subcontractors, and representatives) must undertake the following activities to avoid and minimize take of sea otters by harassment.

(1) Implement policies and procedures to avoid interactions with and minimize to the greatest extent practicable adverse impacts on sea otters, their habitat, and the availability of these marine mammals for subsistence uses.

(2) Develop avoidance and minimization policies and procedures, in cooperation with the Service, that include temporal or spatial activity restrictions to be used in response to the presence of sea otters engaged in a biologically significant activity (*e.g.,* resting, feeding, hauling out, mating, or nursing).

(3) Cooperate with the Service's MMM Office and other designated Federal, State, and local agencies to monitor and mitigate the impacts of pile driving and marine construction activities on sea otters.

(4) Allow Service personnel or the Service's designated representative to board project vessels or visit project worksites for the purpose of monitoring impacts to sea otters and subsistence uses of sea otters at any time throughout project activities so long as it is safe to do so.

(5) Designate trained and qualified protected species observers (PSOs) to monitor for the presence of sea otters, initiate mitigation measures, and monitor, record, and report the effects of the activities on sea otters. The applicant is responsible for providing training to PSOs to carry out mitigation and monitoring.

(6) Have an approved mitigation and monitoring plan on file with the Service MMM and onsite that includes the following information:

(i) The type of activity and where and when the activity will occur (*i.e.,* a summary of the plan of operation);

(ii) Personnel training policies, procedures, and materials;

(iii) Site-specific sea otter interaction risk evaluation and mitigation measures;

(iv) Sea otter avoidance and encounter procedures; and

(v) Sea otter observation and reporting procedures.

(b) *Mitigation measures for in-water noise-generating work.* The applicant must carry out the following measures:

(1) Construction activities must be conducted using equipment that generates the lowest practicable levels of underwater sound within the range of frequencies audible to sea otters.

(2) During all pile-installation activities, regardless of predicted sound levels, a physical interaction shutdown zone of 20 meters (m) (66 feet (ft)) must be enforced. If a sea otter enters the shutdown zone, in-water activities must be delayed until either the animal has been visually observed outside the shutdown zone or 15 minutes have elapsed since the last observation time without redetection of the animal.

(3) If the impact driver has been idled for more than 30 minutes, an initial set of three strikes from the impact driver must be delivered at reduced energy, followed by a 1-minute waiting period, before full-powered proofing strikes.

(4) In-water activity must be conducted in daylight. If environmental conditions prevent visual detection of sea otters within the shutdown zone, in-water activities must be stopped until visibility is regained.

(5) All in-water work along the shoreline must be conducted during low tide when the site is dewatered to the maximum extent practicable.

(6) When an impact hammer is used, noise-dampening block cushions or pile caps will be placed between the hammer and pile.

(c) *Mitigation measures for vessel operations.* Vessel operators must take every precaution to avoid harassment of sea otters when a vessel is operating near these animals. The applicant must carry out the following measures:

(1) Vessels must remain at least 500 m (1,640 ft) from rafts of sea otters unless safety is a factor. Vessels must reduce speed and maintain a distance of 100 m (328 ft) from all sea otters unless safety is a factor.

(2) Vessels must not be operated in such a way as to separate members of

a group of sea otters from other members of the group and must avoid alongshore travel in shallow water (<20 m (~66 ft)) whenever practicable.

(3) When weather conditions require, such as when visibility drops, vessels must adjust speed accordingly to avoid the likelihood of injury to sea otters.

(4) Vessel operators must be provided written guidance for avoiding collisions and minimizing disturbances to sea otters. Guidance will include measures identified in paragraph (c) of this section.

§ 18.150 Monitoring.

(a) Operators must work with PSOs to apply mitigation measures and must recognize the authority of PSOs, up to and including stopping work, except where doing so poses a significant safety risk to personnel.

(b) Duties of PSOs include watching for and identifying sea otters, recording observation details, documenting presence in any applicable monitoring zone, identifying and documenting potential harassment, and working with operators to implement all appropriate mitigation measures.

(c) A sufficient number of PSOs will be available to meet the following criteria: 100 percent monitoring of exclusion zones during all daytime periods of underwater noise-generating work; a maximum of 4 consecutive hours on watch per PSO; a maximum of approximately 12 hours on watch per day per PSO.

(d) All PSOs will complete a training course designed to familiarize individuals with monitoring and data collection procedures. A field crew leader with prior experience as a sea otter observer will supervise the PSO team. Initially, new or inexperienced PSOs will be paired with experienced PSOs so that the quality of marine mammal observations and data recording is kept consistent. Resumes for candidate PSOs will be made available for the Service to review.

(e) Observers will be provided with reticule binoculars (10×42), big-eye binoculars or spotting scopes (30×), inclinometers, and range finders. Field guides, instructional handbooks, maps, and a contact list will also be made available.

(f) Observers will collect data using the following procedures:

(1) All data will be recorded onto a field form or database.

(2) Global positioning system data, sea state, wind force, and weather will be collected at the beginning and end of a monitoring period, every hour in between, at the change of an observer, and upon sightings of sea otters.

(3) Observation records of sea otters will include date; time; the observer's locations, heading, and speed (if moving); weather; visibility; number of animals; group size and composition (adults/juveniles); and the location of the animals (or distance and direction from the observer).

(4) Observation records will also include initial behaviors of the sea otters, descriptions of project activities and underwater sound levels being generated, the position of sea otters relative to applicable monitoring and mitigation zones, any mitigation measures applied, and any apparent reactions to the project activities before and after mitigation.

(5) For all sea otters in or near a mitigation zone, observers will record the distance from the vessel to the sea otter upon initial observation, the duration of the encounter, and the distance at last observation in order to monitor cumulative sound exposures.

(6) Observers will note any instances of animals lingering close to or traveling with vessels for prolonged periods of time.

§ 18.151 Reporting requirements.

(a) Operators must notify the Service at least 48 hours prior to commencement of activities.

(b) Monthly reports will be submitted to the Service MMM for all months during which noise-generating work takes place. The monthly report will contain and summarize the following information: dates, times, weather, and sea conditions (including the Beaufort Scale's sea state and wind force conditions) when sea otters were sighted; the number, location, distance from the sound source, and behavior of the sea otters; the associated project activities; and a description of the implementation and effectiveness of mitigation measures with a discussion of any specific behaviors the sea otters exhibited in response to mitigation.

(c) A final report will be submitted to the Service within 90 days after the expiration of each LOA. It will include the following:

(1) A summary of monitoring efforts (hours of monitoring, activities monitored, number of PSOs, and, if requested by the Service, the daily monitoring logs).

(2) A description of all project activities, along with any additional work yet to be done. Factors influencing visibility and detectability of marine mammals (*e.g.,* sea state, number of observers, and fog and glare) will be discussed.

(3) A description of the factors affecting the presence and distribution of sea otters (*e.g.,* weather, sea state, and project activities). An estimate will be included of the number of sea otters exposed to noise at received levels greater than or equal to 160 dB_{RMS} re: 1 μPa (decibels root-mean squared referenced to 1 microPascal) (based on visual observation).

(4) A description of changes in sea otter behavior resulting from project activities and any specific behaviors of interest.

(5) A discussion of the mitigation measures implemented during project activities and their observed effectiveness for minimizing impacts to sea otters. Sea otter observation records will be provided to the Service in the form of electronic database or spreadsheet files.

(d) All reports must be submitted by email to *fw7_mmm_reports@fws.gov.*

(e) Injured, dead, or distressed sea otters that are not associated with project activities (*e.g.,* animals known to be from outside the project area, previously wounded animals, or carcasses with moderate to advanced decomposition or scavenger damage) must be reported to the Service within 24 hours of the discovery to either the Service MMM (1–800–362–5148, business hours); or the Alaska SeaLife Center in Seward (1–888–774–7325, 24 hours a day); or both. Photographs, video, location information, or any other available documentation must be provided to the Service.

(f) Operators must notify the Service upon project completion or end of the work season.

§ 18.152 Information collection requirements.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this part and assigned OMB Control Number 1018–0070. Federal agencies 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. Direct comments regarding the burden estimate or any other aspect of the information collection to the Service's Information Collection Clearance Officer at the address provided at 50 CFR 2.1(b).

Shannon Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2023–08258 Filed 4–18–23; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 88, No. 75
Wednesday, April 19, 2023

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 Part 35

[NRC–2022–0218]

RIN 3150–AK91

Reporting Nuclear Medicine Injection Extravasations as Medical Events

AGENCY: Nuclear Regulatory Commission.

ACTION: Preliminary proposed rule language; notice of availability and public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is making available preliminary proposed rule language for a rulemaking on the reporting of nuclear medicine injection extravasations as medical events. To inform this rulemaking, the NRC is posing questions to obtain input from stakeholders. The NRC will consider feedback on this notice in the development of a proposed rulemaking planned for publication in late 2024. The NRC will also hold a public meeting during the comment period on this notice to facilitate feedback.

DATES: Submit comments by July 18, 2023. 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 before this date. The public meeting will be held on May 24, 2023, from 1:00 p.m. and 4:00 p.m. eastern time (ET) via the Microsoft Teams online interface.

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–2022–0218. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals 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: Irene Wu, telephone: 301–415–1951, email: *Irene.Wu@nrc.gov;* and Daniel DiMarco, telephone: 301–415–3303, email: *Daniel.Dimarco@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0218 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–2022–0218.
- *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, at 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *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 2022–0218 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. Background

A. Petition for Rulemaking (PRM–35–22)

On May 18, 2020, Lucerno Dynamics, LLC (Lucerno) submitted a petition for rulemaking (PRM), PRM–35–22, that requested the NRC amend part 35 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Medical Use of Byproduct Material.'' Lucerno proposed to require medical event reporting of radiopharmaceutical extravasations that lead to an irradiation resulting in a localized dose equivalent exceeding 50 rem (0.5 Sieverts). Extravasation is the infiltration of injected fluid into the tissue surrounding a vein or artery. Extravasation is not limited to the administration of radiopharmaceuticals. The NRC docketed the petition, and on September 15, 2020, the NRC published a notice of docketing and request for

public comment in the **Federal Register** (85 FR 57148). The NRC received 488 comment submissions from the medical community, Agreement States, Congressional representatives, and members of the public and used the comments to inform the NRC staff's recommendation to the Commission.

On May 9, 2022, the NRC staff submitted SECY–22–0043, ''Petition for Rulemaking and Rulemaking Plan on Reporting Nuclear Medicine Injection Extravasations as Medical Events (Docket IDs PRM–35–22; NRC–2020–0141),'' to the Commission requesting approval to consider PRM–35–22 in the rulemaking process. In staff requirements memorandum (SRM) SRM–SECY–22–0043, dated December 12, 2022, the Commission approved the staff's recommendation to amend 10 CFR part 35 to include certain nuclear medicine injection extravasations as reportable medical events. On December 30, 2022, the NRC published a document in the **Federal Register** (87 FR 80474) stating that the NRC would consider the issues raised in the petition in the rulemaking process and closed the petition docket.

B. Existing Regulatory Framework for Medical Events

In 1980, the NRC amended the medical use regulations in 10 CFR part 35 to require the reporting of medical misadministrations (45 FR 31701; May 14, 1980). The reporting and analysis of medical events helps to identify deficiencies in the safe use of radioactive material and helps ensure that corrective actions are taken to prevent recurrence. In the 1980 rulemaking, the NRC stated in a comment response that it did not consider extravasation to be a misadministration because extravasation frequently occurs in otherwise normal intravenous or intraarterial injections and that extravasations are virtually impossible to avoid.

The reporting requirements were updated in 1991 (56 FR 34104; July 25, 1991), in 2002 (67 FR 20250; April 24, 2002), and again in 2018 (83 FR 33046; July 16, 2018). In 2002, the term and criteria for ''misadministration'' were replaced with ''medical event'' and several changes were made to § 35.3045, ''Report and notification of a medical event.'' None of these updates addressed extravasations.

III. Regulatory Objectives

The NRC is planning rulemaking to amend the NRC's regulations in 10 CFR part 35, ''Medical Use of Byproduct Material'' to include requirements for medical event reporting of certain extravasations that require medical attention for a suspected radiation injury. The information obtained from the medical event reporting of these extravasations would enhance the tracking and trending of these events and promote sharing information on their occurrence, detection, mitigation, and possible preventive strategies. The planned rulemaking would affect medical licensees who administer intravenous radiopharmaceuticals for diagnostic and therapeutic purposes.

IV. Specific Considerations

The NRC is seeking feedback from the public on preliminary proposed rule language before proceeding to the development of a proposed rule. The preliminary proposed rule language is available in ADAMS at Accession No. ML23083B332 and on the federal rulemaking website at *http://www.regulations.gov* under Docket ID NRC–2022–0218. This preliminary proposed rule language does not represent a final NRC staff position, nor has it been reviewed by the Commission. Therefore, the preliminary proposed rule language may undergo significant revision during the rulemaking process.

The NRC is interested in receiving feedback and supporting rationale from the public on any aspect of the preliminary proposed rule language. Additionally, the NRC is seeking feedback on questions in the following three specific areas: Definitions, Procedures, and Healthcare Inequities. Please provide the rationale for responses to questions in these areas.

Definitions

Currently, terms such as ''*Extravasation,*'' ''*Suspected radiation injury,*'' and ''*Medical attention*'' are not included in § 35.2, ''Definitions.'' The NRC is considering adding these terms as new definitions to § 35.2 in support of adding new requirements in § 35.42, ''Procedures for evaluating and reporting extravasations''; § 35.2042, ''Records for procedures for evaluating and reporting extravasations''; and paragraph (a)(3) in § 35.3045, ''Report and notification of a medical event,'' for medical event reporting of extravasations that require medical attention for a suspected radiation injury.

1. What term should the NRC use (*e.g.,* extravasation, infiltration) when describing the leakage of radiopharmaceuticals from a blood vessel or artery into the surrounding tissue?

2. What criteria should the NRC use to define ''suspected radiation injury''?

3. What techniques or methods should be included in the definition of ''medical attention''?

Procedures

The NRC is exploring approaches that would reduce the reliance on patient reporting of adverse tissue reactions to an authorized user physician. One of the strategies that the NRC is considering is requiring that licensees develop, implement, and maintain written procedures to detect and report extravasations in a timely manner to the NRC.

The NRC is considering adding two new sections, § 35.42, ''Procedures for evaluating and reporting extravasations,'' which would require licensees to develop procedures to address all extravasations that result in a suspected radiation injury that requires medical attention from all radiopharmaceutical injections, not just from those requiring a written directive, and § 35.2042, which would add recordkeeping requirements for new § 35.42. The NRC has the following questions on these potential regulations:

4. What steps could the licensee take to minimize the chance of a radiopharmaceutical extravasation occurring?

5. What steps should the licensee take when an extravasation is suspected or discovered?

6. What techniques, technologies, or procedures (*e.g.,* post-treatment imaging, visual observation, patient feedback) should be used to help identify an extravasation during or immediately after a radiopharmaceutical injection?

7. What techniques, technologies, or procedures (*e.g.,* post-treatment imaging, survey measurement) should be used to better characterize an extravasation after radiopharmaceutical treatment?

8. What information should licensees provide to nuclear medicine patients on how to identify an extravasation and how to follow up with their physician if they suspect a radiation injury?

9. When should a reportable extravasation be counted as ''discovered'' for the purposes of notification (*e.g.,* when medical attention is administered, when the physician identifies that the injury is from radiation)?

10. The NRC requires that licensees notify the referring physician and the individual who is the subject of a medical event no later than 24 hours after discovery of the medical event. When should licensees be required to

provide notification of an extravasation medical event to the referring physician and the individual?

11. Who (*e.g.,* patient's primary physician, authorized user, nuclear medicine technician) should be able to identify an extravasation that could result in a ''suspected radiation injury''?

12. What topics should the NRC include in guidance to assist licensees to accurately identify, characterize, and report extravasation events in a timely manner?

Healthcare Inequities

The NRC is trying to better understand concerns raised by several patient safety groups regarding the higher rates of extravasation in patients of color and underserved communities. The NRC has the following questions:

13. What regulatory actions could help ensure that extravasations in patients affected by healthcare inequities are accurately assessed and reported?

14. Are vascular access tools and other technologies (*e.g.,* ultrasound guided vein finders) likely to reduce the potential for an extravasation in all patients, particularly in patients of color?

The NRC will provide an opportunity for public comment on the proposed rule, expected to be published in late 2024. Feedback received in response to this request will be considered in the proposed rule.

V. Public Meeting

The NRC will conduct a public meeting to provide information to facilitate stakeholder feedback on the preliminary proposed rule language and questions included in this document. The public meeting will be held on May 24, 2023, from 1:00 p.m. and 4:00 p.m. ET on the Microsoft Teams online platform. The NRC will publish a notice of the meeting with the meeting link and agenda on the NRC's public meeting website at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting website for information about the public meeting at: *https://www.nrc.gov/public-involve/public-meetings/index.cfm.*

VI. Cumulative Effects of Regulation

The NRC is following its Cumulative Effects of Regulation (CER) process by engaging with external stakeholders throughout the rulemaking process and is providing opportunity for public comment at this pre-rulemaking stage.

1. Given current or projected CER challenges, how should the NRC provide sufficient time to implement the new proposed requirements, including changes to programs and procedures?

2. If CER challenges currently exist or are expected, what should be done to address them?

3. What other (NRC or other agency) regulatory actions (*e.g.,* orders, generic communications, license amendment requests, inspection findings of a generic nature) influence the implementation of the proposed rule's requirements?

4. What are the unintended consequences, and how should they be addressed?

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

VIII. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No./ web link/**Federal Register** citation
Letter from Ronald K. Lattanze on behalf of Lucerno Dynamics, LLC regarding petition for rulemaking, dated May 18, 2020.	ML20157A266.
Notice of Docketing and Request for Comment on Petition for Rulemaking, Reporting Nuclear Medicine Injection Extravasations as Medical Events, September 15, 2020.	85 FR 57148.
Notice of Consideration in the Rulemaking Process for Petition for Rulemaking, Reporting Nuclear Medicine Injection Extravasations as Medical Events, December 30, 2022.	87 FR 80474.
SECY–22–0043, ''Petition for Rulemaking and Rulemaking Plan on Reporting Nuclear Medicine Injection Extravasations as Medical Events (PRM–35–22; NRC–2020–0141),'' dated May 9, 2022.	ML21268A005 (package).
SRM–SECY–22–0043, ''Staff Requirements—SECY–22–0043—Petition for Rulemaking and Rulemaking Plan on Reporting Nuclear Medicine Injection Extravasations as Medical Events (PRM–35–22; NRC–2020–0141),'' dated December 12, 2022.	ML22346A112 (package).
Final Rule, Misadministration Reporting Requirements, May 14, 1980	45 FR 31701.
Final Rule, Quality Management Program and Misadministrations, July 25, 1991	56 FR 34104.
Final Rule, Medical Use of Byproduct Material, April 24, 2002	67 FR 20250.
Final Rule, Medical Use of Byproduct Material—Medical Events; Definitions and Training and Experience, July 16, 2018.	83 FR 33046.
Preliminary Proposed Rule Language, 10 CFR part 35	ML23083B332.

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–2022–0218. 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 take the following steps: (1) navigate to the docket folder (NRC–2022–0218); (2) click the ''Subscribe'' link; and (3) enter an email address and click on the ''Subscribe'' link.

IX. Rulemaking Process

During the rulemaking process, the NRC will solicit comments from the public and will consider all comments before issuing a final rule. If the NRC does not issue a proposed rule, the NRC will issue a document in the **Federal Register** that considers feedback received on the preliminary proposed rule language and explains why the petitioner's requested rulemaking changes were not adopted by the NRC.

Dated: April 14, 2023.

For the Nuclear Regulatory Commission.

Tara Inverso,

Acting Director, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–08238 Filed 4–18–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2023–BT–TP–0006]

Energy Conservation Program: Notification of Petition for Rulemaking

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

ACTION: Notification of petition for rulemaking; request for comment.

SUMMARY: On January 12, 2023, the Department of Energy (''DOE'') received a petition from the Association of Home Appliance Manufacturers (''AHAM'') to consider amendments to the conventional cooking products test procedure to allow a calculation in place of certain testing provisions for conventional cooking tops, clarify the definition of the term specialty cooking zone, clarify the equipment used to measure electric coil heating element diameter, and stay the effectiveness of any mandatory use of the test procedure. Through this notification, DOE seeks comment on the petition, as well as any data or information that could be used in DOE's determination whether to grant the petition.

DATES: Written comments and information are requested and will be accepted on or before May 19, 2023.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov* under docket number EERE–2023–BT–TP–0006. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2023–BT–TP–0006, by any of the following methods:

Email: CookingProducts Petition2023TP0006@ee.doe.gov. Include the docket number and/or RIN in the subject line of the message.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket/EERE-2023-BT-TP-0006.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Dr. Carl Shapiro, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–5649. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act (''APA''), 5 U.S.C. 551 *et seq.,* provides among other things, that ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' (5 U.S.C. 553(e)) DOE received a petition from AHAM, as described in this document and set forth verbatim below,[1] requesting that DOE amend the testing provisions for conventional cooking tops in it test procedure for conventional cooking products at 10 CFR part 430, subpart B, appendix I1 (''appendix I1''). In announcing this petition for public comment, DOE is seeking views on whether it should grant the petition and undertake a rulemaking to consider the proposal contained in the petition. By seeking comment on whether to grant this petition, DOE takes no position at this time regarding the merits of the suggested rulemaking or the assertions in AHAM's petition.

In its petition, AHAM also requests that DOE stay the effectiveness of any mandatory use of the test procedure. Regarding the mandatory use of the test procedure for representations, under the Energy Policy and Conservation Act (''EPCA''), effective 180 days after a test procedure is published in the **Federal Register**, representations regarding the energy use or efficiency of the covered product are required to be made in accordance with the new or amended test procedure. (42 U.S.C. 6293(c)(2)) The final rule establishing appendix I1 was published on August 22, 2022, which resulted in the February 20, 2023, representations compliance date. 87 FR 51492. While DOE may grant individual manufacturers an extension of up to 180 days based on a showing of undue hardship (42 U.S.C. 6293(c)(3)), DOE cannot grant a blanket, indefinite extension of this requirement.

Additionally, as specified in the Note to appendix I1, use of the test procedure is not required until the compliance date of any energy conservation standards for cooking tops. DOE is currently conducting a rulemaking to consider establishing energy conservation standards for conventional cooking products, including conventional cooking tops. 88 FR 6818.

In its petition, AHAM also requests that DOE consider amendments to the appendix I1 test procedure to: (1) allow a calculation to be used as an alternative to the simmer portion of the test to determine the energy consumption of each cooking zone, (2) clarify the definition of ''specialty cooking zone'' to more explicitly specify categories of cooking zones and cooking products that are considered to be specialty cooking zones and therefore would be excluded from the scope of the DOE test procedure, and (3) clarify the equipment used to measure the diameter of electric coil heating elements. AHAM also requests that DOE update its enforcement regulations to require DOE to use both the simmer test and AHAM's suggested alternative calculation method in assessment and enforcement testing to determine compliance with energy conservation standards, should DOE establish such standards.

In the docket for this petition, DOE has provided a data summary for the purposes of evaluating the merits of establishing a calculation method as an alternative to the simmer portion of the test. In particular, the report provides graphical representations of the difference between measured results—representing the appendix I1 test conducted in its entirety—and results

[1] AHAM's petition for rulemaking is available in the docket at *www.regulations.gov/document/EERE-2023-BT-TP-0006-0001.*

calculated using the alternative method suggested by AHAM, for each cooking zone for which data was available in both AHAM's and DOE's test samples.

Although DOE welcomes comments on any aspect of the petition, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) The test burden associated with the simmer portion of the test procedure for conventional cooking tops, including third-party testing costs;

(2) Any additional test data of conventional cooking tops tested to appendix I1 that can be used to verify the accuracy of the recommended equations for determining the energy use of individual cooking zones;

(3) The accuracy of the energy consumption of each cooking zone that would be determined using the recommended calculation approach in place of the simmer portion of the cooking top test for the different cooking top technologies (*e.g.,* electric coil, electric radiant, induction, and gas);

(4) In evaluating whether the calculation approach maintains the accuracy (*i.e.,* representativeness) of the full testing approach, the maximum difference (in kilowatt-hours per year or British thermal units per year, as applicable, or as a percentage) between the measured and calculated values for a cooking zone's energy consumption that should be considered by DOE as being indicative of the calculation approach providing results that are equally as representative as the full testing approach;

(5) The extent to which portable cooking tops can or should be tested under appendix I1; and

(6) The extent to which cooking tops with a downdraft fan that cannot be de-energized can or should be tested under appendix I1.

Submission of Comments

DOE invites all interested parties to submit in writing by May 19, 2023, comments and information regarding this petition.

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

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

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

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. Faxes will not be accepted.

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

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

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of its process for considering rulemaking petitions. DOE actively encourages the participation and interaction of the public during the comment period. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in determining how to proceed with a petition. Anyone who wishes to be added to DOE mailing list to receive future notifications and information about this petition should contact Appliance and Equipment Standards Program staff at (202) 586–6636 or via email at *CookingProductsPetition2023TP0006@ee.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on April 7, 2023, by Francisco Alejandro Moreno, Acting

Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 7, 2023.

Treena V. Garrett,

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

Petition for Amendment

The Association of Home Appliance Manufacturers (AHAM), on behalf of its member companies, respectfully petitions the Department of Energy (DOE or Department) to amend the Test Procedure for Conventional Cooking Products, Appendix I1 to Subpart B of Part 430 (Appendix I).[2]

AHAM has long supported DOE in its efforts to save energy and ensure a national marketplace through the Appliance Standards Program. Repeatable and reproducible test procedures that are representative of actual consumer use, but not unduly burdensome to conduct, are an integral part of the standards program. It is essential that mandatory test procedures be repeatable, reproducible, representative, and not unduly burdensome not just because these qualities are statutory requirements under the Energy Policy and Conservation Act of 1975, as amended (EPCA), but also because of their importance to the integrity and effectiveness of the Appliance Standards Program. That is why AHAM is engaging in several standards development efforts focused on improving the energy test procedures, including our task force—in which DOE participates—on cooktop energy test development.

AHAM has long been concerned that the cooktop test procedure is too burdensome and is not sufficiently reproducible, thus not meeting the EPCA test procedure criteria in 42 U.S.C. 6293(b)(3). With this petition, AHAM makes minor proposals to address primarily test burden. Specifically, AHAM respectfully requests that DOE amend the test procedure to allow for a calculation as an alternative to the simmer portion of the test.[3] AHAM also has identified a couple of minor clarifications needed related to specialty cooking zones and, accordingly, requests that DOE amend Appendix I1 to: (1) exclude models where the cooktop cannot be measured in a representative manner; and (2) require that a caliper be used for the measurement of open-coil cooking zone diameter.

We believe that these changes, though minor for DOE to make, will make a significant difference in reducing test burden and improving the clarity of the test. We note that mandatory use of Appendix I1 for representations of energy use or energy efficiency of a conventional cooking top is not required until on or after February 20, 2023. Additionally, to date, there are no applicable energy conservation standards for cooktops, which means that this test procedure is not used to demonstrate compliance with applicable standards. DOE should, however, quickly make the amendments AHAM proposes in light of the Environmental Protection Agency's proposed ENERGY STAR criteria and to allow the alternative method and additional clarity on other provisions to be used to assess DOE's recently proposed standards.

I. Background

On August 18, 2020, in response to a petition AHAM submitted, DOE published a final rule withdrawing the test procedure for conventional cooktops.[4] AHAM's petition argued that the gas test procedure was not representative and that, for both gas and electric cooktops, had such a high degree of variation that it did not produce accurate results. AHAM also argued that the test procedure was unduly burdensome to conduct. DOE withdrew the test procedure because test data on the record demonstrated that the test procedure for cooktops yielded inconsistent results. DOE determined that the inconsistency in results showed the results to be unreliable that it was unduly burdensome to leave that test procedure in place without further study to resolve inconsistencies.[5]

To address issues raised in our petition, AHAM convened a Task Force to author updated industry standards AHAM ECT–1 and GCT–1. The Task Force began monthly meetings in April of 2021 and DOE and its contractor, Guidehouse, along with efficiency advocate representatives are participants in that effort. The Task Force's goal was (and remains) to develop cooktop test procedures for gas and electric cooktops that are repeatable, reproducible, representative, and accurate. AHAM's desire was to work quickly to complete this work together with other stakeholders and present it to DOE for incorporation by reference as the new DOE test procedure.

On November 4, 2021, DOE published a notice of proposed rulemaking (November 2021 NOPR) in which DOE proposed to re-establish a conventional cooking top test procedure. *See* 86 FR 60974. DOE proposed to adopt, with significant modifications, the latest version of the relevant consensus standard published by the International Electrotechnical Commission (IEC), Standard 60350–2 (Edition 2.0 2017–08), ''Household electric cooking appliances—Part 2: Hobs—Methods for measuring performance'' (IEC 60350–2:2017). The modifications included adapting the test method to gas cooking tops, offering an optional method for burden reduction, normalizing the energy use of each test cycle, adding measurement of standby mode and off mode energy use, altering certain test conditions such as starting water temperature, and adding specificity to certain provisions. *Id.*

The November 2021 NOPR also presented the results of an initial round robin test program initiated in January 2020 (2020 Round Robin). The purpose of the 2020 Round Robin was to investigate further the IEC water heating approach and the concerns AHAM raised in its petition that led to the withdrawal of the prior test procedure. *Id.* at 60979–80. The comment period for the November 2021 NOPR was initially set to close on January 3, 2022. DOE, however, published a notice of

[2] We note that this test procedure was finalized via publication in the **Federal Register** on August 22, 2022. Department of Energy, Energy Conservation Program: Test Procedure for Cooking Products, Final Rule; Technical Correction; Docket No. EERE–2021–BT–TP–0023; RIN 1904–AF18 (Aug. 22, 2022) (Cooking Product Test Procedure Final Rule) and we incorporate this Petition into the record on that docket. If the Department prefers to respond to this Petition as a Petition to Reconsider the final rule, AHAM does not object. We trust the Department will determine the best regulatory vehicle for this request.

[3] Additionally, we ask that DOE update its enforcement regulations to require DOE to use both the physical simmer test and the alternative calculation method in assessment and enforcement testing before making a determination of non-compliance.

[4] Department of Energy, Energy Conservation Program: Test Procedures for Cooking Products; Final Rule; 85 FR 50757 (Aug. 18, 2020).

[5] *Id.* at 50760.

data availability on December 16, 2021 (December 2021 NODA), in which DOE announced that it had published the results of a second round robin test program initiated in May 2021 (2021 Round Robin) and extended the comment period for the November 2021 NOPR until January 18, 2022. *See* 86 FR 71406.

AHAM submitted comments in response to the November 2021 NOPR and December 2021 NODA stating DOE had not yet provided sufficient support for its proposed test procedure to demonstrate that it meets the statutory requirements for a mandatory test procedure. AHAM argued that the burden, repeatability, and reproducibility issues were still so significant that the proposed test procedure threatened the integrity of the Appliance Standards Program. And AHAM's research continued to show that the test procedure DOE proposed, though DOE attempted to improve it, may not be representative for some cooktops (especially gas). Moreover, AHAM pointed out that DOE's process to develop the proposed test procedure was fraught with the same problems that plagued the last version of the test, which DOE ended up withdrawing. AHAM also highlighted its continued concerns with lack of transparency in the process used to develop this test procedure, and argued that DOE's proposed rule was not adequately supported by data (despite the fact that AHAM—with DOE's knowledge—was actively working on obtaining data that would be highly relevant to the development of a cooktop test procedure).

On March 16, 2022, per a request from AHAM, DOE published full test data that was previously presented only in summary form in the December 2021 NODA. DOE indicated that it published this data in response to AHAM's request to provide its full, raw data on the record for stakeholder review, and indicated it did so only after receiving permission from applicable stakeholders to publish their data in the docket. On August 22, 2022, DOE adopted its proposed rule as a new final test procedure, 10 CFR part 430, subpart B, appendix I1.

In parallel to this rulemaking activity, AHAM's cooktop test procedure task force was working to address the issues AHAM previously identified with the test procedure. In fact, AHAM's task force continues to work. DOE, its consultant (Guidehouse), and efficiency advocates were, and continue to be, participants in this effort. From August 2021 to November 2022 AHAM completed two sets of testing at (1) third-party test laboratories; and (2) manufacturer test laboratories. The test results support AHAM's arguments that DOE's test procedure is not sufficiently reproducible and is overly burdensome to conduct.

Based on our extensive testing, AHAM continues to believe that—though some portions of the final test procedure are an improvement on the proposed test procedure—the test continues to be unduly burdensome. Our concerns about reproducibility have also not been fully addressed and, thus, we continue to have concerns about the test's accuracy as well. We recognize, however, that the Department is under significant political pressure and is unlikely to take the time needed to fully investigate and resolve those issues. As a result, AHAM is submitting this Petition targeting key areas in which we believe the test procedure can be improved to significantly decrease test burden without negatively impacting the test's accuracy or representativeness. These changes are not time-consuming to introduce and, especially because there is not yet an applicable standard, we request that the Department expeditiously consider and grant this Petition. It is critical that changes be made before mandatory use of the test procedure is required and before a second draft (and final version of) an ENERGY STAR specification. Thus, while DOE is reviewing these changes, we ask that DOE stay the effectiveness of any mandatory use of the test procedure with regard to representations and/or standards/ENERGY STAR compliance.

II. The Cooktop Test Procedure Is Unduly Burdensome To Conduct

DOE's final rule estimated a third-party test laboratory cost of $4,100 to conduct the test procedure for a single cooking top, and an estimated 23.6 hours of technician time if the test were conducted in-house. AHAM data, however, demonstrates that this is a significant underestimate.

DOE must acknowledge that cooking tops are an attended product (*i.e.,* for safety reasons and due to the nature of the test, they cannot be left unattended by the test technician) and, thus, are inherently more burdensome to test than many other presently regulated appliances. Even were the test time to be equivalent in the number of hours to other test procedures, qualitatively, the test is more burdensome because those hours require active technician time. According to aggregated manufacturer estimates, 70 to 75 percent of the current test requires technician interaction. This cannot be automated or monitored electronically as can be done for unattended appliances, like a refrigerator for example.

To get a detailed look at the test burden, AHAM collected member data on active hours (*i.e.,* those that require the test technician to actively conduct the test and/or attend the appliance during the test) and total hours to conduct the test (*i.e.,* the active hours plus the test hours during which the appliance need not be attended). Table 1 below identifies the activities included in ''active'' hours versus non-active hours.

TABLE 1

Included in active hours	Excluded in active hours
Monitoring temperatures	Cool down period of unit.
Adjusting controls	Waiting for starting water temperature or ambient temperature to fall within specifications.
Selecting and placing cookware	Instances where getting to the turndown temperature takes a long time and the technician steps away or multi-tasks.
Determination of turndown temperature/simmer setting.	
Unit setup and teardown.	
Review of water temperature data to determine the type of test: Energy Test Cycle (ETC), Minimum Above Threshold (MAT), or Maximum Below Threshold (MBT).	

AHAM data shows the average active hours for testing a 4-zone electric cooking top to be 37.4 hours, and the average active hours for testing a 5-zone gas cooking top to be 43.6 hours. Members estimated a total test time of 49.9 hours for a 4-zone electric cooking top and 57.8 hours for a 5-zone gas cooking top. This far exceeds DOE estimates with active hours alone being 58 percent and 85 percent more time, respectively. While the manufacturer estimates may include a small learning curve, AHAM data should not be discounted for this reason. Learning and training on this more involved test is part of the burden and will happen every time a new technician executes this test method. And the consideration of active test hours is an important one because it means that the technician is not as available to do other things during the test as s/he would be for an unattended appliance and a test that requires less technician interaction and monitoring.

In regards to (third-party) testing costs per single cooking top, AHAM data shows a cost 1.9 to 2.6 times more than DOE's estimate (approximately $7,900 to $10,800).

III. To Reduce Test Burden, DOE Should Permit a Simmer Calculation Option in the Test Procedure

Because of the challenges associated with conducting the simmer portion of Appendix I1 such as finding the correct simmer settings for each cooking zone, the simmer portion of the test adds unnecessary procedural steps resulting in significant test burden without adding meaningfully to differentiating the energy efficiency of individual units.

To determine if a less burdensome approach is possible, AHAM conducted investigative testing on 18 cooking tops from ten different manufacturers using third party testing laboratories and testing per Appendix I1 as written. In addition, AHAM collected internal test data from three different manufacturers who conducted their own in-house testing, also using Appendix I1 as written. Using this data, AHAM developed a simmer calculation for each type of cooking top (electric coil, electric radiant, induction and gas) that is accurate and reliable and with this Petition we are asking DOE tom include it as an alternative in Appendix I1.

The calculation would require that each cooking zone be tested at the maximum setting until water reaches 90 °C. The energy consumption to reach 90 °C is then entered into the relevant simmer calculation for a final result that includes the simulated energy consumed during a physical simmer test. Major steps of a test using the simmer calculation are summarized in the graphic below:

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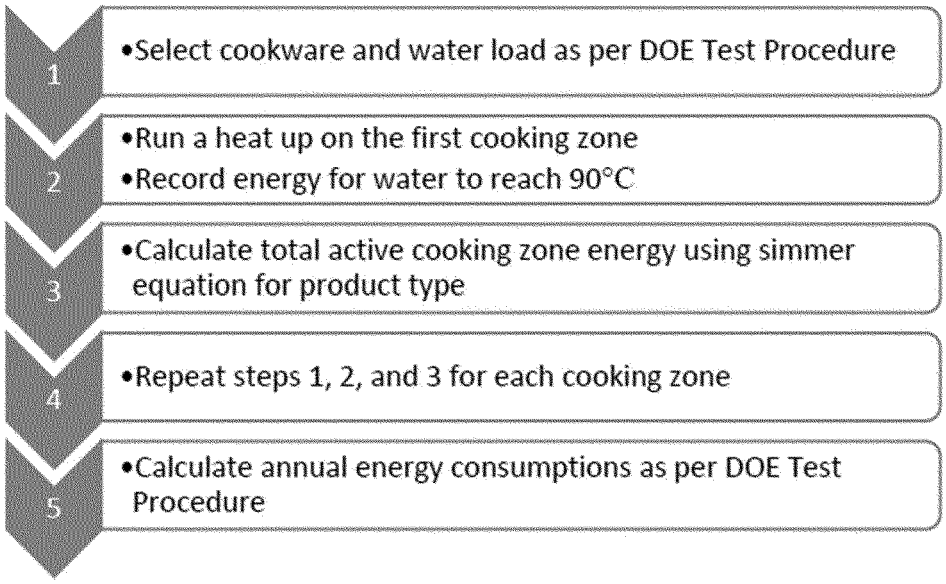


This allows the test result for each model to maintain the same consumer representativeness of the full physical test. Given the limited technology options available for increasing efficiency for any of these product types, it is unlikely that these calculations will change significantly in the coming years. And even if changes are needed, manufacturers could seek guidance or waivers as needed.

TABLE 2

Cooking top product type	Proposed simmer equation
Electric Coil	$E = 1.43E_{90} - 0.02P_{rated} - 4.74$.
Electric Radiant	$E = 1.31E_{90} - 9.02$.
Induction	$E = 1.47E_{90} - 4.63$.
Gas	$E = 1.16E_{90} + 488.12$.

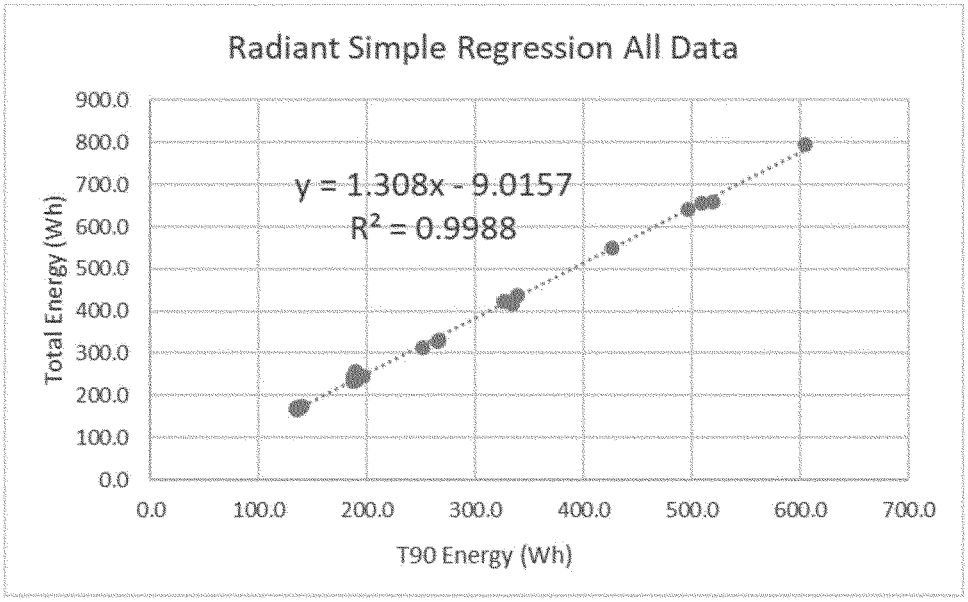
The below chart shows the r-squared value by product type for each simmer calculation equation. As these values indicate, the alternative calculations AHAM proposes are highly correlated to the tested values and are, thus excellent approximations of conducting the physical test. Thus, DOE should include

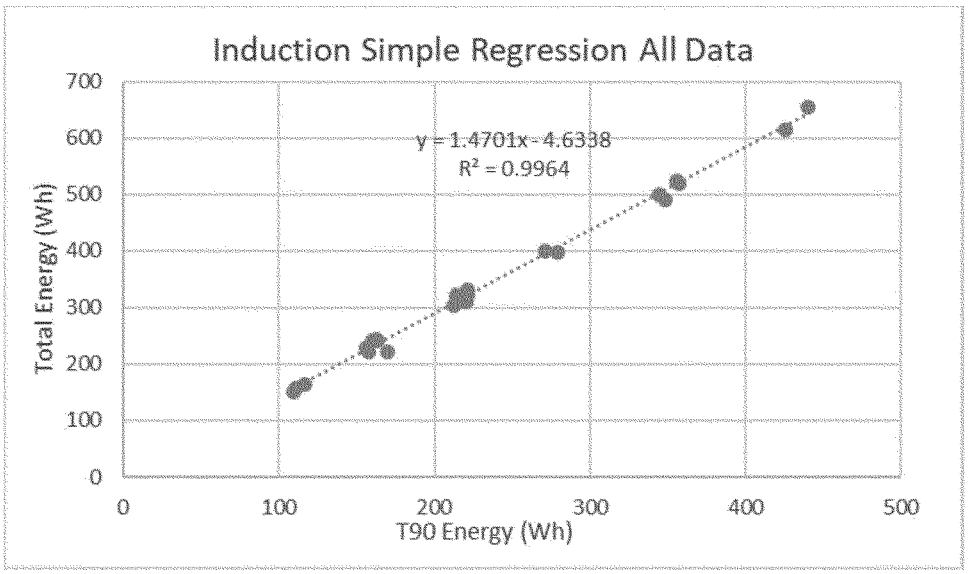
these equations as options in the test procedure.

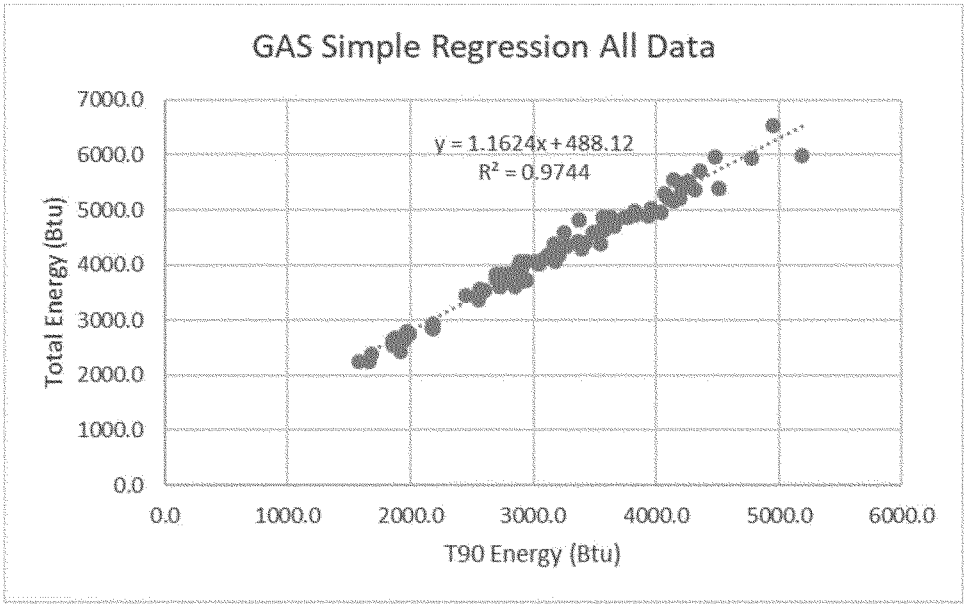
TABLE 3

Cooking top product type	Simmer calculation equation R-squared value
Electric Coil	0.9893 (98.9%)
Electric Radiant	0.9988 (99.9%)
Induction	0.9964 (99.6%)
Gas	0.9744 (97.4%)

Graphic representations of simmer calculations, and the data points that are used to create the calculations, are shown below to visually show the high degree of correlation between tested values and calculated values. (A coil plot is not shown because it is a multi-variable equation).







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AHAM believes each product-type's simmer calculation equation will get stronger with the inclusion of DOE's round robin dataset (improving the R-squared values further). To make these calculations stronger (based on more data points), DOE should release the raw, second-by-second, data of its own testing. AHAM has repeatedly requested that data both as part of its task force work with DOE and on the record,[6] but DOE has yet to provide it. Including that data will serve to improve the alternative calculations making them even more accurate. In the interest of improving accuracy even further, AHAM will provide our raw data confidentially to Guidehouse instead. All data used in developing the simmer calculations will be included. We hope this will allow Guidehouse to update the equations we propose based on a larger data set given that we have not been able to do so without DOE's data.

Due to the high correlation between the simmer calculation and the simmer test, AHAM requests that DOE amend the cooking top test procedure to allow manufacturers to use the simmer calculation as a replacement for the simmer portion of the test procedure. This would allow manufacturers to conduct a simmer calculation or a physical simmer test.

AHAM strongly urges DOE to amend the test procedure to include this alternate calculation method because it will significantly reduce test burden for manufacturers. If DOE believes that the proposed alternative calculation method's variation is too high, AHAM submits that the calculation is well correlated to the test results and thus, if the calculation variation is too significant, so too is the tested variation. The calculation method allows equivalence in variation, but with lower test burden. Table 4 identifies each part of the DOE test procedure that was conducted during active mode AHAM Location 2 investigative testing.

TABLE 4

Unit	Part of test	Number of times conducted—full DOE test	Number of times conducted—simmer calculation
B	Pre-selection	16	0
	Overshoot	4	0
	Energy test	8	4
C	Pre-selection	30	0
	Overshoot	4	0
	Energy test	6	4
D	Pre-selection	19	0
	Overshoot	4	0
	Energy test	8	4
G	Pre-selection	21	0
	Overshoot	5	0
	Energy test	9	5
K	Pre-selection	13	0
	Overshoot	4	0
	Energy test	8	4
M	Burner rating	4	4
	Pre-selection	14	0
	Overshoot	4	0

[6] *See* AHAM Supplemental Comments on DOE's Energy Conservation Program: Test Procedures for Cooking Products; Notice of Proposed Rulemaking and Notification of Data Availability; Docket No. EERE–2021–BT–TP–0023; RIN 1904–AF18 (July 19, 2022), *available at www.regulations.gov/comment/EERE-2021-BT-TP-0023-0023.*

TABLE 4—Continued

Unit	Part of test	Number of times conducted—full DOE test	Number of times conducted—simmer calculation
	Energy test	8	4
N	Burner rating	5	5
	Pre-selection	28	0
	Overshoot	5	0
	Energy test	10	5
O	Burner rating	4	4
	Pre-selection	15	0
	Overshoot	4	0
	Energy test	8	4
P	Burner rating	4	4
	Pre-selection	13	0
	Overshoot	4	0
	Energy test	8	4
R	Burner rating	4	4
	Pre-selection	12	0
	Overshoot	8	0
	Energy test	8	4
Total		329	63

The total number of test parts would be reduced by 81 percent if a simmer calculation is used.

Importantly, the simmer calculation meets DOE's criteria as described in the final rule. DOE stated that in order to ensure that the test method is representative of consumer usage, any alternative method would need to provide an estimated energy consumption specific to the conventional cooking top model under test, rather than yielding an approximate value by means of a generic approach that applies equally for all models. Any such alternative method would need to produce equivalent estimated energy consumption results and associated product rankings as the physical test procedure established in Appendix I1.[7] DOE's criteria for a simmer calculation and the manner in which AHAM's proposal meet them are as follows.

1. Produce equivalent product rankings.

We note that, in order to evaluate equivalent product rankings between the proposed alternative calculation method and the full physical test, there must be consistent product rankings for the full physical tests. The full physical test procedure does not produce consistent product rankings. For example, the same gas units rank differently when tested at different labs.

TABLE 5—INTEGRATED ANNUAL ENERGY CONSUMPTION (EIAEC) REPRODUCIBILITY—MEASURED

	Type	Location 1	Rank (electric, gas)	Location 2	Rank (electric, gas)
Unit M	Gas	1473.7	4	1443.3	3
Unit N (avg)	Gas	1397.2	2	1385.4	2
Unit O	Gas	1471.4	3	1465.6	4
Unit P	Gas	1603.8	6	1531.5	5
Unit Q (avg)	Gas	1345.3	1	1330.3	1
Unit R	Gas	1522.5	5	1535.8	6

Since the full test, including simmer, produces inconsistent product rankings, it is not reasonable to expect consistency, nor does it make sense to require the alternative calculation to be equally inconsistent.

2. Be based on test data from multiple labs.

The simmer equations AHAM proposes in this Petition are based on testing a two third-party laboratories and three manufacturer laboratories.

3. Be representative of tested simmering period on multiple types of products.

The simmer equations AHAM proposes in this Petition are based on a number of models using different technologies including coil, radiant, induction, and gas heating elements.

AHAM proposes that a unique equation be established for each surface cooking type based on the underlying physics—*i.e.,* stored energy within the elements, speed of heating the water resulting in heat lost to the environment, and thermal coupling between the pot and surface cooking type.

TABLE 6

Type	Models used in developing calculation
Coil	5
Radiant	6
Induction	5
Gas	19

4. Include data from products that cover a wide range of available surface cooking types.

It is unclear what technology options DOE is looking to capture, but due to the high number of manufacturers that

[7] Cooking Product Test Procedure Final Rule at 51530.

submitted units or data, we are confident that a range of designs are considered within the calculation.

TABLE 7

Type	Manufacturers represented in developing calculation	Range of rated cooking zone power for units in AHAM investigative testing
Coil	3	675–2,600 W.
Radiant	5	1,200–3,300 W.
Induction	5	1,400–3,600 W.
Gas	7	5,000–19,500 Btu.

5. Produce equivalent energy consumption results when compared to the results produced by the full test.

The difference between physical test results and calculated results using the equations AHAM proposes in this Petition is small. As an example, the below table evaluates fully tested versus calculated results at one of the third-party testing locations in AHAM's testing. The average difference was only about one percent, which is insignificant, particularly when compared to the variation in the full test. Table 8 below demonstrates this point.

TABLE 8—PERCENT DIFFERENCE EIAEC—MEASURED VS. PREDICTED

	Type	Location 1 (%)
Unit B (avg)	Coil	3.3
Unit C	Coil	0.3
Unit D	Radiant	0.0
Unit G	Radiant	−1.3
Unit K	Induction	1.7
Unit M	Gas	0.0
Unit N	Gas	−4.7
Unit O	Gas	−1.3
Unit P	Gas	−3.7
Unit Q	Gas	−2.5
Unit R	Gas	−3.9
Average		−1.1

6. Capture differences between simmer strategies.

Based on discussions with Guidehouse during our task force efforts, AHAM understands ''simmer strategies'' to mean some combination of control type, power levels, power steps, and safety features that a model uses to set, control and maintain power levels. Twelve electric samples were tested at third-party labs; this data was used in developing the simmer equations. Of those samples, AHAM has confirmed that five use an infinite switch control and four use a software-based control. For gas units, see points three and four above showing the large number of models and manufacturers considered. (Note that information on controls was not provided for all units in AHAM's sample.)

As a supplement to this petition, we are confidentially submitting to Guidehouse raw test data that supports our arguments in this Petition and supports DOE amending Appendix I1 to include an alternative simmer calculation.

Additionally, AHAM requests that DOE add enforcement provisions that require DOE to use both simmer methods (the calculation and physical test) before making a finding of non-compliance with energy conservation standards (and ideally, before proceeding beyond assessment testing). A similar enforcement strategy is already in place for refrigerators.[8] DOE identifies compliance by using a calculation, but can also audit by testing the unit using the test procedure.

IV. AHAM Proposes Two Minor Clarifications

Separate from our proposal to permit a calculation alternative to the simmer portion of the test procedure, AHAM also proposes additional minor changes to improve the clarity of the test procedure and we ask that DOE make these changes before the test procedure becomes mandatory to demonstrate compliance with standards/ENERGY STAR specifications, prior to required use of the test procedure to support energy related representations. It would also be helpful to have these improvements made in time to allow use of them in assessing amended standards.

A. Definition of Specialty Cooking Zones

The test procedure excludes specialty cooking zones. In the final rule, DOE noted that ''. . . a cooking zone designed for use only with non-circular cookware would not be expected to be used with any regularity, such that measuring its energy use would not be representative of the energy use of a cooking top during a representative average consumer use cycle . . .'' [9] The final rule also states, ''. . . a heating element on an electric cooking top with a diameter smaller than 100 mm (3.9 inches) would likely not be able to heat

[8] *See* 10 CFR 429.134(b)(2) (''The test described in section 5.2(b) of the applicable test procedure for refrigerators or refrigerator-freezers in appendix A to subpart B of 10 CFR part 430 shall be used for all units of a basic model before DOE makes a determination of noncompliance with respect to the basic model.'').

[9] Cooktop Test Procedure Final Rule at 51522.

water to 90 °C. As such, it would likely be excluded from testing because it would be a specialty cooking zone (*e.g.,* a warming plate or zone).'' [10]

The test procedure excludes non-cooking top portions of combined products. Appendix I1 covers conventional cooking tops and conventional cooking top components of combined products, where a combined product is defined as a conventional range, a microwave/conventional cooking top, a microwave/conventional oven, and a microwave/conventional range. DOE does not require that the microwave and cooking top be tested together. However, DOE does not provide the same distinction for products which are a combination of a range hood and a conventional cooking top. AHAM requests that DOE be consistent and exclude models where it is not possible to take a representative measurement of the cooking top only.

Additionally, AHAM believes that more detail is needed to achieve DOE's goal of excluding cooking zones which are not regularly used and do not match the scope of the test procedure—*i.e.,* boiling water. Table 9 shows the difference between AHAM's proposal and current Appendix I1.

TABLE 9—SPECIALTY COOKING ZONE

Appendix I1	AHAM proposal
Warming Plate	Gas cooking zones, rated 5,600 Btu/h or less, intended to hold food warm. Electric cooking zones, rated 350W or less, intended to hold food warm. Note 1: Excluding 5,600 Btu/h or less may change the gas simmer equation proposed in this petition. If DOE decides to exclude these smaller cooking zones, AHAM can assist in providing an updated simmer calculation. Note 2: The 350W is taken from the safety standard UL 858.
Grill, griddle, or any cooking zone that is designed for use only with non-circular cookware, such as a bridge zone.	Cooking zones designed for use with non-circular cookware, such as bridge burners, oval burners, grills, and griddles as designated in manufacturer instructions. Cooking zones designed for use with non-flat-bottom cookware such as wok burners as designated in manufacturer instructions. Portable appliances for cooking, grilling and similar functions. Cooking tops or ranges with a downdraft fan that cannot be de-energized by the appliance control according to manufacturer instructions.

B. Measurement of Diameter of Open Coil Heating Elements

For electric units, DOE requires measurement of the cooking zone diameter to determine cookware size and water load. Furthermore, ''. . . DOE clarifies that open coil heating elements are to be treated as circular, and that the largest diameter is used . . .''

DOE does not adequately consider the method of measurement for open coil heating elements. These types of elements have rounded edges. If measured with a ruler, the rounded edges are unaccounted for, a smaller diameter is measured, and smaller cookware/water load may be required. But if a caliper were used, that would account for rounded edges, measuring a larger diameter, and thus larger cookware/water load may be needed. Currently, the test procedure appears to permit either measurement tool. AHAM proposes that DOE specify which measurement tool should be used either in the test procedure itself or through test procedure guidance.

This is a small change for DOE to make in the procedure, but it is an important and significant one in terms of accuracy. A small difference in cooking zone diameter can make a large difference in the final energy consumption as demonstrated by test results from UUT_B in AHAM's investigative testing. This unit has two cooking zones where the measurement method changes the water load.

TABLE 10

Measurement method	Ruler	Caliper
Measured Diameter (mm)	188	190
Required Cookware Diameter (mm)	180	210
Required Water Load (g)	1,500	2,050
Energy, E_{CTE} (Wh)	466.01	440.27

As shown in the table above, a one percent difference in diameter measurement produces a 5.85 percent difference in measured energy consumption due to the change in required test water load.

DOE also had this issue for the coil units in its second round robin.[11] Lab A measured elements 2 and 4 at 188mm resulting in a 180mm pot. Labs C and E measured them to be 190–191 resulting in a 210mm pot. This resulted in a shift in annual energy from 179.2 to 191.3, or 6.75 percent. Burner energy was 20–30 percent different due to a one to two percent change in diameter measurement.

To remedy this, AHAM requests that DOE clarify 3.1.1.1.1 of the test procedure to require use of calipers, which provide a more accurate measurement than a ruler. We propose the following text: ''Open-coil cooking zones shall be measured with calipers at the largest outside diameter.'' Alternatively, DOE could issue guidance to clarify that calipers should be used.

V. The DOE Test Procedure Continues To Be Highly Variable

In AHAM's view, data from DOE's second round robin still shows unacceptable levels of variation.[12] Taking a closer at DOE's gas cooking top

[10] *Id.* at 51505.

[11] See *www.regulations.gov/document/EERE-2021-BT-TP-0023-0019.*

[12] Summary of Second Round Robin Testing, testing according to the updated procedure proposed in the November 4, 2021 NOPR, at *www.regulations.gov/document/EERE-2021-BT-TP-0023-0004.*

units test results, Lab A consistently measures lower than Labs B and C. On average, Lab A measures 7.9 percent lower than Labs B and C. This is shown in Table 11 and the shift in mean values between labs is shown in Table 12.

TABLE 11—AVERAGE ANNUAL ENERGY USE

Unit #	Type	Certified Lab A (kBtu)	Certified Lab B (kBtu)	Certified Lab C (kBtu)	Lab E	Overall average (kBtu)
6	Gas	982	1,096	1,106	n/a	1,061
7	Gas	1,313	1,428	1,339	n/a	1,360
8	Gas	1,438	1,554	1,556	n/a	1,516
9	Gas	1,494	1,593	1,614	n/a	1,567

TABLE 12—SHIFT IN MEAN VALUES

Unit #	Type	Lab A vs. Lab B (%)	Lab A vs. Lab C (%)	Lab B vs. Lab C (%)
6	Gas	11.9	12.5	0.6
7	Gas	7.5	1.9	5.5
8	Gas	6.4	7.0	0.5
9	Gas	7.0	8.7	1.6
Average		8.2	7.5	2.1

Variation of this nature will have serious consequences when it comes to future DOE compliance and enforcement efforts. Because of the differences in potential test results depending on the laboratory conducting the test, manufacturers will need to build in a buffer or ''safety factor'' of over ten percent on average (unit 6, Lab C vs. Lab A shows a 12.5 percent variation) to help ensure compliance with applicable standards.

TABLE 13—PERCENTAGE OF (TESTED) UNIT MEETING COMPLIANCE DURING AUDIT TESTING

Margin to limit	Typical allowable shift used by third party labs (3%)	Average shift in DOE testing (8%)
3 Percent	97.5	11.5
5 Percent	100	52
8 Percent	100	97.5
10 Percent	100	100

The variation could also mean that, for example, if a manufacturer uses Lab B or C for certification and DOE uses Lab A for compliance and enforcement testing, DOE's results could be an overstated efficiency as the test unit(s) will have drifted away from their certified values due to variation in mass production. This could result in false findings of non-compliance. The analysis below uses DOE's round robin testing results and statistical simulation (as presently required under 10 CFR 429 Subpart C) to show that this variation is so significant, units with as much as five percent higher energy consumption could still meet a future minimum energy conservation standard level *and* remain compliant when tested by DOE.

TABLE 14—PERCENTAGE OF (TESTED) UNIT MEETING COMPLIANCE DURING AUDIT TESTING

Energy value above DOE threshold	Typical allowable shift used by third party labs (3%)	Average shift in DOE testing (8%)
3 Percent	95	100
5 Percent	76	100
8 Percent	18	99
10 Percent	1	86

We continue to believe that this variation threatens the credibility of the Appliance Standards Program and means that the cooktop test procedure DOE finalized does not produce sufficiently accurate results. Thus, we continue to question whether the test procedure truly meets EPCA's criteria.

Although AHAM does not have a proposal at this time for improving further the test's variation, we do believe DOE can reduce the test's burden so it is not overly burdensome to conduct. Specifically, AHAM asks that DOE simplify the test by removing the requirement to perform a physical simmer test and providing, as an option,

a calculation alternative to the simmer portion of the test.

VI. Conclusion

Based on the above reasoning and justification, combined with the data AHAM will submit with this petition, AHAM respectfully requests that DOE amend the test procedure to:

1. Allow for a calculation as an alternative to the simmer portion of the test; [13]

2. Exclude models where the cooktop cannot be measured in a representative manner; and

3. Require measurement of open-coil cooking zone diameter using a caliper.

Although we understand that DOE is working to consider energy conservation standards for cooktops, we do not expect that making these relatively minor changes to the test procedure will impact DOE's ability to proceed with its other rulemaking plans. Mandatory use of appendix I1 for representations of energy use or energy efficiency of a conventional cooking top is not required until on or after February 20, 2023. We also note that, to date, there are no applicable energy conservation standards for cooktops, which means that this test procedure is not used to demonstrate compliance with applicable standards. Nevertheless, we ask DOE to move quickly to make these changes because the date for using the test procedure for representations is quickly approaching and EPA is moving quickly to develop an ENERGY STAR specification that uses DOE's test procedure. Moreover, these changes will be helpful in assessing DOE's proposed amended energy conservation standards.

AHAM appreciates the opportunity to submit this Petition to Amend the Cooktop Test Procedure and would be glad to discuss these matters in more detail should you so request. We respectfully request that DOE urgently review and act upon this petition as it is critical that changes be made before mandatory use of the test procedure is required. Thus, while DOE is reviewing these changes, we ask that DOE stay the effectiveness of that requirement.

Respectfully Submitted,

Jennifer Cleary,

/s

Vice President, Regulatory Affairs.

About AHAM: AHAM represents more than 150 member companies that manufacture 90% of the major, portable and floor care appliances shipped for sale in the U.S. Home appliances are the heart of the home, and AHAM members provide safe, innovative, sustainable and efficient products that enhance consumers' lives. The home appliance industry is a significant segment of the economy, measured by the contributions of home appliance manufacturers, wholesalers, and retailers to the U.S. economy. In all, the industry drives nearly $200 billion in economic output throughout the U.S. and manufactures products with a factory shipment value of more than $50 billion.

[13] Additionally, we ask that DOE update its enforcement regulations to require DOE to use both the physical simmer test and the alternative calculation method in assessment and enforcement testing before making a determination of non-compliance.

[FR Doc. 2023–07673 Filed 4–18–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0933; Project Identifier MCAI–2022–00554–T]

RIN 2120–AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (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 De Havilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes. This proposed AD was prompted by reports that the saddle washer (radius filler) for the front and rear spar joints may have been incorrectly manufactured for several years. This proposed AD would require inspecting the horizontal stabilizer to vertical joint for gaps and bending of the saddle washer and adjacent washers, and replacing parts if necessary. 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 June 5, 2023.

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 *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.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0933; 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, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; telephone 855–310–1013 or 647–277–5820; email: *thd@dehavilland.com;* website: *dehavilland.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Yaser Osman, Aerospace Engineer, Airframe and Propulsion 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–2023–0933; Project Identifier MCAI–2022–00554–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 *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 Yaser Osman, Aerospace Engineer, Airframe and Propulsion 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, which is the aviation authority for Canada, has issued Transport Canada AD CF–2022–21, dated April 21, 2022 (Transport Canada AD CF–2022–21) (also referred to after this as the MCAI), to correct an unsafe condition on certain De Havilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes. The MCAI states that certain saddle washers for the front and rear spar joint, may have been incorrectly manufactured for several years. Non-conforming saddle washers could potentially become deformed when installed, and lead to gaps at the horizontal stabilizer to vertical stabilizer joint, that would result in reduction of the pre-load at the joint.

The FAA is proposing this AD to address gapping and bending of the saddle washer that could have the potential to reduce the life of the bolt, which in turn could affect the structural integrity of the horizontal stabilizer to vertical stabilizer joint.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0933.

Related Service Information Under 1 CFR Part 51

The FAA reviewed De Havilland Aircraft of Canada Limited Service Bulletin 84–55–12, Revision A, dated February 16, 2022. This service information specifies procedures for a detailed visual inspection of the front and rear spar joints for signs of gapping or bending of the radius filler and/or adjacent washers, and depending on the inspection results, replacement of the saddle washer, adjacent washers, bolt, and barrel nut.

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 this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

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 400 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
5 work-hours × $85 per hour = $425	$0	$425	$170,000

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
2 work-hours × $85 per hour = $170	$5,333	$5,503

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

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:

De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA–2023–0933; Project Identifier MCAI–2022–00554–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by June 5, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Model DHC–8–401 and –402 airplanes, certificated in any category, having serial numbers 4001 and 4003 through 4633 inclusive.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports that the saddle washer (radius filler) for the front and rear spar joints may have been incorrectly manufactured for several years. The FAA is issuing this AD to address gaps and bending of the saddle washer that could have the potential to reduce the life of the bolt, which in turn could affect the structural integrity of the horizontal stabilizer to vertical stabilizer joint.

(f) Compliance

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

(g) Inspection

Within 8,000 flight hours after the effective date of this AD, perform a detailed visual inspection for signs of gapping or bending of the saddle washers and adjacent washers in the front spar and rear spar horizontal/vertical stabilizer joint fitting in accordance with Section 3.B., Part A, of the Accomplishment Instructions of De Havilland Aircraft of Canada Service Bulletin 84–55–12, Revision A, dated February 16, 2022.

(h) Corrective Actions

If any gaps or bending of the washers is found during the inspection required in paragraph (g) of this AD, before further flight, replace the saddle washer, washers, PLI washer, bolt, and barrel nut, as applicable, in accordance with Section 3.B., Part B, of the Accomplishment Instructions of De Havilland Aircraft of Canada Service Bulletin 84–55–12, Revision A, dated February 16, 2022.

(i) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using De Havilland Aircraft of Canada Limited Service Bulletin 84–55–12, dated September 7, 2021.

(j) Additional 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 New York ACO Branch, mail it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (k)(2) of this AD or email to: *9-avs-nyaco-cos@faa.gov.* If mailing information, also submit information by email. 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 or De Havilland Aircraft of Canada Limited's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Additional Information

(1) Refer to Transport Canada AD CF–2022–21, dated April 21, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–0933.

(2) For more information about this AD, contact Yaser Osman, Aerospace Engineer, Airframe and Propulsion 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.*

(l) Material Incorporated by Reference

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

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

(i) De Havilland Aircraft of Canada Limited Service Bulletin 84–55–12, Revision A, dated February 16, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; telephone 855–310–1013 or 647–277–5820; email: *thd@dehavilland.com;* website: *dehavilland.com.*

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

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

Issued on April 13, 2023.

Christina Underwood,

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

[FR Doc. 2023–08202 Filed 4–18–23; 8:45 am]

BILLING CODE 4910–13–P

Notices

Federal Register
Vol. 88, No. 75
Wednesday, April 19, 2023

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

Forest Service

Notice of Issuance of Final Permanent Recreational Shooting Order in the Sierra Vista Ranger District of the Coronado National Forest

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Forest Service (Forest Service or Agency), United States Department of Agriculture, is issuing a final permanent order prohibiting recreational shooting in the proximity to canyon roads on the eastern side of the Huachuca Mountains in the vicinity of the City of Sierra Vista, Fort Huachuca, and the communities of Hereford and Palominas of the Sierra Vista Ranger District in the Coronado National Forest, which covers approximately 5,090 acres in Cochise County, Arizona.

ADDRESSES: The final permanent order, map, response to comments on the proposed permanent order, justification for the final permanent order, and regulatory certifications for the final permanent order are posted on the Coronado National Forest's web page at *https://www.fs.usda.gov/resources/coronado/landmanagement/resourcemanagement.*

FOR FURTHER INFORMATION CONTACT: Celeste Kinsey, District Ranger, 520–378–0311, or *celeste.kinsey@usda.gov.* Individuals who use telecommunication devices for the hearing-impaired may call the Federal Relay Service at 800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: Section 4103 of the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019 (Pub. L. 116–9, title IV (Sportsmen's Access and Related Matters)), hereinafter ''the Dingell Act,'' requires the Forest Service to provide advance notice and opportunity for public comment before temporarily or permanently closing any National Forest System lands to hunting, fishing, or recreational shooting.

The final permanent order prohibiting recreational shooting in the proximity to canyon roads on the eastern side of the Huachuca Mountains in the vicinity of the City of Sierra Vista, Fort Huachuca, and the communities of Hereford and Palominas of the Sierra Vista Ranger District in the Coronado National Forest has completed the public notice and comment process required under the Dingell Act. The Forest Service is issuing the final permanent recreational shooting order. The final permanent order, map, response to comments on the proposed permanent order, justification for the final permanent order, and regulatory certifications for the final permanent order are posted on the Coronado National Forest's web page at *https://www.fs.usda.gov/resources/coronado/landmanagement/resourcemanagement.*

Dated: April 11, 2023.

Jacqueline Emanuel,

Associate Deputy Chief, National Forest System.

[FR Doc. 2023–08248 Filed 4–18–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Directive Publication Notice

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Forest Service (Forest Service or Agency), U.S. Department of Agriculture, provides direction to employees through issuances in its Directive System, comprised of the Forest Service Manual and Forest Service Handbooks. The Agency must provide public notice of and opportunity to comment on any directives that formulate standards, criteria, or guidelines applicable to Forest Service programs. Once per quarter, the Agency provides advance notice of proposed and interim directives that will be made available for public comment during the next three months and notice of final directives issued in the last three months.

DATES: This notice identifies proposed and interim directives that will be published for public comment between April 1, 2023, and June 30, 2023; proposed and interim directives that were previously published for public comment but not yet finalized and issued; and final directives that have been issued since January 1, 2023.

ADDRESSES: Questions or comments may be submitted by email to the contact listed below.

FOR FURTHER INFORMATION CONTACT: JoLynn Anderson, 971–313–1718 or *jolynn.anderson@usda.gov.* Individuals who use telecommunications devices for the deaf and hard of hearing may call the Federal Relay Service at 800–877–8339 24 hours a day, every day of the year, including holidays. You may register to receive email alerts regarding Forest Service directives at *https://www.fs.usda.gov/about-agency/regulations-policies.*

SUPPLEMENTARY INFORMATION:

Proposed and Interim Directives

Consistent with 16 U.S.C. 1612(a) and 36 CFR part 216, the Forest Service publishes for public comment Agency directives that formulate standards, criteria, and guidelines applicable to Forest Service programs. Agency procedures for providing public notice and opportunity to comment are specified in Forest Service Handbook (FSH) 1109.12, chapter 30, Providing Public Notice and Opportunity to Comment on Directives.

The following proposed directives are planned for publication for public comment from April 1, 2023, to June 30, 2023:

1. Forest Service Manual (FSM) 2000, National Forest Resource Management, chapter 40—National Forest System Monitoring (previously published as planned for publication for public comment April 8, 2022 (87 FR 20810)).

2. Forest Service Manual (FSM) 2300, Recreation, Wilderness, and Related Resource Management, chapter 55—Climbing Management (previously published as planned for publication for public comment January 28, 2022 (87 FR 4552)).

The following proposed and interim directives have been published for public comment but have not yet been finalized:

1. FSM 2200, Rangeland Management, chapters Zero Code; 2210, Rangeland

Management Planning; 2220, Management of Rangelands (Reserved); 2230, Grazing Permit System; 2240, Rangeland Improvements; 2250, Rangeland Management Cooperation; and 2270, Information Management and Reports; FSH 2209.13, Grazing Permit Administration Handbook, chapters 10, Term Grazing Permits; 20, Grazing Agreements; 30, Temporary Grazing and Livestock Use Permits; 40, Livestock Use Permits; 50, Tribal Treaty Authorizations and Special Use Permits; 60, Records; 70, Compensation for Permittee Interests in Rangeland Improvements; and 90, Rangeland Management Decision Making; and FSH 2209.16, Allotment Management Handbook, chapter 10, Allotment Management and Administration.

2. FSM 3800, Landscape Scale Restoration Program.

3. FSH 2409.12, Timber Cruising Handbook, chapters 30, Cruising Systems; 40, Cruise Planning, Data Recording, and Cruise Reporting; 60, Quality Control; and 70, Designating Timber for Cutting.

4. FSH 2409.15, Timber Sale Administration Handbook, chapters 20, Measuring and Accounting for Included Timber; 40, Rates and Payments; and 60, Operations and Other Provisions.

Final Directives That Have Been Issued Since January 1, 2023

Final FSH 2209.13, Grazing Permit Administration Handbook, chapter 80, Grazing Fees (chapter 80), has been issued since January 1, 2023. Chapter 80 is the first of 16 other chapters being updated and yet to be issued to provide greater management flexibility and improve the clarity of policies and procedures guiding responsible and consistent management of grazing on National Forest System lands. Chapters in FSM 2200, Rangeland Management, FSH 2209.13, Grazing Permit Administration Handbook, and FSH 2209.16, Allotment Management Handbook, are being reviewed and will be published later.

Final chapter 80 incorporates the final rule on excess and unauthorized grazing that became effective in August 2022. The final rule allows responsible officials to waive excess and unauthorized grazing fees when certain conditions are met. Final chapter 80 merely incorporates this regulation without revision. In addition, final chapter 80 incorporates current direction regarding excess and unauthorized use penalty rates. In final chapter 80, excess and unauthorized use penalty rates were revised to reflect current market value rather than the market value from the 1960s. The 60-day comment period for the proposed directive began December 18, 2020, closed February 16, 2021, and was extended for 60 days to April 17, 2021. The 5,000 public comments and 2 comments from Tribes on all 17 of the proposed directives can be viewed at *https://cara.fs2c.usda.gov/Public/ReadingRoom?project=ORMS-2514.* Final chapter 80 was issued March 6, 2023, and can be viewed at *https://www.fs.usda.gov/im/directives/fsh/2209.13/wo_2209.13_80-Amend%202023-1.docx.*

Dated: April 13, 2023.

JoLynn Anderson,

Branch Chief, Directives, Information Collections and Government Clearance, Office of Policy, National Forest System.

[FR Doc. 2023–08254 Filed 4–18–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–23–SFH–0008]

Notice of Funding Availability for the Section 533 Housing Preservation Grant (HPG) for Fiscal Year 2023

AGENCY: Rural Housing Service, Department of Agriculture.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development (RD) mission area agency of the United States Department of Agriculture (USDA), announces the availability of funding under the Housing Preservation Grant (HPG) program for fiscal year (FY) 2023, making available grant funds to sponsoring organizations for the repair or rehabilitation of housing owned or occupied by low- and very-low-income rural citizens under the HPG Program. The purpose of this notice is to announce the opening and closing dates for receipt of preapplications for HPG funds, including the availability of calendar year 2022 disaster assistance, from eligible applicants, as well as submission requirements. Expenses incurred in developing preapplications will be at the applicant's cost.

DATES: Completed preapplications for grants must be submitted according to one of the following methods:

- *Paper Submissions:* The deadline for receipt of a paper preapplication is 4:30 p.m. local time, June 5, 2023. Applicants intending to mail preapplications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX), and postage due applications will not be accepted. The preapplication dates and times are firm. The Agency will not consider any preapplication received after the deadline.
- *Electronic submissions:* Electronic preapplications must be received by email or submitted to *Grants.gov*. The deadline for receipt of an electronic preapplication is 11:59 p.m. Eastern Time on June 5, 2023. The preapplication dates and times are firm. The agency will not consider any preapplication received after the deadline. The Agency will not solicit or consider scoring or eligibility information that is submitted after the preapplication deadline. The Agency will not consider any preapplication received after the deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted preapplication.

ADDRESSES: *Application Submission:* Entities wanting to apply for assistance may download the preapplication documents and requirements as stated in this Notice from the HPG website: *https://www.rd.usda.gov/programs-services/single-family-housing-programs/housing-preservation-grants.* Applicants will also find the requirements in the HPG program regulation found in 7 CFR 1944 (Subpart N). Preapplication information for electronic submissions may be found at *http://www.Grants.gov.*

Applicants may also request paper preapplication packages from the RD office in their state. A list of Rural Development State Office (RDSO) contacts can be found via: *https://www.rd.usda.gov/about-rd/state-offices.*

FOR FURTHER INFORMATION CONTACT: Mandy Couture, Finance and Loan Analyst, Single Family Housing Direct Division, Special Programs and New Initiatives Branch at (515) 418–2188 (voice) (this is not a toll-free number) or email: *Mandy.Couture@usda.gov.* You may also contact the RD office for the state in which the applicant is located. A list of RDSO contacts is provided at: *https://www.rd.usda.gov/about-rd/state-offices.*

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: Rural Housing Service.

Funding Opportunity Title: Grant.

Announcement Type: Notice of Funding Availability (NOFA).

Funding Opportunity Number: USDA–RD–HCFP–HPG–2023.

Assistance Listing: 10.433.

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Rural Development Key Priorities: The Agency encourages applicants to consider projects that will advance the following key priorities (more details available at *https://www.rd.usda.gov/priority-points*):

- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects; and
- Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure.

For further information, visit *https://www.rd.usda.gov/priority-points.*

A. Program Description

1. *Purpose of the Program.* The HPG program is a grant program administered by the Single-Family Housing Programs of RHS. It is limited to eligible rural areas and to qualified entities (such as public agencies, private non-profit organizations, and federally recognized Tribes). Grant funds can be used to assist low- and very low-income homeowners in repairing and rehabilitating their homes in rural areas.

The program assists cooperative housing complexes and rental property owners in rural areas in repairing and rehabilitating their units if they agree to make such units available to very low- and low-income persons. Rental property owners can include Section 515 and 538 rental properties if the eligibility requirements are met for the HPG program. In accordance with 7 CFR 1944.663, rental property owners must agree to make the units repaired or rehabilitated available for occupancy to very low- or low-income persons for a period of not less than five years. The minimum five-year rent restriction for very low- and low-income tenants will only apply to the units that are repaired with the HPG funding. Any units within the property that were not repaired with HPG funding will not be subject to the five-year restriction.

2. *Statutory and Regulatory Authority.* Funding is authorized by Section 533 of the Housing Act of 1949, as amended and pursuant to the Consolidated Appropriations Act, 2023; Public Law 117–328; 42 U.S.C. 1490m, and 7 CFR 1944, subpart N.

3. *Definitions.* The definitions applicable to this notice may be found at 7 CFR 1944.656.

4. *Application of Awards.* The Agency will review, evaluate, and score preapplications in response to this notice based on the provisions in 7 CFR 1944.679 and as indicated in this notice.

B. Federal Award Information

Type of Award: Grants.

Fiscal Year Funds: FY 2023.

Available Funds: Approximately $18.5 million is made available to eligible participants. Approximately $2.5 million of this funding is available for disaster assistance. RHS may at its discretion, increase the total level of funding available in this category from any available source provided the awards meet the requirements of the statute which made the funding available to the Agency.

Award Amounts: No single entity may be awarded more than ½ of a state's allocation if there are two or more preapplications for a given state that meet the criteria of 7 CFR 1944.679(a), according to 7 CFR 1944.680. Award amounts available in FY 2023 State Allocation have not been finalized and can be obtained from the RDSO. A maximum award of $50,000 is available for disaster assistance with no state maximum for awards.

A list of RDSO contacts is provided at: *https://www.rd.usda.gov/about-rd/state-offices.*

Anticipated Award Date: The Agency anticipates making awards approximately 120 days after the application deadline.

Performance Period: 24 months from the executed grant agreement.

Renewal or Supplemental Awards: None.

Approximate Number of Awards: The number of awards will depend on the number of eligible participants and the total amount of requested funds. Based on the Agency's prior experience with this program, it expects to make approximately 100–150 awards.

C. Eligibility Information

1. *Eligible Applicants.* Potential applicants must meet the eligibility requirements of 7 CFR 1944.658. Additionally, potential applicants must meet the requirements of 7 CFR 1944.661, 1944.662, and/or 1944.686 as applicable. Eligible entities for these competitively awarded grants include State and local governments, non-profit corporations, which may include, but not be limited to Faith-Based and community organizations; federally recognized Indian tribes; and consortia of eligible entities. HPG applicants who were previously selected for HPG funds are eligible to submit new preapplications to apply for FY 2023 HPG program funds. An additional HPG grant may be made when the grantee has achieved or nearly achieved the goals established for the previous or existing grant. . The commitment of program dollars will be made to selected applicants who have fulfilled the necessary requirements for obligations.

Preapplications for disaster assistance grants may be utilized for calendar year 2022 presidentially declared disaster area(s) only (2022 presidentially declared disaster areas can be viewed at *https://www.fema.gov/disaster/declarations*).

2. *Cost Sharing or Matching.* Pursuant to 7 CFR 1944.652(a)(1), grantees are expected to coordinate and leverage funding for repair and rehabilitation activities; as well as replacement housing, with housing and community development organizations or activities operating in the same geographic area. While it is encouraged that HPG funds be leveraged with other resources, cost sharing or matching is not a requirement for the HPG applicant as the HPG applicant would not be denied an award of HPG funds if all other project selection criteria have been met.

3. *Discretionary Points.* None.

4. *Other.* Awards made under this Notice are subject to the provisions contained in the Consolidated Appropriations Act, 2023 (Pub. L. 117–328) Division E Financial Services and General Government Appropriations Act, 2023, Title VII General Provisions—Government-wide, sections 744 and 745, regarding Corporate Felony Convictions and Corporate Federal Tax Delinquencies. To comply with these provisions, only applicants that are or propose to be, corporations will submit Form AD 3030, ''Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants'' as part of their preapplication. There are no limits on proposed direct and indirect costs. Expenses incurred in developing preapplications will be at the applicant's cost.

D. Application and Submission Information

1. *Address to Request Application Package.* Entities wanting to apply for assistance may download the preapplication documents for this Notice from the HPG website: *https://www.rd.usda.gov/programs-services/single-family-housing-programs/housing-preservation-grants.* Application information for electronic submissions may be found at *https://www.grants.gov.*

Applicants may also request a paper application package from the RD office in their state. A list of RDSO contacts can be found via *https://www.rd.usda.gov/about-rd/state-offices.*

2. *Content and Form of Application Submission.* All requirements for submission of a preapplication under the Housing Preservation Program are subject to 7 CFR 1944, subpart N. If the applicant is ineligible or the preapplication is incomplete, the Agency will inform the applicant in writing of the decision, reasons therefore, and its appeal rights and no further evaluation of the application will occur.

As specified by 7 CFR 1944.676, the Agency requires applicants to submit the following information to make an eligibility determination:

1. An SF–424, ''Application for Federal Assistance'';

(i) Made available by contacting any RDSO at the website: *http://www.rd.usda.gov/contact-us/state-offices;* or

(ii) *Grants.gov* at the following website: *https://www.grants.gov.*

2. A statement of activities proposed by the applicant for its HPG program as appropriate to the type of assistance the applicant is proposing, including:

(i) A complete discussion of the type of and conditions for financial assistance for housing preservation, including whether the request for assistance is for a homeowner assistance program, a rental property assistance program, or a cooperative assistance program.

(ii) The process for selecting recipients for HPG assistance, determining housing preservation needs of the dwelling, performing the necessary work, and monitoring/inspecting work performed.

(iii) A description of the process for coordinating with other public and private organizations and programs that provide assistance in rehabilitation of historic properties in accordance with 7 CFR 1944.673.

(iv) The development standard(s) the applicant will use for the housing preservation work; and, if not the RD standards for existing dwellings, the evidence of its acceptance by the jurisdiction where the grant will be implemented.

(v) The time schedule for completing the program.

(vi) The staffing required to complete the program.

(vii) The estimated number of very low- and low-income minority and non-minority persons the grantee will assist with HPG funds; and, if a rental property or cooperative assistance program, the number of units and the term of restrictive covenants on their use for very low- and low-income.

(viii) The geographical area(s) to be served by the HPG program.

(ix) The annual estimated budget for the program period based on the financial needs to accomplish the objectives outlined in the proposal. The applicant can use SF–424A to provide this information.

(x) A copy of an indirect cost proposal/rate or direct cost policy when the applicant has another source of federal funding in addition to the RD HPG program.

(xi) A brief description of the accounting system to be used.

(xii) The method of evaluation to be used by the applicant to determine the effectiveness of its program which encompasses the requirements for quarterly reports to RD in accordance with 7 CFR 1944.683(b) and the monitoring plan for rental properties and cooperatives (when applicable) according to 7 CFR 1944.689.

(xiii) The source and estimated amount of other financial resources to be obtained and used by the applicant for both HPG activities and housing development and/or supporting activities.

(xiv) The use of program income if any, and the tracking system used for monitoring same.

(xv) The applicant's plan for disposition of any security instruments held by them as a result of its HPG activities in the event of its loss of legal status.

(xvi) Any other information necessary to explain the proposed HPG program.

(xvii) The outreach efforts outlined in 7 CFR 1944.671(b).

3. *Experience.* Complete information about the applicant's experience and capacity to carry out the objectives of the proposed HPG program (7 CFR 1944.676(b)(2)).

4. *Evidence of Legal Existence.* Evidence of the applicant's legal existence, including, in the case of a private non-profit organization, a copy of, or an accurate reference to, the specific provisions of state law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for applicants other than public bodies; evidence of good standing from the state when the corporation has been in existence one year or more; and the names and addresses of the applicant's members, directors and officers. If other organizations are members of the applicant-organization, or the applicant is a consortium, preapplications should be accompanied by the names, addresses, and principal purpose of the other organizations. If the applicant is a consortium, documentation showing compliance with paragraph (4)(ii) under the definition of ''organization'' in 7 CFR 1944.656 must also be included.

5. *Audited and Financial Statements.* For a private non-profit entity, the most recent audited statement and a current financial statement dated and signed by an authorized officer of the entity showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt(s) owed by the applicant. If the applicant is an organization being assisted by another private non-profit organization, the same type of financial statement should also be provided by that organization.

6. *Narrative Statement.* A brief narrative statement which includes information about the area to be served and the need for improved housing (including both percentage and the actual number of both low-income and low-income minority households and substandard housing), the need for the type of housing preservation assistance being proposed, the anticipated use of HPG resources for historic properties,

and the method of evaluation to be used by the applicant in determining the effectiveness of its efforts (according to 7 CFR 1944.676(b)(1)(xii)).

7. *Alleviating Overcrowding Statement.* A statement containing the component for alleviating any overcrowding as defined by 7 CFR 1944.656.

8. *List of Other Activities.* A list of other activities the applicant is engaged in and expects to continue, a statement as to any other funding, and whether it will have sufficient funds to assure continued operation of the other activities for at least the period of the HPG grant agreement.

9. *Project Selection Criteria.* Any other information necessary to address the selection criteria in 7 CFR 1944.679.

10. *Environmental Compliance Agreement.* The applicant must comply with the requirements of 7 CFR part 1970 and submit 1970–A Exhibit H ''Multi-tier Action Environmental Compliance Agreement.''

11. *Public Participation and Intergovernmental Review.* Intergovernmental Review. In accordance with 7 CFR 1944.674(c), the HPG program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. RD conducts intergovernmental consultation as implemented with 2 CFR part 415, subpart C. Not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at the following website: *https://www.whitehouse.gov/omb/management/office-federal-financial-management/.* Preapplications from federally recognized Indian Tribes are not subject to this requirement.

(i) The applicant must submit written statements and related correspondence reflecting compliance with 7 CFR 1944.674(a) regarding consultation with local leaders from the county, parish, and/or township governments of the area where the HPG activities will take place for the purpose of assuring that the proposed HPG program is beneficial and does not duplicate current activities. American Indian nonprofit organization applicants should obtain the written concurrence of the tribal governing body in lieu of consulting with the county governments when the program is operated only on tribal land.

(ii) The applicant is to make its statement of activities available to the public for comment prior to submission to RD pursuant to 7 CFR 1944.674(b). The applicant(s) must announce the availability of its statement of activities for review in a print or online newspaper of general circulation in the project area and allow at least 15 days for public comment. The start of this 15-day period must occur no later than 16 days prior to the last day for acceptance of preapplications by the Agency. Federally recognized Indian Tribes, pursuant to 7 CFR 1944.674, should obtain the written concurrence of the tribal governing body in lieu of consulting with the county governments when the program is operated only on tribal land. The preapplication must contain a description of how the comments (if any were received) were addressed.

12. Equal Opportunity Agreement. The applicant must submit an original of Form RD 400–1, ''Equal Opportunity Agreement'' and Form RD 400–4, ''Assurance Agreement'' in accordance with 7 CFR 1944.676.

13. RD Instruction 2000–FF. Provided for informational purposes during the preapplication period per 7 CFR 1944.673.

Applicants should review 7 CFR part 1944, subpart N for a comprehensive list of all application requirements. Preapplications will not be considered for funding if they do not provide sufficient information to determine eligibility or are missing required elements.

Applicants must collect and maintain data provided by recipients on race, sex, and national origin and ensure ultimate recipients collect and maintain this data as described in 7 CFR 1944.671. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

The applicant and the recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E.

Debarment and suspension information is required in accordance with 2 CFR 417180 (OMB's Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) (Non procurement Debarment and Suspension) supplemented by 2 CFR 180417 (Nonprocurement Debarment and Suspension) if it applies. The section heading is ''What information must I provide before entering into a covered transaction with a Federal agency?'' located at 2 CFR 180.335. It is part of OMB's Guidance for Grants and Agreements concerning Governmentwide Debarment and Suspension. Applicants are not eligible if they have been debarred or suspended or otherwise excluded from, or ineligible for, participation in Federal assistance programs under 2 CFR parts 180 and 417.

3. *System for Award Management and Unique Entity Identifier.*

(a) At the time of application, each applicant must have an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR 25 (*https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-25*). To register in SAM, entities will be required to create a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at *https://sam.gov/content/entity-registration.*

(b) Applicant must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

(c) Applicant must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

(d) Applicants must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110 (*https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-25/subpart-A/section-25.110*).

(e) The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. *Submission Dates and Times.* The Agency will not solicit or consider new scoring or eligibility information that is submitted after the preapplication deadline. RHS also reserves the right to ask applicants for clarifying information and additional verification of assertions in the application.

5. *Intergovernmental Review.* Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs,'' applies to this program. This E.O. requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain a SPOC, please see the White House website: *https://www.whitehouse.gov/omb/management/office-federal-financial-management/.* If your State has a SPOC, you may submit a copy of the application directly for review. Any comments obtained through the SPOC must be provided to your State Office for consideration as part of your application. If your state has not established a SPOC, you may submit your application directly to the Agency. Applications from Federally recognized Indian Tribes are not subject to this requirement.

6. *Funding Restrictions.* Applications must be for eligible purposes as defined above and must comply with the grant fund limitations found within 7 CFR 1944. There are no limits on proposed direct and indirect costs. Expenses incurred in developing preapplications will be at the applicant's cost.

7. *Other Submission Requirements:* None.

E. Pre-Application Review Information

1. *Criteria.*

All eligible and complete preapplications for Section 533 HPG funds must be filed with the appropriate RDSO and all paper or electronic preapplications must meet the requirements of this Notice and 7 CFR part 1944.679. Preapplications determined not eligible and/or not meeting the selection criteria will be notified by the RDSO.

2. *Review and Selection Process.*

The Agency reserves the right to offer the applicant less than the grant funding requested. RDSOs will utilize the following threshold project selection criteria for applicants in accordance with 7 CFR 1944.679:

(a) Providing a financially feasible program of housing preservation assistance. ''Financially feasible'' is defined as proposed assistance which will be affordable to the intended recipient or result in affordable housing for very low- and low-income persons.

(b) Serving eligible rural areas with a concentration of substandard housing for households of very low- and low-income.

(c) Being an eligible applicant as defined in 7 CFR 1944.658.

(d) Meeting the requirements of consultation and public comment in accordance with 7 CFR 1944.674.

(e) Submitting a complete preapplication as outlined in 7 CFR 1944.676.

3. *Scoring.*

For applicants meeting all the requirements listed above, the RDSOs will use weighted criteria in accordance with 7 CFR part 1944, subpart N as selection for the grant recipients. Each preapplication and its accompanying statement of activities will be evaluated and, based solely on the information contained in the preapplication, the applicant's proposal will be numerically rated on each criterion within the range provided. The highest-ranking applicant(s) will be selected based on allocation of funds available to the state.

(1) Points are awarded based on the percentage of very low-income persons that the applicant proposes to assist, using the following scale:

(i) More than 80%: 20 points
(ii) 61% to 80%: 15 points
(iii) 41% to 60%: 10 points
(iv) 20% to 40%: 5 points
(v) Less than 20%: 0 points

(2) The applicant's proposal may be expected to result in the following percentage of HPG fund use (excluding administrative costs) to total cost of unit preservation. This percentage reflects maximum repair or rehabilitation with the least possible HPG funds due to leveraging, innovative financial assistance, owner's contribution, or other specified approaches. Points are awarded based on the following percentage of HPG funds (excluding administrative costs) to total funds:

(i) 50% or less: 20 points
(ii) 51% to 65%: 15 points
(iii) 66% to 80%: 10 points
(iv) 81% to 95%: 5 points
(v) 96% to 100%: 0 points

(3) The applicant has demonstrated its administrative capacity in assisting very low- and low-income persons to obtain adequate housing based on the following:

(i) The organization or a member of its staff has at least one or more years of experience successfully managing and operating a rehabilitation or weatherization type program: 10 points.

(ii) The organization or a member of its staff has at least one or more years of experience successfully managing and operating a program assisting very low- and low-income persons obtain housing assistance: 10 points.

(iii) If the organization has administered grant programs, there are no outstanding or unresolved audit or investigative findings which might impair carrying out the proposal: 10 points.

(4) The proposed program will be undertaken entirely in rural areas outside Metropolitan Statistical Areas (MSAs) identified by RD as having populations below 10,000 or in remote parts of other rural areas (*i.e.,* rural areas contained in MSAs with less than 5,000 population) as defined in 7 CFR 1944.656: 10 points.

(5) The program will use less than 20 percent of HPG funds for administration purposes:

(i) More than 20%: Not eligible
(ii) 20%: 0 points
(iii) 19%: 1 point
(iv) 18%: 2 points
(v) 17%: 3 points
(vi) 16%: 4 points
(vii) 15% or less: 5 points

(6) The proposed program contains a component for alleviating overcrowding as defined in 7 CFR 1944.656: 5 points.

In the event more than one preapplication receives the same number of points, those preapplications will then be ranked based on the actual percentage figure used for determining the points in item (1) in the ''Scoring'' section of this Notice (7 CFR 1944.679 (b)(1)).

Example of 1st tie-break:

Both Applicants score 80 points
Applicant X's percentage in ''Scoring'' section item (a) is 65%
Applicant B's percentage in ''Scoring'' section item (a) is 75%
Applicant B is ranked higher than Applicant X
Applicant B will be funded before Applicant X

Further, if preapplications are still tied, then those preapplications still tied will be ranked based on the percentage figures used for determining the points in item (2) in the ''Scoring'' section of this Notice (7 CFR 1944.679 (b)(2)).

Example of 2nd tie-break:

Both Applicants score 80 points
Both Applicants percentage in ''Scoring'' section item (a) is 65%
Applicant X's percentage in ''Scoring'' section item (b) is 55%
Applicant B's percentage in ''Scoring'' section item (b) is 60%
Applicant X is ranked higher with a lower percentage than Applicant B
Applicant X will be funded before Applicant B

Further, 7 CFR 1944.679(c), for preapplications where HPG assistance to rental properties or co-ops is proposed, those still tied will be further ranked based on the number of years the units are available for occupancy under the program (a minimum of five years is

required). For this part, ranking will be based on most to least number of years.

Example of 3rd tie-break:

Both Applicants score 80 points
Both Applicants percentage in ''Scoring'' section item (a) is 65%
Both Applicants percentage in ''Scoring'' section item (b) is 55%
Applicant X's rental unit will be available for occupancy under the program for 10 years
Applicant B's rental unit will be available for occupancy under the program for 5 years
Applicant X is ranked higher than Applicant B
Applicant X will be funded before Applicant B

If any of the applicants that remain tied after the 1st and 2nd tie-breaks are offering to assist single family owners, then the 3rd tie-break would not be applicable, and a lottery would be used to select the applicant to be funded.

If there is still a tie after the first two (or three, when applicable) tie-breaks, then a lottery system will be used to select the applicant to be funded. The lottery will be conducted at the National Office. The lottery will consist of the names of each preapplication with equal scores printed onto a same size piece of paper, which will then be placed into a receptacle that fully obstructs the view of the names. The Director of the Single-Family Housing Loan Division, in the presence of two witnesses, will draw a piece of paper from the receptacle. The name on the piece of paper drawn will be the applicant to be funded.

After the award selections are made by the National Office, all applicants will be notified of the status of their preapplications by email or mail with Form AD–622, ''Notice of Preapplication Review Action.'' Applicants will be given their review rights or appeal rights in accordance with 7 CFR 1944.682.

F. Federal Award Administration Information

1. *Federal Award Notices.*

The Agency will notify in writing, applicants whose preapplications have been selected for funding. At the time of notification, the Agency will advise the applicant what further information and documentation is required along with a timeline for submitting the additional information. If the Agency determines it is unable to select the preapplication for funding, the applicant will be informed in writing. Such notification will include the reasons the applicant was not selected. The Agency will advise applicants, whose preapplications did not meet eligibility and/or selection criteria, of their review rights or appeal rights in accordance with 7 CFR 1944.682.

2. *Administrative and National Policy Requirements.*

(a) The following additional requirements apply to grantees selected for this program:

(i) Form SF–424, ''Application for Federal Assistance''

(ii) Form RD 1940–1, ''Request for Obligation of Funds''

(iii) RD Instruction 1944–N Exhibit A, ''Housing Preservation Grant Agreement''

(iv) Letter of Conditions (if applicable)

(v) Complete Form RD 1942–46, ''Letter of Intent to Meet Conditions'' (if applicable)

(vi) 1940–Q Exhibit A–1, ''Certification for Contracts, Grants and Loans'' (if applicable)

(vii) Form SF 3881, ''ACH Vendor Payment Enrollment Form''

(viii) Form SF 270, ''Request for Advance or Reimbursement''

(ix) Form SF 425, ''Federal Financial Report''

(x) RD Instruction 1944–N Exhibits E–1 and E–2, ''Quarterly (Final) Performance Report'' and ''Quarterly (Final) Performance Report Guide''

(xi) 1970–B Exhibit D, ''Categorical Exclusion Form''

(xii) RD Instruction 1944–N Exhibit F–1, ''Grantee's Process for Identifying Properties Requiring Rural Development Environmental Assessments''

(xii) FEMA Form 086–0–32, ''Standard Flood Hazard Determination Form (SFHDF)''

(xiv) Execute Form SF–LLL, ''Disclosure of Lobbying Activities'' (if applicable)

The grant recipient must include the required nondiscrimination statements in any of their advertisements and brochures. Grantees will be required to collect and maintain data provided by recipients on race, sex, and national origin and ensure recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,'' (62 FR 58782), October 30, 1997. Data on recipients' sex will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

3. *Reporting.*

Performance reporting, including applicable forms, narratives, and other documentation, are to be completed and submitted in accordance with the provisions of 7 CFR 1944.683 and the Grant Agreement. Further, all grantees must submit an audit or financial information covering the defined period of performance as outlined in 7 CFR 1944.688 and the Grant Agreement.

G. Federal Awarding Agency Contact(s)

For general questions about this announcement, please contact Mandy Couture, Finance and Loan Analyst, Single Family Housing Direct Division, Special Programs and New Initiatives Branch at (515) 418–2188 (voice) (this is not a toll-free number) or email: *Mandy.Couture@usda.gov.* The Program website also provides up to date contact information at *https://www.rd.usda.gov/programs-services/single-family-housing-programs/housing-preservation-grants#contact.*

H. Other Information

1. *Paperwork Reduction Act.* In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements associated with the programs, as covered in this notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0575–0157.

2. *National Environmental Policy Act.* All recipients under this notice are subject to the requirements of 7 CFR part 1970.

3. *Federal Funding Accountability and Transparency Act.* All applicants, in accordance with 2 CFR part 25, must be registered in SAM and have a UEI number as stated in Section D.3 of this notice. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

4. *Civil Rights Act.* All grants made under this notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964) and Section 504 of the Rehabilitation Act of 1973, Title VIII of the Civil Rights Act of 1968, Title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

5. *Nondiscrimination Statement.* In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on

race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, USDA Program Discrimination Complaint Form, which can be obtained online at *https://www.usda.gov/sites/default/files/documents/ad-3027.pdf* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

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

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2023–08211 Filed 4–18–23; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[DOCKET #: RUS–22–TELECOM–0054]

Funding Opportunity Announcement for the Broadband Technical Assistance for Fiscal Year 2023

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Utilities Service (RUS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), announces the acceptance of applications—for Broadband Technical Assistance (BTA) for Fiscal Year (FY) 2023. Broadband Technical Assistance provides competitive cooperative agreement funding to eligible entities to receive or deliver broadband technical assistance and training that promotes the expansion of broadband into rural areas. Examples of broadband technical assistance projects may include conducting feasibility studies, completing network designs, and developing broadband financial assistance applications. This announcement lists the information needed to submit an application.

DATES: Applications must be submitted through *https://www.grants.gov no later* than June 20, 2023 to be eligible for funding under this grant opportunity. Late or incomplete applications will not be eligible for funding.

ADDRESSES: All applications must be submitted electronically via the online application system at *https://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: Laurel Leverrier, Assistant Administrator, Telecommunications Program, Rural Utilities Service, United States Department of Agriculture, telephone: (202) 720–9556, email: *Laurel.Leverrier@usda.gov.*

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: Rural Utilities Service.

Funding Opportunity Title: Broadband Technical Assistance.

Announcement Type: Funding Opportunity Announcement (FOA).

Funding Opportunity Number: RUS–BTA–2023.

Assistance Listing Number: 10.752.

Dates: Applications must be submitted through *Grants.gov* and received *no later* than June 20, 2023 to be eligible for funding under this opportunity. Late or incomplete applications will not be eligible for funding.

Rural Development Key Priorities: The Agency encourages applicants to consider projects that will advance the following key priorities.

- Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure;
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

Rural Partners Network (RPN): In addition, the Agency encourages applicants to work with the RPN. The RPN is an all-of-government program that demonstrates to rural America that the federal government can work differently to serve their unique needs in a way that is community-centered and locally-driven. The RPN is a recognition by the Biden Administration that it is time to do more for rural communities. Applicants to this funding opportunity are encouraged to include RPN Community Networks in their proposals by identifying Community Networks as collaborative partners or recipients of service. The RPN is supported by over 20 federal agencies and regional commissions, so including RPN Community Networks can help facilitate coordination with other federal agencies that fund broadband technical assistance (*i.e.,* NTIA, ARC, EDA) to ensure complimentary efforts and reduce the chance of duplicative awards. Please visit *https://www.rural.gov/community-networks* for more information on locations of the 36 RPN Community Networks spanning ten states and Puerto Rico. To access specific contact information for prospective network participants to determine fit, please contact *RuralPartnersNetwork@usda.gov*

A. Program Description

1. Purpose of the Program.

Broadband Technical Assistance provides financial assistance to eligible entities to receive or deliver broadband technical assistance and training and support the expansion or development of broadband cooperatives. Program funds must be used to support broadband technical assistance activities that promote the expansion of broadband into rural areas. Broadband technical assistance activities include, but are not limited to, project planning and community engagement, financial sustainability, environmental compliance, construction and engineering planning, accessing federal resources, and data collection and reporting.

All applicants should carefully review and prepare their applications according to instructions in the FY 2023 BTA Application Guide (Application Guide) and program resources available on the program website at: *https://*

www.rd.usda.gov/programs-services/telecommunications-programs/broadband-technical-assistance-program. Expenses incurred prior to submission of an application will be at the applicant's own risk.

2. Statutory and Regulatory Authority

The Rural eConnectivity Program is authorized under 7 U.S.C. 901 *et seq.,* and Public Law 115–141, Section 779 (2018). This BTA FOA will use technical assistance funds appropriated under the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58).

3. Definitions

The terms and conditions provided in this FOA are applicable to and for the purposes of this FOA only. Unless otherwise provided in the award documents, all financial terms not defined herein shall have the meaning as defined by Generally Accepted Accounting Principles.

Administrator means the Administrator of RUS, or the Administrator's designee.

Applicant means an entity requesting funding under this FOA.

Application means the Applicant's request for federal funding, which may be approved in whole or in part by RUS.

Award documents mean, as applicable, all associated award agreements.

Award means a cooperative agreement entered into under this FOA.

Awardee means an eligible entity that has applied and been awarded federal assistance under this part.

Broadband technical assistance refers to activities that support broadband expansion into eligible rural areas and predevelopment planning activities, which may include, but are not limited to, project planning and community engagement, financial sustainability, environmental compliance, construction planning and engineering, accessing federal resources, and data collection and reporting.

Colonias are identified using the GIS layer (Colonia Areas) in the RUS mapping tool located at *https://www.rd.usda.gov/programs-services/telecommunications-programs/broadband-technical-assistance-program.*

Cooperative means an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise. Cooperatives are democratically controlled by their members, with each member having one vote in electing the board of directors.

Cooperative agreement is the instrument used to fund the support of RD's goals of increasing rural economic growth. In a cooperative agreement, federal employees participate more closely in project activities, often working side-by-side with the cooperator.

Distressed energy communities are identified as communities that are fossil fuel dependent (*e.g.,* coal, oil, gas, and power plant communities) whose economic well-being ranks in the most distressed tier of the Distressed Communities Index. The energy community list is defined by the Report to the President on Empowering Workers Through Revitalizing Energy Communities. A GIS layer identifying distressed energy communities can be found at *https://www.rd.usda.gov/programs-services/telecommunications-programs/broadband-technical-assistance-program.*

Indirect costs are costs that are not readily identified with a particular grant, contract, project function or activity, but are necessary for the general operation of the organization and the conduct of activities it performs.

Persistent poverty county is defined as any county with 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and the 2007–2011 American Community Survey 5–6 year average, or any territory or possession of the United States (U.S.). A GIS layer identifying persistent poverty counties can be found at *https://www.rd.usda.gov/programs-services/telecommunications-programs/broadband-technical-assistance-program.*

Rural area means any area, as confirmed by the most recent decennial Census of the U.S., which is not located within a city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or an urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants; and which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I). For purposes of the definition of rural area, an urbanized area means a densely populated territory as defined in the most recent decennial Census.

Tribe means the term as defined in the Federally Recognized Indian Tribe List Act of 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792). An American Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Tribe List Act of 1994 (25 U.S.C. 5131).

Tribal Entity includes all entities falling under the eligible legal structures, including but not limited to: tribal owned corporations, tribal enterprises, subsidiaries of tribally-owned corporations and enterprises, tribal authorities, tribal utilities intertribal non-profits and associations, Alaska Native Corporations, Native entities within the State of Alaska recognized by and eligible to receive services from the U.S. Department of the Interior's Bureau of Indian Affairs, Native Hawaiian organizations including Homestead Associations, State recognized tribes/nonprofits, and individually-owned Native American entities.

Tribal Land means any area identified by the U.S. Department of Interior as Tribal Land. A GIS layer of most Tribal Lands can be found on the RUS mapping tool located at: *https://www.rd.usda.gov/programs-services/telecommunications-programs/broadband-technical-assistance-program.*

4. Application of Awards

Applications will be reviewed for eligibility and completeness based on Sections C and D of this FOA. Applications determined to be eligible and complete will be further evaluated based on criteria outlined in Section E. All applications will be competitively scored and ranked. Notifications will be sent to applications in accordance with Section F of this FOA.

B. Federal Award Information

Type of Award: Cooperative Agreement.

Fiscal Year Funds: FY 2023.

Available Funds: $20 million is available for funding under this FOA. RUS may, at its discretion, increase the total level of funding available from any available funding source provided the awards meet the requirements of the statute which made the funding available to the Agency.

Award Amounts. The minimum and maximum award amounts vary by funding category. The Agency reserves the right to make the applicant an offer that varies in amount or scope from the applicant's original request.

Funding Categories: Applicant must choose one of the following funding categories to be considered for funding:

- Technical Assistance Providers. Up to $7.5 million is available. The minimum award amount is $50,000 and the maximum award amount is $1,000,000. Entities submitting an application under this funding category must propose to deliver broadband

technical assistance that will benefit rural communities.

• Technical Assistance Recipients. Up to $7.5 million is available. The minimum award amount is $50,000 and the maximum award amount is $250,000. Entities submitting an application under this funding category must be beneficiaries of broadband technical assistance.

• Projects Supporting Cooperatives. Up to $5 million is available. The minimum award amount is $50,000 and the maximum award amount is $1,000,000. Entities submitting an application under this funding category must propose a project that supports the establishment or growth of broadband cooperatives that will benefit rural communities.

Anticipated Award Date: Awards are anticipated to be made by September 30, 2023.

Period of Performance: October 1, 2023, through September 30, 2025.

Renewal or Supplemental Awards: Not applicable.

Type of Assistance Instrument: Cooperative Agreement. RD is authorized to administer cooperative agreement awards in accordance with 7 U.S.C. 2204b(b)(4) for BTA.

C. Eligibility Information

1. Eligible Applicants

Only entities legally organized as one of the following are eligible for financial assistance:

a. Federally recognized Tribes and Tribal entities;

b. States or local governments, including any agency, subdivision, instrumentality, or political subdivision thereof;

c. A territory or possession of the U.S.;

d. An institution of higher education (including 1862 Land-Grant Institutions, 1890 Land-Grant Institutions, 1994 Land-Grant Institutions, Hispanic-Serving Institutions, and Historically Black Colleges and Universities);

e. Nonprofit organizations with 501(c)(3) IRS status;

f. Cooperatives or mutual organizations;

g. Corporations; or

h. Limited Liability Companies or Limited Liability Partnerships

2. Project Eligibility

a. To be eligible for funding assistance, the proposed project must promote the expansion of broadband services into eligible rural areas.

b. Award funds may be used to assist rural communities, new and existing cooperatives, consultants, and others in identifying and planning for the following purposes to deliver broadband services to rural areas:

i. Identify resources to finance broadband facilities from public and private sources;

ii. Prepare feasibility studies, financial forecasts, market surveys, environmental studies, and technical design information to support broadband services;

iii. Prepare reports and surveys necessary to support the need for broadband services, the price range and to request financial assistance;

iv. Analyze and improve operations related to the management of broadband facilities (*i.e.,* implement automation, adopt new software, conduct training, etc.) and to the efficiency of the entity.

c. The proposed project must include a component that allows for active participation and substantial involvement by RD in the applicant's project proposal. Examples of measurable substantial involvement include, but are not limited to the following:

i. Joint convenings of community members, partners, and stakeholders;

ii. Joint delivery of training for RD programs;

iii. The development of training sessions and outreach materials; and

iv. Joint efforts to form new broadband cooperatives and support existing cooperatives efforts to expand broadband service into rural areas.

It is the intent of the proposed project to engage RD staff in broadband technical assistance activities, and it is the responsibility of the applicant to identify specific tasks where RD staff can provide measurable, substantial involvement in the project. If such tasks are not identified, the application will not be eligible for funding.

d. A certification from the appropriate tribal official is required if a project is being proposed by a non-Tribal applicant over or on Tribal Lands. The appropriate Tribal official is the Tribal Council of the Tribal Government with jurisdiction over the Tribal Lands at issue. Any non-Tribal applicant that fails to provide a certification to administer a project on Tribal Lands will not be considered for funding.

3. Cost Sharing or Matching

There are no cost sharing or matching requirements associated with this funding opportunity.

D. Application and Submission Information

1. Address To Request Application Package

Application and supporting materials are available at *Grants.gov.* Applications must contain all required information. To apply electronically, applicants must follow the instructions for this funding announcement at *Grants.gov.*

2. Content and Form of Application Submission

a. A fully completed application is required to be considered eligible for funding. For an application to be considered complete, the applicant must complete and submit all forms, information, and supporting documentation described below.

i. Written narrative proposal. The written proposal should be assembled into one or more pdf file(s) and should conform to the order in which the evaluation criteria are presented in Section E. The completed pdf file(s) should be uploaded into *Grants.gov* as an attachment to the application. The maximum limit for the written narrative section is 25 pages. Information exceeding 25 pages for the written narrative may not be considered for evaluation by the scoring panel. The written narrative proposal must clearly identify the funding category chosen.

ii. Standard Form 424, ''Application for Federal Assistance.''

iii. Standard Form 424B, ''Assurances—Non-Construction Programs.''

iii. RD Form 400–4, ''Assurance Agreement.''

iv. The Agency reserves the right to contact applicants to seek clarification on submitted materials or request additional information.

b. The Application Guide provides specific, detailed instructions for each item of a complete application. The Agency emphasizes the importance of including every item and strongly encourages applicants to follow the instructions carefully, using the examples and illustrations in the Application Guide.

3. System for Award Management and Unique Entity Identifier

a. At the time of application, each applicant must have an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR part 25 (*https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-25*). In order to register in SAM, entities will be required to create a Unique Entity Identifier (UEI). Instructions for

obtaining the UEI are available at *https://sam.gov/content/entity-registration.*

b. Applicant must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

c. Applicant must ensure they complete the Financial Assistance General Representations and Certifications in SAM.

d. Applicants must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110 (*https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-25/subpart-A/section-25.110*).

e. The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. Submission Dates and Times

Applications must be submitted through *Grants.gov* and received no later than June 20, 2023 to be eligible for funding under this opportunity. Late or incomplete applications will not be eligible for funding.

Grants.gov requires some credentialing and online authentication procedures that may take several business days to complete. Therefore, the applicant should complete the registration, credentialing, and authorization procedures at *Grants.gov* in order to submit an application. Instructions on all required passwords, credentialing, and software are available on *Grants.gov*. If system errors or technical difficulties occur, use the customer support resources available at the *Grants.gov* website.

The Agency will not solicit or consider new scoring or eligibility information that is submitted after the application deadline. RUS also reserves the right to ask applicants for clarifying information and additional verification of assertions in the application.

5. Intergovernmental Review

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

6. Funding Restrictions

In addition to costs identified as unallowable by 2 CFR part 200, award funds cannot be used to pay for the following types of expenses (this is not a comprehensive list of unallowable costs, see 2 CFR part 200).

a. Construction (in any form).

b. Activities serving non-rural communities.

c. Activities supporting communities with existing broadband access.

d. Duplicative project costs funded by another award.

e. Indirect Costs.

7. Other Submission Requirements

Applications must be submitted electronically using *Grants.gov.* No other form of application will be accepted. RUS will not accept applications through mail or courier delivery, in-person delivery, email, or fax. RUS will approve no more than one application per applicant. If an applicant submits more than one application for different projects, then the Agency will only consider the application with the highest score. If an applicant submits more than one application for the same project, then the Agency will only consider the latest submission.

E. Application Review Information

1. Evaluation Criteria

The Agency will review each eligible, complete application based on the evaluation criteria identified in this section. The written narrative proposal addressed in Section D of this FOA must address the criteria in the following order:

a. Project Work Plan (up to 30 points). The applicant can receive up to 30 points for providing a detailed project work plan that demonstrates the soundness of the proposed broadband technical assistance approach. The scoring criterion will be based on the following:

i. *Work Plan Approach*—The work plan approach should identify and detail project objectives, rural communities to be served, project key goals, partnerships developed or to be developed, and anticipated deliverables of the project. Applicants must list all rural communities that will benefit from the broadband technical assistance project and describe characteristics of the communities being served including information such as population size, population density, poverty rate, and other economic indicators.

ii. *Work Plan Implementation*—Applicants should include details on how the technical assistance will be provided and how it will lead to expanded broadband service in rural areas. Applicants should detail major task(s), involvement of key personnel, time period of task(s), substantial involvement of RD staff, and expected deliverables.

iii. *Budget and Work Plan Alignment*—A detailed budget and budget justification must be provided. The budget justification should align with the tasks detailed in the workplan. Discuss how the budget specifically supports the proposed activities discussed in the project key tasks (as described above). The format of the budget's narrative can be in a chart, spreadsheet, table, etc., but it should be readable on letter-size, printable pages. The information needs to be presented in such a way that the reviewers can readily understand what expenses are incurred to support the project. Statement(s) of work for any subcontractors and consultants must be included as part of the application.

b. Organizational capacity (up to 20 points). All applicants must demonstrate the capacity to deliver and/or support broadband technical assistance activities. The applicant can receive up to 20 points based on organizational capacity and qualifications. The maximum 20 points for this criterion will be based on the following:

i. The applicant's proposal should demonstrate that the applicant has identified appropriate key personnel, both in terms of number of personnel and qualifications of personnel and should provide specific detail of qualifications of key personnel relating to broadband technical assistance. Capacity of personnel to access data for needs assessments and access to planners and other technical experts will be evaluated.

ii. Applicants that are technical assistance providers should specify the number of years of providing broadband technical assistance, detail experience in providing broadband technical assistance to rural communities, identify types of rural communities previously served, and detail experience in performance evaluation.

c. Targeted communities (20 points). The applicant must describe how the proposed technical assistance activities will benefit targeted communities. The applicant should provide detail on how the project will promote the expansion of broadband within the targeted communities. Describe how the plan will help entities plan for and access broadband funding opportunities. The applicant can receive 20 points if at least 50 percent of the rural

communities benefiting from the project consist of:

i. Tribes and Tribal entities,

ii. Colonias,

iii. Persistent poverty counties, or

iv. Distressed energy communities.

A GIS layer of the areas noted above can be found on the RUS mapping tool located at: *https://www.rd.usda.gov/programs-services/telecommunications-programs/broadband-technical-assistance-program.* A certification from the appropriate Tribal official is required if a project is being proposed by a non-Tribal applicant over or on Tribal Lands.

d. Rurality (up to 20 points). Points will be awarded for serving the least dense rural areas as measured by the population of the communities served.

e. Economic Need (up to 20 points). Economic need is based on the county poverty percentage of the communities proposed to be served in the application. The percentages must be determined by utilizing the U.S. Census Small Area Income and Poverty Estimates (SAIPE) Program. Communities located in geographic areas, for which no SAIPE data exist, will be determined to have an average SAIPE poverty percentage of 30 percent. SAIPE data can be found on the program website.

f. Performance measures (up to 10 points). The applicant can receive up to 10 points based on the proposed performance measures to evaluate the progress and impact of the proposed project.

Performance measures should be based on the applicant's proposal and must include a description for how the results of the technical assistance will be measured and the benchmarks to be used for measuring effectiveness. Indicators to be used should be specific and be quantifiable.

2. Review and Selection Process

Applications are ranked by the final score. RUS selects applications based on those rankings, subject to the availability of funds. RUS will approve no more than one application per applicant. If an applicant submits more than one application for different projects, then the Agency will only consider the application with the highest score. If an applicant submits more than one application for the same project, then the Agency will only consider the latest submission. The Agency has the authority to limit the number of applications selected in any one state or for any one project during a fiscal year. An application receiving fewer points can be selected over a higher scoring application if there are insufficient funds available to cover the costs of the higher scoring application.

The Agency reserves the right to offer the applicant less than the amount of funding requested.

F. Federal Award Administration Information

1. Federal Award Notices

RUS notifies applicants whose projects are selected for awards by mailing or emailing a copy of an award letter. The receipt of an award letter does not authorize the applicant to commence performance under the award. The award letter will include an agreement that contains all the terms and conditions for the cooperative agreement. An applicant must execute and return the agreement, accompanied by any additional items required by the agreement, within the number of days specified in the selection notice letter.

2. Administrative and National Policy Requirements

The items listed in this FOA, the Application Guide, and program resources implement the appropriate administrative and national policy requirements, which include but are not limited to:

a. Using Form SF 270, ''Request for Advance or Reimbursement,'' to request reimbursements (along with the submission of receipts for expenditures, and any other documentation to support the request for reimbursement).

b. Submitting an annual project performance activity report, no later than January 31st of the year following the year in which all or any portion of the award is first advanced and continuing in subsequent years until completion of the project.

c. Ensuring that records are maintained to document all activities and expenditures utilizing program funds and matching funds (receipts for expenditures are to be included in this documentation).

d. Providing a final project performance report, no later than one hundred twenty (120) days after the expiration date, termination of the award, the project completion, or the final disbursement of the award by the awardee, whichever event occurs last.

e. Complying with policies, guidance, and requirements as described in the following applicable Code of Federal Regulations, and any successor regulations:

i. 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

ii. 2 CFR parts 180 and 417 (Government-wide Nonprocurement Debarment and Suspension).

iii. Complying with Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency.'' For information on limited English proficiency and agency-specific guidance, go to *https://www.LEP.gov.*

iv. Accountability and Compliance with Civil Rights Laws. The regulation found at 7 CFR part 1901 subpart E (*https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XVIII/subchapter-H/part-1901/subpart-E*) contains policies and procedures for implementing the regulations of the Department of Agriculture issued pursuant to Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Title IX, Section 504 of the Rehabilitation Act of 1973, Executive Order 13166, Executive Order 11246, and the Equal Credit Opportunity Act of 1974, as they relate to RD. Nothing herein shall be interpreted to prohibit preference to American Indians on Indian Reservations.

The policies contained in this subpart apply to recipients. As recipients of federal financial assistance, awardees are required to comply with the applicable federal, state and local laws. Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act prohibits discrimination by recipients of federal financial assistance. Recipients are required to adhere to specific outreach activities. These outreach activities include contacting community organizations and leaders that include minority leaders; advertising in local newspapers and other media throughout the entire service area; and including the nondiscrimination slogan, ''This is an Equal Opportunity Program.''

Discrimination is prohibited by Federal Law, in methods that may include, but not be limited to, advertisements, public broadcasts, and printed materials, such as brochures and pamphlets.

By completing the Financial Assistance Representations and Certifications in SAM, recipients affirm that they will operate the program free from discrimination. The recipient will maintain the race and ethnic data on the board members and beneficiaries of the program. The recipient will provide alternative forms of communication to persons with limited English proficiency. The Agency will conduct Civil Rights Compliance Reviews on recipients to identify the collection of racial and ethnic data on program beneficiaries. In addition, the compliance review will ensure that

equal access to the program benefits and activities are provided for persons with disabilities and language barriers.

3. Reporting

a. Performance reporting. All recipients of financial assistance must provide annual performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project in meeting the program objectives. Success of the project can be demonstrated by identifying the progress achieved in securing financing to bring broadband service to the eligible rural area. Project performance reports should include, but are not limited to, the following:

i. A comparison of actual accomplishments to the objectives established for that period;

ii. A description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

iii. Objectives and timetable established for the next reporting period.

iv. Activities demonstrating the coordination with the State Broadband Office.

b. Recipient and sub-recipient reporting. The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 (Transparency Act) in the event the applicant receives funding, unless such applicant is exempt from such reporting requirements pursuant to 2 CFR 170.110(b). The reporting requirements under the Transparency Act are found at 2 CFR part 170 (*https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-170*).

c. Record keeping and accounting. The agreement will contain provisions related to record keeping and accounting requirements.

G. Federal Awarding Agency Contacts

1. *Website: https://www.rd.usda.gov/programs-services/telecommunications-programs/broadband-technical-assistance-program.* The BTA website maintains up-to-date resources and contact information for the Program.

2. For inquiries regarding eligibility concerns, please contact program staff at *https://www.usda.gov/reconnect/contact-us.* Other inquiries, please contact Laurel Leverrier, Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture (USDA), email *laurel.leverrier@usda.gov,* telephone: (202) 720–9554.

H. Other Information

1. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with the program, as covered in this notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0503–0028.

2. National Environmental Policy Act

All recipients under this notice are subject to the requirements of 7 CFR part 1970 (*https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XVIII/subchapter-H/part-1970*).

However, awards for technical assistance and training under this notice are classified as a Categorical Exclusion according to 7 CFR 1970.53(b) (*https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XVIII/subchapter-H/part-1970#p-1970.53(b)*), and usually do not require any additional documentation. RUS will review each application to determine its compliance with 7 CFR part 1970 (*https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XVIII/subchapter-H/part-1970*). The applicant may be asked to provide additional information or documentation to assist RUS with this determination.

3. USDA Non-Discrimination Statement

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

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.usda.gov/oascr/program-discrimination-complaint-filing,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

a. *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

b. *Fax:* (833) 256–1665 or (202) 690–7442; or

c. *Email: program.intake@usda.gov.*

Andrew Berke,

Administrator, Rural Utilities Service, Rural Development.

[FR Doc. 2023–08233 Filed 4–18–23; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the West Virginia Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the West Virginia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public briefing via Zoom. The purpose of the briefing is to hear testimony on the civil rights impacts that exclusionary and punitive disciplinary policies, practices and

procedures have on students of color, students with disabilities and LGBTQ+ students in in West Virginia public schools.

DATES: Monday, April 24, 2023, from 10:30 a.m.–12:30 p.m. Eastern Time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1600618726

Join by Phone (Audio Only): 1–833–435–1820 USA Toll-Free; Meeting ID: 160 061 8726#

FOR FURTHER INFORMATION CONTACT: Ivy Davis, Designated Federal Officer, at *ero@usccr.gov* or 1–202–539–8468.

SUPPLEMENTARY INFORMATION: This Committee meeting is available to the public through the registration link above. Any interested member of the public may attend the meeting. Immediately after the panel briefing concludes the Committee Chair will recognize members of the public to make a brief statement to the Committee on the panel topic—not to exceed five minutes—as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *svillanueva@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the schedule meeting. Written comments may be emailed to Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–202–539–8468.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, West Virginia Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *svillanueva@usccr.gov.*

Agenda

I. Welcome and Roll Call
II. Opeing Remarks
III. Panelist Testimony
IV. Committee Q&A
V. Public Comment
VI. Closing Remarks
VII. Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting as the Committee's project needs to reach completion before their term ends.

Dated: Thursday, April 13, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–08195 Filed 4–18–23; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Massachusetts Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Massachusetts Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a briefing via Zoom to hear testimony on civil asset forfeiture. The committee will also hold a business meeting after the briefing.

DATES: Friday, April 28, 2023; 2:00 p.m. ET.

ADDRESSES: The meeting will be held via Zoom.

Meeting Link (Audio/Visual): https://tinyurl.com/yj3dcm33; password: USCCR–MA.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll-Free; Meeting ID: 160 057 7752#.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez, Designated Federal Official at *bdelaviez@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the meeting link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Evelyn Bohor at *ebohor@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Barbara Delaviez at *bdelaviez@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–312–353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Massachusetts Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *ebohor@usccr.gov.*

Agenda

I. Welcome & Roll Call

II. Discussion

III. Public Comment

IV. Next Steps

V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of committee member and panelist availability.

Dated: April 13, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–08194 Filed 4–18–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the U.S. Virgin Islands Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the U.S. Virgin Islands Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom. The purpose of the meeting is to discuss and plan on matters related to the Committee's inaugural civil rights project.

DATES: Thursday, May 4, 2023, from 12:00 p.m.–1:00 p.m. Atlantic Time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1617149191.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll-Free; Meeting ID: 161 714 9191#.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or 1–202–656–8937.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *svillanueva@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–202–656–8937.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, U.S. Virgin Islands Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *svillanueva@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Discussion: Committee's Inaugural Civil Rights Project
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: April 14, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–08256 Filed 4–18–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2140]

Reorganization of Foreign-Trade Zone 64 (Expansion of Service Area) Under Alternative Site Framework; Jacksonville, Florida

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Jacksonville Port Authority, grantee of Foreign-Trade Zone 64, submitted an application to the Board (FTZ Docket B–52–2022, docketed November 15, 2022) for authority to expand the service area of the zone to include a portion of Alachua County, Florida, as described in the application, adjacent to the Jacksonville Florida U.S. Customs and Border Protection port of entry;

Whereas, notice inviting public comment was given in the **Federal Register** (87 FR 70779–70780, November 21, 2022) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiners' report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 64 to expand the service area under the ASF is approved, subject to the FTZ Act and the Board's regulations, including section 400.13, and to the Board's standard 2,000-acre activation limit for the zone.

Dated: April 13, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2023–08265 Filed 4–18–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–27–2023]

Foreign-Trade Zone 255—Washington County, Maryland, State; Application for Reorganization and Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Board of County Commissioners of Washington County, grantee of FTZ 255, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part

400). It was formally docketed on April 13, 2023.

FTZ 255 was approved by the FTZ Board on July 3, 2002 (Board Order 1232, 67 FR 48877–48878, July 26, 2002).

The current zone includes the following sites: *Site 1* (276 acres)—Lakeside Corporate Center, 200 Castle Drive, Cascade; *Site 2* (443 acres)—Hagerstown Regional Airport Complex/Bowman Airpark, 18434 Showalter Road, Hagerstown; *Site 4* (438 acres)—Hunter's Green/Hopewell Valley Industrial Complex, Hopewell Road and Halfway Boulevard, Hagerstown; Site 6 (172 acres)—Interstate Industrial Park, 10228 Governor Lane Boulevard, Williamsport; and, Site 7 (129 acres)—Mellott Enterprises Industrial Complex, Resley Street, north of Maryland Avenue, Hancock.

The grantee's proposed service area under the ASF would be Washington County, Maryland, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The application indicates that the proposed service area is adjacent to the Baltimore U.S. Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone to include all of the existing sites as ''magnet'' sites. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 2 be so exempted. The applicant is also requesting approval of the following subzone: Proposed Subzone 255A (94.7 acres)—Conair LLC, 10440 Downsville Pike, Hagerstown.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov*. The closing period for their receipt is June 20, 2023. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 3, 2023.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.* For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov.*

Dated: April 13, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023–08231 Filed 4–18–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–28–2023]

Foreign-Trade Zone (FTZ) 125, Notification of Proposed Production Activity; Jayco, Inc.; (Motorhomes); Middlebury, Indiana

Jayco, Inc. submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Middlebury, Indiana within FTZ 125. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on April 10, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished products are motorhomes (duty rate 2.5%).

The proposed foreign-status materials and components include vans and cab chassis (duty rate ranges from 4.0% to 25.0%). The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is May 30, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Juanita Chen at *juanita.chen@trade.gov.*

Dated: April 14, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023–08273 Filed 4–18–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Aviastar—TU, 5 b. 7 Leningradsky Prospect, g. Moskva, 125040, Moscow, Russia; Order Renewing Temporary Denial of Export Privileges

Pursuant to section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (''EAR'' or ''the Regulations''),[1] I hereby grant the request of the Office of Export Enforcement (''OEE'') to renew the temporary denial order (''TDO'') issued in this matter on October 17, 2022. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations.

I. Procedural History

On April 21, 2022, I signed an order denying Aviastar—TU's (''Aviastar'') export privileges for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to Section 766.24(a) of the Regulations and was effective upon issuance.[2] This temporary denial order was subsequently renewed in accordance with Section 766.24(d) of the Regulations.[3] The renewal order issued

[1] On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (''ECRA''). While Section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. app. 2401 *et seq.* (''EAA''), (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (''IEEPA''), and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

[2] The TDO was published in the **Federal Register** on April 26, 2022 (87 FR 24514).

[3] Section 766.24(d) provides that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation. Renewal requests are to be made in writing no later than 20 days before the

on October 17, 2022 and was effective upon issuance.[4]

On March 7, 2023, BIS, through OEE, submitted a written request for renewal of the TDO that was issued on October 17, 2022. The written request was made more than 20 days before the TDO's scheduled expiration. A copy of the renewal request was sent to Aviastar in accordance with sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

B. The TDO and BIS's Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation's (''Russia's'') further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia's defense, aerospace, and maritime sectors and are intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (*e.g.,* Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (''ECCN'') 9A991 (section 746.8(a)(1) of the EAR).[5] BIS will review any export or reexport license applications for such items under a policy of denial. *See* section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (''AVS'') (section 740.15 of the EAR).[6] Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

This OEE request for renewal is based upon the facts underlying the issuance of the initial TDO and the renewal order subsequently issued in this matter on October 17, 2022, as well as other evidence developed during this investigation. These facts and evidence demonstrate that Aviastar continues to act in blatant disregard for U.S. export controls and the applicable TDO. Specifically, the initial TDO, issued on April 21, 2022, was based on evidence that Aviastar engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into and out of Russia after March 2, 2022 from destinations including, but not limited to, Hangzhou, China; Shenzhen, China; and Zhengzhou, China from/to Novosibirsk, Russia and Abakan, Russia, without the required BIS authorization.[7] Further evidence submitted by BIS indicated that Aviastar was continuing to operate aircraft subject to the EAR domestically on flights within Russia, potentially in violation of Section 736.2(b)(10) of the Regulations.

As discussed in the October 17, 2022 renewal order, evidence presented by BIS indicated that, after the initial order issued, Aviastar continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and out of Russia, in violation of the Regulations and the TDO itself.[8] Specifically, the October 17, 2022 renewal order detailed Aviastar's continued operation of aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Zhengzhou, China and Hangzhou, China, as well as on domestic flights within Russia.[9]

Since that time, Aviastar has continued to engage in conduct prohibited by the applicable TDO and Regulations. In its March 7, 2023 request for renewal of the TDO, BIS submitted evidence that Aviastar is operating aircraft subject to the EAR, which were flown into Russia on or after March 2, 2022, on flights within Russia in violation of the October 17, 2022 TDO and/or the Regulations. Specifically, BIS's evidence and related investigation demonstrates that Aviastar has continued to operate aircraft subject to the EAR, including, but not limited to, on flights from/to Novosibirsk, Russia, Moscow, Russia, Blagoveshchensk, Russia, Ulan-Ude, Russia, and Krasnoyarsk, Russia in apparent violation of section 736.2(b)(10) of the Regulations, as well as the previously issued TDO.

Information about those flights includes, but is not limited to, the following:

scheduled expiration date of a temporary denial order.

[4] The October 17, 2022, renewal order was published in the **Federal Register** on October 20, 2022 (87 FR 63760).

[5] 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List (''CCL'') under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

[6] 87 FR 13048 (Mar. 8, 2022).

[7] Publicly available flight tracking information shows that on April 10, 2022, serial number (SN) 27054 flew from Hangzhou, China to Novosibirsk, Russia, and on April 12, 2022, SN 27054 flew from Zhengzhou, China to Abakan, Russia. In addition, on April 12, 2022, SN 27053 flew from Shenzhen, China to Abakan, Russia.

[8] Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

[9] Publicly available flight tracking information shows that on May 22, 2022, SN 27054 flew from Zhengzhou, China to Novosibirsk, Russia, and on May 25, 2022, SN 27053 flew from Hangzhou, China to Novosibirsk, Russia. In addition, on September 22, 2022, SN 25731 flew from Irkutsk, Russia to Moscow, Russia.

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA–73351 ..	25696	757–223 (B752)	Novosibirsk, RU/Moscow, RU	March 7, 2023.
RA–73351 ..	25696	757–223 (B752)	Nizhnevartovsk, RU/Yakutsk, RU	March 6, 2023
RA–73351 ..	25696	757–223 (B752)	Norilsk, RU/Moscow, RU	March 6, 2023.
RA–73351 ..	25696	757–223 (B752)	Blagoveshchensk, RU/Novosibirsk, RU	March 3, 2023.
RA–73351 ..	25696	757–223 (B752)	Vladivostok, RU/Krasnoyarsk, RU	March 3, 2023.
RA–73354 ..	27053	757–223 (B752)	Ulan-Ude, RU/Moscow, RU	March 7, 2023.
RA–73354 ..	27053	757–223 (B752)	Krasnoyarsk, RU/Norilsk, RU	March 5, 2023.
RA–73354 ..	27053	757–223 (B752)	Mirny, RU/Ulan-Ude, RU	March 2, 2023.
RA–73354 ..	27053	757–223 (B752)	Novosibirsk, RU/Mirny, RU	February 24, 2023.

III. Findings

Under the applicable standard set forth in section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that Aviastar has acted in violation of the Regulations and the TDO; that such violations have been significant and deliberate; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Therefore, renewal of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Aviastar, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, Aviastar-TU, 5 b. 7 Leningradsky prospekt, g. Moskva, 125040, Moscow, Russia, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of Aviastar any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Aviastar of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Aviastar acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Aviastar of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

D. Obtain from Aviastar in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Aviastar, or service any item, of whatever origin, that is owned, possessed or controlled by Aviastar if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Aviastar by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of sections 766.24(e) of the EAR, Aviastar may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Aviastar as provided in section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Aviastar, and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2023–08245 Filed 4–18–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment; Correction

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

SUMMARY: On March 30, 2023, the U.S. Department of Commerce (Commerce) published a notice in the **Federal Register**, in which Commerce requested public comment on any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period July 1, 2022, through December 31, 2022. That notice contains an incorrect docket number for the filing of comments.

DATES: Applicable April 19, 2023.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 30, 2023, in FR Doc 2023–06610, on page 19070, Commerce incorrectly listed Docket No. ITA—2023–002 for the filing of subsidy comments at *https://www.regulations.gov.* The correct number is Docket No. ITA—2023–0002.

Background

On March 30, 2023, Commerce published the *Request for Comment* in the **Federal Register**.[1] Within the notice, Commerce solicited public comment on subsidies provided by Austria, Brazil, Canada, Germany, Romania, and Sweden, which had exports accounting for at least one percent of total U.S. imports of softwood lumber during the period July 1, 2022, through December 31, 2022.

Any comments must be submitted through the Federal eRulemaking Portal at *https://www.regulations.gov,* Docket No. ITA–2023–0002 and addressed to Ryan Majerus, Deputy Assistant Secretary for Policy and Negotiations, at U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. Comments must be received no later than May 1, 2023, which is 30 days after the publication of the *Request for Comment.*[2]

Dated: April 13, 2023.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2023–08267 Filed 4–18–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment,* 88 FR 19069 (March 30, 2023) (*Request for Comment*).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–094]

Refillable Stainless Steel Kegs From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2020

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies were provided to certain exporters/producers of refillable stainless steel kegs (kegs) from the People's Republic of China (China) during the period of review (POR) January 1, 2020, through December 31, 2020.

DATES: Applicable April 19, 2023.

FOR FURTHER INFORMATION CONTACT: Ted Pearson, 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) 482–2631.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review in the **Federal Register** on December 21, 2022, and invited interested parties to comment.[1] For a complete description of the events that occurred subsequent to the *Preliminary Results, see* the Issues and Decision Memorandum.[2]

[2] Because 30 days from March 30, 2023 is April 29, 2023, which is a Saturday, the deadline for the filing of comments moves to Monday, May 1, 2023.

[1] *See Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review in Part; 2020,* 87 FR 78045 (December 21, 2022) (*Preliminary Results),* and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Refillable Stainless Steel Kegs from the People's Republic of China; 2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Scope of the Order [3]

The products covered by the scope of the *Order* are kegs from China. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum and are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our analysis of comments from interested parties and the evidence on the record, we revised the calculation of the net countervailable subsidy rates for Ningbo Master International Trade Co., Ltd. (Ningbo Master). For a discussion of the issues, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a complete description of the methodology underlying all of Commerce's conclusions, including our reliance, in part, on facts otherwise available, including adverse facts available, pursuant to sections 776(a) and (b) of the Act, *see* the Issues and Decision Memorandum.

Companies Not Selected for Individual Review

The statute and Commerce's regulations do not address the establishment of a rate to be applied to

[3] *See Refillable Stainless Steel Kegs from the People's Republic of China: Countervailing Duty Order,* 84 FR 68400 (December 16, 2019) (*Order*).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides the basis for calculating the all-others rate in an investigation. Section 705(c)(5)(A)(i) of the Act instructs Commerce, as a general rule, to calculate the all-others rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero or *de minimis* countervailable subsidy rates, and any rates determined entirely on the basis of facts available.

There are two companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent. For these non-selected companies, because the rate calculated for the only participating mandatory respondent in this review, Ningbo Master, was above *de minimis* and not based entirely on facts available, we are applying Ningbo Master's subsidy rate to the two non-selected companies.

This is the same methodology Commerce applied in the *Preliminary Results* for determining a rate for companies not selected for individual examination. However, due to changes in the calculation for Ningbo Master, we revised the non-selected rate accordingly. Consequently, for both of the non-selected companies for which a review was requested and not rescinded, we are applying an *ad valorem* subsidy rate of 5.22 percent.

Final Results of Administrative Review

We determine find the net countervailable subsidy rates for the mandatory and non-selected respondents under review for the period January 1, 2020, through December 31, 2020, to be as follows:

Producer or exporter	Subsidy rate (percent *ad valorem*)
Ningbo Master International Trade Co., Ltd[5]	5.22
Review-Specific Average Rate Applicable to the Following Companies:	
Guangzhou Jingye Machinery Co., Ltd	5.22
Guangzhou Ulix Industrial & Trading Co., Ltd	5.22

[5] Commerce finds the following companies to be cross-owned with Ningbo Master: Ningbo Major Draft Beer Equipment Co., Ltd. and Zhejiang Major Technology Co., Ltd.

Disclosure

Commerce intends to disclose calculations and analysis performed for the final results of review within five days after the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Assessment Requirements

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review, for the above-listed companies at the applicable *ad valorem* assessment rates listed. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above for the above-listed companies with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Administrative Protective Order

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

Notification to Interested Parties

The final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: April 13, 2023.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–08272 Filed 4–18–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–888]

Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Final Results of Changed Circumstances Review and Continuation of the Order

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

SUMMARY: The U.S. Department of Commerce (Commerce) has determined not to revoke the order on floor-standing, metal-top ironing tables and certain parts thereof from the People's Republic of China (China).

DATES: Applicable April 19, 2023.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration,

U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4475.

SUPPLEMENTARY INFORMATION:

Background

On July 18, 2022, Commerce published the *Initiation and Preliminary Results* of this changed circumstances review (CCR) in the **Federal Register**.[1] For a complete description of the events that followed the *Initiation and Preliminary Results, see* the Issues and Decision Memorandum.[2]

Scope of the Order [3]

For purposes of this *Order,* the product covered consists of floor-standing, metal-top ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. The subject ironing tables were previously classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0010. Effective July 1, 2003, the subject ironing tables are classified under new HTSUS subheading 9403.20.0011. The subject metal top and leg components are classified under HTSUS subheading 9403.90.8040. Although the HTSUS subheadings are provided for convenience and for Customs and Border Protection (CBP) purposes, Commerce's written description of the scope remains dispositive. For a full description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum and are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Changed Circumstances Review and Determination Not To Revoke

Section 751(d)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.222(g)(1)(i) provide that Commerce may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order, in whole or in part.[4] Further, 19 CFR 351.222(g)(2) provides that Commerce will conduct a CCR under 19 CFR 351.216, and may revoke an order, in whole or in part, if it determines that revocation is warranted.

Seymour Mfg. LLC demonstrated that it is a domestic producer of ironing tables and has expressed interest in the continuation of the *Order.* Therefore, Commerce has determined not to revoke the *Order.*

Administrative Protective Order

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

Notification to Interested Parties

This determination is issued and published in accordance with sections 751(b)(1) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.216(e).

Dated: April 12, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–08232 Filed 4–18–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Floor-Standing Metal Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Initiation and Preliminary Results of Changed Circumstances Review and Intent to Revoke Order,* 87 FR 42700 (July 18, 2022) (*Initiation and Preliminary Results*).

[2] *See* Memorandum, ''Decision Memorandum for Final Results of Antidumping Duty Changed Circumstances Review: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China,'' dated concurrently with, and hereby, adopted by, this notice (Issues and Decision Memorandum).

[3] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China,* 69 FR 47868 (August 6, 2004) (*Order*).

[4] *See* section 782(h) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–067]

Forged Steel Fittings From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Both-Well (Taizhou) Steel Fittings Co., Ltd. (Both-Well) as well as four additional companies which are eligible for a separate rate, exporters of forged steel fittings from the People's Republic of China (China), sold subject merchandise in the United States at prices below normal value (NV) during the period of review (POR) November 1, 2020, through October 31, 2021. Commerce further determines that Jiangsu Forged Pipe Fittings Co., Ltd. (Jiangsu) had no shipments of subject merchandise during the POR, and 20 companies for which this review was initiated are not eligible for a separate rate and are thus part of the China-wide entity.

DATES: Applicable April 19, 2023.

FOR FURTHER INFORMATION CONTACT: Robert Palmer, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0968.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* [1] on December 7, 2022, and invited interested parties to comment. For a complete description of the events that occurred since the *Preliminary*

[1] *See Forged Steel Fittings from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments; 2020–2021,* 87 FR 75034 (December 7, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

Results, see the Issues and Decision Memorandum.[2]

Scope of the Order [3]

The merchandise covered by the *Order* is forged steel fittings from China. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the parties' briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed is included as Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties regarding the *Preliminary Results,* we made certain revisions to the margin calculations for Both-Well.[4] For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Determination of No Shipments

In the *Preliminary Results,* we preliminarily determined that Jiangsu had no shipments of subject merchandise to the United States during the POR.[5] No party filed comments with respect to this preliminary determination and we received no information to contradict the preliminary finding. Therefore, we continue to find that Jiangsu had no shipments of subject merchandise during the POR and will issue appropriate liquidation instructions that are consistent with our ''automatic assessment'' clarification for these final results.[6]

Separate Rate

In our *Preliminary Results,* we determined that the following companies demonstrated their eligibility for separate rates: Both-Well; Lianfa Stainless Steel Pipes & Valves (Qingyun) Co., Ltd.; Qingdao Bestflow Industrial Co., Ltd.; Xin Yi International Trade Co., Limited; and Yingkou Guangming Pipeline Industry Co., Ltd.[7] We received no arguments since the issuance of the *Preliminary Results* that provide a basis for reconsideration of these determinations. Therefore, for these final results, we continue to find that the five companies listed in the table in the ''Final Results'' section of this notice are each eligible for a separate rate.

The China-Wide Entity

In the *Preliminary Results*, Commerce found that 20 companies for which a review was initiated did not establish their eligibility for a separate rate.[8] No parties contested this finding. As such, we continue to determine these 20 companies identified in Appendix II are part of the China-wide entity. Because no party requested a review of the China-wide entity, and Commerce no longer considers the China-wide entity as an exporter conditionally subject to administrative reviews,[9] we did not conduct a review of the China-wide entity. Thus, the weighted-average dumping margin for the China-wide entity rate (*i.e.,* 142.72 percent) is not subject to change.[10]

Rate for Non-Examined Separate Rate Respondents

In the *Preliminary Results,*[11] and consistent with Commerce's practice,[12] we assigned the non-examined, separate rate companies a rate equal to the calculated weighted-average dumping margin for the mandatory respondent whose rate was not zero, *de minimis* (*i.e.,* less than 0.5 percent), or based entirely on facts available (*i.e.,* the weighted-average dumping margin for Both-Well). No parties commented on the methodology for calculating this separate rate. For the final results, we continue to apply this approach, as it is consistent with the intent of, and our use of, section 735(c)(5)(A) of the Tariff Act of 1930, as amended (the Act).[13]

Final Results of Review

For companies subject to this review, which established their eligibility for a separate rate, Commerce determines that the following weighted-average dumping margins exist for the period November 1, 2020, through October 31, 2021:

Exporter	Weighted-average dumping margin (percent)
Both-Well (Taizhou) Steel Fittings Co., Ltd	29.06
Review-Specific Rate Applicable to the Following Companies:	
Lianfa Stainless Steel Pipes & Valves (Qingyun) Co., Ltd	29.06
Qingdao Bestflow Industrial Co., Ltd	29.06
Xin Yi International Trade Co., Limited	29.06
Yingkou Guangming Pipeline Industry Co., Ltd	29.06

Disclosure

We intend to disclose the calculations performed to interested parties in this proceeding under an administrative protective order (APO) within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

[2] *See* Memorandum, ''Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Forged Steel Fittings from the People's Republic of China; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Forged Steel Fittings from Italy and the People's Republic of China: Antidumping Duty Orders,* 83 FR 60397, dated November 26, 2018 (*Order*).

[4] *See* Memorandum, ''Antidumping Duty Administrative Review of Forged Steel Fittings from the People's Republic of China: Final Results Calculation Memorandum for Both-Well,'' dated concurrently with this notice.

[5] *See Preliminary Results,* 87 FR at 75035.

[6] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (*Assessment Practice Refinement*).

[7] *See Preliminary Results* PDM at 6–7.

[8] *Id.* at 8.

[9] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65969–70 (November 4, 2013).

[10] *See Order,* 83 FR at 60397.

[11] *See Preliminary Results* PDM at 7–8.

[12] *See, e.g., Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 36656, 36660 (July 24, 2009).

[13] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 56158, 56160 (September 12, 2011).

For Both-Well, which has a final weighted-average dumping margin that is not zero or *de minimis* (*i.e.,* less than 0.5 percent), we will calculate importer-specific *ad valorem* assessment rates by dividing the total amount of dumping calculated for all reviewed U.S. sales to the importer by the total entered value of the merchandise sold to the importer by Both-Well, in accordance with 19 CFR 351.212(b)(1). Where Both-Well did not report entered value, we will calculate importer-specific per-unit duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the importer to the total sales quantity associated with those sales. To determine whether an importer-specific per-unit assessment rate is *de minimis,* in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. Where an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[14]

For the respondents which were not selected for individual examination in this administrative review, and which qualified for a separate rate, the assessment rate will be equal to the weighted-average dumping margin assigned to them for the final results (*i.e.,* 29.06 percent). For the companies identified as part of the China-wide entity, we will instruct CBP to apply an *ad valorem* assessment rate of 142.72 percent to all POR entries of subject merchandise which was exported by those companies.

Pursuant to a refinement in our non-market economy practice, for sales that were not reported in the U.S. sales data submitted by Both-Well during this review, we will instruct CBP to liquidate entries associated with those sales at the rate for the China-wide entity.[15] Furthermore, where we found that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's cash deposit rate) will be liquidated at the rate for the China-wide entity.[16]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for Both-Well and the non-examined separate rate respondents, the cash deposit rate will be 29.06 percent; (2) for previously examined Chinese and non-Chinese exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 142.72 percent); and (4) for all non-Chinese exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification Regarding APO

This notice also serves as a reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

These final results and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 19 CFR 351.221(b)(5).

Dated: April 12, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

Appendix II

Companies Not Eligible for a Separate Rate

1. Cixi Baicheng Hardware Tools, Ltd.
2. Dalian Guangming Pipe Fittings Co., Ltd.
3. Eaton Hydraulics (Luzhou) Co., Ltd.
4. Eaton Hydraulics (Ningbo) Co., Ltd.
5. Jiangsu Haida Pipe Fittings Group Co.
6. Jinan Mech Piping Technology Co., Ltd.
7. Jining Dingguan Precision Parts Manufacturing Co., Ltd.
8. Luzhou City Chengrun Mechanics Co., Ltd.
9. Ningbo HongTe Industrial Co., Ltd.
10. Ningbo Long Teng Metal Manufacturing Co., Ltd.
11. Ningbo Save Technology Co., Ltd.
12. Ningbo Zhongan Forging Co., Ltd.
13. Q.C. Witness International Co., Ltd.
14. Shanghai Lon Au Stainless Steel Materials Co., Ltd.
15. Witness International Co., Ltd.
16. Yancheng Boyue Tube Co., Ltd.
17. Yancheng Haohui Pipe Fittings Co., Ltd.
18. Yancheng Jiuwei Pipe Fittings Co., Ltd.
19. Yancheng Manda Pipe Industry Co., Ltd.
20. Yuyao Wanlei Pipe Fitting Manufacturing Co., Ltd.

[FR Doc. 2023–08230 Filed 4–18–23; 8:45 am]

BILLING CODE 3510–DS–P

[14] *See* 19 CFR 351.106(c)(2).

[15] *See Assessment Practice Refinement,* 76 FR at 65694 for a full discussion of this practice.

[16] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

United States Investment Advisory Council

AGENCY: SelectUSA, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), this notice announces, the United States Investment Advisory Council (IAC) will hold a public meeting on May 1, 2023 at the U.S. Department of Commerce in Washington, DC. In August 2022, U.S. Secretary of Commerce Gina M.

Raimondo appointed a new cohort of members to serve two-year terms. Members of this cohort will meet for the third time to continue to discuss matters related to foreign direct investment (FDI) in the United States and the programs and policies to promote and retain such investments across the country.

DATES: Monday, May 1, 2023, 4:30 p.m.–6:00 p.m. ET.

ADDRESSES: The meeting will be held in person only at the U.S. Department of Commerce in Washington, DC. Please note that registration is required both to attend the meeting and to make a statement during the public comment portion of the meeting. The meeting has a limited number of spaces for members of the public to attend in-person, and requests to attend will be considered on a first-come first-served basis. Please limit comments to five minutes or less and submit a brief statement summarizing your comments to: *IAC@trade.gov* or United States Investment Advisory Council, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 30011, Washington, DC 20230. The deadline for members of the public to register, including requests to make comments during the meeting, or to submit written comments for dissemination prior to the meeting is 5:00 p.m. ET on April 24, 2023. Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Claire Pillsbury, United States Investment Advisory Council, Room 30011, 1401 Constitution Avenue NW, Washington, DC 20230, phone: 202–578–8239, email: *IAC@trade.gov.*

SUPPLEMENTARY INFORMATION: The IAC was established under the discretionary authority of the Secretary of Commerce (Secretary) and in accordance with the Federal Advisory Committee Act (5 U.S.C. app.). The IAC advises the Secretary on matters relating to the promotion and retention of foreign direct investment in the United States. At the meeting, the IAC members will discuss work done within the three working groups: Economic Competitiveness, Workforce, and SelectUSA 2.0. The final agenda will be posted on the Department of Commerce website for the IAC at: *https://www.trade.gov/selectusa-investment-advisory-council,* prior to the meeting.

Public Participation: The meeting will be open to the public on a first-come first-served basis and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the **ADDRESSES** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted but may be impossible to fill. There will be fifteen (15) minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for public comments may be limited to three (3) minutes per person. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name and address of the proposed speaker and a brief statement summarizing the comments. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers.

Speakers are requested to submit a written copy of their prepared remarks by 5:00 p.m. ET on April 24, 2023, for inclusion in the meeting records and for circulation to the Members of the IAC.

In addition, any member of the public may submit pertinent written comments concerning the IAC's affairs at any time before or after the meeting. Comments may be submitted to Claire Pillsbury at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. ET on April 24, 2023, to ensure transmission to the IAC members prior to the meeting. Comments received after that date and time will be distributed to the members but may not be considered during the meeting. Comments and statements will be posted on the IAC website (*https://www.trade.gov/selectusa-investment-advisory-council*) without change, including any business or personal information provided such as it includes names, addresses, email addresses, or telephone numbers. All comments and statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

Copies of the meeting minutes will be available within 90 days of the meeting date.

William Burwell,

Deputy Executive Director, SelectUSA.

[FR Doc. 2023–08276 Filed 4–18–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC927]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public online meeting.

SUMMARY: The Groundfish and Economics Subcommittees of the Pacific Fishery Management Council's (Pacific Council) Scientific and Statistical Committee (SSC) will convene an online meeting to review the non-trawl commercial fishery sablefish trip limit model used by the Pacific Council's Groundfish Management Team. The methodology review meeting is open to the public.

DATES: The groundfish methodology review online meeting will be held Tuesday, May 9, 2023, from 9 a.m. until 3 p.m. (Pacific Daylight Time) or until business for the day has been completed.

ADDRESSES: The groundfish methodology review will be conducted as an online meeting. Specific meeting information, including the agenda and directions on how to join the meeting and system requirements, will be provided in the workshop announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Marlene A. Bellman, Staff Officer, Pacific Council; telephone: (503) 820–2414, email: *marlene.bellman@noaa.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the groundfish methodology review meeting is to evaluate proposed data inputs, modeling approaches, potential improvements, and any other pertinent information related to the sablefish trip limit model used in commercial non-trawl fisheries management. This review is planned in preparation for the 2025–26 biennial groundfish management cycle. The results of this review are not considered

final until reviewed by the full SSC at a future Pacific Council meeting.

No management actions will be decided by the meeting participants. The participants' role will be the development of recommendations and reports for consideration by the SSC and the Pacific Council at a future Pacific Council meeting. The Pacific Council and SSC are scheduled to consider methodology review recommendations for use in informing management decisions at their September 2023 meeting in Spokane, Washington.

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent of the workshop participants to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: April 14, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–08286 Filed 4–18–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC925]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council is convening its Scientific and Statistical Committee (SSC) via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Friday, May 5, 2023, beginning at 9 a.m. Webinar registration information: *https://attendee.gotowebinar.com/register/3291040516210343 26.* Call in information: 1 (415) 930–5321, Access Code: 916–377–054.

ADDRESSES:

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scientific and Statistical Committee will meet to discuss the challenges the SSC has faced when applying acceptable biological catch (ABC) control rules for Northeast multispecies (groundfish) stocks. They will also discuss the progress made on scoping a model for enhanced use of the SSC sociocultural and economics expertise in the SSC and Council process (*e.g.,* SSC subpanel on social science). They will receive an update on plans for the eighth meeting of the Council Coordination Committee's Scientific Coordination Subcommittee. Other business will be discussed as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: April 14, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–08285 Filed 4–18–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC921]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. The Exempted Fishing Permit would allow commercial fishing vessels to fish outside fishery regulations in support of research conducted by the applicant. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before May 4, 2023.

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

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''NEFSC Study Fleet EFP''.

FOR FURTHER INFORMATION CONTACT: Louis Forristall, Fishery Management Specialist, (339) 674–7646.

SUPPLEMENTARY INFORMATION: The applicant submitted a complete application for an Exempted Fishing Permit (EFP) to conduct commercial fishing activities that the regulations would otherwise restrict. This EFP would exempt the participating vessels from the following Federal regulations:

TABLE 1—REQUESTED EXEMPTIONS

CFR citation	Regulation	Need for exemption
648.83	Multispecies Minimum Fish Sizes.	Allow possession of haddock, yellowtail flounder, winter flounder, and American plaice below minimum size on common pool and sector vessels for biological sampling purposes.
684.86(a)	Haddock Possession Restriction.	Allow possession of haddock for biological sampling.
648.86(d)	Small-Mesh Multispecies Possession Restriction.	Exempt vessels from small-mesh possession restrictions for biological sampling.
648.86(g)	Yellowtail Flounder Possession Restriction.	Exempt common pool vessels from yellowtail possession restrictions and limitations.
648.86(j)	Georges Bank Winter Flounder Possession Restriction.	Exempt common pool vessels from winter flounder restrictions.

TABLE 2—PROJECT SUMMARY

Project title	Study fleet program
Applicant	Northeast Fisheries Science Center's Cooperative Research Branch.
Project objectives	Allow fishermen and Center staff to collect biological data and biological samples relevant to stock assessments and fish biology.
Application date	March 1, 2023.
Project period	May 1, 2023–April 30, 2024.
Project location	The Gulf of Maine, Georges Bank, Southern New England, and the Mid-Atlantic.
Number of vessels	20.
Number of trips	100.
Trip duration (days)	5.
Total number of days	500.
Gear type(s)	Otter trawl, scallop dredge, midwater otter trawl, paired trawl.
Number of tows or sets	5.
Duration of tows or sets	1 hour.

Project Narrative

The Northeast Fisheries Science Center's Cooperative Research Branch is requesting an EFP to allow participants in their Study Fleet Program to collect biological information on catch. The Center established the Study Fleet Program in 2002 to more fully characterize commercial fishing operations and provide sampling opportunities to augment NOAA's National Marine Fisheries Service's data collection programs. As part of the program, the Center contracts commercial fishing vessels to collect biological data and fish specimens for the Center to use in research relevant to stock assessments and fish biology.

Under the EFP, Study Fleet participants would be allowed to temporarily possess catch that is below minimum size restrictions and above possession limits for the purposes of biological sampling. When directed by the Center, participating vessels would be authorized to retain and land specific amounts of fish exceeding possession limits and/or below minimum fish sizes, for research purposes only. The captain or crew would deliver these fish to Center staff or local Port Agents upon landing. In these limited circumstances, the Study Fleet Program would give participating vessels a formal biological sampling request prior to landing. This would ensure that the landed fish do not exceed any collection needs of the Study Fleet Program, as detailed below.

During EFP trips, crew would sort, weigh, measure, and collect biological data from fish prior to discarding. During sampling, some discarded fish would remain on deck slightly longer than they would under normal sorting procedures. Exemptions from minimum fish sizes and possession restrictions would allow vessels to temporarily retain catch for at-sea sampling.

Vessels would be required to comply with all other applicable regulations specified at 50 CFR part 648 and would not be exempt from any inseason quota closures. All catch would be attributed to the appropriate commercial fishing quota. For a vessel fishing on a groundfish sector trip, all catch of groundfish stocks allocated to sectors would be deducted from the vessel's sector's annual catch entitlement (ACE). If the ACE for a stock has been reached in a sector, participating vessels would no longer be allowed to fish in that stock area unless the sector acquires additional ACE for the stock in question. For participating common pool vessels, all groundfish catch would be counted toward the appropriate trimester total allowable catch (TAC). Common pool vessels would be exempt from the possession and trip limits, but would still be subject to trimester TAC closures.

Vessels fishing under this EFP would be required to report via their Vessel Monitoring System (VMS) or the web- or app-based Interactive Voice Response (IVR) system to identify trips that would be landing species below minimum size limits and/or in excess of possession limits. Vessels not landing fish for the Center, but temporarily possessing fish for at-sea sampling, would not be required to report via the IVR system or VMS.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: April 13, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–08214 Filed 4–18–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Personnel Development To Improve Services and Results for Children With Disabilities—Preparation of Early Intervention and Special Education Personnel Serving Children With Disabilities Who Have High-Intensity Needs

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2023 for Personnel Development to Improve Services and Results for Children with Disabilities—Preparation of Early Intervention and Special Education Personnel Serving Children with Disabilities who have High-Intensity Needs, Assistance Listing Number (ALN) 84.325K. This notice relates to the approved information collection under OMB control number 1820–0028.

DATES:

Applications Available: April 19, 2023.

Deadline for Transmittal of Applications: June 13, 2023.

Deadline for Intergovernmental Review: August 14, 2023.

Pre-Application Webinar Information: No later than April 24, 2023, the Office of Special Education and Rehabilitative Services will post details on pre-recorded informational webinars designed to provide technical assistance to interested applicants. Links to the webinars may be found at *https://www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Sunyoung Ahn, U.S. Department of Education, 400 Maryland Avenue SW, Room 5013, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: 202–987–0141. Email: *Sunyoung.Ahn@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for personnel preparation in early intervention, special education, related services, and regular education to work with children, including infants, toddlers, and youth, with disabilities; and (2) ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined through scientifically based research, to be successful in serving those children.

Priorities: This competition includes one absolute priority and, within that absolute priority, one competitive preference priority. In accordance with 34 CFR 75.105(b)(2)(v), the absolute priority is from allowable activities specified in the statute (see sections 662 and 681 of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1462 and 1481)).

Absolute Priority: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Preparation of Early Intervention and Special Education Personnel Serving Children with Disabilities who have High-Intensity Needs.

Background:

The purpose of this priority is to prepare scholars who are fully credentialed to serve children, including infants, toddlers, and youth, with disabilities (children with disabilities) who have high-intensity needs.[1] The Department is committed to promoting equity for children with disabilities to access educational resources and opportunities, and a high priority for the Department is to increase the number of personnel, including increasing the number of multilingual personnel and personnel from racially and ethnically diverse backgrounds, who provide services to children with disabilities. To support these goals, under this absolute priority, the Department will fund high-quality projects that prepare early intervention and special education personnel at the bachelor's degree, certification, master's degree, or educational specialist degree levels for professional practice in a variety of education settings, including natural environments (the home and community settings in which children with and without disabilities participate), early childhood programs, classrooms, schools, and distance learning environments; including increasing the number of multilingual personnel and personnel from racially and ethnically diverse backgrounds. Projects will also prepare such personnel to support each child with a disability who has high-intensity needs in meeting high expectations and to have meaningful and effective collaborations with other providers, families, and administrators.

For decades, State demand for fully credentialed early intervention and special education personnel to serve children with disabilities has persistently exceeded the available supply (Mason-Williams et al., 2020). The shortages have been exacerbated by the COVID–19 pandemic and are at a crisis point nationally. According to a recent survey by the National Center for Education Statistics, most schools reported starting the 2022–23 school year short-staffed for both instructional and non-instructional staff, with the most severe shortages for special education personnel (U.S. Department of Education, 2022). Recent data related to the special education personnel pipeline also indicate discouraging trends. Enrollment in educator preparation programs has dropped 35 percent over the last five years, foreshadowing an insufficient pipeline of special education personnel (Council of Administrators of Special Education, 2020). Also, special education personnel

[1] For the purposes of this priority, ''high-intensity needs'' refers to a complex array of disabilities (*e.g.,* multiple disabilities, significant cognitive disabilities, significant physical disabilities, significant sensory disabilities, significant autism, significant emotional disabilities, or significant learning disabilities, including dyslexia) or the needs of children with these disabilities requiring intensive, individualized intervention(s) (*i.e.,* that are specifically designed to address persistent learning or behavior difficulties, implemented with greater frequency and for an extended duration than is commonly available in a typical classroom or early intervention setting, or which require personnel to have knowledge and skills in identifying and implementing multiple evidence-based interventions).

continue to leave the teaching profession at nearly twice the rate of their general education colleagues (Council of Administrators of Special Education, 2020). These shortages limit the field's ability to ensure that each child can meet challenging objectives and receive an education that addresses individualized needs and is both meaningful and appropriately ambitious, which is essential for preparing them for the future.

The need for personnel with the knowledge and skills to serve children with disabilities who have high-intensity needs is even greater. To effectively serve children with disabilities who have high-intensity needs, personnel require specialized or advanced skills and knowledge to work within a multidisciplinary team, collaboratively design and deliver evidence-based instruction and intensive individualized intervention(s), and provide instruction and interventions in person and through distance learning technologies in natural environments, classrooms, and schools that address the needs of these individuals (Boe et al., 2013; Browder et al., 2014; McLeskey & Brownell, 2015). Personnel also need leadership skills to strengthen professional practice and cultural and linguistic competencies to effectively deliver services and education for children with disabilities who have high-intensity needs, including children who are multilingual and children who are from racially and ethnically diverse backgrounds.

To enable personnel to provide efficient, high-quality, integrated, and equitable services, both in person and through distance learning technologies, personnel preparation programs need to embed, into preservice training in early intervention settings, early childhood programs, and schools; content, practices, and extensive field or clinical experiences that are evidence-based and culturally and linguistically responsive. Therefore, this priority aims to fund high-quality projects that prepare scholars in early intervention and special education, including multilingual scholars and scholars from racially, and ethnically diverse backgrounds, who are fully credentialed to enter the field and serve children with disabilities who have high-intensity needs.

Priority:

The purpose of this priority is to increase the number and improve the quality of personnel, including multilingual personnel and personnel from racially and ethnically diverse backgrounds, who are fully credentialed to serve children who have high-intensity needs [2] in early intervention and special education. The priority will fund high-quality projects that prepare scholars [3] in early intervention and special education at the bachelor's degree, certification,[4] master's degree, or educational specialist degree levels for professional practice in natural environments, early childhood programs, classrooms, school settings, and in distance learning environments serving children with disabilities who have high-intensity needs.

Note: Projects may include individuals who are not funded as scholars, but are in degree programs (*e.g.,* general education, early childhood education, administration) that are cooperating with the grantee's project. These individuals may participate in the coursework, assignments, field or clinical experiences, and other opportunities required of scholars' program of study (*e.g.,* speaker series, monthly seminars) if doing so does not diminish the benefit for project-funded scholars (*e.g.,* by reducing funds available for scholar support or limiting opportunities for scholars to participate in project activities).

Note: Projects that partner with related services [5] programs to prepare early intervention or special education personnel can qualify under this priority. In such situations, scholars in the partnering related services degree program (*e.g.,* bachelor's, master's, or clinical doctorate degree) may receive scholar support to complete their related services degree. Degree programs across more than one institution of higher education (IHE) may partner together within a project. Personnel preparation degree programs that prepare all scholars to be dually certified, including dually certified in special education and a related service, can qualify under this priority.

Note: Applications that propose to prepare only related services personnel are not eligible under this priority but can qualify under Preparation of Related Services Personnel Serving Children with Disabilities who have High-Intensity Needs priority (ALN 84.325R).

Focus Areas:

Within this absolute priority, the Secretary intends to support projects under the following two focus areas: (A) Preparing Personnel to Serve Infants, Toddlers, and Preschool-Age Children with Disabilities who have High-Intensity Needs; and (B) Preparing Personnel to Serve School-Age Children with Disabilities who have High-Intensity Needs.

Applicants must identify the specific focus area (*i.e.,* A or B) under which they are applying as part of the competition title on the application cover sheet (SF 424, line 12). Applicants may not submit the same proposal under more than one focus area. Applicants may submit different proposals in different focus areas.

Note: The Office of Special Education Programs (OSEP) may fund out of rank order high-quality applications to ensure that projects are funded in both Focus Area A and Focus Area B.

Focus Area A: Preparing Personnel to Serve Infants, Toddlers, and Preschool-Age Children with Disabilities who have High-Intensity Needs. This focus area is for projects that prepare early intervention and special education personnel to provide services to infants, toddlers, and preschool children with disabilities. In States where certification in early intervention is combined with certification in early childhood special education, applicants may propose a combined early intervention and early childhood special education personnel

[2] For the purposes of this priority, ''high-intensity needs'' refers to a complex array of disabilities (*e.g.,* multiple disabilities, significant cognitive disabilities, significant physical disabilities, significant sensory disabilities, significant autism, significant emotional disabilities, or significant learning disabilities, including dyslexia) or the needs of children with these disabilities requiring intensive, individualized intervention(s) (*i.e.,* that are specifically designed to address persistent learning or behavior difficulties, implemented with greater frequency and for an extended duration than is commonly available in a typical classroom or early intervention setting, or which require personnel to have knowledge and skills in identifying and implementing multiple evidence-based interventions).

[3] For the purposes of this priority, ''scholar'' means an individual who: (a) is pursuing a bachelor's, certification, master's, or educational specialist degree in early intervention or special education; (b) receives scholarship assistance as authorized under section 662 of IDEA (34 CFR 304.3(g)); (c) will be eligible for a license, endorsement, or certification from a State or national credentialing authority following completion of the degree program identified in the application; and (d) will be able to be employed in a position that serves children with disabilities for a minimum of 51 percent of their time or case load. Individuals pursuing degrees in general education or early childhood education do not qualify as ''scholars'' eligible for scholarship assistance.

[4] For the purposes of this priority, ''certification'' refers to programs of study that lead to State licensure, endorsement, or certification that qualifies graduates to teach or provide services to children with disabilities. Programs of study that lead to a certificate of completion from the institution of higher education (IHE), but do not lead to State licensure, endorsement, or certification, do not qualify.

[5] For the purposes of this priority, ''related services'' includes: speech-language pathology and audiology services; interpreting services; psychological services; applied behavior analysis; physical therapy and occupational therapy; recreation, including therapeutic recreation; social work services; counseling services, including rehabilitation counseling; and orientation and mobility services.

preparation project under this focus area. In States where the certification age range is other than birth through five, applicants must propose a preparation project that complies with the State's certification requirements for early intervention and early childhood special education personnel.

Focus Area B: Preparing Personnel to Serve School-Age Children with Disabilities who have High-Intensity Needs. This focus area is for projects that prepare special education personnel to work with school-age children with disabilities who have high-intensity needs.

Focus Areas A and B:

Applicants may, but are not required to, use up to the first 12 months of the performance period and up to $100,000 of funds awarded in the first budget period for planning, including enhancing an existing program, without enrolling scholars. If an applicant chooses to use the first year for program planning, then the applicant must provide sufficient justification for requesting program planning time and include the goals, objectives, and intended outcomes of program planning in year one, a description of the proposed strategies and activities to be supported, and a timeline for the work. The proposed strategies may include activities such as—

(1) Updating coursework, group assignments, or extensive and coordinated field or clinical experiences in early intervention settings, early childhood programs, and schools needed to support preparation for early intervention and special education personnel, including personnel from groups that are underrepresented in the field, including personnel with disabilities, multilingual personnel, and personnel from racially and ethnically diverse backgrounds, serving children with disabilities who have high-intensity needs;

(2) Building capacity (*e.g.,* hiring a field supervisor, providing professional development for faculty and field supervisors) of the program to prepare scholars, including scholars from groups that are underrepresented in the field, including scholars with disabilities, multilingual scholars, and scholars from racially and ethnically diverse backgrounds, to serve children with disabilities with high-intensity needs and their families;

(3) Purchasing needed resources (*e.g.,* additional teaching supplies or specialized equipment to enhance instruction); or

(4) Establishing relationships with early intervention and early childhood programs or schools to serve as sites for field or clinical experiences needed to support the project. These sites may include high-need local educational agencies (LEAs),[6] high-poverty schools,[7] schools identified for comprehensive support and improvement,[8] and schools implementing a targeted support and improvement plan [9] for children with disabilities; early childhood and early intervention programs located within the geographic boundaries of a high-need LEA; and early childhood and early intervention programs located within the geographical boundaries of an LEA serving the highest percentage of schools identified for comprehensive support and improvement or implementing targeted support and improvement plans in the State.

Additional Federal funds may be requested for scholar support and other grant activities occurring in year one of the project, provided that the total request for year one does not exceed the maximum award available for one budget period of 12 months (*i.e.,* $250,000).

Note: Applicants proposing projects to develop, expand, or add a new area of emphasis to early intervention or special education programs must provide, in their applications, information on how these new areas will be sustained once Federal funding ends.

Note: Project periods under this priority may be up to 60 months. Projects should be designed to ensure that all proposed scholars successfully complete the program within 60 months from the start of the project. The Secretary may reduce continuation awards for any project in which scholar recruitment is not on track or scholars are not on track to complete the program within the project period.

To be considered for funding under this absolute priority, all program applicants must meet the requirements contained in this priority.

To meet the requirements of this priority an applicant must—

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how—

(1) The proposed project will address the need in the proposed preparation focus area to prepare personnel who are fully qualified to serve children with disabilities who have high-intensity needs;

(2) The proposed project will increase the number of personnel in the proposed preparation focus area who demonstrate the competencies [10] needed to—

(i) Promote high expectations and improve outcomes for children with disabilities who have high-intensity needs;

(ii) Differentiate curriculum and instruction;

(iii) Provide intensive, evidence-based [11] individualized instruction and interventions in person and through distance learning technologies in a variety of early intervention, early childhood, and school settings (*e.g.,* natural environments; public schools, including charter schools; private schools; and other nonpublic education settings, including home education);

(iv) Provide culturally and linguistically responsive instruction and services;

(v) Collaborate with diverse partners, including multilingual individuals, individuals and families from racially and ethnically diverse backgrounds, and individuals with disabilities, using a multidisciplinary team approach to address the individualized

[6] For the purposes of this priority, ''high-need LEA'' means an LEA (a) that serves not fewer than 10,000 children from families with incomes below the poverty line; or (b) for which not less than 20 percent of the children are from families with incomes below the poverty line.

[7] For the purposes of this priority, ''high-poverty school'' means a school in which at least 50 percent of students are from low-income families as determined using one of the measures of poverty specified in section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school under this definition is determined on the basis of the most currently available data.

[8] For the purposes of this priority, ''school implementing a comprehensive support and improvement plan'' means a school identified for comprehensive support and improvement by a State under section 1111(c)(4)(D) of the ESEA that includes (a) not less than the lowest performing 5 percent of all schools in the State receiving funds under title I, part A of the ESEA; (b) all public high schools in the State failing to graduate one third or more of their students; and (c) public schools in the State described in section 1111(d)(3)(A)(i)(II) of the ESEA.

[9] For the purposes of this priority, ''school implementing a targeted support and improvement plan'' means a school identified for targeted support and improvement by a State that has developed and is implementing a school-level targeted support and improvement plan to improve student outcomes based on the indicators in the statewide accountability system defined in section 1111(d)(2) of the ESEA.

[10] For the purposes of this priority, ''competencies'' means what a person knows and can do—the knowledge, skills, and dispositions necessary to effectively function in a role (National Professional Development Center on Inclusion, 2011).

[11] For the purposes of this priority, ''evidence-based'' means, at a minimum, evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component (as defined in 34 CFR 77.1) included in the project's logic model (as defined in 34 CFR 77.1) is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes (as defined in 34 CFR 77.1).

developmental, learning, and academic needs of children with disabilities who have high-intensity needs, and support their successful transitions from early childhood to elementary, elementary to secondary, or transition to postsecondary education and the workforce; and

(vi) Exercise leadership to improve professional practice and services and education for children with disabilities who have high-intensity needs; and

(3) The applicant has successfully graduated students in their program, including students with disabilities, multilingual students, and students who are from racially, and ethnically diverse backgrounds, including data disaggregated by disability status, race, national origin and primary language(s), and the number of students who have graduated in the last five years.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how—

(1) The project will conduct its planning activities, if the applicant will use any of the allowable first 12 months of the project period for planning;

(2) The project will recruit and retain scholars. To meet this requirement, the applicant must describe—

(i) The selection criteria the project will use to identify applicants for admission in the program;

(ii) The specific recruitment strategies the project will use to attract applicants, including from groups that are underrepresented in the field, including applicants with disabilities, multilingual applicants, and applicants from racially and ethnically diverse backgrounds to ensure a diverse pool of applicants; and

Note: Applicants should engage in focused outreach and recruitment to increase the number of applicants from groups that are traditionally underrepresented in the field, including applicants with disabilities, multilingual applicants, and applicants from racial and ethnic diversity backgrounds, but the selection criteria the applicant intends to use must ensure equal access and treatment of all applicants seeking admission to the program and must be consistent with applicable law, including Federal civil rights law.

(iii) The approach that will be used to mentor and support all scholars, and any specific approaches to supporting groups that are underrepresented in the field, including individuals with disabilities, multilingual scholars, and scholars from racially and ethnically diverse backgrounds, for retention and completion of the program within the project period and preparing them for careers in early intervention or special education; and

(3) The project will be designed to promote the acquisition of the competencies needed by early intervention or special education personnel to support improved outcomes for children with disabilities with high-intensity needs. To address this requirement, the applicant must—

(i) Describe how the proposed components, such as coursework; field or clinical experiences in early intervention, early childhood, and school settings; work-based experiences; or other opportunities provided to scholars, and sequence of the project components will enable the scholars to acquire the competencies needed by personnel working with children with disabilities with high-intensity needs;

(ii) Describe how the proposed project will reflect current evidence-based practices (EBPs) to prepare scholars to provide effective and equitable evidence-based culturally and linguistically responsive instruction, interventions, and services that improve outcomes for children with disabilities with high-intensity needs, in a variety of educational or early childhood and early intervention settings, including in-person and remote settings; and

(iii) Describe how the proposed project will engage partners, including: multilingual individuals and individuals and families from racially and ethnically diverse backgrounds; public or private partnering agencies, schools, or programs; centers or organizations that provide services to children with disabilities and their families; and individuals with disabilities and their families, to inform and support project components.

(c) Demonstrate, in the narrative section of the application under ''Quality of the project personnel and management plan,'' how—

(1) The project director and other key project personnel are qualified to prepare scholars in the project's preparation focus area;

(2) The project director and other key project personnel will manage the components of the project; and

(3) The time commitments of the project director and other key project personnel are adequate to meet the objectives of the proposed project.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources,'' how—

(1) Information regarding the types of accommodations and resources available to fully support scholars' well-being and a work-life balance (*e.g.,* university and community mental health supports, counseling services, health resources, housing resources, child care) will be disseminated and how the project will support scholars to access those accommodations and resources in a timely basis, if needed, while the scholar is in the program;

(2) The types of accommodations and resources provided to support scholars' well-being and a work-life balance will be individualized based on scholars' cultural, academic, and social emotional needs with the goal of supporting them to complete the program; and

(3) The budget is adequate for meeting the project objectives and mitigating financial burden to scholars in completing the program of study.

Note: Scholar support does not need to be uniform for all scholars and should be customized for individual scholars based on scholars' financial needs, including consideration of all costs associated with the cost of attendance, even if that means enrolling fewer scholars. Scholar support can include support for cost of attendance (*i.e.,* tuition and fees; university student health insurance; an allowance for books, materials, and supplies; an allowance for miscellaneous personal expenses; an allowance for dependent care, such as child care; and/or an allowance for room and board), travel in conjunction with training assignments including conference registration, and stipends to support scholars' completion of the program. Projections for scholar support should consider tuition increases and cost of living increases over the project period.

(e) Demonstrate, in the narrative section of the application under ''Quality of the project evaluation,'' how the applicant will—

(1) Evaluate how well the goals or objectives of the proposed project have been met. To meet this requirement, the applicant must describe—

(i) The outcomes to be measured for both the project and the scholars, particularly the acquisition of scholars' competencies; and

(ii) The evaluation methodologies, data collection methods, and data analyses that will be used; and

(2) Collect, analyze, and use data on scholars supported by the project to inform the project on an ongoing basis.

(f) Demonstrate, in the appendices or narrative under ''Required project assurances'' as directed, that the following requirements are met. The applicant must—

(1) Include in appendix A of the application—

(i) Charts, tables, figures, graphs, screen shots, and visuals that provide information directly relating to the application requirements for the

narrative. Appendix A should not be used for supplementary information. Please note that charts, tables, figures, graphs, and screen shots can be single-spaced when placed in appendix A; and

(ii) A letter of support from a public or private partnering agency, school, or program, that states it will provide scholars with a field or clinical experience in a high-need LEA, a high-poverty school, a school implementing a comprehensive support and improvement plan, a school implementing a targeted support and improvement plan for children with disabilities, an SEA, an early childhood and early intervention program located within the geographical boundaries of a high-need LEA, or an early childhood and early intervention program located within the geographical boundaries of an LEA serving the highest percentage of schools identified for comprehensive support and improvement or implementing targeted support and improvement plans in the State;

(2) Include in appendix B of the application—

(i) A table that lists the project's required coursework and includes the course title, brief description, learning goals, and relevant State or national professional organization personnel standards for each course;

(ii) Four exemplar course syllabi required by the degree program that reflect EBPs across the areas of assessment; social, emotional, and behavior development and learning; inclusive practices; instructional strategies; and literacy as appropriate;

(3) Include in the application budget attendance by the project director at a three-day project directors' meeting in Washington, DC, during each year of the project; and

(4) Provide an assurance that—

(i) The project will meet the requirements in 34 CFR 304.23, particularly those related to (i) informing all scholarship recipients of their service obligation commitment; and (ii) disbursing scholarships. Failure by a grantee to properly meet these requirements is a violation of the grant award that may result in the grantee being liable for returning any misused funds to the Department;

(ii) The project will meet the statutory requirements in section 662(e) through (h) of IDEA;

(iii) The project will be operated in a manner consistent with nondiscrimination requirements contained in Federal civil rights laws;

(iv) All the syllabi for the project's required coursework will be provided if requested by OSEP;

(v) At least 65 percent of the total award over the project period (*i.e.,* up to 5 years) will be used for scholar support;

(vi) Scholar support provided by the project (*e.g.,* tuition and fees; university student health insurance; an allowance for books, materials, and supplies; an allowance for miscellaneous personal expenses; an allowance for dependent care, such as child care; and an allowance for room and board) is not based on the condition that the scholar work for the grantee (*e.g.,* personnel at the IHE);

(vii) The project director, key personnel, and scholars will actively participate in learning opportunities (*e.g.,* webinars, briefings) supported by OSEP. This is intended to promote opportunities for participants to understand reporting requirements, share resources, and generate new knowledge by addressing topics of common interest to participants across projects including Department priorities and needs in the field;

(viii) The project website, if applicable, will be of high quality, with an easy-to-navigate design that meets government or industry-recognized standards for accessibility;

(ix) Scholar accomplishments (*e.g.,* public service, awards, publications, conference presentations) will be reported in annual and final performance reports; and

(x) Annual data will be submitted on each scholar who receives grant support (OMB Control Number 1820–0686). The primary purposes of the data collection are to track the service obligation fulfillment of scholars who receive funds from OSEP grants and to collect data for program performance measure reporting under 34 CFR 75.110. Data collection includes the submission of a signed, completed pre-scholarship agreement and exit certification for each scholar funded under an OSEP grant (see paragraph (f)(4)(i) of this priority). Applicants are encouraged to visit the Personnel Development Program Data Collection System website at *https://pdp.ed.gov/osep* for further information about this data collection requirement.

Competitive Preference Priority: Within this absolute priority, we give competitive preference to applications that address the following priority. Under 34 CFR 75.105(c)(2)(i), we award an additional 3 points to an application that meets the Competitive Preference Priority. Applicants should indicate in the abstract if they are addressing the competitive preference priority.

The priority is:

Competitive Preference Priority—Applications from New Potential Grantees (0 or 3 points).

(a) Under this priority, an applicant must demonstrate that the applicant (*e.g.,* the IHE) has not had an active discretionary grant under the program from which it seeks funds, in the last five years before the deadline date for submission of applications under the 84.325K program.

(b) For the purpose of this priority, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

References:

Boe, E. E., deBettencourt, L., Dewey, J. F., Rosenberg, M. S., Sindelar, P. T., & Leko, C. D. (2013). *Variability in demand for special education teachers: Indicators, explanations, and impacts. Exceptionality, 21*(2), 103–125.

Browder, D. M., Wood, L., Thompson, J., & Ribuffo, C. (2014). *Evidence-based practices for students with severe disabilities* (Document No. IC–3). *http://ceedar.education.ufl.edu/tool/innovation-configurations/.*

Council of Administrators of Special Education (2020). *Proceedings of Special Education Legislative Summit 2020. https://exceptionalchildren.org/sites/default/files/2020-07/AllBriefs_2020.pdf.*

Mason-Williams, L., Bettini, E., Peyton, D., Harvey, A., Rosenberg, M., & Sindelar, P. T. (2020). *Rethinking shortages in special education: Making good on the promise of an equal opportunity for students with disabilities.* Teacher Education and Special Education, *43*(1), 45–62.

McLeskey, J., & Brownell, M. (2015). *High-leverage practices and teacher preparation in special education* (Document No. PR–1). *http://ceedar.education.ufl.edu/wp-content/uploads/2016/05/High-Leverage-Practices-and-Teacher-Preparation-in-Special-Education.pdf.*

National Professional Development Center on Inclusion. (August, 2011). *Competencies for early childhood educators in the context of inclusion: Issues and guidance for States.* The University of North Carolina, FPG Child Development Institute.

U.S. Department of Education. (2022). Institute of Education Sciences, National Center for Education Statistics. *School Pulse Panel (2021–22). https://ies.ed.gov/schoolsurvey/spp/.*

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1462 and 1481.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 304.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $6,750,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2024 from the list of unfunded applications from this competition.

Estimated Range of Awards: $200,000–$250,000 per year.

Estimated Average Size of Awards: $225,000 per year.

Maximum Award: We will not make an award exceeding $250,000 for a single budget period of 12 months.

Estimated Number of Awards: 27.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants are IHEs and private nonprofit organizations.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2.a. *Cost Sharing or Matching:* Cost sharing or matching is not required for this competition.

b. *Indirect Cost Rate Information:* This program uses a training indirect cost rate. This limits indirect cost reimbursement to an entity's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. For more information regarding training indirect cost rates, see 34 CFR 75.562. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *https://www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c), a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: IHEs, nonprofit organizations suitable to carry out the activities proposed in the application, and public agencies. The grantee may award subgrants to entities it has identified in an approved application or that it selects through a competition under procedures established by the grantee, consistent with 34 CFR 75.708(b)(2).

4. *Other General Requirements:*

a. Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

b. Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *www.federalregister.gov/content/pkg/FR–2022–12–07/pdf/2022–26554.pdf,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 40 pages; (2) limit the whole application to no more than 100 pages; and (3) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Significance (10 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project will prepare personnel for fields in which shortages have been demonstrated; and

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(b) *Quality of project services (35 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice;

(ii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services;

(iii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services; and

(iv) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(c) *Quality of project personnel and quality of the management plan (20 points).*

(1) The Secretary considers the quality of the project personnel and the quality of the management plan.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel;

(ii) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks; and

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(d) *Adequacy of resources (20 points).*

(1) The Secretary considers the adequacy of resources of the proposed project.

(2) In determining the adequacy of resources of the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization; and

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) *Quality of the project evaluation (15 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project; and

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions, and under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the

integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

6. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115—232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* For the purposes of Department reporting under 34 CFR 75.110, the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Personnel Development to Improve Services and Results for Children with Disabilities program. These measures include (1) the percentage of preparation programs that incorporate scientifically based practices or EBPs into their curricula; (2) the percentage of scholars completing the preparation program who are knowledgeable and skilled in EBPs that improve outcomes for children with disabilities; (3) the percentage of scholars who exit the preparation program prior to completion due to poor academic performance; (4) the percentage of scholars completing the preparation program who are working in the area(s) in which they were prepared upon program completion; (5) the Federal cost per scholar who completed the preparation program; (6) the percentage of scholars who completed the preparation program and are employed in high-need districts; and (7) the percentage of scholars who completed the preparation program and who are rated effective by their employers.

In addition, the Department will gather information on the following outcome measures: the number and percentage of scholars proposed by the grantee in their application that were actually enrolled and making satisfactory academic progress in the current academic year; the number and percentage of enrolled scholars who are on track to complete the training program by the end of the project's original grant period; and the percentage of scholars who completed the preparation program and are employed in the field of special education for at least two years.

Grantees may be asked to participate in assessing and providing information on these aspects of program quality.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with

the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Katherine Neas,

Deputy Assistant Secretary. Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2023–08249 Filed 4–18–23; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Notice of Federal Advisory Committee Charter Renewals

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of Federal Advisory Committee Charter renewals.

SUMMARY: In accordance with the Federal Advisory Committee Act, the purpose of this notice is to announce that the Election Assistance Commission (EAC) has renewed the charters for the Board of Advisors, the Standards Board, the Technical Guidelines Development Committee, and Local Leadership Council for a two-year period through April 13, 2025. The Board of Advisors, the Standards Board, and the Technical Guidelines Development Committee are federal advisory committees under the Federal Advisory Committee Act and created by the Help America Vote Act of 2002. The Local Leadership Council is a discretionary federal advisory committee, established by the EAC on June 8, 2021.

DATES: Renewed through April 13, 2025.

ADDRESSES: Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001.

To Obtain a Copy of the Charters: A complete copy of the Charters are available from the EAC in electronic format. An electronic copy can be downloaded in PDF format on the EAC's website, *http://www.eac.gov.* In order to obtain a paper copy of the Charters, please mail your request to the U.S. Election Assistance Commission FACA Boards Management at 633 3rd Street NW, Suite 200, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION: The Board of Advisors, the Standards Board, and the Technical Guidelines Development Committee are Federal advisory committees created by statute whose mission is to advise the EAC through review of the voluntary voting systems guidelines, review of voluntary guidance, and review of best practices recommendations. The Local Leadership Council is a discretionary advisory committee and is made up of 100 local election officials who are current or former officers in each state's local election official association. In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the renewal of these Charters.

Camden Kelliher,

Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2023–08215 Filed 4–18–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

21st Century Energy Workforce Advisory Board

AGENCY: Office of Energy Jobs, Office of Policy, Department of Energy.

ACTION: Notice of establishment.

SUMMARY: The U.S. Department of Energy (DOE or the Department) announces the establishment of the 21st Century Energy Workforce Advisory Board (EWAB), pursuant to the Infrastructure Investment and Jobs Act (hereafter, ''IIJA''), and in accordance with the Federal Advisory Committee Act (FACA), and the rules and regulations in implementation of that Act.

FOR FURTHER INFORMATION CONTACT: Piper O'Keefe, Designated Federal Officer, Office of Energy Jobs, Office of Policy, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585 at (202) 809–5110, or *piper.o'keefe@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: As detailed in its Charter, EWAB will provide advice and recommendations to the Secretary of Energy on a strategy for the Department to support and develop a skilled energy workforce that meets the current and future industry and labor needs of the energy sector; provides opportunities for students to become qualified for placement in traditional energy sector and emerging energy sector jobs; identifies areas in which the Department can effectively utilize the technical expertise of the Department to support the workforce activities of other Federal agencies; strengthens and engages the workforce training programs of the Department and the National Laboratories in carrying out the Equity in Energy Initiative of the Department and other Department workforce priorities; develops plans to support and retrain displaced and unemployed energy sector workers; and prioritizes education and job training for underrepresented groups, including racial and ethnic minorities, Indian Tribes, women, veterans, and socioeconomically disadvantaged individuals. EWAB will also analyze the effectiveness of existing Department-directed support and existing energy workforce training programs. The Advisory Board shall submit an annual report containing its findings and proposed energy workforce strategy to the Secretary, as described in section 18744(c) of IIJA.

Pursuant to section 18744(b) of IIJA, the Advisory Board shall be composed of not fewer than 10 and not more than 15 members, who are appointed by the Secretary of Energy. Board members will be appointed for two- or three-year terms and may be reappointed during the membership renewal period following review. The EWAB will meet bi-monthly. When vacancies occur, the Secretary of Energy will identify

appointment nominees who can address the Advisory Board's needs pursuant to IIJA. The Advisory Board shall include not fewer than 1 representative of a labor organization with significant energy experience who has been nominated by a national labor federation.

Individuals appointed to the Advisory Board shall be selected in a representational capacity of the following fields of expertise: (A) the field of economics or workforce development; (B) relevant traditional energy industries or emerging energy industries, including energy efficiency; (C) secondary or postsecondary education; (D) energy workforce development or apprenticeship programs of States or units of local government; (E) relevant organized labor organizations; or (F) bringing underrepresented groups, including racial and ethnic minorities, women, veterans, and socioeconomically disadvantaged individuals, into the workforce. Other factors to be considered for Advisory Board membership include demographic, professional, and experiential diversity. In addition, the Office of Energy Jobs will strive for the EWAB to reflect the principles of inclusion, equity, and diversity, and to ensure that the Advisory Board's recommendations strive for equitable distribution of benefits for all Americans, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. The Office of Energy Jobs also will also strive for geographic diversity in the composition of the EWAB, including individuals representing the perspectives of rural, urban, and suburban areas.

Additionally, the establishment of the Energy Workforce Advisory Board has been determined to be essential to conduct business of the Department of Energy's and to be the in the public interest in connection with the performance of duties imposed upon the Department of Energy, by law and agreement. The Advisory Board will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. § 10, the rules and regulations in implementation of that Act.

Signing Authority

This document of the Department of Energy was signed on April 12, 2023, by Shena Kennerly, Acting Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 14, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–08278 Filed 4–18–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e) (1) (v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
1. CP21–57–000, CP16–10–000, CP19–477–000	3–29–2023	FERC Staff.[1]
2. CP21–57–000, CP16–10–000, CP19–477–000	3–29–2023	FERC Staff.[2]
3. CP21–57–000, CP16–10–000, CP19–477–000	3–29–2023	FERC Staff.[3]
4. CP21–57–000, CP16–10–000 ,CP19–477–000	3–29–2023	FERC Staff.[4]
5. CP21–57–000, CP16–10–000, CP19–477–000	3–29–2023	FERC Staff.[5]
6. CP21–57–000, CP16–10–000, CP19–477–000	3–29–2023	FERC Staff.[6]
7. CP21–57–000, CP16–10–000, CP19–477–000	3–30–2023	FERC Staff.[7]
8. CP21–57–000, CP16–10–000, CP19–477–000	3–30–2023	FERC Staff.[8]
9. CP21–57–000, CP16–10–000, CP19–477–000	3–30–2023	FERC Staff.[9]
10. CP21–57–000, CP16–10–000, CP19–477–000	3–30–2023	FERC Staff.[10]
11. CP21–57–000, CP16–10–000, CP19–477–000	3–30–2023	FERC Staff.[11]

Docket Nos.	File date	Presenter or requester
12. CP21–57–000, CP16–10–000, CP19–477–000	3–30–2023	FERC Staff.[12]
13. CP21–57–000, CP16–10–000, CP19–477–000	3–30–2023	FERC Staff.[13]
14. CP21–57–000, CP16–10–000, CP19–477–000	3–30–2023	FERC Staff.[14]
15. CP21–57–000, CP16–10–000, CP19–477–000	3–30–2023	FERC Staff.[15]
16. CP21–57–000, CP16–10–000, CP19–477–000	3–30–2023	FERC Staff.[16]
17. CP21–57–000, CP16–10–000, CP19–477–000	3–30–2023	FERC Staff.[17]
18. CP16–454–000, CP16–455–000, CP16–16–000	4–10–2023	FERC Staff.[18]
19. CP16–454–000, CP21–465–001, CP21–465–002	4–10–2023	FERC Staff.[19]
Exempt:		
1. P–14513–003	3–30–2023	Idaho State Historic Preservation Office.

[1] Emailed comments dated 3/29/23 from Isabella Musa and 25 other individuals.
[2] Emailed comments dated 3/29/23 from William Carbley and 27 other individuals.
[3] Emailed comments dated 3/29/23 from Robin Hordon and 24 other individuals.
[4] Emailed comments dated 3/29/23 from Brian Reardon and 24 other individuals.
[5] Emailed comments dated 3/29/23 from Kelsey Brodt and 24 other individuals.
[6] Emailed comments dated 3/29/23 from Naomi W and 14 other individuals.
[7] Emailed comments dated 3/29/23 from Aaron Weaver and 29 other individuals.
[8] Emailed comments dated 3/29/23 from Carrie Gleason and 29 other individuals.
[9] Emailed comments dated 3/29/23 from Lexi Nutkiewicz and 29 other individuals.
[10] Emailed comments dated 3/29/23 from Reegan Burns and 29 other individuals.
[11] Emailed comments dated 3/29/23 from Victoria Crawford and 28 other individuals.
[12] Emailed comments dated 3/30/23 from Alyssia Gross and 24 other individuals.
[13] Emailed comments dated 3/30/23 from Jessica Lifford and 9 other individuals.
[14] Emailed comments dated 3/30/23 from Alisia Bowling Gonzalez and 8 other individuals.
[15] Emailed comments dated 3/30/23 from Tiffany Smith and 20 other individuals.
[16] Emailed comments dated 3/30/23 from Matt Cutts and 24 other individuals.
[17] Emailed comments dated 3/30/23 from Janine Vinton and 29 other individuals.
[18] Memorandum regarding ex parte communications on 3/8/23 with Bekah Hinojosa and Christopher Basaldu.
[19] Emailed comments dated 4/10/23 from Trevor Falk.

Dated: April 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08275 Filed 4–18–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: April 20, 2023, 10:00 a.m.

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

STATUS: Open to the public.

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 stricken 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.

1100TH—MEETING

[Open meeting; April 20, 2023; 10:00 a.m.]

Item No.	Docket No.	Company
	ADMINISTRATIVE	
A–1	AD23–1–000	Agency Administrative Matters.
A–2	AD23–2–000	Customer Matters, Reliability, Security and Market Operations.
A–3	RD23–2–000	North American Electric Reliability Corporation.
	ELECTRIC	
E–1	RM22–19–000	Incentives for Advanced Cybersecurity Investment.
E–2	RM16–17–001, ER21–331–000, ER21–330–000.	Data Collection for Analytics and Surveillance and Market-Based Rate Purposes DDP Specialty Electronic Materials US, Inc. MC (US) 3, LLC.
E–3	EL22–34–001	Office of the *Ohio Consumers' Counsel* v. *American Electric Power Service Corporation,* American Transmission Systems, Inc., and Duke Energy Ohio, LLC.
E–4	OMITTED.	
E–5	ER21–2460–003	New York Independent System Operator, Inc.
E–6	ER22–2350–000	New York Independent System Operator, Inc.
E–7	ER22–2362–000	California Independent System Operator Corporation.
E–8	ER22–1546–000	Tampa Electric Company.
E–9	ER22–2303–000	Black Hills Power, Inc.
E–10	ER22–1863–001	Arizona Public Service Company.

1100TH—MEETING—Continued

[Open meeting; April 20, 2023; 10:00 a.m.]

Item No.	Docket No.	Company
E–11	ER22–2305–000	Louisville Gas and Electric Company.
E–12	ER22–1539–001	NRG Power Marketing LLC.
E–13	ER22–1980–001, ER22–1980–000	Deuel Harvest Wind Energy LLC.
E–14	ER20–681–008	Tri-State Generation and Transmission Association, Inc.
E–15	ER23–855–000	Ohio Power Company, PJM Interconnection, L.L.C., American Electric Power Service Corporation, and AEP Ohio Transmission Company, Inc.
	EL22–34–000	*Office of Ohio Consumers' Counsel* v. *American Electric Power Service Corporation, American Transmission System, Inc., and Duke Energy Ohio, LLC.*
E–16	EL22–38–000	PacifiCorp.
E–17	EC23–28–000	Michigan Electric Transmission Company, LLC and ITC Interconnection LLC.
E–18	EL22–59–001	*Tenaska Clear Creek Wind, LLC* v. *Southwest Power Pool, Inc., Midcontinent Independent System Operator, Inc. Associated Electric Cooperative, Inc., and Tennessee Valley Authority.*
	HYDRO	
H–1	P–12766–008	Green Mountain Power Corporation.
H–2	P–15280–000	Stonecat Hydro, LLC.
	CERTIFICATES	
C–1	CP16–454–003, CP16–454–000	Rio Grande LNG, LLC.
	CP16–455–000, CP16–455–002, CP20–481–000.	Rio Bravo Pipeline Company LLC.
C–2	CP16–116–002	Texas LNG Brownsville LLC.
C–3	CP17–40–016	Spire STL Pipeline LLC.
C–4	CP21–465–000, CP21–465–001, CP21–465–002.	Driftwood Pipeline LLC.
C–5	CP21–94–002, CP21–94–000, CP21–94–001.	Transcontinental Gas Pipe Line Company, LLC.
C–6	CP21–467–001	Texas Gas Transmission, LLC.

A free webcast of this event is available through the Commission's website. 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 Federal Energy Regulatory Commission provides technical support for the free webcasts. Please call (202) 502–8680 or email *customer@ferc.gov* if you have any questions.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters but will not be telecast.

Issued: April 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–08322 Filed 4–17–23; 11:15 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–9–000]

New England Winter Gas-Electric Forum; Supplemental Notice of Second New England Winter Gas-Electric Forum

As announced in the Notice of Forum issued in this proceeding on February 16, 2023, the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led forum on Tuesday, June 20, 2023, from approximately 9:00 a.m. to 5:00 p.m. Eastern Time, to discuss possible solutions to the electricity and natural gas challenges facing the New England Region. A preliminary agenda for this forum is attached. The Commission will issue a further supplemental notice with a full agenda and the confirmed panelists prior to the forum. The forum will be open to the public and be held at the DoubleTree by Hilton Portland, 363 Maine Hall Rd, Portland, ME 04106.

The purpose of the forum is to continue discussion from the September 8, 2022, forum about the electricity and natural gas challenges facing the New England region. This forum will discuss studies on extreme weather risks, infrastructure on the electric and gas systems in New England, and infrastructure and market design reforms to aid with the electric and gas system challenges faced historically during New England winters. The goal of this forum is to identify solutions to address the electric and gas system challenges and discuss timing of their potential implementation.

While the forum is not for the purpose of discussing any specific matters before the Commission, some forum discussions may involve issues raised in proceedings that are currently pending before the Commission. These proceedings include, but are not limited to:

Constellation Mystic Power LLC	Docket Nos. ER18–1639–000, ER18–1639–014, ER18–1639–015, ER18–1639–018, ER18–1639–019, ER18–1639–021, ER18–1639–022.

ISO New England Inc	Docket Nos. ER19–1428–000, ER19–1428–001, ER19–1428–002, ER19–1428–003, ER19–1428–004, ER19–1428–005, ER19–1428–006.
NextEra Energy Seabrook, LLC	Docket Nos. EL21–3–000, EL21–3–001.
NECEC Transmission LLC and Avangrid, Inc. v. *NextEra Energy Resources, LLC.*	Docket Nos. EL21–6–000, EL21–6–001.
Belmont Municipal Light Dep't et al. v. *Constellation Mystic Power, LLC and ISO New England, Inc.*	Docket No. EL23–4–000.

Only Commissioners and panelists will participate in the panel discussions. The forum will be open to the public for listening and observing, and written comments may be submitted in Docket No. AD22–9–000.

Registration for in-person attendance will be required, and there is no fee for attendance. A link to attendee registration will be available on the New England Winter Gas-Electric Forum event page on the Commission's website. Due to space constraints, seating for this event will be limited and registrants that get a confirmed space will be contacted via email. Only confirmed registrants can be admitted to the forum given the maximum occupancy limit at the venue (as required by fire and building safety code). Therefore, the Commission encourages members of the public who wish to attend this event in person to register at their earliest convenience. Online registration will be open, as long as attendance capacity is available, until the day before the forum (June 19). Once registration has reached capacity, registration will be closed. However, those interested in attending after capacity has been reached can join a waiting list (using the same registration link) and be notified if space becomes available. Those who are unable to attend in person may watch the free webcast.

The webcast will allow persons to listen and observe the forum remotely but not participate. Information on this forum, including a link to the webcast, will be posted prior to the event on this forum's event page on the Commission's website. A recording of the webcast will be made available after the forum in the same location on the Calendar of Events. The forum will be transcribed. Transcripts of the forum will be available for a fee from Ace-Federal Reporters, Inc. (202–347–3700).

Individuals interested in participating as panelists should submit a self-nomination email by 5:00 p.m. Eastern time on Friday, May 19, 2023, to *Panelist_NewEnglandForum@ferc.gov.* The self-nominations should have ''Panelist Self-Nomination'' in the subject line and include the panelist's name, photograph, contact information, organizational affiliation, one-paragraph biography, and what panels the self-nominated panelist proposes to speak on.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this forum, please contact *NewEnglandForum@ferc.gov* or *sarah.mckinley@ferc.gov* for technical or logistical questions.

Dated: April 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

Second New England Winter Gas–Electric Forum

Docket No. AD22–9–000

June 20, 2023

Agenda

9:00 a.m.–9:15 a.m.: Welcome and Opening Remarks from the Chairman and Commissioners

9:15 a.m.–9:45 a.m.: Opening Presentations: Winters 2023/2024 and 2024/2025 in New England and the Role of Everett

The forum will commence with a presentation by ISO New England Inc. (ISO–NE) that discusses the upcoming winters of 2023/2024 and 2024/2025 with consideration for the Everett Marine Terminal's (Everett) availability and its impact on the ISO–NE electric grid. Following ISO–NE's presentation on upcoming winters, a second presentation will explain Everett's physical capabilities and its impact on the electric and natural gas systems in New England.

Panelists: To be announced.

9:45 a.m.–10:45 a.m.: Panel 1: Should Everett be Retained and, if so, how?

Panel 1 will allow panelists to provide their views on the need for Everett on the electric and natural gas systems in New England. This panel may also discuss fuel procurement needs and challenges, including the fuel procurement and LNG capabilities available to New England from facilities other than Everett. Finally, this panel will discuss the constraints surrounding the planned retirement of Everett and the expected impact on the electric and natural gas systems in New England in future winters.

Panelists: To be announced.

10:45 a.m.–11:15 a.m.: Third Presentation: Extreme Weather Risks to ISO–NE, Presentation of the EPRI Study by ISO–NE and EPRI

The third presentation, by ISO–NE and the Electric Power Research Institute (EPRI), will detail the development of the EPRI model, the assumptions used, parameters considered, and the study results for the target year of 2027.[1] ISO–NE and EPRI will also explain the study's key conclusions and offer thoughts on how those conclusions should be considered in the context of developing solutions to the region's electricity and natural gas challenges.

Panelists: To be announced.

11:15 a.m.–12:15 p.m.: Panel 2: Reactions to the EPRI Study

This panel will provide panelists an opportunity to provide their reactions to the EPRI study's assumptions, inputs, and results. This panel will discuss what actionable steps should be taken, if any, as a result of the study's findings, and whether additional study or analysis is needed.

Panelists: To be announced.

12:15 p.m.–1:45 p.m.: Lunch Break

1:45 p.m.–3:00 p.m.: Panel 3: Path to Sustainable Solutions—Infrastructure

Based on the findings and issues identified in the previous panels and presentations, Panel 3 will shift toward discussing potential infrastructure solutions beyond winter 2023/2024.

[1] Each year as part of its Annual Work Plan, ISO–NE develops ''Anchor Projects'' which for 2023 includes ISO–NE's work with EPRI to develop an ''innovative framework for conducting a probabilistic energy-security study that assesses the operational impact of future extreme weather events.'' *See* ISO–NE, *ISO New England's 2023 Annual Work Plan,* (October 2022) at 7, *https://www.iso-ne.com/static-assets/documents/2022/10/2023_awp_final_10_12_22.pdf.* The study is currently under development and information can be found on the ISO–NE website. *See* ISO–NE, *Operational Impacts of Extreme Weather Events Key Project, https://www.iso-ne.com/committees/key-projects/operational-impacts-of-extreme-weather-events/.*

While retention of Everett has been raised as one possible solution, this panel will discuss the merits of other, longer-term solutions available to the region and the timelines for implementing them. Potential topics for discussion include: (1) new electric transmission interconnections with other regions; (2) the timing and impact of new offshore wind, onshore wind, and solar resource development; (3) transmission planning to enable efficient development of expected offshore wind additions; (4) increased natural gas pipeline infrastructure/capacity; and (5) increased oil and natural gas storage capability.

Panelists: To be announced.

3:15 p.m.–3:30 p.m.: Break

3:15 p.m.–4:30 p.m.: Panel 4: Path to Sustainable Solutions—Market Design

In Panel 4, Commissioners and panelists will discuss potential market solutions to New England's winter reliability challenges. Specifically, this panel will discuss any potential merits and benefits of market design changes to ISO–NE markets to enhance resource performance incentives, including incentives for resources to make advanced fuel procurements and/or maintain fuel inventories in the winter months; and align capacity market structure and rules with observed reliability risks—*e.g.,* by reforming resource capacity accreditation and/or conducting prompt and/or seasonal capacity auctions.

Panelists: To be announced.

4:30 p.m.–5:00 p.m.: Closing Roundtable

In the Closing Roundtable, Commissioners and panelists will discuss what was learned through the presentations and panels and consider next steps. Topics will include what solutions stakeholders agree on pursuing and the timeline for implementing them as well as discussion of if, how, and when longer term solutions can be implemented sooner than currently expected.

Panelists: To be announced.

[FR Doc. 2023–08266 Filed 4–18–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

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

Docket Numbers: EG23–120–000.

Applicants: Apex Solar LLC.

Description: Apex Solar LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 4/12/23.

Accession Number: 20230412–5199.

Comment Date: 5 p.m. ET 5/3/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–60–000.

Applicants: Parkway Generation Keys Energy Center LLC v. *PJM Interconnection, L.L.C.*

Description: Complaint of *Parkway Generation Keys Energy Center LLC* v. *PJM Interconnection, L.L.C.*

Filed Date: 4/6/23.

Accession Number: 20230406–5234.

Comment Date: 5 p.m. ET 4/26/23.

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

Docket Numbers: ER10–1790–022; ER21–1716–004; ER14–2672–023; ER12–1825–036; ER22–2519–001; ER13–33–007; ER15–2483–003; ER10–2468–004; ER11–1853–001; ER10–2597–006; ER10–2481–006; ER11–2041–017; ER12–2200–008; ER10–3196–004; ER10–2273–004; ER11–2042–017; ER14–1317–011.

Applicants: Sunshine Gas Producers, LLC, Seneca Energy, II LLC, PEI Power II, LLC, PEI Power Corporation, Mehoopany Wind Energy LLC, Innovative Energy Systems, LLC, Ingenco Wholesale Power, L.L.C., Fowler Ridge III Wind Farm LLC, Fowler Ridge II Wind Farm LLC, Fowler Ridge Wind Farm LLC, LRI Renewable Energy LLC, Collegiate Clean Energy, LLC, Bellflower Solar 1, LLC, EDF Industrial Power Services (CA), LLC, EDF Energy Services, LLC, BP Energy Retail LLC, BP Energy Company.

Description: Second Supplement to January 31, 2023, Notice of Change in Status of BP Energy Company, et al.

Filed Date: 4/11/23.

Accession Number: 20230411–5198.

Comment Date: 5 p.m. ET 5/2/23.

Docket Numbers: ER14–2281–002.

Applicants: Homer City Generation, L.P.

Description: Compliance filing: Information Filing in Docket ER14–2281 to be effective N/A.

Filed Date: 4/12/23.

Accession Number: 20230412–5188.

Comment Date: 5 p.m. ET 5/3/23.

Docket Numbers: ER23–1241–001.

Applicants: IP Oberon, LLC.

Description: Tariff Amendment: Supplement to Applications for Market-Based Rate Authority to be effective 5/3/2023.

Filed Date: 4/13/23.

Accession Number: 20230413–5132.

Comment Date: 5 p.m. ET 4/24/23.

Docket Numbers: ER23–1517–001.

Applicants: IP Oberon II, LLC.

Description: Tariff Amendment: Supplement to Applications for Market-Based Rate Authority to be effective 5/30/2023.

Filed Date: 4/13/23.

Accession Number: 20230413–5135.

Comment Date: 5 p.m. ET 5/4/23.

Docket Numbers: ER23–1621–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 20 to be effective 6/12/2023.

Filed Date: 4/12/23.

Accession Number: 20230412–5174.

Comment Date: 5 p.m. ET 5/3/23.

Docket Numbers: ER23–1622–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Amendment: Notice of Cancellation of Rate Schedule FERC No. 312 to be effective 6/12/2023.

Filed Date: 4/12/23.

Accession Number: 20230412–5179.

Comment Date: 5 p.m. ET 5/3/23.

Docket Numbers: ER23–1623–000.

Applicants: Mesquite Solar 4, LLC.

Description: § 205(d) Rate Filing: Certificate of Concurrence to Assignment, Co-Tenancy and SFA to be effective 4/13/2023.

Filed Date: 4/12/23.

Accession Number: 20230412–5182.

Comment Date: 5 p.m. ET 5/3/23.

Docket Numbers: ER23–1624–000.

Applicants: Mesquite Solar 5, LLC.

Description: § 205(d) Rate Filing: Certificate of Concurrence to Amended and Restated Co-Tenancy and SFA to be effective 4/13/2023.

Filed Date: 4/12/23.

Accession Number: 20230412–5185.

Comment Date: 5 p.m. ET 5/3/23.

Docket Numbers: ER23–1625–000.

Applicants: Apex Solar LLC.

Description: Baseline eTariff Filing: Application for Market Based Rate Authority to be effective 4/13/2023.

Filed Date: 4/12/23.

Accession Number: 20230412–5190.

Comment Date: 5 p.m. ET 5/3/23.

Docket Numbers: ER23–1626–000.

Applicants: Mesquite Solar 5, LLC.

Description: § 205(d) Rate Filing: Certificate of Concurrence to Amended and Restated Co-Tenancy and SFA to be effective 4/13/2023.

Filed Date: 4/13/23.

Accession Number: 20230413–5000.

Comment Date: 5 p.m. ET 5/4/23.

Docket Numbers: ER23–1627–000.

Applicants: Mesquite Solar 4, LLC.

Description: § 205(d) Rate Filing: Certificate of Concurrence to Amended

and Restated Co-Tenancy and SFA to be effective 4/13/2023.

Filed Date: 4/13/23.

Accession Number: 20230413–5001.

Comment Date: 5 p.m. ET 5/4/23.

Docket Numbers: ER23–1628–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 4668; Queue No. AE1–038 to be effective 6/12/2023.

Filed Date: 4/13/23.

Accession Number: 20230413–5002.

Comment Date: 5 p.m. ET 5/4/23.

Docket Numbers: ER23–1629–000.

Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: PPL Electric Utilities Corporation submits tariff filing per 35.13(a)(2)(iii: PPL submits revisions to OATT Att. H–8G Depreciation Rates to be effective 6/12/2023.

Filed Date: 4/13/23.

Accession Number: 20230413–5048.

Comment Date: 5 p.m. ET 5/4/23.

Docket Numbers: ER23–1630–000.

Applicants: Idaho Power Company.

Description: § 205(d) Rate Filing: LGIA for Arco Wind No. 580 Between Idaho Power Company and Arco Wind, LLC to be effective 4/13/2023.

Filed Date: 4/13/23.

Accession Number: 20230413–5088.

Comment Date: 5 p.m. ET 5/4/23.

Docket Numbers: ER23–1631–000.

Applicants: Cavalier Solar A, LLC.

Description: Baseline eTariff Filing: Cavalier Solar A, LLC Shared Facilities Agreement to be effective 4/14/2023.

Filed Date: 4/13/23.

Accession Number: 20230413–5094.

Comment Date: 5 p.m. ET 5/4/23.

Docket Numbers: ER23–1632–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 4063 OPPD Interim GIA to be effective 4/12/2023.

Filed Date: 4/13/23.

Accession Number: 20230413–5141.

Comment Date: 5 p.m. ET 5/4/23.

Docket Numbers: ER23–1633–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 4064 OPPD Interim GIA to be effective 4/12/2023.

Filed Date: 4/13/23.

Accession Number: 20230413–5142.

Comment Date: 5 p.m. ET 5/4/23.

Docket Numbers: ER23–1634–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 4065 OPPD Interim GIA to be effective 4/12/2023.

Filed Date: 4/13/23.

Accession Number: 20230413–5143.

Comment Date: 5 p.m. ET 5/4/23.

Docket Numbers: ER23–1635–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 4066 OPPD Interim GIA to be effective 4/12/2023.

Filed Date: 4/13/23.

Accession Number: 20230413–5145.

Comment Date: 5 p.m. ET 5/4/23.

Docket Numbers: ER23–1636–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 4067 OPPD Interim GIA to be effective 4/12/2023.

Filed Date: 4/13/23.

Accession Number: 20230413–5147.

Comment Date: 5 p.m. ET 5/4/23.

Docket Numbers: ER23–1637–000.

Applicants: Idaho Power Company.

Description: § 205(d) Rate Filing: RS 171—IPC/BPA—Purchase, Sale and Security Agreement to be effective 3/24/2023.

Filed Date: 4/13/23.

Accession Number: 20230413–5162.

Comment Date: 5 p.m. ET 5/4/23.

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

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

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

Dated: April 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08274 Filed 4–18–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1625–000]

Apex Solar LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Ocotillo Solar LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 3, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this

time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08271 Filed 4–18–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1618–000]

Ocotillo Solar LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Ocotillo Solar LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is May 3, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08270 Filed 4–18–23; 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 & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR23–12–000.
Applicants: Dow Pipeline Company.
Description: Report Filing: Supplemental Informational Filing to be effective N/A.
Filed Date: 4/12/23.
Accession Number: 20230412–5086.
Comment Date: 5 p.m. ET 5/3/23.

Docket Numbers: PR23–43–000.
Applicants: Salt Plains Storage, LLC.
Description: § 284.123 Rate Filing: Salt Plains—Notification of Change in Circumstances to be effective N/A.
Filed Date: 4/12/23.
Accession Number: 20230412–5173.
Comment Date: 5 p.m. ET 5/3/23.

Docket Numbers: RP23–681–000.
Applicants: Spire Storage West LLC.
Description: Compliance filing: Spire Storage West—Notification of Change in Circumstances to be effective N/A.
Filed Date: 4/12/23.
Accession Number: 20230412–5177.
Comment Date: 5 p.m. ET 4/24/23.

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

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

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

Dated: April 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08268 Filed 4–18–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10902–01–OA]

Public Meeting of the Science Advisory Board Environmental Justice Screen (EJScreen) Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office is announcing a public meeting of the Science Advisory Board Environmental Justice Screen (EJScreen) Review Panel. The purpose of the meeting is to discuss responses to charge questions, listen to public comments and peer review the EPA's EJScreen methodology and updated calculations for the environmental justice (EJ) indexes released publicly in October 2022, as well as other aspects of the calculations. The Panel will also provide recommendations and expert input on other components of the tool.

DATES:

Public Meetings: The Science Advisory Board EJScreen Review Panel

will meet on the following dates. All times listed are in Eastern Standard Time.

1. May 8, 2023, from 9:00 a.m. to 5:00 p.m.

2. May 9, 2023, from 8:30 a.m. to 5:00 p.m.

3. May 10, 2023, from 8:30 a.m. to 1:30 p.m.

Comments: See the section titled ''Procedures for Providing Public Input'' under **SUPPLEMENTARY INFORMATION** for instructions and deadlines.

ADDRESSES: The meeting will be conducted in person at Hyatt Place National Harbor, located at 123 Waterfront Street, National Harbor, MD 20745, and virtually. Please refer to the SAB website at *https://sab.epa.gov* for information on how to attend the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this notice may contact Dr. Zaida Figueroa, Designated Federal Officer (DFO), via telephone (202) 564–2643, or email at *figueroa.zaida@epa.gov.* General information about the SAB, as well as any updates concerning the meeting announced in this notice, can be found on the SAB website at *https://sab.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the Science Advisory Board EJScreen Review Panel will hold a public meeting to discuss responses to charge questions, listen to public comments and peer review the EPA's EJScreen methodology and updated calculations for the environmental justice (EJ) indexes released publicly in October 2022, as well as other aspects of the calculations. The Panel will also provide recommendations and expert input on other components of the tool.

Availability of Meeting Materials: All meeting materials, including the agenda, will be available on the SAB web page at *https://sab.epa.gov.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instruction below to submit comments.

Oral Statements: In general, individuals or groups requesting an oral presentation at a meeting conducted virtually will be limited to three minutes and individuals or groups requesting an oral presentation at an in-person meeting will be limited to five minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Persons interested in providing oral statements should contact the DFO, in writing (preferably via email) at the contact information noted above by May 2, 2023, to be placed on the list of registered speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be submitted to the DFO by May 2, 2023, for consideration at the May 8–10, 2023, meeting. Written statements should be supplied to the DFO at the contact information above via email. Submitters are requested to provide an unsigned version. Members of the public should be aware that their personal contact information if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without the explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO, at the contact information noted above, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

V Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2023–08242 Filed 4–18–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201348–003.

Agreement Name: APL/SWIRE Guam, Saipan—S. Korea, Japan Slot Charter Agreement.

Parties: American Presidents Lines, LLC; Swire Shipping Pte. Ltd.

Filing Party: Conte Cicala, Clyde & Co. US LLP.

Synopsis: The Amendment modifies the amount of space being chartered under the Agreement.

Proposed Effective Date: 4/10/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/34502.

Agreement No.: 201403.

Agreement Name: SSPL/NPDL Slot Charter Agreement.

Parties: Neptune Pacific Direct Line Pte. Ltd.; Swire Shipping Pte. Ltd.

Filing Party: Matthew Thomas, Blank Rome.

Synopsis: The Agreement would authorize Swire Shipping to charter space to Neptune Pacific Direct Line in the trade between the United States (including American Samoa) on the one hand, and Tahiti, Samoa, Tonga, Fiji, Australia and New Zealand on the other hand.

Proposed Effective Date: 5/27/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/79503.

Dated: April 14, 2023.

JoAnne O'Bryant,

Program Analyst.

[FR Doc. 2023–08253 Filed 4–18–23; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than May 19, 2023.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *First Mid Bancshares, Inc.,* through its subsidiary Eagle Sub, LLC, both of Mattoon, Illinois, to acquire Blackhawk Bancorp, Inc., and thereby indirectly acquire Blackhawk Bank, both of Beloit, Wisconsin. Additionally, Eagle Sub, LLC, to become a bank holding company upon the merger (the ''interim holding company merger'') of Blackhawk Bancorp, Inc., with and into Eagle Sub, LLC. Finally, following the interim holding company merger, First Mid Bancshares, Inc., to merge with Eagle Sub, LLC, with First Mid Bancshares, Inc., as the surviving entity.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–08261 Filed 4–18–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of AHRQ subcommittee meeting.

SUMMARY: The subcommittee listed below is a part of AHRQ's Health Services Research Initial Review Group (IRG) Committee. Grant applications are to be reviewed and discussed at this meeting. The subcommittee meeting will be closed to the public.

DATES: See below for date of meeting:

1. *Healthcare Safety and Quality Improvement Research (HSQR)*

Date: June 14–15, 2023

ADDRESSES: Agency for Healthcare Research and Quality (Virtual Review), 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: (To obtain a roster of members, agenda or minutes of the non-confidential portions of the meeting.) Jenny Griffith, Committee Management Officer, Office of Extramural Research Education and Priority Populations, Agency for Healthcare Research and Quality (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 427–1557.

SUPPLEMENTARY INFORMATION: In accordance with section 10 (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), AHRQ announces meetings of the above-listed scientific peer review group, which is a subcommittee of AHRQ's Health Services Research Initial Review Group Committee. The subcommittee meeting will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2 section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). 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. Agenda items for this meeting are subject to change as priorities dictate.

Dated: April 13, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–08250 Filed 4–18–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment for the Emergency Medical Error Reduction Group PSO

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of delisting.

SUMMARY: The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule) authorizes AHRQ, on behalf of the Secretary of HHS, to list as a patient safety organization (PSO) an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ accepted a notification of proposed voluntary relinquishment from the Emergency Medical Error Reduction Group PSO, PSO number P0235, of its status as a PSO, and has delisted the PSO accordingly.

DATES: The delisting was effective at 12:00 Midnight ET (2400) on March 29, 2023.

ADDRESSES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. Both directories can be accessed electronically at the following HHS website: *http://www.pso.ahrq.gov/listed.*

FOR FURTHER INFORMATION CONTACT: Cathryn Bach, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, MS 06N100B, Rockville, MD 20857; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866)

438–7231; TTY (local): (301) 427–1130; Email: *pso@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act, 42 U.S.C. 299b-21 to 299b-26, and the related Patient Safety Rule, 42 CFR part 3, published in the **Federal Register** on November 21, 2008 (73 FR 70732–70814), establish a framework by which individuals and entities that meet the definition of provider in the Patient Safety Rule may voluntarily report information to PSOs listed by AHRQ, on a privileged and confidential basis, for the aggregation and analysis of patient safety work product.

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of PSOs.

AHRQ has accepted a notification of proposed voluntary relinquishment from the Emergency Medical Error Reduction Group PSO to voluntarily relinquish its status as a PSO. Accordingly, the Emergency Medical Error Reduction Group PSO, P0235, was delisted effective at 12:00 Midnight ET (2400) on March 29, 2023.

More information on PSOs can be obtained through AHRQ's PSO website at *http://www.pso.ahrq.gov.*

Dated: April 13, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–08247 Filed 4–18–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1338]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments; correction.

SUMMARY: The Food and Drug Administration is correcting a notice entitled ''Vaccines and Related Biological Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments'' that appeared in the **Federal Register** of April 11, 2023. The document announced a forthcoming public advisory committee meeting of the Vaccines and Related Biological Products Advisory Committee. The document was published with the incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Lisa Granger, Office of Policy, Planning, Legislation and International Affairs, Food and Drug Administration, 301–796–9115, *Lisa.Granger@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Tuesday, April 11, 2023 (88 FR 21688) in FR Doc. 2023–248, the following corrections are made:

1. On page 21688, in the third column, in the header of the document, ''Docket No. FDA–2023–N–0378'' is corrected to read ''Docket No. FDA–2023–N–1338'' and in the **ADDRESSES** section, in the third line of the last paragraph, ''FDA–2023–N–0378'' is corrected to read ''FDA–2023–N–1338.''

2. On page 21689, in the first column, in the second line of the ''Instructions:'' section, Docket No. FDA–2023–N–0378'' is corrected to read ''Docket No. FDA–2023–N–1338''.

Dated: April 14, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–08279 Filed 4–18–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3065]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Tobacco Products; Required Warnings for Cigarette Packages and Advertisements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by May 19, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0877. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Tobacco Products; Required Warnings for Cigarette Packages and Advertisements—21 CFR Part 1141

OMB Control Number 0910–0877—Extension

This information collection supports FDA regulations and guidance. Tobacco products are generally governed by chapter IX of the Federal Food, Drug, and Cosmetic Act (sections 900 through 920) (21 U.S.C. 387 through 21 U.S.C. 387t).

On March 18, 2020, FDA issued a final rule establishing new cigarette health warnings for cigarette packages and advertisements entitled ''Tobacco Products; Required Warnings for Cigarette Packages and Advertisements'' (85 FR 15638; *https://www.federalregister.gov/d/2020-05223*). The final rule implements a provision of the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) that requires FDA to issue regulations requiring color graphics depicting the negative health consequences of smoking to accompany new textual warning label statements. The Tobacco Control Act amends the Federal Cigarette Labeling and Advertising Act of 1965 (FCLAA) (15 U.S.C. 1333) to require each cigarette package and advertisement to bear one of the new required warnings. The final rule specifies the 11 new textual warning label statements and accompanying color graphics.

Section 1141.10(g) (21 CFR 1141.10(g) and section 4(c) of the FCLAA sets forth the specific marketing requirements relating to the random and equal display and distribution of required warnings on cigarette packaging and quarterly rotation of required warnings in alternating sequence in cigarette advertising and requires the submission of plans outlining how the cigarette packaging and advertising will comply with such requirements. FDA must review and approve cigarette plans in advance of any person displaying or distributing cigarette packages or advertisements for products that are required to carry the required warnings, and a record of the FDA-approved plan must be established and maintained by the tobacco product manufacturer.

To implement these statutory and regulatory requirements, cigarette plans will be reviewed by FDA upon submission by respondents. FDA published a guidance document on July 9, 2021, entitled ''Submission of Plans for Cigarette Packages and Cigarette Advertisements'' which describes cigarette plans information, format and submission (*https://www.fda.gov/regulatory-information/search-fda-guidance-documents/submission-plans-cigarette-packages-and-cigarette-advertisements-revised*).

Pursuant to section 201(b) of the Tobacco Control Act, FDA finalized the ''Required Warnings for Cigarette Packages and Advertisements'' rule with an effective date of June 18, 2021, 15 months after the date of publication. On April 3, 2020, the final rule was challenged in the U.S. District Court for the Eastern District of Texas.[1] The effective date of the final rule has been delayed in accordance with orders issued by the U.S. District Court for the Eastern District of Texas. Visit FDA's website at *https://www.fda.gov/tobacco-products/labeling-and-warning-statements-tobacco-products/cigarette-labeling-and-health-warning-requirements* for updates regarding the effective date of the rule and related timelines, including the recommended date for submitting cigarette plans for FDA review.

In the **Federal Register** of September 19, 2022 (87 FR 57206), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Part 1141 and activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Original Submission (Initial Plan)	59	1	59	150	8,850
Supplement	30	1	30	75	2,250
Total					11,100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates are based on FDA's experience with information collections for other tobacco product plans (*i.e.,* smokeless, OMB control number 0910–0671 and cigars, OMB control number 0910–0768) and 2017 Treasury Alcohol and Tobacco Tax and Trade Bureau data.

FDA estimates 59 entities are affected. We estimate these 59 entities will submit initial plans, and it will take an average of 150 hours per respondent to prepare and submit a plan for packaging and advertising for a total of 8,850 hours. We estimate that about half of respondents will submit a supplement. If a supplement to an approved plan is submitted, FDA estimates it will take half the time per response. We estimate receiving 30 supplements at 75 hours per response for a total of 2,250 hours. FDA estimates that the total hours for submitting initial plans and supplements will be 11,100.

Section 1141.10(g)(4) establishes that each tobacco product manufacturer required to randomly and equally display and distribute warnings on cigarette packages or quarterly rotate warnings in cigarette advertisements in accordance with an FDA-approved plan under section 4 of the FCLAA and part 1141 must maintain a copy of the FDA-approved plan (approved under § 1141.10(g)(3)). This copy of such FDA-approved plan must be available for inspection and copying by officers or employees of FDA. This subsection requires that the FDA-approved plan must be retained while in effect and for a period of not less than 4 years from the date it was last in effect.

[1] *R.J. Reynolds Tobacco Co. et al.* v. *United States Food and Drug Administration et al.,* No. 6:20–cv–00176 (E.D. Tex. filed April 3, 2020).

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Part 1141 and activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Original Submission (Initial Plan) Records	59	1.5	89	3	267
Total					267

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that 59 recordkeepers will keep a total of about 89 records at 3 hours per record for a total of 267 hours. As stated previously, these estimates are based on FDA's experience with information collections for other tobacco product plans (*i.e.,* smokeless, OMB control number 0910–0671 and cigars, OMB control number 0910–0768). Based on our estimates for the submission of one-time, initial plans and supplements (*i.e.,* that all respondents will submit one-time, initial plans and about half of respondents will submit supplements to FDA-approved plans), we estimate that each recordkeeper will keep an average of 1.5 records.

FDA concludes that the required warnings for cigarette packages and cigarette advertisements in § 1141.10 are not subject to review by OMB because they do not constitute a ''collection of information'' under the PRA (44 U.S.C. 3501–3521). Rather, these labeling statements are a ''public disclosure'' of information originally supplied by the Federal Government to the recipient for the purpose of ''disclosure to the public'' (5 CFR 1320.3(c)(2)).

Since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: April 14, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–08280 Filed 4–18–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1168]

Agency Information Collection Activities; Proposed Collection; Comment Request; Human Cells, Tissues, and Cellular and Tissue-Based Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection associated with statutory and regulatory requirements that govern certain human cells, tissues, and cellular and tissue-based products (HCT/Ps).

DATES: Either electronic or written comments on the collection of information must be submitted by June 20, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 20, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–1168 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Human Cells, Tissues, and Cellular and Tissue-Based Products.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information

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

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

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), 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(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed 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) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Human Cells, Tissues, and Cellular and Tissue-Based Products—21 CFR Part 1271

OMB Control Number 0910–0543—Extension

This information collection helps support the implementation of statutory and regulatory requirements that govern certain human cells, tissues, and cellular and tissue-based products (HCT/Ps). Manufacturers of HCT/Ps regulated solely under the authority of section 361 of the Public Health Service Act (the PHS Act) (42 U.S.C. 264) are required to register and list HCT/Ps pursuant to part 1271 (21 CFR part 1271) whether or not the HCT/P enters into interstate commerce. Manufacturers of HCT/Ps regulated as drugs, devices and/or biological products under section 351 of the PHS Act (42 U.S.C. 262) and/or section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), are required to register and list HCT/Ps following the procedures in part 207 (21 CFR part 207) (if a drug and/or biological product) or part 807 (21 CFR part 807) (if a device). Information collection associated with the registration and listing requirements in parts 207 and 807 are currently approved in OMB control numbers 0910–0045 and 0910–0625, respectively.

Agency regulations in part 1271 set forth general provisions applicable to HCT/Ps in subpart A (§§ 1271.1 through 1271.20). Those HCT/Ps that are regulated solely under the authority of section 361 of the PHS Act are described in § 1271.10. Provisions in part 1271, subpart B (§§ 1271.21 through 1271.37), establish procedures for registration and listing including format and content elements along with scheduled timeframes for the submission of certain information and action by FDA. The regulations also provide for waivers from the electronic format requirement, amendments to establishment registration, and requesting information on registration and listing from FDA.

Registrants use Form FDA 3356, Establishment Registration and Listing for HCT/Ps, to submit HCT/P establishment registration and listing information to the Electronic Human Cell and Tissue Establishment Registration System (eHCTERs). Electronic submission of HCT/P establishment and product listing information is required under § 1271.22. However, a request for waiver of the electronic submission requirement may be submitted pursuant to § 1271.23. If the waiver request is granted, Form FDA 3356 (and accompanying instructions) may be downloaded to complete and submit by mail. The Tissue Establishment Registration page (*https://www.fda.gov/vaccines-blood-biologics/biologics-establishment-registration/tissue-establishment-registration*) provides access to eHCTERs, instructions for using eHCTERs, and other resource information that may be helpful to respondents.

Provisions in part 1271, subpart C (§§ 1271.45 through 1271.90), establish requirements for determining donor eligibility, including donor screening and testing, explaining these requirements are a component of current good tissue practice (CGTP) requirements set forth in part 1271, subpart D (§§ 1271.145 through 1271.320). The provisions in part 1271, subparts C and D, govern the methods used in, and the facilities and controls used for, the manufacture of HCT/Ps, including but not limited to all steps in recovery, donor screening, donor testing, processing, storage, labeling, packaging, and distribution.

The regulations in part 1271, subpart E and subpart F (§§ 1271.330 through 1271.440), establish additional requirements for establishments described in § 1271.10, including inspection and enforcement provisions, and recordkeeping requirements providing for the retention, notification to third parties, and disclosure of such records to FDA.

Description of Respondents: Respondents to this information collection are establishments that recover, process, store, label, package, or distribute any HCT/P that is regulated solely under section 361 of the PHS Act and regulations in part 1271 or perform donor screening or testing.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section; reporting activities	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [2]
1271.10(b)(1) and 1271.21(b); register and submit list of each HCT/P manufactured by existing establishments.	2,374	1	2,374	0.5 (30 minutes) ...	1,187
1271.10(b)(1) and (2), 1271.21(a), and 1271.25(a) and (b); register and submit list of each HCT/P manufactured by new establishments.	157	1	157	0.75 (45 minutes)	118
1271.10(b)(2), 1271.21(c)(2)(ii), and 1271.25(c); update list.	566	1	566	0.5 (30 minutes) ...	283
1271.23; request electronic format waiver	1	1	1	1	1
1271.26; location/ownership amendments	346	1	346	0.25 (15 minutes)	87
1271.155(a); request exemption or alternative to any requirement.	18	1.333	24	3	72
1271.350(a)(1) and (3); investigate and report adverse actions.	15	14.266	214	1	214
1271.420(a); notify FDA (imports)	200	2.8	560	0.25 (15 minutes)	140
Total		23.399	4,242		2,102

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Rounded to the nearest whole number.

Based on current data from eHCTERS, we estimate there are 2,374 HCT/P current registrants and 157 new registrants, for a total of 2,531 respondents annually. Information collection provisions that include reporting activities are identified in table 1. The estimated burden for each of the individual reporting activities was calculated based on the annual number of submissions, averaged among respondents, and based on informal communications with industry.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR part 1271; establish and maintain records	Number of recordkeepers	Number of records per recordkeeper [2]	Total annual records	Average burden per recordkeeping [2]	Total hours [3]
1271.47; Establishing SOPs	157	1	157	48	7,536
1271.47; Updating SOPs	2,374	1	2,374	24	56,976
1271 Subpart C & Subpart D: Establishing and maintaining records documenting methods used in, and the facilities and controls used for, the manufacture of HCT/Ps, including but not limited to all steps in recovery, donor screening, donor testing, processing, storage, labeling, packaging, and distribution.	2,531	3,311.36	8,381,049	0.26 (~15 minutes)	2,170,493
Total			8,383,580		2,235,005

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Decimals rounded to the nearest hundredth.
[3] Rounded to the nearest whole number.

To calculate burden associated with the establishment and maintenance of operating procedures in accordance with applicable CGTP requirements, we assume twice the time is necessary for new establishments. Burden we attribute to recordkeeping activities associated with the remaining provisions in part 1271 is assumed to be distributed among the individual elements and averaged among respondents.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR part 1271—human cells, tissues, and cellular and tissue-based products; activity	Number of respondents	Number of disclosures per respondent [2]	Total annual disclosures	Average burden per disclosure [2]	Total hours
Disclosing information as required under applicable good manufacturing practices/CGTP provisions.	1,611	4,984.75	8,030,435	0.30 (~18 minutes)	2,389,226

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Decimals rounded to the nearest hundredth.

As part of the recordkeeping requirements, certain provisions in part 1271 require the disclosure of information to third parties, particularly as it pertains to the distribution of HCT/Ps. We estimate a proportion of the respondents to the information collection (1,611) will incur burden resulting from these disclosures and have therefore accounted for burden that may be attributable to these distinct activities.

Our estimated burden for the information collection reflects an overall reduction of 150,137 hours and 347,843 responses annually, which corresponds to a decrease in the number HCT/P establishments and a decrease in the number HCT/Ps distributed since our last evaluation.

Dated: April 14, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–08277 Filed 4–18–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Tribal Self-Governance Planning Cooperative Agreement Program

Announcement Type: New.

Funding Announcement Number: [HHS–2023–IHS–TSGP–0001].

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.444.

Key Dates

Application Deadline Date: June 20, 2023.

Earliest Anticipated Start Date: July 18, 2023.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting applications for cooperative agreements for the Tribal Self-Governance Planning Cooperative Agreement Program. This program is authorized under the Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); and Title V of the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. 5383(e). The Assistance Listings section of *SAM.gov* (*https://same.gov/content/home*) describes this program under 93.444.

Background

The Tribal Self-Governance Program (TSGP) is more than an IHS program; it is an expression of the Government-to-Government relationship between the United States (U.S.) and Indian Tribes. Through the TSGP, Tribes negotiate with the IHS to assume Programs, Services, Functions, and Activities (PSFAs), or portions thereof, which gives Tribes the authority to manage and tailor health care programs in a manner that best fits the needs of their communities.

Participation in the TSGP affords Tribes the most flexibility to tailor their health care needs by choosing one of three ways to obtain health care from the Federal Government for their citizens. Specifically, Tribes can choose to: (1) receive health care services directly from the IHS; (2) contract with the IHS to administer individual programs and services the IHS would otherwise provide (referred to as Title I Self-Determination Contracting); and (3) compact with the IHS to assume control over health care programs the IHS would otherwise provide (referred to as Title V Self-Governance Compacting or the TSGP). These options are not exclusive and Tribes may choose to combine options based on their individual needs and circumstances.

The TSGP is a tribally-driven initiative and strong Federal-Tribal partnerships are essential to the program's success. The IHS established the Office of Tribal Self-Governance (OTSG) to implement the Self-Governance authorities under the ISDEAA. The primary OTSG functions are to: (1) serve as the primary liaison and advocate for Tribes participating in the TSGP; (2) develop, direct, and implement TSGP policies and procedures; (3) provide information and technical assistance to Self-Governance Tribes; and (4) advise the IHS Director on compliance with TSGP policies, regulations, and guidelines. Each IHS Area has an Agency Lead Negotiator (ALN), designated by the IHS Director to act on his or her behalf, who has authority to negotiate Self-Governance Compacts and Funding Agreements. Tribes interested in participating in the TSGP should contact their respective ALN to begin the Self-Governance planning and negotiation process. Tribes currently participating in the TSGP that are interested in expanding existing or adding new PSFAs should also contact their respective ALN to discuss the best methods for expanding or adding new PSFAs.

Purpose

The purpose of this Planning Cooperative Agreement is to provide resources to Tribes interested in entering the TSGP and to existing Self-Governance Tribes interested in assuming new or expanded PSFAs. Title V of the ISDEAA requires a Tribe or Tribal organization (T/TO) to complete a planning phase to the satisfaction of the Tribe. The planning phase must include legal and budgetary research and internal Tribal government planning and organizational preparation relating to the administration of health care programs. See 25 U.S.C. 5383(d).

The planning phase is critical to negotiations and helps Tribes make informed decisions about which PSFAs to assume and what organizational changes or modifications are necessary to successfully support those PSFAs. A thorough planning phase improves timeliness and efficient negotiations and ensures that the Tribe is fully prepared to assume the transfer of IHS PSFAs to the Tribal health program.

A Planning Cooperative Agreement is not a prerequisite to enter the TSGP and a Tribe may use other resources to meet the planning requirement. Tribes that receive Planning Cooperative Agreements are not obligated to participate in the TSGP and may choose to delay or decline participation based on the outcome of their planning activities. This also applies to existing Self-Governance Tribes exploring the option to expand their current PSFAs or assume additional PSFAs.

II. Award Information

Funding Instrument—Cooperative Agreement

Estimated Funds Available

The total funding identified for fiscal year (FY) 2023 is approximately $900,000. Individual award amounts are anticipated to be $180,000. The funding available for competing awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

The IHS anticipates issuing approximately five awards under this program announcement.

Period of Performance

The period of performance is for 1 year.

Cooperative Agreement

Cooperative agreements awarded by the Department of Health and Human Services (HHS) are administered under the same policies as grants. However, the funding agency, IHS, is anticipated to have substantial programmatic involvement in the project during the

entire period of performance. Below is a detailed description of the level of involvement required of the IHS.

Substantial Agency Involvement Description for Cooperative Agreement

A. Provide descriptions of PSFAs and associated funding at all organizational levels (service unit, area, and headquarters) including funding formulas and methodologies related to determining Tribal shares.

B. Meet with Planning Cooperative Agreement recipients to provide program information and discuss methods currently used to manage and deliver health care.

C. Identify and provide statutes, regulations, and policies that provide authority for administering IHS programs.

D. Provide technical assistance on the IHS budget, Tribal shares, and other topics as needed.

III. Eligibility Information

1. Eligibility

To be eligible for this opportunity, applicant must meet the following criteria:

- Applicant must be an ''Indian Tribe'' as defined in 25 U.S.C. 5304(e); a ''Tribal Organization'' as defined in 25 U.S.C. 5304(l); or an ''Inter-Tribal Consortium'' as defined at 42 CFR 137.10. Please note that Tribes prohibited from contracting pursuant to the ISDEAA are not eligible. See section 424(a) of the Consolidated Appropriations Act, 2014, Public Law 113–76, as amended by section 445 of the Consolidated Appropriations Act, 2023, Public Law 117–328.
- Pursuant to 25 U.S.C. 5383(c)(1)(B), applicant must request participation in self-governance by resolution or other official action by the governing body of each Indian Tribe to be served. Note: If the applicant has already successfully completed the planning phase required and requested participation in the IHS Tribal Self-Governance Program by official Tribal action, then the applicant is not eligible for this funding opportunity.
- Pursuant to 25 U.S.C. 5383(c)(1)(C), applicant must demonstrate financial stability and financial management capability for 3 fiscal years.

Meeting the eligibility criteria for a Planning Cooperative Agreement does not mean that a T/TO is eligible for participation in the IHS TSGP under title V of the ISDEAA. See 25 U.S.C. 5383, 42 CFR 137.15–23. For additional information on the eligibility for the IHS TSGP, please visit the ''Eligibility and Funding'' page on the OTSG website located at *https://www.ihs.gov/SelfGovernance.*

The Division of Grants Management (DGM) will notify any applicants deemed ineligible.

2. Additional Information on Eligibility

The IHS does not fund concurrent projects. If an applicant is successful under this announcement, any subsequent applications in response to other Tribal Self-Governance Planning Cooperative Agreement Program announcements from the same applicant will not be funded. Applications on behalf of individuals (including sole proprietorships) and foreign organizations are not eligible and will be disqualified from competitive review and funding under this funding opportunity.

Note: Please refer to section IV.2 (Application and Submission Information/ Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal Resolutions, proof of nonprofit status, etc.

3. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

4. Other Requirements

Applications with budget requests that exceed the highest dollar amount outlined under section II Award Information, Estimated Funds Available, or exceed the period of performance outlined under Section II Award Information, Period of Performance, are considered not responsive and will not be reviewed. The DGM will notify the applicant.

Additional Required Documentation

Tribal Resolution

The DGM must receive an official, signed Tribal Resolution prior to issuing a Notice of Award (NoA) to any T/TO selected for funding. An applicant that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. However, if an official signed Tribal Resolution cannot be submitted with the application prior to the application deadline date, a draft Tribal Resolution must be submitted with the application by the deadline date in order for the application to be considered complete and eligible for review. The draft Tribal Resolution is not in lieu of the required signed resolution but is acceptable until a signed resolution is received. If an application without a signed Tribal Resolution is selected for funding, the applicant will be contacted by the Grants Management Specialist (GMS) listed in this funding announcement and given 90 days to submit an official signed Tribal Resolution to the GMS. If the signed Tribal Resolution is not received within 90 days, the award will be forfeited.

Applicants organized with a governing structure other than a Tribal council may submit an equivalent document commensurate with their governing organization.

IV. Application and Submission Information

Grants.gov uses a Workspace model for accepting applications. The Workspace consists of several online forms and three forms in which to upload documents—Project Narrative, Budget Narrative, and Other Documents. Give your files brief descriptive names. The filenames are key in finding specific documents during the merit review and in processing awards. Upload all requested and optional documents individually, rather than combining them into a single file. Creating a single file creates confusion when trying to find specific documents. Such confusion can contribute to delays in processing awards, and could lead to lower scores during the merit review.

1. Obtaining Application Materials

The application package and detailed instructions for this announcement are available at *https://www.Grants.gov.*

Please direct questions regarding the application process to *DGM@ihs.gov.*

2. Content and Form Application Submission

Mandatory documents for all applicants include:

- Application forms:

1. SF–424, Application for Federal Assistance.
2. SF–424A, Budget Information—Non-Construction Programs.
3. SF–424B, Assurances—Non-Construction Programs.
4. Project Abstract Summary form.

- Project Narrative (not to exceed 10 pages). See Section IV.2.A, Project Narrative for instructions.
- Budget Narrative (not to exceed 5 pages). See Section IV.2.B, Budget Narrative for instructions.
- One-page Timeframe Chart.
- Tribal Resolution(s) as described in Section III, Eligibility.
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work (if applicable).
- Disclosure of Lobbying Activities (SF–LLL), if applicant conducts reportable lobbying.

• Certification Regarding Lobbying (GG-Lobbying Form).
• Copy of current Negotiated Indirect Cost (IDC) rate agreement (required in order to receive IDC).
• Organizational Chart (optional).
• Documentation sufficient to demonstrate financial stability and financial management capability for 3 fiscal years. The Indian Tribe must provide evidence that, for the 3 fiscal years prior to requesting participation in the TSGP, the Indian Tribe has had no uncorrected significant and material audit exceptions in the required annual audit of the Indian Tribe's Self-Determination Contracts or Self-Governance Funding Agreements with any Federal agency. See 25 U.S.C. 5383, 42 CFR 137.15–23. For T/TO that expended $500,000 or more in Federal awards, the OTSG shall retrieve the audits directly from the Federal Audit Clearinghouse. For T/TO that expended less than $500,000 in Federal awards, the T/TO must provide evidence of the program review correspondence from the IHS or Bureau of Indian Affairs officials. See 42 CFR 137.21–23.
• Documentation of current Office of Management and Budget (OMB) Financial Audit.

Acceptable forms of documentation include:

1. Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
2. Face sheets from audit reports. Applicants can find these on the FAC website at *https://facdissem.census.gov/*.

Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements. Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS. See *https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html.*

Requirements for Project and Budget Narratives

A. Project Narrative: This narrative should be a separate document that is no more than 10 pages and must: (1) have consecutively numbered pages; (2) use black font 12 points or larger (applicants may use 10 point font for tables); (3) be single-spaced; and (4) be formatted to fit standard letter paper (8–½ × 11 inches). Do not combine this document with any others.

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria), and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the overall page limit, the reviewers will be directed to ignore any content beyond the page limit. The 10-page limit for the project narrative does not include the work plan, standard forms, Tribal Resolutions, budget, budget narratives, and/or other items. Page limits for each section within the project narrative are guidelines, not hard limits.

There are three parts to the project narrative: Part 1—Program Information; Part 2—Program Planning and Evaluation; and Part 3—Program Report. See below for additional details about what must be included in the narrative.

The page limits below are for each narrative and budget submitted.

Part 1: Program Information (Limit—4 Pages)

Section 1: Needs

Describe the Tribe's current health program activities, including: how long it has been operating; what programs or services are currently being provided; and if the applicant is currently administering any ISDEAA Title I Self-Determination Contracts or Title V Self-Governance Compacts. Identify the need for assistance and how the Planning Cooperative Agreement would benefit the health activities the Tribe is currently administering or looking to expand.

Part 2: Program Planning and Evaluation (Limit—4 Pages)

Section 1: Program Plans

Project Objective(s), Work Plan, and Approach

State in measurable terms the objectives and appropriate activities to achieve the following Planning Cooperative Agreement recipient award activities:

(A) Research and analyze the complex IHS budget to gain a thorough understanding of funding distribution at all organizational levels and determine which PSFAs the Tribe may elect to assume or expand.

(B) Establish a process to identify PSFAs and associated funding that may be incorporated into current programs.

(C) Determine the Tribe's share of each PSFA and evaluate the current level of health care services being provided to make an informed decision on new or expanded program assumption.

(D) Describe how the objectives are consistent with the purpose of the program, the needs of the people to be served, and how they will be achieved within the proposed timeframe. Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project and how they will be measured.

Organizational Capabilities, Key Personnel, and Qualifications

Describe the organizational structure of the Tribe and its ability to manage the proposed project. Include resumes or position descriptions of key staff showing requisite experience and expertise. If applicable, include resumes and scope of work for consultants that demonstrate experience and expertise relevant to the project.

Section 2: Program Evaluation

Define the criteria to be used to evaluate planning activities and how they will be measured. Describe fully and clearly the methodology that will be used to determine if the needs identified are being met and if the outcomes are being achieved. This section must address the following questions:

(A) Are the goals and objectives measurable and consistent with the purpose of the program and the needs of the people to be served?

(B) Are the goals achievable within the proposed timeframe?

Part 3: Program Report (Limit—2 Pages)

Section 1: Describe your organization's significant program activities and accomplishments over the past 6 to 12 months associated with the goals of this announcement.

Please identify and describe significant program activities and achievements associated with the delivery of quality health services. Provide a comparison of the actual accomplishments to the goals established for the project period or, if applicable, provide justification for the lack of progress.

B. Budget Narrative (Limit—5 Pages)

Provide a budget narrative that explains the amounts requested for each line item of the budget from the SF–424A (Budget Information for Non-Construction Programs) for the first year of the project. The applicant can submit with the budget narrative a more detailed spreadsheet than is provided by the SF–424A (the spreadsheet will not be considered part of the budget narrative). The budget narrative should specifically describe how each item would support the achievement of proposed objectives. Be very careful about showing how each item in the ''Other'' category is justified. Do NOT

use the budget narrative to expand the project narrative.

3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Time on the Application Deadline Date. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*). If problems persist, contact Mr. Paul Gettys, Deputy Director, DGM, by email at *DGM@ihs.gov.* Please be sure to contact Mr. Gettys at least 10 days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

The IHS will not acknowledge receipt of applications.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and indirect costs.
- Only one cooperative agreement may be awarded per applicant.

6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the *https://www.Grants.gov* website to submit an application. Find the application by selecting the ''Search Grants'' link on the homepage. Follow the instructions for submitting an application under the Package tab. No other method of application submission is acceptable.

If you cannot submit an application through *Grants.gov*, you must request a waiver prior to the application due date. You must submit your waiver request by email to *DGM@ihs.gov.* Your waiver request must include clear justification for the need to deviate from the required application submission process. The IHS will not accept any applications submitted through any means outside of *Grants.gov* without an approved waiver.

If the DGM approves your waiver request, you will receive a confirmation of approval email containing submission instructions. You must include a copy of the written approval with the application submitted to the DGM. Applications that do not include a copy of the waiver approval from the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m. Eastern Time on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

- Please search for the application package in *https://www.Grants.gov* by entering the Assistance Listing number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to 20 working days.
- Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.
- Applicants must comply with any page limits described in this funding announcement.
- After submitting the application, you will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The IHS will not notify you that the application has been received.

System for Award Management

Organizations that are not registered with the System for Award Management (SAM) must access the SAM online registration through the SAM home page at *https://sam.gov.* Organizations based in the U.S. will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active. Please see *SAM.gov* for details on the registration process and timeline. Registration with the SAM is free of charge but can take several weeks to process. Applicants may register online at *https://sam.gov.*

Unique Entity Identifier

Your *SAM.gov* registration now includes a Unique Entity Identifier (UEI), generated by *SAM.gov*, which replaces the DUNS number obtained from Dun and Bradstreet. *SAM.gov* registration no longer requires a DUNS number.

Check your organization's *SAM.gov* registration as soon as you decide to apply for this program. If your *SAM.gov* registration is expired, you will not be able to submit an application. It can take several weeks to renew it or resolve any issues with your registration, so do not wait.

Check your *Grants.gov* registration. Registration and role assignments in *Grants.gov* are self-serve functions. One user for your organization will have the authority to approve role assignments, and these must be approved for active users in order to ensure someone in your organization has the necessary access to submit an application.

The Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), requires all HHS recipients to report information on sub-awards. Accordingly, all IHS recipients must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its UEI number to the prime recipient organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

Additional information on implementing the Transparency Act, including the specific requirements for SAM, are available on the DGM Grants Management, Policy Topics web page at *https://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

Possible points assigned to each section are noted in parentheses. The project narrative and budget narrative should include only the first year of activities. The project narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to fully understand the project. Attachments requested in the criteria do not count toward the page limit for the narratives. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

1. Evaluation Criteria

A. Introduction and Need for Assistance (25 Points)

Describe the Tribe's current health program activities, including: how long it has been operating, what programs or services are currently being provided, and if the applicant is currently administering any ISDEAA Title I Self-Determination Contracts or Title V Self-Governance Compacts. Identify the need for assistance and how the Planning Cooperative Agreement would benefit the health activities the Tribe is currently administering and/or looking to expand.

B. Project Objective(s), Work Plan and Approach (25 Points)

State in measurable terms the objectives and appropriate activities to achieve the following Planning Cooperative Agreement recipient award activities:

(1) Research and analyze the complex IHS budget to gain a thorough understanding of funding distribution at all organizational levels and determine which PSFAs the Tribe may elect to assume or expand.

(2) Establish a process to identify PSFAs and associated funding that may be incorporated into current programs.

(3) Determine the Tribe's share of each PSFA and evaluate the current level of health care services being provided to make an informed decision on new or expanded program assumption.

(4) Describe how the objectives are consistent with the purpose of the program, the needs of the people to be served, and how they will be achieved within the proposed timeframe. Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project.

C. Program Evaluation (25 Points)

Define the criteria to be used to evaluate planning activities and how they will be measured. Clearly describe the methodologies and parameters that will be used to determine if the needs identified are being met and if the outcomes identified are being achieved. Are the goals and objectives measurable and consistent with the purpose of the program and meet the needs of the people to be served? Are they achievable within the proposed timeframe? Describe how the assumption of PSFAs enhances sustainable health delivery. Ensure the measurement includes activities that will lead to sustainability.

D. Organizational Capabilities, Key Personnel, and Qualifications (15 Points)

Describe the organizational structure of the Tribe and its ability to manage the proposed project. Include resumes or position descriptions of key staff showing requisite experience and expertise. If applicable, include resumes and scope of work for consultants that demonstrate experience and expertise relevant to the project.

E. Categorical Budget and Budget Justification (10 Points)

Submit a budget with a narrative describing the budget request and matching the scope of work described in the project narrative. Justify all expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative.

Additional documents can be uploaded as Other Attachments in *Grants.gov*. These can include:

- Work plan, logic model, and/or timeline for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Rate Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened for eligibility and completeness as outlined in this funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the Review Committee (RC) based on the evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds (budget limit, period of performance limit) will not be referred to the RC and will not be funded. The DGM will notify the applicant of this determination.

Applicants must address all program requirements and provide all required documentation.

3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS Office of Tribal Self-Governance within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF–424) of the application.

A. Award Notices for Funded Applications

The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the award, the terms and conditions of the award, the effective date of the award, the budget period, and period of performance. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for 1 year. If funding becomes available during the course of the year, the application may be reconsidered.

Note: Any correspondence, other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization, is not an authorization to implement their program on behalf of the IHS.

VI. Award Administration Information

1. Administrative Requirements

Awards issued under this announcement are subject to, and are administered in accordance with, the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Awards:

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards currently in effect or implemented during the period of award, other Department regulations and policies in effect at the time of award, and applicable statutory provisions. At the time of publication, this includes 45 CFR part 75, at *https://www.govinfo.gov/content/pkg/CFR-2021-title45-vol1/pdf/CFR-2021-title45-vol1-part75.pdf.*
- Please review all HHS regulatory provisions for Termination at 45 CFR 75.372, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2021-title45-vol1/pdf/CFR-2021-title45-vol1-sec75-372.pdf.*

C. Grants Policy:

- HHS Grants Policy Statement, Revised January 2007, at *https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf.*

D. Cost Principles:

• Uniform Administrative Requirements for HHS Awards, ''Cost Principles,'' at 45 CFR part 75 subpart E, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2021-title45-vol1/pdf/CFR-2021-title45-vol1-part75-subpartE.pdf.*

E. Audit Requirements:

• Uniform Administrative Requirements for HHS Awards, ''Audit Requirements,'' at 45 CFR part 75 subpart F, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2021-title45-vol1/pdf/CFR-2021-title45-vol1-part75-subpartF.pdf.*

F. As of August 13, 2020, 2 CFR part 200 was updated to include a prohibition on certain telecommunications and video surveillance services or equipment. This prohibition is described in 2 CFR 200.216. This will also be described in the terms and conditions of every IHS grant and cooperative agreement awarded on or after August 13, 2020.

2. Indirect Costs

This section applies to all recipients that request reimbursement of IDC in their application budget. In accordance with HHS Grants Policy Statement, Part II–27, the IHS requires applicants to obtain a current IDC rate agreement and submit it to the DGM prior to the DGM issuing an award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable award activities under the current award's budget period. If the current rate agreement is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Per 2 CFR 200.414(f) Indirect (F&A) costs,

> any non-Federal entity (NFE) [*i.e.,* applicant] that does not have a current negotiated rate, . . . may elect to charge a de minimis rate of 10 percent of modified total direct costs which may be used indefinitely. As described in Section 200.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as the NFE chooses to negotiate for a rate, which the NFE may apply to do at any time.

Electing to charge a de minimis rate of 10 percent can be used by applicants that have received an approved negotiated indirect cost rate from HHS or another cognizant Federal agency. Applicants awaiting approval of their indirect cost proposal may request the 10 percent de minimis rate. When the applicant chooses this method, costs included in the indirect cost pool must not be charged as direct costs to the award.

Available funds are inclusive of direct and appropriate indirect costs. Approved indirect funds are awarded as part of the award amount, and no additional funds will be provided.

Generally, IDC rates for IHS recipients are negotiated with the Division of Cost Allocation at *https://rates.psc.gov/* or the Department of the Interior (Interior Business Center) at *https://ibc.doi.gov/ICS/tribal.* For questions regarding the indirect cost policy, please write to *DGM@ihs.gov.*

3. Reporting Requirements

The recipient must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active award, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions and/or the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the recipient organization or the individual responsible for preparation of the reports. Per DGM policy, all reports must be submitted electronically by attaching them as a ''Grant Note'' in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please use the form under the Recipient User section of *https://www.grantsolutions.gov/home/getting-started-request-a-user-account/.* Download the Recipient User Account Request Form, fill it out completely, and submit it as described on the web page and in the form.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually. The progress reports are due within 30 days after the reporting period ends (specific dates will be listed in the NoA Terms and Conditions). These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 120 days of the period of performance end date.

B. Financial Reports

Federal Financial Reports are due 90 days after the end of each budget period, and a final report is due 120 days after the end of the period of performance. Recipients are responsible and accountable for reporting accurate information on all required reports: the Progress Reports and the Federal Financial Report.

Failure to submit timely reports may result in adverse award actions blocking access to funds.

C. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal awards to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

The IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs, and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation threshold met for any specific reporting period.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Management website at *https://www.ihs.gov/dgm/policytopics/.*

D. Non-Discrimination Legal Requirements for Recipients of Federal Financial Assistance (FFA)

The recipient must administer the project in compliance with Federal civil rights laws, where applicable, that prohibit discrimination on the basis of race, color, national origin, disability, age, and comply with applicable conscience protections. The recipient must comply with applicable laws that prohibit discrimination on the basis of sex, which includes discrimination on the basis of gender identity, sexual

orientation, and pregnancy. Compliance with these laws requires taking reasonable steps to provide meaningful access to persons with limited English proficiency and providing programs that are accessible to and usable by persons with disabilities. The HHS Office for Civil Rights provides guidance on complying with civil rights laws enforced by HHS. See *https://www.hhs.gov/civil-rights/for-providers/provider-obligations/index.html* and *https://www.hhs.gov/civil-rights/for-individuals/nondiscrimination/index.html.*

• Recipients of FFA must ensure that their programs are accessible to persons with limited English proficiency. For guidance on meeting your legal obligation to take reasonable steps to ensure meaningful access to your programs or activities by limited English proficiency individuals, see *https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/fact-sheet-guidance/index.html* and *https://www.lep.gov.*

• For information on your specific legal obligations for serving qualified individuals with disabilities, including reasonable modifications and making services accessible to them, see *https://www.hhs.gov/civil-rights/for-individuals/disability/index.html.*

• HHS funded health and education programs must be administered in an environment free of sexual harassment. See *https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/index.html.*

• For guidance on administering your program in compliance with applicable Federal religious nondiscrimination laws and applicable Federal conscience protection and associated anti-discrimination laws, see *https://www.hhs.gov/conscience/conscience-protections/index.html* and *https://www.hhs.gov/conscience/religious-freedom/index.html.*

• Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS.

E. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the FAPIIS at *https://www.fapiis.gov/fapiis/#/home* before making any award in excess of the simplified acquisition threshold (currently $250,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. The IHS will consider any comments by the applicant, in addition to other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants, as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, NFEs are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10 million for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and HHS implementing regulations at 45 CFR part 75, the IHS must require an NFE or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. All applicants and recipients must disclose in writing, in a timely manner, to the IHS and to the HHS Office of Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to:

U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Marsha Brookins, Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, (Include ''Mandatory Grant Disclosures'' in subject line) Office: (301) 443–5204, Fax: (301) 594–0899, Email: *DGM@ihs.gov*

And

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: *https://oig.hhs.gov/fraud/report-fraud/* (Include ''Mandatory Grant Disclosures'' in subject line) Fax: (202) 205–0604 (Include ''Mandatory Grant Disclosures'' in subject line) or Email: *MandatoryGranteeDisclosures@oig.hhs.gov*

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (see 2 CFR part 180 and 2 CFR part 376).

VII. Agency Contacts

1. Questions on the program matters may be directed to:

Roxanne Houston, Program Officer, Indian Health Service, Office of Tribal Self-Governance, 5600 Fishers Lane, Mail Stop: 08E05, Rockville, MD 20857, Phone: (301) 443–7821, Email: *Roxanne.Houston@ihs.gov*

2. Questions on awards management and fiscal matters may be directed to:

Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Email: *DGM@ihs.gov*

For technical assistance with *Grants.gov,* please contact the *Grants.gov* help desk at 800–518–4726, or by email to *support@grants.gov.*

VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement, and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

P. Benjamin Smith,

Deputy Director, Indian Health Service.

[FR Doc. 2023–08201 Filed 4–18–23; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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 Advisory Child Health and Human Development Council.

Date: June 6–7, 2023.

Open Session: June 6, 2023, 12:00 p.m. to 1:00 p.m.

Agenda: Opening Remarks, Administrative Matters.

Place: National Institutes of Health 31 Center Drive, C-Wing, Conference Rooms F & G, Bethesda, MD 21157.

Closed Session: June 6, 2023, 1:15 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 31 Center Drive, C-Wing, Conference Rooms F & G, Bethesda, MD 21157.

Open Session: June 7, 2023, 9:00 a.m. to 12:45 p.m.

Agenda: NICHD Director's Report, and other business of Council.

Place: National Institutes of Health, 31 Center Drive, C-Wing, Conference Rooms F & G, Bethesda, MD 21157.

Contact Person: Ms. Lisa Neal, Committee Management Officer, Committee Management Branch, Eunice Kennedy Shriver National Institute of Child, Health and Human Development, NIH, 6701B Rockledge Drive, Room 2208, Bethesda, MD 20892, (301) 204–1830, *lisa.neal@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.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Individuals will be able to view the meeting via NIH Videocast. Select the following link for Videocast access instructions: *http://www.nichd.nih.gov/about/advisory/nachhd/Pages/virtual-meeting.aspx*.

Information is also available on the Institute's/Center's home page: *https://www.nichd.nih.gov/about/advisory/council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 13, 2023.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08244 Filed 4–18–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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 Advisory Dental and Craniofacial Research Council.

Date: May 16, 2023.

Open: 10:00 a.m. to 2:30 p.m.

Agenda: Report of the Director, NIDCR and concept clearances.

Place: National Institute of Dental and Craniofacial Research, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Closed: 2:45 p.m. to 3:15 p.m.

Agenda: To review and evaluate BSC report to Council.

Place: National Institute of Dental and Craniofacial Research, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Closed: 3:15 p.m. to 4:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Dental and Craniofacial Research, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lynn M. King, Ph.D., Executive Secretary, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Bethesda, MD 20892–4878, (301) 594–5006, *Lynn.King@nih.gov*.

Information is also available on the Institute's/Center's home page: *https://www.nidcr.nih.gov/about-us,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 13, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08204 Filed 4–18–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0022]

Entry Summary (Form 7501)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; revision of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than June 20, 2023) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s)

contained in this notice must include the OMB Control Number 1651–0022 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Entry Summary.
OMB Number: 1651–0022.
Form Number: CBP Form 7501.
Current Actions: Revision.
Type of Review: Revision.
Affected Public: Importer, importer's agent for each import transaction.

Abstract: CBP Form 7501, *Entry Summary,* is used to identify merchandise entering the commerce of the United States, and to document the amount of duty and/or tax paid. CBP Form 7501 is submitted by the importer, or the importer's agent, for each import transaction. The data on this form is used by CBP as a record of the import transaction; to collect the proper duty, taxes, certifications, and enforcement information; and to provide data to the U.S. Census Bureau for statistical purposes. CBP Form 7501 must be filed within 10 working days from the time of entry of merchandise into the United States. Collection of the data on this form is authorized by 19 U.S.C. 1484 and provided for by 19 CFR 141.61 and 19 CFR 142.11. CBP Form 7501 and accompanying instructions can be found at: *https://www.cbp.gov/newsroom/publications/forms?title_1=7501.*

New Change:

CBP is proposing to add the following required data fields to Form 7501:

- For certain Harmonized Tariff Schedule (HTS) classifications of steel imports, the country where the steel used in the manufacture of the product was melted and poured; the country where the steel used in the manufacture of the product was melted and poured applies to the original location where the raw steel is first produced in a steel-making furnace in a liquid state; and then poured into its first solid shape.
- For certain HTS classifications of aluminum imports, the countries where the largest and second largest volume of primary aluminum used in the manufacture of the imported aluminum product was smelted; and the country where the aluminum used in the imported aluminum product was most recently cast. The fields requiring identification of the countries where the largest volume of primary aluminum used in the manufacture of the product was smelted applies to the country where the largest volume of new aluminum metal is produced from alumina (or aluminum oxide) by the electrolytic Hall-Héroult process. Importers may be required to report if primary aluminum from specific countries is used in the imported aluminum product, if required by law and/or Presidential Proclamation.[1]
- Importers will be required to report on the Form 7501 the steel country of melt and pour and aluminum countries of smelt and cast for imports under those steel and aluminum HTS classifications subject to the Commerce Department's steel and aluminum import license applications, and where applicable, the Section 232 steel and aluminum measures.

These data fields will substantially align the Form 7501 reporting requirements with the Commerce Department's existing reporting requirements for steel melt and pour and aluminum smelt and cast countries for steel and aluminum import license applications under 19 CFR 360.103(c)(1) and 19 CFR 361.103(c)(1). The aluminum and steel license application information is used by the Commerce Department for monitoring of anticipated imports of certain aluminum and steel products into the United States. The Form 7501 data is used by CBP to determine, when imports are entered for consumption, the proper amount of duties, applicable fees, taxes, and imports subject to quota.

These data fields are also required to enforce the tariff rate quotas for imported steel and aluminum established by the following Presidential Proclamations under section 232 of the Trade Expansion Act of 1962, as amended: for products of the European Union, Proclamation 10327 of December 27, 2021 (87 FR 1, January 3, 2022) and Proclamation 10328 of December 27, 2021 (87 FR 11, January 3, 2022); for products of Japan (steel-only), Proclamation 10356 of March 31, 2022 (87 FR 19351, April 1, 2022); and for products of the United Kingdom, Proclamation 10405 of May 31, 2022 (87 FR 33583, June 3, 2022) and Proclamation 10406 of May 31, 2022 (87 FR 33591, June 3, 2022).

Type of Information Collection: 7501 Formal Entry (Electronic submission).
Estimated Number of Respondents: 2,336.
Estimated Number of Annual Responses per Respondent: 9,903.
Estimated Number of Total Annual Responses: 23,133,408.
Estimated Time per Response: 5 minutes.
Estimated Total Annual Burden Hours: 1,920,073.
Type of Information Collection: 7501 Formal Entry (Paper Submission).

[1] The January 24, 2023 Presidential Proclamation on Adjusting Imports of Aluminum Into the United States requires importers to provide to CBP information necessary to identify the countries where the primary aluminum used in the manufacture of certain imports of aluminum articles are smelted and information necessary to identify the countries where such aluminum articles imports are cast. This notice proposes to add the aluminum smelt and cast data field to Form 7501 independently from the January 24, 2023 Proclamation.

Estimated Number of Respondents: 28.

Estimated Number of Annual Responses per Respondent: 9,903.

Estimated Number of Total Annual Responses: 277,284.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 92,336.

Type of Information Collection: 7501 Formal Entry w/Softwood Lumber Act of 2008 (Paper Only).

Estimated Number of Respondents: 210.

Estimated Number of Annual Responses per Respondent: 1,905.

Estimated Number of Total Annual Responses: 400,050.

Estimated Time per Response: 40 minutes.

Estimated Total Annual Burden Hours: 266,433.

Type of Information Collection: 7501 Informal Entry (Electronic Submission).

Estimated Number of Respondents: 1,883.

Estimated Number of Annual Responses per Respondent: 2,582.

Estimated Number of Total Annual Responses: 4,861,906.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 403,538.

Type of Information Collection: 7501 Informal Entry (Paper Submission).

Estimated Number of Respondents: 19.

Estimated Number of Annual Responses per Respondent: 2,582.

Estimated Number of Total Annual Responses: 49,058.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 12,265.

Type of Information Collection: 7501A Document/Payment Transmittal (Paper Only).

Estimated Number of Respondents: 20.

Estimated Number of Annual Responses per Respondent: 60.

Estimated Number of Total Annual Responses: 1,200.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 300.

Type of Information Collection: Exclusion Approval Information Letter.

Estimated Number of Respondents: 5,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 5,000.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 250.

Dated: April 14, 2023.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2023–08213 Filed 4–18–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2023–0007]

Notice of President's National Security Telecommunications Advisory Committee Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Notice of Federal Advisory Committee Act (FACA) meeting; request for comments.

SUMMARY: CISA is publishing this notice to announce the President's National Security Telecommunications Advisory Committee (NSTAC) meeting on May 16, 2023, in Washington, DC. This meeting will be partially closed to the public. The public can access the meeting via teleconference.

DATES:

Meeting Registration: Registration to attend the meeting is required and must be received no later than 5:00 p.m. Eastern Time (ET) on May 9, 2023. For more information on how to participate, please contact *NSTAC@cisa.dhs.gov.*

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5:00 p.m. ET on May 9, 2023.

Written Comments: Written comments must be received no later than 5:00 p.m. ET on May 9, 2023.

Meeting Date: The NSTAC will meet on May 16, 2023, from 1:00 to 5:00 p.m. ET. The meeting may close early if the committee has completed its business.

ADDRESSES: The May 2023 NSTAC Meeting's open session is set to be held from 3:30 to 5:00 p.m. ET in person at 1650 Pennsylvania Avenue NW, Washington, DC 20504. Members of the public may participate via teleconference. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance, please email *NSTAC@cisa.dhs.gov* by 5:00 p.m. ET on May 9, 2023. The NSTAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

Comments: Members of the public are invited to provide comment on issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials that may be discussed during the meeting will be made available for review at *https://www.cisa.gov/nstac* on May 1, 2023. Comments should be submitted by 5:00 p.m. ET on May 9, 2023, and must be identified by Docket Number CISA–2023–0007. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Please follow the instructions for submitting written comments.
- *Email: NSTAC@cisa.dhs.gov.* Include the Docket Number CISA–2023–0007 in the subject line of the email.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the Docket Number for this action. Comments received will be posted without alteration to *www.regulations.gov,* including any personal information provided. You may wish to review the Privacy & Security Notice available via a link on the homepage of *www.regulations.gov.*

Docket: For access to the docket and comments received by the NSTAC, please go to *www.regulations.gov* and enter docket number CISA–2023–0007.

A public comment period is scheduled to be held during the meeting from 4:20 to 4:30 p.m. ET. Speakers who wish to participate in the public comment period must email *NSTAC@cisa.dhs.gov* to register. Speakers should limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Christina Berger, 202–701–6354, *NSTAC@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The NSTAC is established under the authority of Executive Order (E.O.) 12382, dated September 13, 1982, as amended by E.O. 13286, continued and amended under the authority of E.O. 14048, dated September 30, 2021. Notice of this meeting is given under FACA, 5 U.S.C. ch. 10 (Pub. L. 117–286). The NSTAC advises the president on matters related to national security

and emergency preparedness (NS/EP) telecommunications and cybersecurity policy.

Agenda: The NSTAC will meet in an open session on Tuesday, May 16, 2023, from 3:30 to 5:00 p.m. ET to discuss current NSTAC activities and the government's ongoing cybersecurity and NS/EP communications initiatives. This open session will include: (1) a keynote address; and (2) a status update on the Addressing the Abuse of Domestic Infrastructure by Foreign Malicious Actors Subcommittee.

The committee will also meet in a closed session from 1:00 to 3:00 p.m. ET during which time: (1) senior government intelligence officials will provide a threat briefing concerning threats to NS/EP communications and engage NSTAC members in follow-on discussion; and (2) NSTAC members and senior government officials will discuss potential NSTAC study topics.

Basis for Closure: In accordance with section 10(d) of FACA and 5 U.S.C. 552b(c)(1), The Government in the Sunshine Act, it has been determined that a portion of the agenda requires closure.

These agenda items are the: (1) classified threat briefing and discussion, which will provide NSTAC members the opportunity to discuss information concerning threats to NS/EP communications with senior government intelligence officials; and (2) potential NSTAC study topics discussion. The briefing is anticipated to be classified at the top secret/sensitive compartmented information level. Disclosure of these threats during the briefing, as well as vulnerabilities and mitigation techniques, is a risk to the Nation's cybersecurity posture because adversaries could use this information to compromise commercial and government networks. Subjects discussed during the potential study topics discussion are tentative and are under further consideration by the committee.

Therefore, this portion of the meeting is required to be closed pursuant to section 10(d) of FACA and 5 U.S.C. 552b(c)(1) because it will disclose matters that are classified.

Dated: April 13, 2023.

Christina Berger,

Designated Federal Officer, NSTAC, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2023–08252 Filed 4–18–23; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. FEMA–2022–0042]

Privacy Act of 1974; System of Records; Correction

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of correction.

SUMMARY: The Department of Homeland Security (DHS) published a document in the **Federal Register** of March 31, 2023, concerning request for comments on the Federal Emergency Management Agency's (FEMA) collection of records on individuals reported as being involved in suspicious activities, individuals who report suspicious activities, and individuals charged with the analysis and appropriate handling of suspicious activity reports. The document contained an incorrect agency docket number.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Tammi Hines, (202) 646–3606, *FEMA-Privacy@fema.dhs.gov,* Privacy Officer, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC 20478. For privacy questions please contact: Mason C. Cutter, (202) 343–1717, *Privacy@hq.dhs.gov,* Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 31, 2023, in **Federal Register** Doc. 88–19317, on pages 19317–19320, the correct agency docket number should be ''FEMA–2022–0042.''

DATES: Submit comments on or before May 19, 2023.

* * * * *

Mason C. Clutter,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2023–08241 Filed 4–18–23; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6331–N–02B]

Extension of Public Interest, General Applicability Waiver of Build America, Buy America Provisions as Applied to Tribal Recipients of HUD Federal Financial Assistance: Extension of Public Comment Period

AGENCY: Office of the Secretary, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice; extension of public comment period.

SUMMARY: On April 7, 2023, HUD posted on its website for public comment an extension to its previously issued public interest, general applicability waiver for the Buy America Domestic Content Procurement Preference (''Buy America Preference,'' or ''BAP'') as applied to Federal Financial Assistance (''FFA'') provided to Tribes, Tribally Designated Housing Entities (''TDHE''s), and other Tribal Entities (hereinafter collectively ''Tribal Recipients''). Specifically, HUD's notice proposed that the waiver continue for an additional one-year period. The notice also established an April 24, 2023, deadline for public comment. The notice was also published in the **Federal Register** on April 12, 2023. Through today's notice, HUD announces that it is extending the public comment period on its ''Extension of Public Interest, General Applicability Waiver of Build America, Buy America Provisions as Applied to Tribal Recipients of HUD Federal Financial Assistance'' to May 8, 2023.

DATES: *Comment Due Date:* The comment due date of April 24, 2023, provided by HUD's posting its ''Extension of Public Interest, General Applicability Waiver of Build America, Buy America Provisions as Applied to Tribal Recipients of HUD Federal Financial Assistance'' is extended to May 8, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of

Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments: Facsimile (FAX) comments are not acceptable.

Public Inspection of Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Faith Rogers, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10126, Washington, DC 20410–5000, at (202) 402–7082 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* HUD encourages submission of questions about this document be sent to *BuildAmericaBuyAmerica@hud.gov.*

SUPPLEMENTARY INFORMATION: The Build America, Buy America Act (the Act) was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58). The Act establishes a domestic content procurement preference (the ''Buy American Preference,'' or ''BAP'') that applies to HUD's Federal financial assistance used for infrastructure projects.

On May 3, 2022 (87 FR 26221), HUD published a notice HUD seeking public comment on a general applicability, public interest waiver for one year of the BAP as applied to FFA provided to Tribal Recipients to provide the Department with time to engage in the Tribal consultation policy with respect to the applicability of BABA requirements to Tribal Recipients. HUD's Tribal Government-to Government Consultation Policy [1] was adopted in compliance with Executive Order 13175, ''Consultation with Indian Tribal Governments,'' and outlines the internal procedures and principles HUD must follow when communicating and coordinating on HUD programs and activities that affect Native American Tribes.

On April 7, 2023, HUD posted for comment on its website a proposed extension to May 3, 2022, of the public interest, general applicability waiver of the BAP as applied to FFA provided to Tribes Recipients. The notice proposed that the waiver continue for an additional period of one year and established an April 24, 2023, deadline for public comment. The notice was also published in the **Federal Register** on April 12, 2023 (88 FR 22064).

HUD has received feedback requesting additional time to review and provide comments on HUD's proposal to extend for an additional one-year period its waiver of the BAP as applied to FFA provided to Tribal Recipients. Therefore, HUD is extending the deadline for comments until May 8, 2023.

Aaron Santa Anna,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2023–08257 Filed 4–18–23; 8:45 am]

BILLING CODE 4210–67–P

[1] Available at: *https://www.hud.gov/program_offices/public_indian_housing/ih/regs/govtogov_tcp.* See also 81 FR 40893.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R7–NWRS–2023–0005; FF07R08000–234–FXRS12630700000; OMB Control Number 1018–0141]

Agency Information Collection Activities; Alaska Guide Service Evaluation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before June 20, 2023.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (please reference 1018–041 in the subject line of your comments):

- Internet (preferred): *https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R7–NWRS–2023–0005.
- *Email: Info_Coll@fws.gov.*
- *U.S. mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 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 (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent

burdens, we invite the public and other Federal agencies 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 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. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you 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: We collect information via Form 3–2349 (Alaska Guide Service Evaluation) to help us evaluate commercial guide services on our national wildlife refuges in the State of Alaska (State). The National Wildlife Refuge Administration Act of 1966, as amended (16 U.S.C. 668dd–ee), authorizes us to permit uses, including commercial visitor services, on national wildlife refuges when we find the activity to be compatible with the purposes for which the refuge was established. With the objective of making available a variety of quality visitor services for wildlife-dependent recreation on National Wildlife Refuge System lands, we issue permits for commercial guide services, including big game hunting, sport fishing, wildlife viewing, river trips, and other guided activities. We use FWS Form 3–2349 as a method to:

- Monitor the quality of services provided by commercial guides.
- Gauge client satisfaction with the services.
- Assess the impacts of the activity on refuge resources.

The client is the best source of information on the quality of commercial guiding services. We collect:

- Client name.
- Guide name(s).
- Type of guided activity.
- Dates and location of guided activity.
- Information on the services received, such as the client's expectations, safety, environmental impacts, and client's overall satisfaction.

We encourage respondents to provide any additional comments that they wish regarding the guide service or refuge experience, and ask whether or not they wish to be contacted for additional information.

The above information, in combination with State-required guide activity reports and contacts with guides and clients in the field, provides a comprehensive method for monitoring permitted commercial guide activities. A regular program of client evaluation helps refuge managers detect potential problems with guide services so that we can take corrective actions promptly. In addition, we use this information during the competitive selection process for big game and sport fishing guide permits to evaluate a renewing applicant's ability to provide a quality guiding service.

The Service is actively reviewing the current evaluation form to identify ways to improve the information collected to:

- Provide more quantifiable and defensible data;
- Provide statistical data for each completed and submitted form; and
- Translate the client responses into useful information, so refuge management can make better informed decisions.

Proposed Revision

With this submission, the Service will propose a new form (tentatively assigned Form 3–2538, ''Alaska Guide Service Evaluation'') to OMB for approval. The Service initially proposed this form for viability testing under OMB Control No. 1090–0011, ''DOI Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery,'' in our December 22, 2020, **Federal Register** notice (85 FR 83604). However, due to a delay and changes to Control No. 1090–0011 that now prohibit testing of new forms, we are proposing the form be approved for testing under this information collection (OMB Control No. 1018–0141). Upon approval and after successfully testing the form in at least two guide seasons, the Service anticipates discontinuing Form 3–2349 and instead using Form 3–2538 as the single guide service evaluation form (incorporating appropriate changes identified in the usability testing phase).

In order to effectively adapt visitor services programming in the Alaska Region, we need to understand visitor satisfaction. To that end, the Alaska Guide Service Evaluation team, comprised of representatives from across the Region, with the assistance of the Human Dimensions Branch and the Service Information Collection Clearance Officer, has revised the current guide evaluation form. The revised form provides the region's refuges with a useful and quantitative tool that reflects social science survey design best practices, and that is standardized for use across refuges in the region. Form 3–2538 would collect the following information from participants in the Alaska guide program:

- Details regarding the guided trip—name of the outfitter(s) and person(s) guiding the trip and top three purposes for visiting the refuge.
- Experiences with the guided trip.
- Level of satisfaction with the guided trip and details regarding purpose of visit to refuge.
- Suggestions for improvements.
- Details about visitor—gender; State and/or country of residence; year of birth; race or ethnicity; details regarding formal schooling; and approximate household income.
- Contact information for follow-up questions (optional).

The public may request copies of any form contained in this information collection by sending a request to the Service Information Collection Clearance Officer (see **ADDRESSES**).

Title of Collection: Alaska Guide Service Evaluation.

OMB Control Number: 1018–0141.

Form Number: Forms 3–2349 and 3–2538.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Clients of permitted commercial guide service providers.

Total Estimated Number of Annual Respondents: 264.

Total Estimated Number of Annual Responses: 264.

Estimated Completion Time per Response: 15 minutes.

Total Estimated Number of Annual Burden Hours: 66.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time, following use of commercial guide services.

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. 2023–08237 Filed 4–18–23; 8:45 am]

BILLING CODE 4333–15–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIME AND DATE: The Members of the National Council on Disability (NCD) will hold a quarterly business meeting on Thursday, May 4, 2023, 12 p.m.–4 p.m., Eastern Daylight Time (EDT).

PLACE: This meeting will occur via Zoom videoconference. Registration is not required. Interested parties are encouraged to join the meeting in an attendee status by Zoom Desktop Client, Mobile App, or Telephone to dial-in. Updated information is available on NCD's event page at *https://ncd.gov/events/2023/upcoming-council-meeting.* To join the Zoom webinar, please use the following URL: *https://us06web.zoom.us/j/81048854248?pwd=bEQ2T2M4UkltdmdKU3hoUEhXYy9SZz09* or enter Webinar ID: 810 4885 4248 in the Zoom app. The Passcode is: 591696. To join the Council Meeting by telephone, dial one of the preferred numbers listed. The following numbers are (for higher quality, dial a number based on your current location): (309) 205 3325; (312) 626 6799; (646) 876 9923; (646) 931 3860; (301) 715 8592; (305) 224 1968; (669) 444 9171; (669) 900 6833; (689) 278 1000; (719) 359 4580; (253) 205 0468; (253) 215 8782 or (346) 248 7799. You will be prompted to enter the meeting ID 810 4885 4248 and passcode 591696. International numbers are also available: *https://us06web.zoom.us/u/kiRIRMWTy.*

In the event of audio disruption or failure, attendees can follow the meeting by accessing the Communication Access Realtime Translation (CART) link provided. CART is text-only translation that occurs real time during the meeting and is not an exact transcript.

MATTERS TO BE CONSIDERED: Following welcome remarks and introductions, the Executive Committee will provide their report; followed by a policy briefing on NCD's Impact of Extreme Weather Events on People with Disabilities report; break; Chairman's report; policy updates; a Progress Report process discussion; and public comment session on the impact of genetic editing and fetal medicine on the future of people with disabilities, before adjourning.

Agenda: The times provided below are approximations for when each agenda item is anticipated to be discussed (all times Eastern Daylight Time):

Thursday, May 4, 2023

12:00–12:10 p.m.—Welcome and Call to Order
12:10–1:00 p.m.—Executive Committee Report
1:00–2:00 p.m.—Policy Briefing: NCD's Impact of Extreme Weather Events on People with Disabilities Report
2:00–2:10 p.m.—Break
2:10–2:20 p.m.—Chairman's Report
2:20–2:40 p.m.—Policy Updates
2:40–3:00 p.m.—Progress Report Process Discussion
3:00–4:00 p.m.—Public Comment
4:00 p.m.—Adjourn

Public Comment: Your participation during the public comment period provides an opportunity for us to hear from you—individuals, businesses, providers, educators, parents and advocates. Your comments are important in bringing attention to issues and priorities of the disability community and informing the work of NCD.

For the May 4 Council meeting, NCD will have an extended public comment period of one hour and requests comments from the public regarding the impact of genetic editing and fetal medicine on the future of people with disabilities. Additional information on specifics of the topic is available on NCD's event page at *https://ncd.gov/events/2023/upcoming-council-meeting.*

Because of the virtual format, the Council will receive public comment by email or by video or audio over Zoom.

NCD now requires advanced registration to provide public comment during a Council meeting. Interested parties may register by sending an email to *PublicComment@ncd.gov* with the subject line ''Public Comment'' and your name, organization, state, and a brief summary of the comments you intend to make in the body of your email. Deadline for registration is May 3, 8:00 p.m. EDT. All individuals desiring to make public comment are strongly encouraged to read NCD's guidelines for public comment in advance of the meeting at: *https://ncd.gov/events/2023/upcoming-council-meeting.*

NCD will call upon as many individuals who registered as possible as time permits. All individuals called on to make comments will be allotted three minutes to speak and then will be asked to stop. Due to time constraints, NCD makes no guarantee that those who register will be able to provide comments during the public comment session, however, all public comment submissions sent via email will be collected and provided to the Council at the conclusion of the meeting. While public comment can be submitted on any topic over email, comments during the meeting should be specific to genetic editing and fetal medicine, as the input is needed for an upcoming report. If commenters speak on another topic at the meeting, they will be asked to stop out of courtesy to those who came prepared to speak on the topic. If any time remains following the conclusion of the comments of those registered, NCD may call upon those who desire to make comments but did not register.

CONTACT PERSON FOR MORE INFORMATION: Nicholas Sabula, Public Affairs Specialist, NCD, 1331 F Street NW, Suite 850, Washington, DC 20004; 202–272–2004 (V), or *nsabula@ncd.gov.*

Accommodations: An ASL interpreter will be on-camera during the entire meeting, and CART has been arranged for this meeting and will be embedded into the Zoom platform as well as available via streamtext link. The web link to access CART (in English) is: *https://www.streamtext.net/player?event=NCD.*

If you require additional accommodations, please notify Netterie Lewis by sending an email to *nlewis@ncd.gov* as soon as possible and no later than 24 hours prior to the meeting.

Due to last-minute confirmations or cancellations, NCD may substitute items without advance public notice.

Dated: April 17, 2023.

Anne C. Sommers McIntosh,

Executive Director.

[FR Doc. 2023–08409 Filed 4–17–23; 4:15 pm]

BILLING CODE 8421–02–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Polar Programs (AC OPP) (1130).

Date and Time: May 17, 2023; 1 p.m. to 2 p.m. EST.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314 | Virtual via Zoom.

A virtual meeting link will be posted on the AC OPP website at: *https://nsf.gov/geo/opp/advisory.jsp.*

Type of Meeting: Open.

Contact Person: Sara Eckert, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314; Contact: (703) 292–7899, *seckert@nsf.gov*

Purpose of Meeting: Advisory committee review of Science Advisory Subcommittee (SASC) report.

Agenda: Review and evaluate the COVID Protocols Subcommittee report, and vote on whether the report should be forwarded to the NSF Office of Polar Programs.

Dated: April 13, 2023.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023–08229 Filed 4–18–23; 8:45 am]

BILLING CODE 7555–01–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* April 19, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 11, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 114 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–133, CP2023–135.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2023–08260 Filed 4–18–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97301; File No. SR–CboeEDGA–2023–005]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a New Data Product To Be Known as the US Equity Short Volume & Trades Report

April 13, 2023.

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 5, 2023, Cboe EDGA Exchange, Inc. (''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to Exchange Rule 13.8 to introduce a new data product to be known as the US Equity Short Volume & Trades Report. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to amend Rule 13.8 to revise paragraph 13.8(h) in order to introduce a new data product to be known as the US Equity Short Volume & Trades Report. A description of market data products offered by the Exchange is provided in Exchange Rule 13.8 and proposed Rule 13.8(h) provides that the US Equity Short Volume & Trades Report is a report that will contain both an end-of-day short volume report and an end-of-month report that provides a record of all short sale transactions for the month. The proposed US Equity Short Volume & Trades Report will incorporate the existing Short Volume Report[5] currently described in Rule 13.8(h) as well as introduce a new, end-of-month report containing a record of all short sale transactions for the current month. The proposed US Equity Short Volume & Trades Report is nearly identical to the NYSE TAQ Group Short Sales & Short Volume product and Nasdaq's Short Sale Volume Reports (discussed *infra*).

The end-of-day report (''EOD Report'') included within the US Equity Short Volume & Trades Report will be identical to the existing Short Volume Report published by the Exchange. The existing Short Volume Report summarizes certain equity trading activity on the Exchange, including

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 95552 (August 18, 2022), 87 FR 52089 (August 24, 2022), SR–CboeEDGA–2022–011 (''Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a New Data Product To Be Known as the Short Volume Report'').

trade date,[6] total volume,[7] short volume,[8] and sell short exempt volume,[9] by symbol.[10] The data fields contained in the existing Short Volume Report will not change when the Short Volume Report is incorporated into the US Equity Short Volume & Trades Report as the EOD Report. The proposed end-of-month report (''EOM Report'') to be included in the US Equity Short Volume & Trades Report will be a new report that provides a record of all short sale transactions for the month, including trade date and time (in microseconds),[11] trade size,[12] trade price,[13] and type of short sale execution,[14] by symbol and exchange.[15] The US Equity Short Volume & Trades Report will be available for purchase to both BZX Members (''Members'') [16] as well as non-Members.[17]

As discussed in the Exchange's previous filing to introduce the EOD Report,[18] the data fields included in the EOD Report are essentially identical to the fields included by the New York Stock Exchange LLC (''NYSE'') in their Daily Short Volume file [19] and similar to the fields provided by the NASDAQ Stock Market LLC (''Nasdaq'') in its Daily Short Sale file.[20] The data fields contained in the EOD Report found within the proposed US Equity Short Volume & Trades Report are identical to the data fields found in the existing Short Volume Report.[21] NYSE offers its Daily Short Volume file as one component of its NYSE TAQ Group Short Sales & Short Volume product [22] and Nasdaq offers its Daily Short Sale file as one component of its Short Sale Volume Reports.[23] The Exchange is proposing to include its EOD Report within the US Equity Short Volume & Trades Report in the same manner as NYSE and Nasdaq incorporate their daily short sale files within a more robust data offering.

The Exchange notes that the data fields included in the EOM Report are nearly identical to the fields included by NYSE in its Monthly Short Sales file, except that the Exchange will not include two fields that appear within the NYSE Monthly Short Sales file.[24] Specifically, the NYSE Monthly Short Sales file also includes date,[25] time,[26] size,[27] price,[28] type of short sale execution,[29] market center,[30] and symbol.[31] Additionally, the data fields included in the EOM Report are nearly identical to the fields found in the Nasdaq Monthly Short Sale File, except that the Exchange will not include two fields that appear within the Nasdaq Monthly Short Sale File.[32] Both the Exchange and Nasdaq include date,[33] time,[34] size,[35] price,[36] short sale execution type,[37] market center,[38] and symbol.[39] The Exchange notes that the only difference between its proposed EOM Report and the corresponding NYSE and Nasdaq monthly files is that the Exchange will not include a linked indicator [40] field or short size [41] field in its EOM Report. As the Exchange does not currently offer a linked indicator field, it will not include this field within the EOM Report. Additionally, the Exchange will not include a short size field in its EOM Report because the size shown in the trade size field included in the Exchange's EOM Report will be the number of shares in the transaction that executed with a sell short or sell short exempt marking.[42]

[6] ''Trade date'' is the date of trading activity in yyyy-mm-dd format.

[7] ''Total volume'' is the total number of shares transacted.

[8] ''Short volume'' is the total number of shares sold short.

[9] ''Short exempt volume'' is the total number of shares sold short classified as exempt.

[10] ''Symbol'' refers to the Cboe formatted symbol in which the trading activity occurred. *See https://cdn.cboe.com/resources/membership/US_Symbology_Reference.pdf.*

[11] ''Trade date and time'' is the date and time of trading activity in yyyy-mm-dd hh:mm:ss.000000 (microseconds) ET format.

[12] ''Trade size'' is the number of shares transacted.

[13] ''Trade price'' is the price at which shares were transacted.

[14] ''Short type'' is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction. A short sale transaction is a transaction in which a seller sells a security which the seller does not own, or the seller has borrowed for its own account (*see* 17 CFR 242.200). A short sale exempt transaction is a short sale transaction that is exempt from the short sale price test restrictions of Regulation SHO Rule 201 (*see* 17 CFR 242.201(c)).

[15] ''Exchange'' is the market identifier (Z = BZX, Y = BYX, X = EDGX, A = EDGA).

[16] *See* Rule 1.5(n) (''Member''). The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

[17] The Exchange intends to submit a separate filing to establish fees for the US Equity Short Volume & Trades Report.

[18] *Supra* note 5.

[19] *See* NYSE Daily Short Volume Client Specification, available at: *https://www.nyse.com/publicdocs/nyse/data/Daily_Short_Volume_Client_Spec_v1.3a.pdf.*

[20] *See* Nasdaq OMX Daily and Monthly Short Sale File Format and Specifications, available at: *https://nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/ShortSaleFileSpecifications.pdf.*

[21] *Supra* note 5.

[22] See *https://www.nyse.com/market-data/historical/taq-nyse-group-short-sales.*

[23] *See https://nasdaqtrader.com/Trader.aspx?id=shortsale.*

[24] *See* NYSE Monthly Short Sales Client Specification, available at: *https://www.nyse.com/publicdocs/nyse/data/Monthly_Short_Sales_Client_Spec_v1.3a.pdf.* The NYSE Monthly Short Sales file includes trade date and time, size, price, type of short sale execution, market center, and symbol. Unlike the NYSE file, the US Equity Short Volume & Trades Report will not include the linked indicator or short size fields. The Exchange does not currently offer a linked indicator tied to short sale executions and the size field found within the US Equity Short Volume & Trades Report will provide the size of the short sale execution.

[25] NYSE ''Date'' is the trade date of the short sale transaction in YYYYMMDD format.

[26] NYSE ''Time'' is the time of the short sale transaction in microsecond (HH:MM:SSnnnnnn) format.

[27] NYSE ''Size'' is the size of the trade in shares.

[28] NYSE ''Price'' is the price of the trade.

[29] NYSE ''Short Type'' is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction (E = Short Sale Exempt execution, S = Short not exempt).

[30] NYSE ''Market center'' is the market identifier (A = NYSE American, N = NYSE, P = NYSE Arca, C = NYSE National, M = NYSE Chicago).

[31] NYSE ''Symbol'' refers to the NYSE formatted symbol in which the trading activity occurred. *See https://www.nyse.com/publicdocs/nyse/data/NYSESymbology__Spec_v1.0c.pdf.*

[32] *See* NASDAQ OMX Daily and Monthly Short Sale File Format and Specification, available at: *https://nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/ShortSaleFileSpecifications.pdf.* The Nasdaq Monthly Short Sale File includes trade date and time, size, price, type of short sale execution, market center, and ticker symbol. Unlike the Nasdaq file, the US Equity Short Volume & Trades Report will not include the link indicator or short size fields. The Exchange does not currently offer a link indicator tied to short sale executions and the size field found within the US Equity Short Volume & Trades Report will provide the size of the short sale transaction.

[33] Nasdaq ''Date'' is the date that the trade was reported to the tape in YYYYMMDD format.

[34] Nasdaq ''Time'' is the time of the trade in HH:MM:SS format.

[35] Nasdaq ''Size'' is the number of shares in the transaction in mixed or round lot as reported to the tape.

[36] Nasdaq ''Price'' is the price of the trade as reported to the tape.

[37] Nasdaq ''Short Type'' is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction (E = Short Exempt, S = Short Not Exempt).

[38] Nasdaq ''Market Center'' is the market identifier (Q = NASDAQ, T = NASDAQ, B = Boston, X = PSX).

[39] Nasdaq ''Ticker Symbol'' refers to the Nasdaq formatted symbol in which the trading activity occurred.

[40] NYSE defines ''LinkedIndicator'' as null for all unbundled executions and the Auction Reference Trade ID for all bundled executions. Nasdaq defines ''Link Indicator'' as a market center defined character variable used to flag records that will be difficult to match to tape data ([blank] = matches tape, P = multiple parts of a batch trade included in the short sale data, B = the only part of a batch trade included in the short sale data, M may represent multiple prints, A = ''As-Of'' trade).

[41] NYSE defines ''ShortSize'' as the number of shares sold short. Nasdaq defines ''Short Size'' as the number of shares in the transaction that were designated for short sale.

[42] The EOM Report will not distinguish between ''Short Size'' and ''Trade Size'' in that all

Continued

Both the EOD Report and EOM Report will be included in the cost of the US Equity Short Volume & Trades Report and will be available for purchase by both Members and non-Members on an annual or monthly subscription basis.[43] Additionally, like NYSE, the Exchange will offer historical reports containing both the end-of-day volume and end-of-month trading activity.[44] Historical reports will be available for purchase dating back to January 2, 2015, and will include the same data fields as the US Equity Short Volume & Trades Report.

The Exchange anticipates that a wide variety of market participants will purchase the proposed US Equity Short Volume & Trades Report, including, but not limited to, active equity trading firms and academic institutions. For example, the Exchange notes that academic institutions may utilize the US Equity Short Volume & Trades Report data and as a result promote research and studies of the equities industry to the benefit of all market participants. The Exchange further believes the proposed US Equity Short Volume & Trades Report may provide helpful trading information regarding investor sentiment that may allow market participants to make more informed trading decisions and may be used to create and test trading models and analytical strategies and provide comprehensive insight into trading on the Exchange. The proposal is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[45] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[46] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[47] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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. The Exchange believes that the proposed US Equity Short Volume & Trades Report would further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency through the dissemination of short volume and short sale execution data. The proposed rule change would benefit investors by providing access to the US Equity Short Volume & Trades data, which may promote better informed trading, as well as research and studies of the equities industry.

Moreover, as noted above, both NYSE and Nasdaq offer data products that contain both a daily and monthly short sale file. These products provide data that is nearly identical to the offering proposed by the Exchange. The proposed EOD Report that will be offered as one component of the US Equity Short Volume & Trades Report is the Exchange's existing Short Volume Report, which is substantially similar to the NYSE and Nasdaq daily short volume product offerings. The proposed EOM Report that will be offered as the second component of the US Equity Short Volume & Trades Report will contain date, time, size, price, short sale type, market center, and symbol, which is nearly identical to the data fields found within the NYSE and Nasdaq monthly short volume reports.[48] As stated previously, the Exchange's EOM Report is nearly identical to the NYSE and Nasdaq monthly reports in that the Exchange will offer identical data fields except for a linked indicator value and a short size value. Accordingly, the proposed US Equity Short Volume & Trades Report does not provide a unique or novel data offering, but rather offers data points consistent with other data products already available and utilized by market participants today.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote fair competition among the national securities exchanges by permitting the Exchange to offer a data product that provides substantially the same data offered by competing equities exchanges. The Exchange's proposed US Equity Short Volume & Trades Report will contain both an EOD Report and an EOM Report, both of which are nearly identical to the competing NYSE and Nasdaq data product offerings, with the only difference being that the Exchange will not include a linked indicator field or short size field in its EOM Report.

Additionally, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The US Equity Short Volume & Trades Report will be available equally to Members and non-Members. Market participants are not required to purchase the US Equity Short Volume & Trades Report, and the Exchange is not required to make the US Equity Short Volume & Trades Report available to investors. Rather, the Exchange is voluntarily making the US Equity Short Volume & Trades Report available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. Given the above, the Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect

transactions reflected in the EOM Report will be marked sell short or sell short exempt. *Supra* note 14.

[43] *Supra* note 17.

[44] *Supra* note 22.

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(5).

[47] *Id.*

[48] *Supra* notes 24 and 32.

the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[49] and Rule 19b–4(f)(6) thereunder.[50]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[51] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange states that waiver of the operative delay will permit the Exchange to immediately make the US Equity Short Volume & Trades Report available to subscribers as an alternative to the competing products offered by NYSE and Nasdaq. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[52]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGA–2023–005.

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–CboeEDGA–2023–005. 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–CboeEDGA–2023–005, and should be submitted on or before May 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08219 Filed 4–18–23; 8:45 am]

BILLING CODE 8011–01–P

[49] 15 U.S.C. 78s(b)(3)(A).

[50] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[51] 17 CFR 240.19b–4(f)(6)(iii).

[52] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[53] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97303; File No. SR-CboeBYX–2023–006]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a New Data Product To Be Known As the US Equity Short Volume & Trades Report

April 13, 2023.

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 5, 2023, Cboe BYX Exchange, Inc. (''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to Exchange Rule 11.22 to introduce a new data product to be known as the US Equity Short Volume & Trades Report. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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 seeks to amend Rule 11.22 to revise paragraph 11.22(f) in order to introduce a new data product to be known as the US Equity Short Volume & Trades Report. A description of market data products offered by the Exchange is provided in Exchange Rule 11.22 and proposed Rule 11.22(f) provides that the US Equity Short Volume & Trades Report is a report that will contain both an end-of-day short volume report and an end-of-month report that provides a record of all short sale transactions for the month. The proposed US Equity Short Volume & Trades Report will incorporate the existing Short Volume Report [5] currently described in Rule 11.22(f) as well as introduce a new, end-of-month report containing a record of all short sale transactions for the current month. The proposed US Equity Short Volume & Trades Report is nearly identical to the NYSE TAQ Group Short Sales & Short Volume product and Nasdaq's Short Sale Volume Reports (discussed *infra*).

The end-of-day report (''EOD Report'') included within the US Equity Short Volume & Trades Report will be identical to the existing Short Volume Report published by the Exchange. The existing Short Volume Report summarizes certain equity trading activity on the Exchange, including trade date,[6] total volume,[7] short volume,[8] and sell short exempt volume,[9] by symbol.[10] The data fields contained in the existing Short Volume Report will not change when the Short Volume Report is incorporated into the US Equity Short Volume & Trades Report as the EOD Report. The proposed end-of-month report (''EOM Report'') to be included in the US Equity Short Volume & Trades Report will be a new report that provides a record of all short sale transactions for the month, including trade date and time (in microseconds),[11] trade size,[12] trade price,[13] and type of short sale execution,[14] by symbol and exchange.[15] The US Equity Short Volume & Trades Report will be available for purchase to both BZX Members (''Members'') [16] as well as non-Members.[17]

As discussed in the Exchange's previous filing to introduce the EOD Report,[18] the data fields included in the EOD Report are essentially identical to the fields included by the New York Stock Exchange LLC (''NYSE'') in their Daily Short Volume file [19] and similar to the fields provided by the NASDAQ Stock Market LLC (''Nasdaq'') in its Daily Short Sale file.[20] The data fields contained in the EOD Report found within the proposed US Equity Short Volume & Trades Report are identical to the data fields found in the existing Short Volume Report.[21] NYSE offers its Daily Short Volume file as one component of its NYSE TAQ Group Short Sales & Short Volume product [22] and Nasdaq offers its Daily Short Sale file as one component of its Short Sale Volume Reports.[23] The Exchange is proposing to include its EOD Report as one component of the US Equity Short Volume & Trades Report in the same manner as NYSE and Nasdaq incorporate their daily short sale files within a more robust data offering.

The Exchange notes that the data fields included in the EOM Report are nearly identical to the fields included by NYSE in its Monthly Short Sales file, except that the Exchange will not include two fields that appear within the NYSE Monthly Short Sales file.[24] Specifically, the NYSE Monthly Short Sales file also includes date,[25] time,[26] size,[27] price,[28] type of short sale execution,[29] market center,[30] and symbol.[31] Additionally, the data fields included in the EOM Report are nearly identical to the fields found in the Nasdaq Monthly Short Sale File, except that the Exchange will not include two fields that appear within the Nasdaq Monthly Short Sale File.[32] Both the

[5] *See* Securities Exchange Act Release No. 95548 (August 18, 2022), 87 FR 52087 (August 24, 2022), SR-CboeBYX–2022–019 (''Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a New Data Product To Be Known as the Short Volume Report'').

[6] ''Trade date'' is the date of trading activity in yyyy-mm-dd format.

[7] ''Total volume'' is the total number of shares transacted.

[8] ''Short volume'' is the total number of shares sold short.

[9] ''Short exempt volume'' is the total number of shares sold short classified as exempt.

[10] ''Symbol'' refers to the Cboe formatted symbol in which the trading activity occurred. *See https://cdn.cboe.com/resources/membership/US_Symbology_Reference.pdf.*

[11] ''Trade date and time'' is the date and time of trading activity in yyyy-mm-dd hh:mm:ss.000000 (microseconds) ET format.

[12] ''Trade size'' is the number of shares transacted.

[13] ''Trade price'' is the price at which shares were transacted.

[14] ''Short type'' is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction. A short sale transaction is a transaction in which a seller sells a security which the seller does not own, or the seller has borrowed for its own account (*see* 17 CFR 242.200). A short sale exempt transaction is a short sale transaction that is exempt from the short sale price test restrictions of Regulation SHO Rule 201 (*see* 17 CFR 242.201(c)).

[15] ''Exchange'' is the market identifier (Z = BZX, Y = BYX, X = EDGX, A = EDGA).

[16] *See* Rule 1.5(n) (''Member''). The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

[17] The Exchange intends to submit a separate filing to establish fees for the US Equity Short Volume & Trades Report.

[18] *Supra* note 5.

[19] *See* NYSE Daily Short Volume Client Specification, available at: *https://www.nyse.com/publicdocs/nyse/data/Daily_Short_Volume_Client_Spec_v1.3a.pdf.*

[20] *See* Nasdaq OMX Daily and Monthly Short Sale File Format and Specifications, available at: *https://nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/ShortSaleFileSpecifications.pdf*

[21] *Supra* note 5.

[22] See *https://www.nyse.com/market-data/historical/taq-nyse-group-short-sales.*

[23] *See https://nasdaqtrader.com/Trader.aspx?id=shortsale.*

[24] *See* NYSE Monthly Short Sales Client Specification, available at: *https://www.nyse.com/publicdocs/nyse/data/Monthly_Short_Sales_Client_Spec_v1.3a.pdf.* The NYSE Monthly Short Sales file includes trade date and time, size, price, type of short sale execution, market center, and symbol. Unlike the NYSE file, the US Equity Short Volume & Trades Report will not include the linked indicator or short size fields. The Exchange does not currently offer a linked indicator tied to short sale executions and the size field found within the US Equity Short Volume & Trades Report will provide the size of the short sale execution.

[25] NYSE ''Date'' is the trade date of the short sale transaction in YYYYMMDD format.

[26] NYSE ''Time'' is the time of the short sale transaction in microsecond (HH:MM:SSnnnnnn) format.

[27] NYSE ''Size'' is the size of the trade in shares.

[28] NYSE ''Price'' is the price of the trade.

[29] NYSE ''Short Type'' is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction (E = Short Sale Exempt execution, S = Short not exempt).

[30] NYSE ''Market center'' is the market identifier (A = NYSE American, N = NYSE, P = NYSE Arca, C = NYSE National, M = NYSE Chicago).

[31] NYSE ''Symbol'' refers to the NYSE formatted symbol in which the trading activity occurred. *See https://www.nyse.com/publicdocs/nyse/data/NYSE_Spec_v1.0c.pdf.*

[32] *See* NASDAQ OMX Daily and Monthly Short Sale File Format and Specification, available at: *https://nasdaqtrader.com/content/technicalsupport/specifications//ShortSaleFileSpecifications.pdf.* The Nasdaq Monthly Short Sale File includes trade date and time, size, price, type of short sale execution, market center, and ticker symbol. Unlike the Nasdaq file, the US Equity Short Volume & Trades Report will not include the link indicator or short size fields. The Exchange does not currently offer a link indicator tied to short sale executions and the

Exchange and Nasdaq include date,[33] time,[34] size,[35] price,[36] short sale execution type,[37] market center,[38] and symbol.[39] The Exchange notes that the only difference between its proposed EOM Report and the corresponding NYSE and Nasdaq monthly files is that the Exchange will not include a linked indicator[40] field or short size[41] field in its EOM Report. As the Exchange does not currently offer a linked indicator field, it will not include this field within the EOM Report. Additionally, the Exchange will not include a short size field in its EOM Report because the size shown in the trade size field included in the Exchange's EOM Report will be the number of shares in the transaction that executed with a sell short or sell short exempt marking.[42]

Both the EOD Report and EOM Report will be included in the cost of the US Equity Short Volume & Trades Report and will be available for purchase by both Members and non-Members on an annual or monthly subscription basis.[43] Additionally, like NYSE, the Exchange will offer historical reports containing both the end-of-day volume and end-of-month trading activity.[44] Historical reports will be available for purchase dating back to January 2, 2015, and will include the same data fields as the US Equity Short Volume & Trades Report.

The Exchange anticipates that a wide variety of market participants will purchase the proposed US Equity Short Volume & Trades Report, including, but not limited to, active equity trading firms and academic institutions. For example, the Exchange notes that academic institutions may utilize the US Equity Short Volume & Trades Report data and as a result promote research and studies of the equities industry to the benefit of all market participants. The Exchange further believes the proposed US Equity Short Volume & Trades Report may provide helpful trading information regarding investor sentiment that may allow market participants to make more informed trading decisions and may be used to create and test trading models and analytical strategies and provide comprehensive insight into trading on the Exchange. The proposal is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[45] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[46] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[47] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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. The Exchange believes that the proposed US Equity Short Volume & Trades Report would further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency through the dissemination of short volume and short sale execution data. The proposed rule change would benefit investors by providing access to the US Equity Short Volume & Trades data, which may promote better informed trading, as well as research and studies of the equities industry.

Moreover, as noted above, both NYSE and Nasdaq offer data products that contain both a daily and monthly short sale file. These products provide data that is nearly identical to the offering proposed by the Exchange. The proposed EOD Report that will be offered as one component of the US Equity Short Volume & Trades Report is the Exchange's existing Short Volume Report, which is substantially similar to the NYSE and Nasdaq daily short volume product offerings. The proposed EOM Report that will be offered as the second component of the US Equity Short Volume & Trades Report will contain date, time, size, price, short sale type, market center, and symbol, which is nearly identical to the data fields found within the NYSE and Nasdaq monthly short volume reports.[48] As stated previously, the Exchange's EOM Report is nearly identical to the NYSE and Nasdaq monthly reports in that the Exchange will offer identical data fields except for a linked indicator value and a short size value. Accordingly, the proposed US Equity Short Volume & Trades Report does not provide a unique or novel data offering, but rather offers data points consistent with other data products already available and utilized by market participants today.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believe the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote fair competition among the national securities exchanges by permitting the Exchange to offer a data product that provides substantially the

size field found within the US Equity Short Volume & Trades Report will provide the size of the short sale transaction.

[33] Nasdaq ''Date'' is the date that the trade was reported to the tape in YYYYMMDD format.

[34] Nasdaq ''Time'' is the time of the trade in HH:MM:SS format.

[35] Nasdaq ''Size'' is the number of shares in the transaction in mixed or round lot as reported to the tape.

[36] Nasdaq ''Price'' is the price of the trade as reported to the tape.

[37] Nasdaq ''Short Type'' is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction (E = Short Exempt, S = Short Not Exempt).

[38] Nasdaq ''Market Center'' is the market identifier (Q = NASDAQ, T = NASDAQ, B = Boston, X = PSX).

[39] Nasdaq ''Ticker Symbol'' refers to the Nasdaq formatted symbol in which the trading activity occurred.

[40] NYSE defines ''LinkedIndicator'' as null for all unbundled executions and the Auction Reference Trade ID for all bundled executions. Nasdaq defines ''Link Indicator'' as a market center defined character variable used to flag records that will be difficult to match to tape data ([blank] = matches tape, P = multiple parts of a batch trade included in the short sale data, B = the only part of a batch trade included in the short sale data, M may represent multiple prints, A = ''As-Of'' trade).

[41] NYSE defines ''ShortSize'' as the number of shares sold short. Nasdaq defines ''Short Size'' as the number of shares in the transaction that were designated for short sale.

[42] The EOM Report will not distinguish between ''Short Size'' and ''Trade Size'' in that all transactions reflected in the EOM Report will be marked sell short or sell short exempt. *Supra* note 14.

[43] *Supra* note 17.

[44] *Supra* note 22.

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(5).

[47] *Id.*

[48] *Supra* notes 24 and 32.

same data offered by competing equities exchanges. The Exchange's proposed US Equity Short Volume & Trades Report will contain both an EOD Report and an EOM Report, both of which are substantially similar to the competing NYSE and Nasdaq data product offerings, with the only difference being that the Exchange will not include a linked indicator field or short size field in its EOM Report.

Additionally, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The US Equity Short Volume & Trades Report will be available equally to Members and non-Members. Market participants are not required to purchase the US Equity Short Volume & Trades Report, and the Exchange is not required to make the US Equity Short Volume & Trades Report available to investors. Rather, the Exchange is voluntarily making the US Equity Short Volume & Trades Report available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. Given the above, the Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [49] and Rule 19b–4(f)(6) thereunder.[50]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[51] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange states that waiver of the operative delay will permit the Exchange to immediately make the US Equity Short Volume & Trades Report available to subscribers as an alternative to the competing products offered by NYSE and Nasdaq. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[52]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBYX–2023–006.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBYX–2023–006. 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-CboeBYX–2023–006, and should be submitted on or before May 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08221 Filed 4–18–23; 8:45 am]

BILLING CODE 8011–01–P

[49] 15 U.S.C. 78s(b)(3)(A).

[50] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[51] 17 CFR 240.19b–4(f)(6)(iii).

[52] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[53] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97307; File No. SR–EMERALD–2023–09]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

April 13, 2023.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 3, 2023, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'') to amend fees for historical Open-Close Report to: (i) add a fee for ad hoc requests for end-of-day data and no longer provide such data free of charge; (ii) respond to requests for ad hoc intra-day data and adopt a new fee for such requests; and (iii) adopt academic discounts for requests for ad hoc historical end-of-day and intra-day Open-Close data.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange adopted a new data product for options known as the Open-Close Report,[3] which the Exchange made available for purchase to Exchange Members[4] and non-Members on June 1, 2021.[5] The Open-Close Report is described under Exchange Rule 531(d)(1). The Exchange now proposes to amend fees for historical Open-Close Report to: (i) add a fee for ad hoc requests for end-of-day data and no longer provide such data free of charge; (ii) respond to requests for ad hoc intra-day data and adopt a new fee for such requests; and (iii) adopt academic discounts for requests for ad hoc historical end-of-day and intra-day Open-Close data. The Exchange previously filed this proposal on March 23, 2023 (SR–EMERALD–2023–07). On April 3, 2023, the Exchange withdrew SR–EMERALD–2023–07 and resubmitted this proposal.

General

By way of background, the Exchange offers two versions of the Open-Close Report, an end-of-day summary and intra-day report.[6] The end-of-day version is a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker),[7] side of the market (buy or sell), contract volume, and transaction type (opening or closing). The Priority Customer, Non-Priority Customer volume is further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Open-Close Report data is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed. The Exchange notes that Open-Close Report data is not necessary for trading and subscribing to the Open-Close Report is completely optional.

Members and non-Members may purchase the Open-Close Report on a monthly basis. The Exchange currently assess a monthly fee of $600 per month for subscribing to the end-of-day summary Open-Close Report and $2,000 per month for subscribing to the intra-day Open-Close Report. For mid-month subscriptions, new subscribers are currently charged for the full calendar month for which they subscribe and will be provided Open-Close Report data for each trading day of the calendar month from the day on which they subscribed and receive data for each trading day of the calendar month prior to the day on which they subscribe.

End-of-Day Ad Hoc Request (Historical Data)

The Exchange currently provides Members and Non-Members who request on an ad hoc basis historical end-of-day Open-Close Report data free of charge. The Exchange initially proposed to provide such data for free because it only recently launched the Open-Close Report and had minimal amount of historical end-of-day data. The Exchange also wanted to support the introduction of the new product through such a pricing incentive to attract additional subscribers.

An ad hoc request may be for any number of months beginning with June 2021, the month in which the Exchange first made the Open-Close Report available. For example, a market participant may request end-of-day Open-Close Report data for the month of June 2021 or July 2021, or may request such data for both June and July 2021 and would not be currently charged a fee for such request(s). The Exchange notes that other exchanges that provide similar data products allow for ad hoc requests of their end-of-day data for a fee.[8] Similar to other exchanges, the

[3] *See* Securities Exchange Act Release No. 91963 (May 21, 2021), 86 FR 28662 (May 27, 2021) (SR–EMERALD–2021–18) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt a New Historical Market Data Product To Be Known as the Open-Close Report).

[4] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[5] *See* Securities Exchange Act Release No. 92138 (June 9, 2021), 86 FR 31769 (June 15, 2021) (SR–EMERALD–2021–20) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Fees for the Open-Close Report).

[6] The intraday Open-Close Report provides similar information to that of Open-Close Data but will be produced and updated every 10 minutes during the trading day. Data is captured in ''snapshots'' taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period.

[7] *See* Exchange Rule 100.

[8] *See* Price List—U.S. Derivatives Data for Nasdaq PHLX, LLC (''PHLX''), The Nasdaq Stock Market, LLC (''Nasdaq''), Nasdaq ISE, LLC (''ISE''), and Nasdaq GEMX, LLC (''GEMX''), *available at http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#web.* Particularly, PHLX offers ''Nasdaq PHLX Options Trade Outline (PHOTO)'' and assesses $400 for historical end-of-day data; Nasdaq offers the ''Nasdaq Options Trade Outline (NOTO)'' and assesses $250 for historical end-of-day data; ISE offers the ''Nasdaq ISE Open/Close Trade Profile'' and assesses $600 per month for historical end-of-day data and $27,500 for complete

Continued

Exchange now proposes to charge a fee of $500 per request per month for ad-hoc requests for end-of-day historical data.[9]

The Exchange currently makes the historical end-of-day Open-Close data available fifteen (15) days after the end of the month for which it is requested. The Exchange implemented this delay because historical end-of-day Open-Close Report data was free of charge and the Exchange sought to not encourage subscribers to request historical end-of-day Open-Close Report data over a paid subscription. Now that the Exchange proposes to charge a fee for historical end-of-day Open-Close Report data, it believes the fifteen (15) day delay in making the data available is no longer necessary and proposes to remove this language from its Fee Schedule.

Intra-Day Ad Hoc Request (Historical Data)

The Exchange now proposes to provide Members and Non-Members who request on an ad hoc basis historical intra-day Open-Close Report data for a fee of $1,000 per request per month. When the Exchange proposed to provide for ad-hoc requests for end-of day data, it did not also propose to allow for ad hoc requests for intra-day Open-Close Report data.[10] Based on interest from Members and non-Members, the Exchange now proposes to do so for the above proposed fee.

As it currently specifies for historical end-of-day Open-Close data, an ad hoc request may be for any number of months beginning with June 2021, the month in which the Exchange first made the Open-Close Report available. Similarly, the Exchange will provide historical intra-day Open-Close data for the same time period. The Exchange notes that other exchanges that provide similar data products allow for ad hoc requests of their intra-day data for a fee.[11]

Academic Discounts for Ad Hoc Historical End-of-Day and Intra-Day Open-Close Report Data

The Exchange also proposes to adopt an academic discount for ad-hoc requests of historical months of these data sets. Specifically, the Exchange proposes to charge qualifying academic purchasers per request $1,500 per year for the first year (instead of $6,000 per year) and $125 per month thereafter for historical end-of-day Open-Close Report data covering all of the Exchange's securities. Further, the Exchange proposes to charge qualifying academic purchasers per request $3,000 per year for the first year (instead of $12,000 per year) and $250 per month thereafter for historical intra-day Open-Close Report data covering all of the Exchange's securities.

Particularly, the Exchange believes that academic institutions and researchers provide a valuable service for the Exchange in studying and promoting the options market. Though academic institutions and researchers have need for granular options data sets, they do not trade upon the data for which they subscribe. The Exchange believes the proposed reduced fee for qualifying academic purchasers of historical end-of-day Open-Close Report data and intra-day Open-Close Report data will encourage and promote academic studies of its market data by academic institutions. In order to qualify for the academic pricing, an academic purchaser must: (1) be an accredited academic institution or member of the faculty or staff of such an institution, and (2) use the data in independent academic research, academic journals and other publications, teaching and classroom use, or for other bona fide educational purposes (*i.e.* academic use). Furthermore, use of the data must be limited to faculty and students of an accredited academic institution, and any commercial or profit-seeking usage is excluded. Academic pricing will not be provided to any purchaser whose research is funded by a securities industry participant. Academic users interested in qualifying will be required to submit a brief application.[12]

Exchange Business Development personnel will have the discretion to review and approve such applications and request additional information when it deems necessary.

The Exchange notes that competing exchanges currently offer academic discounts for similar data sets on those exchanges.[13] The Exchange recognizes the high value of academic research and educational instruction and publications, and believes that the proposed academic discounts for historical end-of-day Open-Close Report data and intra-day Open-Close Report data will encourage the promotion of academic research of the options industry, which will serve to benefit all market participants while also opening up a new potential user base among students. Finally, the Exchange notes that academic purchasers' ad hoc requests of historical end-of-day Open-Close and intra-day Open-Close data would be educational in use and purpose, and not vocational.

Implementation Date

The Exchange intends to implement the proposed fee changes immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposed changes to its Fee Schedule concerning fees for the Open-Close Report is consistent with Section 6(b) of the Act [16] in general, and furthers the objectives of Section 6(b)(4) of the Act [17] in particular, in that it is an equitable allocation of dues, fees and other charges among its members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory

history; and GEMX offers the ''Nasdaq GEMX Open/Close Trade Profile'' and assesses $400 for historical end-of-day data. Cboe EDGX Exchange, Inc. (''EDGX'') and Cboe BZX Exchange, Inc. (''BZX'') both assess $400 for historical end-of-day data per request per month. *See* the EDGX fee schedule *available at http://markets.cboe.com/us/options/membership/fee_schedule/edgx/ and* the BZX fee schedule *available at http://markets.cboe.com/us/options/membership/fee_schedule/bzx/.*

[9] *Id.*

[10] *See* Securities Exchange Act Release No. 93023 (September 16, 2021), 86 FR 52731 (September 22, 2021) (SR–EMERALD–2021–28).

[11] *See* Price List—U.S. Derivatives Data for PHLX, ISE, and GEMX, *available at http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#web.* Particularly, PHLX offers ''Nasdaq PHLX Options Trade Outline (PHOTO)'' and assesses $1,000 for historical intra-day data; ISE offers the ''Nasdaq ISE Open/Close Trade Profile'' and assesses $1,000 per month for historical intra-day; and GEMX offers the ''Nasdaq GEMX Open/Close Trade Profile'' and assesses $750 for historical end-of-day data. EDGX and BZX both assess $750 for historical intra-day data per request per month. *See* the EDGX fee schedule *available at http://markets.cboe.com/us/options/membership/fee_schedule/edgx/ and* the BZX fee schedule *available at http://markets.cboe.com/us/options/membership/fee_schedule/bzx/.*

[12] The Exchange notes that it will have an academic user application available on the Exchange's website soon but it has not received any such requests from potential academic users at the time of this filing (or the previous filing).

[13] *See supra note* 8, BZX, EDGX, and ISE fee schedules; *see also* Cboe Exchange, Inc. (''Cboe'') Options Fee Schedule, Livevol Fees, Open Close Data *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf.*

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4).

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, the Open-Close Report 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 the Open-Close Report. Particularly, information regarding opening and closing activity across different option series during the trading day may indicate investor sentiment, which may allow market participants to make better informed trading decisions throughout the day. Subscribers to the data may also be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes the Open-Close Report provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading and completely optional. Moreover, other exchanges offer a similar data product.[18] This proposal seeks to provide historical Open-Close Report data to market participants by amending the fees for the Open-Close Report to: (i) add a fee of $500 per request per month for ad hoc requests for end-of-day historical data; (ii) respond to requests for ad hoc intra-day data and adopt a fee of $1,000 per request per month for such requests; and (iii) adopt academic discounts for requests for ad hoc historical end-of-day and intra-day Open-Close data.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, for the month of March 2023, no single options exchange had more than approximately 13% of the equity options market share and the Exchange represented only approximately 3.27% of the equity options market share for the month of March 2023.[19] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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.'' [20] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products.

The Exchange believes its proposal to respond to requests and add fees for ad hoc requests for historical end-of-day and intra-day data and adopt academic discounts for such requests is reasonable as the proposed rates are similar to fees assessed by other exchanges that provide data in response to ad hoc request for their similar data products.[21] The Exchange believes its proposal is reasonable and not unfairly discriminatory because the Exchange now has almost two years of historical Open-Close Report data to provide to market participants that request historical intra-day or end-of-day Open-Close Report data since the Exchange began offering the Open-Close Report in June 2021. Further, the Exchange notes that no competing exchange provides their own historical Open-Close report data free of charge.[22] Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Like the Exchange's Open-Close Report, other exchanges offer similar data products that each provide insight into trading on those markets and may likewise aid in assessing investor sentiment. Although each of these similar Open-Close data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different option series based on open and closing interest on any one exchange.[23] Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and analytical strategies using only Open-Close data relating to trading activity on one or more of the other markets that provide similar data products. As such, if a market participant views another exchange's historical end-of-day or intra-day Open-Close data as more attractive than the Exchange's historical end-of-day or intra-day Open-Close Report data, then such market participant can merely choose not to request such data from the Exchange and instead purchase another exchange's historical end-of-day or intra-day Open-Close data, which offer similar data points, albeit based on that other market's trading activity.

The Exchange also believes its proposal is reasonable as it would further support its offer of the Open-Close Report, which is designed to aid investors by providing insight into trading on the Exchange. Providing market data, such as the Open-Close Report, is also a means by which exchanges compete to attract business. Subscribers that receive end-of-day Open-Close data, and now intra-day Open-Close data as a result of this proposal, in response to an ad hoc request may use such data to evaluate the usefulness of the Exchange's Open-Close Report and decide, based on that data, whether to subscribe to the Open-Close Report on a monthly basis. To the extent that the Exchange is successful in attracting subscribers for the Open-Close Report through this proposal, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposal to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges.[24] The Exchange therefore believes that its proposal reflects the competitive environment and would be properly assessed on Member or non-Member subscribers. The Exchange also believes the proposal is equitable and not unfairly discriminatory as it would apply equally to all users who choose to purchase or receive such data.

The Exchange believes its proposal is equitably allocated because a wide variety of market participants may choose to request historical Open-Close Report intra-day or end-of-day data, including but not limited to individual customers, buy-side investors and investment banks, all of which will be charged the same rates for the monthly data requests depending on the type of request (*i.e.,* intra-day or end-of-day ad

[18] *See supra* notes 8 and 11.

[19] *See* the Exchange's ''The market at a glance,'' *available at https://www.miaxoptions.com/* (last visited April 3, 2023).

[20] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[21] *See supra* notes 8 and 11.

[22] *See id.*

[23] The Exchange notes that its Open-Close Report data product does not include data on any exclusive, singly-listed option series.

[24] *See supra* notes 8 and 11.

hoc historical requests). The Exchange reiterates that the decision as to whether or not to make an ad hoc request for historical end-of-day or intra-day data Open-Close Report data is entirely optional and available for all market participants. Indeed, no market participant is required to make such ad hoc request for historical end-of-day or intra-day Open-Close Report data, and the Exchange is not required to make historical end-of-day or intra-day Open-Close Report data available to all investors. The Exchange is voluntarily making a subset of existing Open-Close Report data available via ad hoc requests for intra-day and end-of-day data under this proposal at the request of customers, and market participants may choose to receive this data based on their own business needs and for the proposed fees specified herein. Potential purchasers of ad hoc data may request the data at any time if they believe it to be valuable or may decline to subscribe such data.

The Exchange believes it is reasonable to remove the mandatory fifteen (15) day waiting period in order to receive historical ad hoc end-of-day Open-Close data because the Exchange initially implemented this delay because it made historical end-of-day Open-Close Report data free and sought to not encourage subscribers to request historical end-of-day Open-Close Report data over a paid subscription. Now that the Exchange proposes to charge a fee for historical end-of-day Open-Close Report data and because no other options exchange imposes similar delay requirements for the same data, the Exchange believes the fifteen (15) day waiting period is no longer necessary and is reasonable to remove this language from the Fee Schedule.

The Exchange believes that the discount for qualifying academic purchasers of the ad hoc historical end-of-day Open-Close and intra-day Open-Close Report data is reasonable because academic users are not able to monetize access to the data as they do not trade on the data set. The Exchange believes the proposed discount will allow for more academic institutions and faculty members to purchase historical end-of-day Open-Close and intra-day Open-Close Report data, and, as a result, promote research and studies of the options industry to the benefit of all market participants. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all academic users that submit applications and meet the accredited academic institution or faculty member and academic use criteria. As stated above, qualified academic users will subscribe to the data set for educational use and purposes and are not permitted to use the data for commercial or monetizing purposes, nor can qualify if they are funded by an industry participant. As a result, the Exchange believes the proposed discount is equitable and not unfairly discriminatory because it maintains equal treatment for all industry participants or other subscribers that use the data for vocational, commercial or other for-profit purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to enhance the value of a data product that is similar to those offered by other competitor options exchanges.[25] The Exchange made historical end-of-day and intra-day Open-Close Report data available in order to keep pace with changes in the industry and evolving customer needs, and believes that providing such data to market participants that make requests for it will continue to contribute to robust competition among national securities exchanges. At least eight other U.S. options exchanges offer historical end-of-day and intra-day Open-Close report data on an ad hoc basis with fees that are substantially similar to the Exchange's proposed fees herein. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. While the proposed academic discount is a fee reduction that applies only to qualifying academic purchasers, the Exchange believes that academic purchasers' research and publications as a result of access to historical market data benefits all market participants.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price ad hoc requests for end-of-day and intra-day Open-Close Report data is constrained by competition among exchanges that offer similar fees for similar ad hoc requests for end-of-day and intra-day Open-Close report data to their customers. The Exchange notes that there are currently a number of similar products available to market participants and investors. At least eight other U.S. options exchanges offer similar fees for ad hoc requests for end-of-day and intra-day Open-Close report data that is substantially similar to the fees for ad hoc requests for end-of-day and intra-day Open-Close Report data proposed in this filing, which the Exchange must consider in its pricing discipline in order to compete for the market data.[26] For example, proposing fees that are excessively higher than established fees for similar ad hoc requests for historical end-of-day and intra-day Open-Close Report data on the Exchange would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposal 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 for ad hoc historical requests to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposal would apply uniformly to any market participant, in that it does not differentiate between requests for ad hoc historical Open-Close Report data, other than for qualifying academic users. The proposal allows any interested Member or non-Member to request on an ad hoc basis historical end-of-day or intra-day Open-Close Report databased on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[27] and Rule

[25] *See supra* notes 8 and 11.

[26] *See, e.g.* Cboe Options Fee Schedule, Livevol Fees, Open-Close Data, *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf. See also supra* note 8, ISE fee schedule.

[27] 15 U.S.C. 78s(b)(3)(A)(ii).

19b-4(f)(2) [28] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2023–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2023–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2023–09, and should be submitted on or before May 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Sherry R. Haywood,

Assistant Secretary.

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[28] 17 CFR 240.19b–4(f)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97302; File No. SR–MIAX–2023–15]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

April 13, 2023.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 3, 2023, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Fee Schedule (''Fee Schedule'') to amend fees for historical Open-Close Report to: (i) add a fee for ad hoc requests for end-of-day data and no longer provide such data free of charge; (ii) respond to requests for ad hoc intra-day data and adopt a new fee for such requests; and (iii) adopt academic discounts for requests for ad hoc historical end-of-day and intra-day Open-Close data.

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 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 adopted a new data product for options known as the Open-Close Report,[3] which the Exchange made available for purchase to Exchange Members [4] and non-Members on June 1, 2021.[5] The Open-Close Report is described under Exchange Rule 531(d)(1). The Exchange now proposes to amend fees for historical Open-Close Report to: (i) add a fee for ad hoc requests for end-of-day data and no longer provide such data free of charge; (ii) respond to requests for ad hoc intra-day data and adopt a new fee for such requests; and (iii) adopt academic discounts for requests for ad hoc historical end-of-day and intra-day Open-Close data. The Exchange previously filed this proposal on March 23, 2023 (SR–MIAX–2023–14). On April 3, 2023, the Exchange withdrew SR–MIAX–2023–14 and resubmitted this proposal.

General

By way of background, the Exchange offers two versions of the Open-Close

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 91965 (May 21, 2021), 86 FR 28665 (May 27, 2021) (SR–MIAX–2021–18) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a New Historical Market Data Product To Be Known as the Open-Close Report).

[4] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[5] *See* Securities Exchange Act Release No. 92135 (June 9, 2021), 86 FR 31751 (June 15, 2021) (SR–MIAX–2021–23) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Fees for the Open-Close Report).

Report, an end-of-day summary and intra-day report.[6] The end-of-day version is a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker [7]), side of the market (buy or sell), contract volume, and transaction type (opening or closing). The Priority Customer, Non-Priority Customer volume is further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Open-Close Report data is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed. The Exchange notes that Open-Close Report data is not necessary for trading and subscribing to the Open-Close Report is completely optional.

Members and non-Members may purchase the Open-Close Report on a monthly basis. The Exchange currently assess a monthly fee of $600 per month for subscribing to the end-of-day summary Open-Close Report and $2,000 per month for subscribing to the intra-day Open-Close Report. For mid-month subscriptions, new subscribers are currently charged for the full calendar month for which they subscribe and will be provided Open-Close Report data for each trading day of the calendar month from the day on which they subscribed and receive data for each trading day of the calendar month prior to the day on which they subscribe.

End-of-Day Ad Hoc Request (Historical Data)

The Exchange currently provides Members and Non-Members who request on an ad hoc basis historical end-of-day Open-Close Report data free of charge. The Exchange initially proposed to provide such data for free because it only recently launched the Open-Close Report and had minimal amount of historical end-of-day data. The Exchange also wanted to support the introduction of the new product through such a pricing incentive to attract additional subscribers.

An ad hoc request may be for any number of months beginning with June 2021, the month in which the Exchange first made the Open-Close Report available. For example, a market participant may request end-of-day Open-Close Report data for the month of June 2021 or July 2021, or may request such data for both June and July 2021 and would not be currently charged a fee for such request(s). The Exchange notes that other exchanges that provide similar data products allow for ad hoc requests of their end-of-day data for a fee.[8] Similar to other exchanges, the Exchange now proposes to charge a fee of $500 per request per month for ad-hoc requests for end-of-day historical data.[9]

The Exchange currently makes the historical end-of-day Open-Close data available fifteen (15) days after the end of the month for which it is requested. The Exchange implemented this delay because historical end-of-day Open-Close Report data was free of charge and the Exchange sought to not encourage subscribers to request historical end-of-day Open-Close Report data over a paid subscription. Now that the Exchange proposes to charge a fee for historical end-of-day Open-Close Report data, it believes the fifteen (15) day delay in making the data available is no longer necessary and proposes to remove this language from its Fee Schedule.

Intra-Day Ad Hoc Request (Historical Data)

The Exchange now proposes to provide Members and Non-Members who request on an ad hoc basis historical intra-day Open-Close Report data for a fee of $1,000 per request per month. When the Exchange proposed to provide for ad-hoc requests for end-of day data, it did not also propose to allow for ad hoc requests for intra-day Open-Close Report data.[10] Based on interest from Members and non-Members, the Exchange now proposes to do so for the above proposed fee.

As it currently specifies for historical end-of-day Open-Close data, an ad hoc request may be for any number of months beginning with June 2021, the month in which the Exchange first made the Open-Close Report available. Similarly, the Exchange will provide historical intra-day Open-Close data for the same time period. The Exchange notes that other exchanges that provide similar data products allow for ad hoc requests of their intra-day data for a fee.[11]

Academic Discounts for Ad Hoc Historical End-of-Day and Intra-Day Open-Close Report Data

The Exchange also proposes to adopt an academic discount for ad-hoc requests of historical months of these data sets. Specifically, the Exchange proposes to charge qualifying academic purchasers per request $1,500 per year for the first year (instead of $6,000 per year) and $125 per month thereafter for historical end-of-day Open-Close Report data covering all of the Exchange's securities. Further, the Exchange proposes to charge qualifying academic purchasers per request $3,000 per year for the first year (instead of $12,000 per year) and $250 per month thereafter for historical intra-day Open-Close Report data covering all of the Exchange's securities.

Particularly, the Exchange believes that academic institutions and researchers provide a valuable service for the Exchange in studying and promoting the options market. Though academic institutions and researchers have need for granular options data sets, they do not trade upon the data for which they subscribe. The Exchange believes the proposed reduced fee for qualifying academic purchasers of historical end-of-day Open-Close Report data and intra-day Open-Close Report data will encourage and promote academic studies of its market data by academic institutions. In order to qualify for the academic pricing, an

[6] The intraday Open-Close Report provides similar information to that of Open-Close Data but will be produced and updated every 10 minutes during the trading day. Data is captured in ''snapshots'' taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period.

[7] *See* Exchange Rule 100.

[8] *See* Price List—U.S. Derivatives Data for Nasdaq PHLX, LLC (''PHLX''), The Nasdaq Stock Market, LLC (''Nasdaq''), Nasdaq ISE, LLC (''ISE''), and Nasdaq GEMX, LLC (''GEMX''), *available at http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#web.* Particularly, PHLX offers ''Nasdaq PHLX Options Trade Outline (PHOTO)'' and assesses $400 for historical end-of-day data; Nasdaq offers the ''Nasdaq Options Trade Outline (NOTO)'' and assesses $250 for historical end-of-day data; ISE offers the ''Nasdaq ISE Open/Close Trade Profile'' and assesses $600 per month for historical end-of-day data and $27,500 for complete history; and GEMX offers the ''Nasdaq GEMX Open/Close Trade Profile'' and assesses $400 for historical end-of-day data. Cboe EDGX Exchange, Inc. (''EDGX'') and Cboe BZX Exchange, Inc. (''BZX'') both assess $400 for historical end-of-day data per request per month. *See* the EDGX fee schedule *available at http://markets.cboe.com/us/options/membership/fee_schedule/edgx/ and* the BZX fee schedule *available at http://markets.cboe.com/us/options/membership/fee_schedule/bzx/.*

[9] *Id.*

[10] *See* Securities Exchange Act Release No. 93021 (September 16, 2021), 86 FR 52709 (September 22, 2021) (SR–MIAX–2021–39).

[11] *See* Price List—U.S. Derivatives Data for PHLX, ISE, and GEMX, *available at http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#web.* Particularly, PHLX offers ''Nasdaq PHLX Options Trade Outline (PHOTO)'' and assesses $1,000 for historical intra-day data; ISE offers the ''Nasdaq ISE Open/Close Trade Profile'' and assesses $1,000 per month for historical intra-day; and GEMX offers the ''Nasdaq GEMX Open/Close Trade Profile'' and assesses $750 for historical end-of-day data. EDGX and BZX both assess $750 for historical intra-day data per request per month. *See* the EDGX fee schedule *available at http://markets.cboe.com/us/options/membership/fee_schedule/edgx/ and* the BZX fee schedule *available at http://markets.cboe.com/us/options/membership/fee_schedule/bzx/.*

academic purchaser must: (1) be an accredited academic institution or member of the faculty or staff of such an institution, and (2) use the data in independent academic research, academic journals and other publications, teaching and classroom use, or for other bona fide educational purposes (*i.e.* academic use). Furthermore, use of the data must be limited to faculty and students of an accredited academic institution, and any commercial or profit-seeking usage is excluded. Academic pricing will not be provided to any purchaser whose research is funded by a securities industry participant. Academic users interested in qualifying will be required to submit a brief application.[12] Exchange Business Development personnel will have the discretion to review and approve such applications and request additional information when it deems necessary.

The Exchange notes that competing exchanges currently offer academic discounts for similar data sets on those exchanges.[13] The Exchange recognizes the high value of academic research and educational instruction and publications, and believes that the proposed academic discounts for historical end-of-day Open-Close Report data and intra-day Open-Close Report data will encourage the promotion of academic research of the options industry, which will serve to benefit all market participants while also opening up a new potential user base among students. Finally, the Exchange notes that academic purchasers' ad hoc requests of historical end-of-day Open-Close and intra-day Open-Close data would be educational in use and purpose, and not vocational.

Implementation Date

The Exchange intends to implement the proposed fee changes immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposed changes to its Fee Schedule concerning fees for the Open-Close Report is consistent with Section 6(b) of the Act[16] in general, and furthers the objectives of Section 6(b)(4) of the Act[17] in particular, in that it is an equitable allocation of dues, fees and other charges among its members and other recipients of Exchange data.

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, the Open-Close Report 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 the Open-Close Report. Particularly, information regarding opening and closing activity across different option series during the trading day may indicate investor sentiment, which may allow market participants to make better informed trading decisions throughout the day. Subscribers to the data may also be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes the Open-Close Report provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading and completely optional. Moreover, other exchanges offer a similar data product.[18] This proposal seeks to provide historical Open-Close Report data to market participants by amending the fees for the Open-Close Report to: (i) add a fee of $500 per request per month for ad hoc requests for end-of-day historical data; (ii) respond to requests for ad hoc intra-day data and adopt a fee of $1,000 per request per month for such requests; and (iii) adopt academic discounts for requests for ad hoc historical end-of-day and intra-day Open-Close data.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, for the month of March 2023, no single options exchange had more than approximately 13% of the equity options market share and the Exchange represented only approximately 6.72% of the equity options market share for the month of March 2023.[19] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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.''[20] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products.

The Exchange believes its proposal to respond to requests and add fees for ad hoc requests for historical end-of-day and intra-day data and adopt academic discounts for such requests is reasonable as the proposed rates are similar to fees assessed by other exchanges that provide data in response to ad hoc request for their similar data products.[21] The Exchange believes its proposal is reasonable and not unfairly discriminatory because the Exchange now has almost two years of historical Open-Close Report data to provide to market participants that request historical intra-day or end-of-day Open-Close Report data since the Exchange began offering the Open-Close Report in June 2021. Further, the Exchange notes that no competing exchange provides their own historical Open-Close report data free of charge.[22] Indeed, proposing

[12] The Exchange notes that it will have an academic user application available on the Exchange's website soon but it has not received any such requests from potential academic users at the time of this filing (or the previous filing).

[13] *See supra note* 8, BZX, EDGX, and ISE fee schedules; *see also* Cboe Exchange, Inc. (''Cboe'') Options Fee Schedule, Livevol Fees, Open Close Data *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf.*

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4).

[18] *See supra* notes 8 and 11.

[19] *See* the Exchange's ''The market at a glance,'' *available at https://www.miaxoptions.com/* (last visited April 3, 2023).

[20] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[21] *See supra* notes 8 and 11.

[22] *See id.*

fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Like the Exchange's Open-Close Report, other exchanges offer similar data products that each provide insight into trading on those markets and may likewise aid in assessing investor sentiment. Although each of these similar Open-Close data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different option series based on open and closing interest on any one exchange.[23] Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and analytical strategies using only Open-Close data relating to trading activity on one or more of the other markets that provide similar data products. As such, if a market participant views another exchange's historical end-of-day or intra-day Open-Close data as more attractive than the Exchange's historical end-of-day or intra-day Open-Close Report data, then such market participant can merely choose not to request such data from the Exchange and instead purchase another exchange's historical end-of-day or intra-day Open-Close data, which offer similar data points, albeit based on that other market's trading activity.

The Exchange also believes its proposal is reasonable as it would further support its offer of the Open-Close Report, which is designed to aid investors by providing insight into trading on the Exchange. Providing market data, such as the Open-Close Report, is also a means by which exchanges compete to attract business. Subscribers that receive end-of-day Open-Close data, and now intra-day Open-Close data as a result of this proposal, in response to an ad hoc request may use such data to evaluate the usefulness of the Exchange's Open-Close Report and decide, based on that data, whether to subscribe to the Open-Close Report on a monthly basis. To the extent that the Exchange is successful in attracting subscribers for the Open-Close Report through this proposal, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposal to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges.[24] The Exchange therefore believes that its proposal reflects the competitive environment and would be properly assessed on Member or non-Member subscribers. The Exchange also believes the proposal is equitable and not unfairly discriminatory as it would apply equally to all users who choose to purchase or receive such data.

The Exchange believes its proposal is equitably allocated because a wide variety of market participants may choose to request historical Open-Close Report intra-day or end-of-day data, including but not limited to individual customers, buy-side investors and investment banks, all of which will be charged the same rates for the monthly data requests depending on the type of request (*i.e.,* intra-day or end-of-day ad hoc historical requests). The Exchange reiterates that the decision as to whether or not to make an ad hoc request for historical end-of-day or intra-day data Open-Close Report data is entirely optional and available for all market participants. Indeed, no market participant is required to make such ad hoc request for historical end-of-day or intra-day Open-Close Report data, and the Exchange is not required to make historical end-of-day or intra-day Open-Close Report data available to all investors. The Exchange is voluntarily making a subset of existing Open-Close Report data available via ad hoc requests for intra-day and end-of-day data under this proposal at the request of customers, and market participants may choose to receive this data based on their own business needs and for the proposed fees specified herein. Potential purchasers of ad hoc data may request the data at any time if they believe it to be valuable or may decline to subscribe such data.

The Exchange believes it is reasonable to remove the mandatory fifteen (15) day waiting period in order to receive historical ad hoc end-of-day Open-Close data because the Exchange initially implemented this delay because it made historical end-of-day Open-Close Report data free and sought to not encourage subscribers to request historical end-of-day Open-Close Report data over a paid subscription. Now that the Exchange proposes to charge a fee for historical end-of-day Open-Close Report data and because no other options exchange imposes similar delay requirements for the same data, the Exchange believes the fifteen (15) day waiting period is no longer necessary and is reasonable to remove this language from the Fee Schedule.

The Exchange believes that the discount for qualifying academic purchasers of the ad hoc historical end-of-day Open-Close and intra-day Open-Close Report data is reasonable because academic users are not able to monetize access to the data as they do not trade on the data set. The Exchange believes the proposed discount will allow for more academic institutions and faculty members to purchase historical end-of-day Open-Close and intra-day Open-Close Report data, and, as a result, promote research and studies of the options industry to the benefit of all market participants. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all academic users that submit applications and meet the accredited academic institution or faculty member and academic use criteria. As stated above, qualified academic users will subscribe to the data set for educational use and purposes and are not permitted to use the data for commercial or monetizing purposes, nor can qualify if they are funded by an industry participant. As a result, the Exchange believes the proposed discount is equitable and not unfairly discriminatory because it maintains equal treatment for all industry participants or other subscribers that use the data for vocational, commercial or other for-profit purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to enhance the value of a data product that is similar to those offered by other competitor options exchanges.[25] The Exchange made historical end-of-day and intra-day Open-Close Report data available in order to keep pace with changes in the industry and evolving customer needs, and believes that providing such data to market participants that make requests for it will continue to contribute to robust competition among national securities exchanges. At least eight other U.S. options exchanges offer historical end-of-day and intra-day Open-Close report data on an ad hoc basis with fees that are substantially similar to the

[23] The Exchange notes that its Open-Close Report data product does not include data on any exclusive, singly-listed option series.

[24] *See supra* notes 8 and 11.

[25] *See supra* notes 8 and 11.

Exchange's proposed fees herein. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. While the proposed academic discount is a fee reduction that applies only to qualifying academic purchasers, the Exchange believes that academic purchasers' research and publications as a result of access to historical market data benefits all market participants.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price ad hoc requests for end-of-day and intra-day Open-Close Report data is constrained by competition among exchanges that offer similar fees for similar ad hoc requests for end-of-day and intra-day Open-Close report data to their customers. The Exchange notes that there are currently a number of similar products available to market participants and investors. At least eight other U.S. options exchanges offer similar fees for ad hoc requests for end-of-day and intra-day Open-Close report data that is substantially similar to the fees for ad hoc requests for end-of-day and intra-day Open-Close Report data proposed in this filing, which the Exchange must consider in its pricing discipline in order to compete for the market data.[26] For example, proposing fees that are excessively higher than established fees for similar ad hoc requests for historical end-of-day and intra-day Open-Close Report data on the Exchange would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposal 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 for ad hoc historical requests to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposal would apply uniformly to any market participant, in that it does not differentiate between requests for ad hoc historical Open-Close Report data, other than for qualifying academic users. The proposal allows any interested Member or non-Member to request on an ad hoc basis historical end-of-day or intra-day Open-Close Report databased on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[27] and Rule 19b–4(f)(2)[28] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2023–15 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–2023–15. 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–2023–15, and should be submitted on or before May 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Sherry R. Haywood,

Assistant Secretary.

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[26] *See, e.g.* Cboe Options Fee Schedule, Livevol Fees, Open-Close Data, *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf. See also supra* note 8, ISE fee schedule.

[27] 15 U.S.C. 78s(b)(3)(A)(ii).

[28] 17 CFR 240.19b–4(f)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97297; File No. SR–NYSEAMER–2023–16]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Modify Rule 900.2NY and To Adopt New Rules 964NYP, 964.1NYP, and 964.2NYP

April 13, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 6, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 900.2NY (Definitions) and to adopt new Rules 964NYP (Order Ranking, Display, and Allocation), 964.1NYP (Directed Orders and DOMM Quoting Obligations), and 964.2NYP (Participation Entitlement of Specialist Pool and Designation of Primary Specialist) to reflect the transition of the Exchange's options market to the Pillar trading platform. 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

Background

The Exchange plans to transition its options trading platform to its Pillar trading platform. The Exchange's affiliated options exchange, NYSE Arca, Inc. (''NYSE Arca'' or ''Arca Options'') is currently operating on Pillar, as are the Exchange's national securities exchange affiliates' cash equity markets.[4] For this transition, the Exchange proposes to use the same Pillar technology already in operation on Arca Options.[5] In doing so, the Exchange will be able to offer not only common specifications for connecting to both of its equity and options markets, but also common trading functions across the Exchange and its affiliated options exchange, NYSE Arca Options.

The Exchange plans to roll out the new Pillar technology platform over a period of time based on a range of underlying symbols beginning on October 23, 2023.[6] As was the case for Arca Options when it transitioned to Pillar, the Exchange will announce by Trader Update[7] when underlying symbols will be transitioning to the Pillar trading platform. With this transition, certain rules would continue to be applicable to options overlying symbols trading on the current trading platform—the ''Exchange System,''[8] but would not be applicable to options overlying symbols that have transitioned to trading on Pillar.

Instead, the Exchange proposes new rules to reflect how options would trade on the Exchange once Pillar is implemented. These proposed rule changes will (1) use Pillar terminology that is identical to Pillar terminology governing options trading on NYSE Arca, except as otherwise noted; (2) provide for common functionality on both its options markets; and (3) reflect the Exchange's existing Customer priority and pro rata allocation model, with any differences noted herein.[9]

Proposed Use of ''P'' Modifier

As proposed, new rules governing options trading on Pillar would have the same numbering as current rules that address the same functionality, but with the modifier ''P'' appended to the rule number. For example, Rule 964NY, governing Display, Priority and Order Allocation—Trading Systems, would remain unchanged and continue to apply to any trading in symbols on the Exchange System. Proposed Rule 964NYP would govern Order, Ranking, Display, and Allocation for trading in options symbols migrated to the Pillar trading platform. All other current rules that have not had a version added with a ''P'' modifier will be applicable to how trading functions on both the Exchange System and Pillar. Once options overlying all symbols have migrated to the Pillar trading platform, the Exchange will file a separate rule proposal to delete rules that are no longer operative because they apply only to trading on the Exchange System.

To reflect how the ''P'' modifier would operate, the Exchange proposes to add rule text immediately following the title ''Section 900NY. Rules Principally Applicable to Trading of Option Contracts,'' and before ''Rule 900.1NY. Applicability''), which would provide that rules with a ''P'' modifier would be operative for symbols that are trading on the Pillar trading platform. As further proposed, and consistent with the handling of the transition to Pillar by Arca Options, if a symbol (and the option overlying such symbol) is trading on the Pillar trading platform, a rule with the same number as a rule with a ''P'' modifier would no longer be operative for that symbol.[10] The Exchange believes that adding this explanation regarding the ''P'' modifier in Exchange rules would provide transparency regarding which rules

[4] The Exchange's national securities exchange affiliates' cash equity markets include: the New York Stock Exchange LLC, NYSE Arca Inc., NYSE American LLC, NYSE National, Inc., and NYSE Chicago, Inc. (collectively, the ''NYSE Equities Exchanges'').

[5] *See, e.g.,* Securities Exchange Act Release No. 94072 (January 26, 2022), 87 FR 5592 (February 1, 2022) (order approving new rules applicable to trading of single-leg options on Pillar) (SR–NYSEArca–2021–47) (the ''Arca Options Approval Order''). *See, e.g.,* Rules 6.76P–O (Order Ranking and Display) and 6.76AP–O (Order Execution and Routing) (together, the ''Arca Priority Rules''). *See also* NYSE Arca Rules 1.1 (Definitions) (which includes definitions that describe terms applicable to options trading on Pillar).

[6] *See* Trader Update, January 30, 2023 (announcing Pillar Migration Launch date of October 23, 2023, for the Exchange), *available here: https://www.nyse.com/trader-update/history#110000530919.* The Exchange would not begin to migrate underlying symbols to the Pillar platform until all Pillar-related rule filings (*i.e.,* with a ''P'' modifier) are either approved or operative, as applicable.

[7] Trader Updates are available here: *https://www.nyse.com/trader-update/history.* Anyone can subscribe to email updates of Trader Updates, *available here: https://www.nyse.com/subscriptions.*

[8] Rule 900.2NY defines ''Exchange System'' or ''System'' as referring to the Exchange's ''current electronic order delivery, execution, and reporting system for designated option issues through which orders and quotes of Users are consolidated for execution and/or display.'' With the transition to Pillar, the Exchange would no longer use the terms ''Exchange System'' or ''System.'' Once the transition is complete, the Exchange will file a subsequent proposed rule change to delete references to (and the defined term) the ''Exchange System'' and ''System'' from the rulebook. *See also* Rule 900.2NY (providing substantially identical to definition ''Consolidated Book'', which is defined as ''the Exchange's electronic book of orders and quotes'' and further provides that ''all orders and quotes that are entered into the Book will be ranked and maintained in accordance with the rules of priority as provided in Rule 964NY.'').

[9] The current proposal seeks to adopt rules based on certain aspects of the Arca Priority rules, as well as certain definitions that describe terms applicable to options trading on Pillar set forth in NYSE Arca Rule 1.1. However, because the Exchange has (and will continue to have) a priority and allocation scheme that differs from the price-time model on Arca Options, the proposed rules are also based on the Exchange's existing priority Rules 964NY, 964.NY and 964.2NY, with differences noted herein.

[10] NYSE Arca used the same description when it transitioned its options platform to Pillar. *See* Arca Options Approval Order.

would be operative during the symbol migration to Pillar.

The Exchange will not implement the ''P'' rules proposed herein until all other Pillar-related rule filings (*i.e.,* with a ''P'' modifier) are either approved or operative, as applicable, and the Exchange announces the rollout of underlying symbols to Pillar by Trader Update.

Summary of Proposed Rule Changes

In this filing, the Exchange proposes the following new Pillar rules: Rules 964NYP (Order Ranking, Display, and Allocation), 964.1NYP (Directed Orders and DOMM Quoting Obligations), and 964.2NYP (Participation Entitlement of Specialist Pool and Designation of Primary Specialist).[11] The Exchange also proposes to amend Rule 900.2NY to add new definitions that would be applicable for options trading on Pillar as well as to modify additional definitions as set forth below. These proposed rules would set forth the foundation of the Exchange's options trading model on Pillar and, among other things, would use existing Pillar terminology and functionality currently in effect on Arca Options. However, because the Exchange has (and will continue to have) a priority and allocation scheme that differs from the price-time model on Arca Options, the proposed rules would also reflect the Exchange's existing (Customer priority and pro rata allocation) model, with any changes to the existing model noted herein. As discussed in greater detail below, the Exchange is not proposing fundamentally different functionality applicable to options trading on Pillar than is currently available on the Exchange System. However, with Pillar, the Exchange would introduce new terminology and new or updated functionality, as applicable, that would be available for options trading.

To promote clarity and transparency, the Exchange further proposes to add a preamble to the following current rules specifying that they would not be applicable to trading on Pillar: Rules 964NY (Display, Priority and Order Allocation—Trading Systems), and 964.1NY (Directed Orders), and 964.2NY (Participation Entitlement of Specialists and e-Specialists).

[11] As described herein, to streamline rule text regarding participation guarantees, the Exchanges proposes to include in new Rule 964NYP much of the information that is set forth in current Rules 964.1NY (Directed Orders), and 964.2NY (Participation Entitlement of Specialists and e-Specialists). In some instances, the Exchange is proposing to delete from Rules 964.1NY and 964.2NY information that is duplicative of rule text being carried over from current Rule 964NY.

Proposed Rule Changes

Proposed Rule 900.2NY: Definitions

Rule 900.2NY sets forth definitions that are applicable to options trading. In connection with the transition of options trading to Pillar, the Exchange proposes the following amendments to Rule 900.2NY. As described in detail below, the proposed new definitions are identical to how the same terms are defined in NYSE Arca Rule 1.1, except that the proposed terms relate solely to options trading.[12]

- *Away Market:* The Exchange proposes to adopt the defined term of ''Away Market,'' which would refer to ''any Trading Center (1) with which the Exchange maintains an electronic linkage, and (2) that provides instantaneous responses to orders routed from the Exchange.'' This proposed definition is identical to how this term is defined in NYSE Arca Rule 1.1 with respect to options trading.[13]
- *Away Market BBO or ABBO:* The Exchange proposes to adopt the defined term ''Away Market BBO'' or ''ABBO,'' which would refer to the best bid(s) or offer(s) disseminated by Away Markets and calculated by the Exchange based on market information the Exchange receives from OPRA. Consistent with this proposal, the Exchange also proposes that the term ''ABB'' would mean the best Away Market bid and the term ''ABO'' would mean the best Away Market offer. This proposed definition is identical to how this term is defined in NYSE Arca Rule 1.1 with respect to options trading.

In addition, also identical to NYSE Arca Rule 1.1 with respect to options trading, the Exchange proposes that it would adjust its calculation of the ABBO for options traded on the Exchange in the same manner that the Exchange would calculate the NBBO (as described herein). Accordingly, the Exchange proposes that, unless otherwise specified, the Exchange may adjust its calculation of the ABBO based on information about orders it sends to Away Markets, execution reports received from those Away Markets, and certain orders received by the Exchange.[14]

- *Consolidated Book:* The Exchange proposes to modify the defined term ''Consolidated Book'' to include reference to new Rule 964NYP. Current Rule 900.2NY defines ''Consolidated Book'' as ''the Exchange's electronic book of orders and quotes'' and further provides that ''all orders and quotes that are entered into the Book will be ranked and maintained in accordance with the rules of priority as provided in Rule 964NY.'' The Exchange proposes to add to the end of this definition the phrase ''or Rule 964NYP, as applicable.'' This proposed change would add transparency and internal consistency to Exchange rules.
- *Customer and Professional Customer:* The Exchange proposes to modify the defined term ''Professional Customer,'' which is defined as an ''individual or organization that (i) is not a Broker/Dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).'' [15] This definition further provides that a Professional Customer will be treated in the same manner as a non-Customer for purposes of enumerated rules of the Exchange, including, among others, current Rule 964NY (regarding priority and allocation) and certain provisions of Rule 964.2NY (regarding guaranteed

[12] Unlike NYSE Arca Rule 1.1, the proposed new definitions (*e.g.,* of Away Market, ABBO, and MPID) do not include a description of how such terms relate to equities trading. Thus, when the Exchange states that the proposed definitions are identical to the definitions in NYSE Arca Rule 1.1, the Exchange means solely as relates to options trading. The Exchange believes this distinction is immaterial as Rule 900.2NY pertains solely to options trading, whereas Rule 1.1 applies to both options and equities trading.

[13] This proposed definition is also based on the definition of ''NOW Recipient,'' which is currently defined as ''any Market Center (1) with which the Exchange maintains an electronic linkage, and (2) that provides instantaneous responses to NOW Orders routed from the System. The Exchange shall designate from time to time those Market Centers that qualify as NOW Recipients and shall periodically publish such information via its website.'' The Exchange proposes four non-substantive differences for the Pillar options trading definition of ''Away Market'': (1) use the Pillar term of ''Away Market'' instead of the term ''NOW Recipient;'' (2) use the term ''Trading Center'' instead of ''Market Center''; (3) refer to ''orders routed from the Exchange'' instead of ''NOW Orders routed from the System''; and (4) delete the text relating to the Exchange designating and publishing to its website certain Away Markets. The Exchange does not believe that this text needs to be included in the definition of Away Market because such markets are, by definition, those markets with which the Exchange maintains electronic linkage (*i.e.,* pursuant to the Options Order Protection and Locked/Crossed Market Plan). The Exchange will file a separate rule filing to remove the definition of ''NOW Recipient'' after it transitions to Pillar.

[14] Although the Exchange has not presently identified any circumstances under which it would use an unadjusted ABBO, it has included the ''[u]nless otherwise specified'' text to allow for this possibility once the Exchange migrates to the Pillar trading platform. Should the Exchange opt to utilize an unadjusted ABBO for purposes of a specified rule, it would file a subsequent rule change to this effect.

[15] To correct the omission of the word ''an'' in the first sentence of the definition, the Exchange proposes to revise the definition to state that a Professional Customer is ''an individual or organization . . . .'' *See* proposed Rule 900.2NY (emphasis added). This proposed change would add clarity and transparency to Exchange rules.

participation of Specialists). To address the addition of proposed Rule 964NYP, which would incorporate the provisions of Rule 964.2NY, the Exchange proposes to add to the list of applicable rules references: Rules ''964NYP (Order Ranking, Display, and Allocation), 964NYP(h)(2)(A) and (B) (Specialist Pool Guaranteed Participation).'' The Exchange also proposes to add reference to Rule 980NYP (Electronic Complex Order Trading), which proposed new rule describes Complex Order trading on Pillar.[16] This proposed change would add transparency and internal consistency to Exchange rules.

• *Directed Order Market Maker or DOMM:* The Exchange proposes to modify the defined term ''Directed Order Market Maker,'' which refers to a Market Maker that receives a Directed Order, to include reference to the shorthand ''DOMM.'' This proposed change would add transparency and internal consistency to Exchange rules.

• *Market Participant Identifier or MPID:* The Exchange proposes to adopt the defined term of ''Market Participant Identifier'' or ''MPID'', which would refer to the identifier assigned to the orders and quotes of a single ATP Holder for the execution and clearing of trades on the Exchange by that permit holder. The definition would further provide that an ATP Holder may obtain multiple MPIDs and each such MPID may be associated with one or more sub-identifiers of that MPID. This proposed definition is identical to how this term is defined in NYSE Arca Rule 1.1 with respect to options trading. The Exchange notes that the proposed definition only includes reference to ATP Holders on the Exchange rather than ETP Holders, OTP Holders, or OTP Firms on NYSE Arca.

• *NBBO:* The Exchange proposes to modify the defined term ''NBBO,'' which refers to the national best bid (NBB) or national best offer (NBO), to specify that, unless otherwise specified, the Exchange may adjust its calculation of the NBBO based on information about orders it sends to Away Markets, execution reports received from those Away Markets, and certain orders received by the Exchange. This proposed text reflects how the Exchange currently calculates the NBBO for options trading and is identical to how Arca Options describes its calculation of the NBBO per NYSE Arca Rule 1.1. The Exchange believes that adding this detail to the proposed definition of NBBO would promote clarity and transparency in Exchange rules and across its affiliated options exchanges. The Exchange further notes that, as is the same on Arca Options, there are limited circumstances when the Exchange would not adjust its calculation of the NBBO and will specify in its rules when it would not be using an adjusted NBBO for purposes of a specific rule.[17]

Proposed Rule 964NYP: Order Ranking, Display, and Allocation

Rule 964NY, titled ''Display, Priority and Order Allocation—Trading Systems,'' governs order ranking, display and allocation for options trading on the current Exchange System. Proposed Rule 964NYP would address order ranking, display, and allocation for options trading on Pillar. The Exchange proposes that the title for new Rule 964NYP would be ''Order Ranking, Display and Allocation'' instead of ''Display, Priority and Order Allocation—Trading Systems,'' because the Exchange does not propose to use the term ''Trading Systems,'' which term is not defined in current Exchange rules, in connection with Pillar.

Current Rule 964NY sets forth the priority for the allocation of incoming orders to resting interest (orders or quotes) at a particular price in the Exchange System.[18] Specifically, per Rule 964NY, the priority for the allocation of incoming orders at the same price is as follows: (1) resting Customer orders; (2) Directed Order Market Makers (or DOMMs), provided they satisfy the criteria to be eligible to receive a Directed Order; [19] (3) the Specialist Pool (including for Directed Orders if not allocated to the DOMM); [20] and (4) non-Customer interest (on a size pro rata basis).[21] Under the current Rule, a DOMM or the Specialist Pool may be entitled to guaranteed participation with an incoming order for up to 40% of that order, provided, among other requirements, the DOMM or the Specialist Pool is quoting at the NBBO and the execution price is at the NBBO.[22] If the DOMM qualifies for the participation guarantee with an incoming Directed Order, the Specialist Pool is not entitled to guaranteed participation.[23] Whether the DOMM or Specialist Pool receives the participation guarantee, that participant(s) is entitled to the greater of 40% of the incoming order or their size pro rata share, which allocation is not to exceed each participants disseminated size.[24]

On Pillar, orders and quotes will be ranked and maintained in the same way that such interest is ranked and maintained on the Exchange System, including participation guarantees to DOMMs or the Specialist Pool, with one difference. Today, same-priced displayed orders and quotes are be ranked ahead of same-priced non-displayed orders and quotes, with displayed Customer orders afforded first priority to trade ahead of same-priced non-Customer interest and, non-displayed interest, orders and quotes are ranked in time priority with no priority afforded to Customer interest.

On Pillar, the Exchange is adopting the same priority categories as are utilized by Arca Options, *i.e.,* Priority 1—Market Order, Priority 2—Display Orders and Priority 3—Non-Display Orders (the ''Pillar Priority categories'').[25] Thus, on the Exchange, Customer orders in each priority category will have first priority to trade ahead of same-priced non-Customer interest in that priority category.[26] For example, same-priced interest ranked Priority 1—Market Orders will afford Customer orders at a price first priority, followed by same-priced non-Customer interest. And the same concept holds

[16] *See* Securities Exchange Act Release No. 97125 (March 13, 2023), 88 FR 16467 (March 17, 2023) (notice of filing to adopt new Rule 980NYP regarding complex order trading on Pillar) (SR–NYSEAMER–2023–17).

[17] *See* Arca Options Approval Order, 87 FR 5592, at 5598–59.

[18] *See* Rule 964NY(b) and (c) (regarding priority, allocation, and execution of incoming interest (and the balance thereof) against orders and quotes resting in the Consolidated Book. The Consolidated Book is the Exchange's electronic book of orders and quotes. *See* Rule 900.2NY.

[19] Rule 900.2NY defines a Directed Order Market Maker as a Market Maker that receives a Directed Order. *See* Rule 964.1NY (Directed Orders) (providing that ''Specialists and Market Makers may receive Directed Orders in their appointed classes in accordance with the provisions of this Rule 964.1NY'' and describing the potential allocation of Directed Orders, as well as the DOMM's heightened quoting requirements).

[20] Rule 900.2NY defines the Specialist Pool as the aggregated size of the best bid and best offer, in a given series, amongst the Specialist and e-Specialists that match in price; and defines a ''Specialist'' as an individual or entity deemed qualified by the Exchange to make transactions in accordance with Rule 920NY and meets the requirements of Rule 927NY(b). Each Specialist must be registered with the Exchange as a Market Maker, and any ATP Holder so registered is eligible to be qualified as a Specialist. Per Rule 927.4NY, the Exchange may designate one or more e-Specialists per options class to fulfill certain Specialist's obligations.

[21] *See* Rule 964NY(b)(3) (setting forth size pro rata formula and application).

[22] *See* Rule 964NY(b)(2)(B) and (C); Rule 964.1NY(i), (ii) (Directed Orders); and Rule 964.2NY (Participation Entitlement of Specialists and e-Specialists).

[23] *See* Rule 964NY(b)(2)(B); Rule 964.2NY(b)(4).

[24] *See* Rule 964NY(b)(2)(B)(iii) and (C)(iii). The Primary Specialist may be afforded additional weighting in the Specialist Pool. *See* Rules 964.2NY(a) and (b)(3) (regarding criteria considered in the selection of the Primary Specialist and its entitlement to additional weighting, respectively).

[25] *See* Arca Options Rule 6.76P–O(e).

[26] *See* proposed Rule 964NYP(e), discussed *infra.*

true for each of the Priority 2 and Priority 3 interest categories. The Exchange believes that the proposed new rule is consistent with the Exchange's Customer-centric allocation model and affords Customers priority at a price regardless of order type utilized. As discussed in detail below, the proposed rule also provides transparency with respect to how the Exchange's Customer priority and pro rata allocation model would operate using new terminology applicable to all orders and quotes on the Pillar trading platform.

Proposed Rule 964NYP(a) would set forth definitions for purposes of all ''Options Trading'' on the Pillar trading platform. Each of the proposed definitions are identical to definitions utilized on Arca Options to describe order ranking and display.[27] These proposed definitions would provide transparency regarding options trading on Pillar and would serve as the foundation for the handling of orders/quotes and modifiers on the new trading platform.[28] In addition to using the same Pillar terminology as is used in Arca Options Rule 6.76P–O, the Exchange notes that the proposed definitions do not differ in substance from the operation of current Rule 964NY relating to options trading, as described below.

• Proposed Rule 964NYP(a)(1) would define the term ''display price'' to mean the price at which an order or quote ranked ''Priority 2—Display Orders'' [29] or Market Order is displayed, which price may be different from the limit price or working price of the order (*i.e.,* if it is a non-routable Limit Order). This proposed definition is identical to Arca Options Rule 6.76P–O(a)(1). The Exchange notes that, also identical to Arca Options Rule 6.76P–O(a)(1), Market Orders would be included as interest that may have a display price (for example, consistent with current functionality, a Market Order could be displayed at its Trading Collar).[30]

• Proposed Rule 964NYP(a)(2) would define the term ''limit price'' to mean the highest (lowest) specified price at which a Limit Order or quote to buy (sell) is eligible to trade. The limit price is designated by the order sender. As noted in the proposed definitions of display price and working price, the limit price designated by the order sender may differ from the price at which the order/quote would be displayed or eligible to trade. This proposed definition is identical to Arca Options Rule 6.76P–O(a)(2).

• Proposed Rule 964NYP(a)(3) would define the term ''working price'' to mean the price at which an order or quote is eligible to trade at any given time, which may be different from the limit price or display price of an order. This proposed definition is identical to Arca Options Rule 6.76P–O(a)(3). The Exchange believes that the term ''working price'' would provide clarity regarding the price at which an order/quote may be executed at any given time. Specifically, the Exchange believes that use of the term ''working'' denotes that this is a price that is subject to change, depending on the circumstances. The Exchange will be using this term in connection with orders/quotes and modifiers available on Pillar, which (as noted herein) will be the subject of a separate rule filing.[31]

• Proposed Rule 964NYP(a)(4) would define the term ''working time'' to mean the effective time sequence assigned to an order or quote for purposes of determining its priority ranking. The Exchange proposes to use the term ''working time'' in its rules for trading on the Pillar trading platform instead of terms such as ''time sequence'' or ''time priority,'' which are used in rules governing options trading on the Exchange's current system. The Exchange believes that use of the term ''working'' denotes that this is a time assigned to an order/quote for purposes of ranking and is subject to change, depending on circumstances. This proposed definition is identical to Arca Options Rule 6.76P–O(a)(4).

• Proposed Rule 964NYP(a)(5) would be identical to Arca Options Rule 6.76P–O(a)(5) and would define an ''Aggressing Order'' or ''Aggressing Quote'' to mean a buy (sell) order or quote that is or becomes marketable against sell (buy) interest on the Consolidated Book. The proposed terms would therefore refer to orders or quotes that are marketable against other orders or quotes on the Consolidated Book. These terms would be applicable to incoming orders or quotes, orders that have returned unexecuted after routing, or resting orders or quotes that become marketable due to one or more events. For the most part, resting orders or quotes will have already traded with contra-side interest against which they are marketable.

To maximize the potential for orders or quotes to trade, the Exchange continually evaluates whether resting interest may become marketable. Events that could trigger a resting order to become marketable include updates to the working price of such order or quote, updates to the NBBO, changes to other interest resting on the Consolidated Book, or processing of inbound messages. To address such circumstances and identical to Arca Options Rule 6.76P–O(a)(5), the Exchange proposes to include in proposed Rule 964NYP(a)(5) that a resting order or quote may become an Aggressing Order or Aggressing Quote if its working price changes, if the NBBO is updated, because of changes to other orders or quotes on the Consolidated Book, or when processing inbound messages. The Exchange believes that these proposed definitions would promote transparency in Exchange rules by providing detail regarding circumstances when a resting order or quote may become marketable, and thus would become an Aggressing Order or Aggressing Quote.

Under current Rule 964NY(a), the Exchange System displays all non-marketable limit orders in the Display Order Process, unless indicated otherwise.[32] Proposed Rule 964NYP(b)

[27] *See* Arca Options Rule 6.76P–O(a)(1)–(5).

[28] The Exchange will file a separate rule change to adopt proposed Rule 900.3NYP that will describe orders and modifiers available to Exchange market participants on the Pillar trading platform (the ''Pillar Order Type Filing''). Like Arca Options Rule 6.62P–O, relating to orders and modifiers, proposed Rule 900.3NYP would specify whether an order or quote would be displayable, *i.e.,* ranked Priority 2—Display Orders, or non-displayable, *i.e.,* ranked Priority 3—Non-Display Orders, and would set forth modifier instructions available for each order type (*e.g.,* DAY, GTC, IOC, etc.).

[29] The term ''Priority 2—Display Orders'' is described in more detail below.

[30] Current Trading Collar functionality is set forth in Rule 967NY(a), and as noted herein the Pillar Order Type Filing will separately adopt new Rule 900.3NYP, which will describe how Trading Collars would be applied (including to Market Orders) on Pillar. The Exchange represents that it would handle collared Market Orders the same way such interest is handled on Arca Options, *i.e.,* it would be held on the Consolidated Book for 500 milliseconds and, if not traded within that period, would cancel. *See* Arca Options Rule 6.62P–O(a)(4)(D).

[31] *See supra* note 28 regarding the Pillar Order Type Filing.

[32] The Exchange notes that current Rule 964NY(a) refers to the display of non-marketable limit orders ''in the Display Order Process,'' but that concept is not defined nor referenced elsewhere in Rule 964NY and is not being utilized in proposed Rule 964NYP. As indicated below, Rules 964NY(b)(2)(E) and (c)(2)(D) refer to orders in the ''Working Order File,'' but (as with the Display Order Process) that concept is neither defined nor referenced elsewhere in current Rule 964NY. Regarding the Working Order Process, it appears that detail regarding this concept was deleted at some point because this concept is described in the Commission's order approving options listing and trading rules on American Stock Exchange LLC (''Amex'')—the Exchange's predecessor exchange. *See, e.g.,* Securities Exchange Act No. Release 59472 (February 27, 2009), 74 FR 9843, at 9845–9846 (SR–NYSEALTR–2008–14) (approving, among other rules, Rule 964NY(b)(2)(E), which provides that the Working Order Process ranks/prioritizes Reserve Orders, AON Orders, Stop/Stop Limit Orders, and

Continued

would govern the display of non-marketable Limit Orders and quotes. As proposed, the Exchange would display ''all non-marketable Limit Orders and quotes ranked Priority 2—Display Orders unless the order or modifier instruction specifies that all or a portion of the order is not to be displayed,'' which functionality is the same as that set forth in the first sentence of Rule 964NY(a), except that the proposed rule includes reference to quotes, uses Pillar Priority categories to describe the same functionality, and does not include reference to the Display Order Process. Further, proposed Rule 964NYP(b) is identical to Arca Options Rule 6.76P–O(b).

Proposed Rule 964NYP(b)(1) would provide that the Exchange would ''disseminate current consolidated quotations/last sale information, and such other market information as may be made available from time to time pursuant to agreement between the Exchange and other Trading Centers, consistent with the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information.'' This proposed Rule mirrors the second sentence of current Rule 964NY(a), except that the proposed Rule refers to the ''Exchange'' rather than the ''System'' and uses the term ''Trading Centers'' instead of ''Market Centers.'' [33] Further, proposed Rule 964NYP(b)(1) is identical to Arca Options Rule 6.76P–O(b)(2).

Finally, proposed Rule 964NYP(b)(2) is identical to Arca Options Rule 6.76P–O(b)(3) and would provide that if ''an Away Market locks or crosses the Exchange BBO, the Exchange will not change the display price of any Limit Orders or quotes ranked Priority 2—Display Orders and any such orders will be eligible to be displayed as the Exchange's BBO.'' This proposed rule describes Pillar functionality, which is the same as current functionality not described in the rule. The Exchange believes that including this text in the proposed rules would promote clarity and granularity because this proposed concept makes clear that resting displayed interest that did not cause a locked or crossed market condition can stand its ground and maintain priority at the price at which it was originally displayed.

Proposed Rule 964NYP(c) would describe the Exchange's general process for ranking orders and quotes. Current Rule 964NY(b) describes Customer priority, *i.e.,* Customer orders get first priority at a price, followed (in second priority) by any guaranteed participation of either a DOMM or the Specialist Pool (as described further below), next (and third priority) is any non-Customer interest, which may be allocated pro rata (as described in proposed Rule 964NYP(i) below); and finally, to orders ''in the Working Order File, if eligible for execution,'' except that such orders ''do not have any priority or standing until they are eligible for execution and/or display.'' [34]

As proposed, Rule 964NYP(c), which is identical to Arca Options Rule 6.76P–O(c), would provide that all non-marketable orders and quotes would be ranked and maintained in the Consolidated Book according to price-time priority in the following manner: (1) price; (2) priority category; (3) time; and (4) ranking restrictions applicable to an order/quote or modifier condition. Accordingly, orders and quotes would be first ranked by price. Next, at each price level, orders and quotes would be assigned a Pillar Priority category and, within each priority category, interest would be ranked by time. The general requirements for ranking per proposed Rule 964NYP(c) are applicable to all orders and quotes, unless an order or quote or modifier has a specified exception to this ranking methodology (per proposed paragraph (g) as described below).

Proposed Rule 964NYP(d), which is identical to Arca Options Rule 6.76P–O(d), would describe how orders and quotes would be ranked based on price, which additional detail would provide transparency regarding the Exchange's price-ranking process. Specifically, as proposed, all orders and quotes would be ranked based on the working price of an order or quote. Orders and quotes to buy would be ranked from highest working price to lowest working price and orders and quotes to sell would be ranked from lowest working price to highest working price. The proposed rule would further provide that if the working price of an order or quote changes, the price priority of an order or quote would change. This proposed pricing priority is current functionality (not included in the rule), but the new rule, which is identical to Arca Options Rule 6.76P–O(d), would add detail regarding the concept of ''working price'' and its impact on priority.

Proposed Rule 964NYP(e) would describe the proposed Pillar Priority categories for ranking purposes, which added detail and terminology would be new for the Exchange but would be based on Pillar terminology as used in Arca Options rules. As proposed, at each price, all orders and quotes would be assigned a priority category and, within each priority category, Customer orders would be ranked ahead of non-Customer. If, at a price, there are no remaining orders or quotes in a priority category, then same-priced interest in the next priority category would have priority. Proposed Rule 964NYP(e) is based on Arca Options Rule 6.76P–O(e), except that the Exchange's rule specifies its distinct Customer priority model, which affords Customer orders in each Pillar Priority category first priority at a price (over same-price non-Customer interest), which differs from the price-time model on Arca Options.

The proposed Pillar Priority categories would be:

- Proposed Rule 964NYP(e)(1) would be identical to Arca Options Rule 6.76P–O(e)(1) and would specify ''Priority 1—Market Orders,'' which provides that unexecuted Market Orders would have priority over all other same-side orders with the same working price. For example, a Market Order subject to a Trading Collar would be displayed on the Consolidated Book. In such circumstances, the displayed Market Order would have priority over all other resting orders at that price. The Exchange believes that the proposed rule change would add transparency and specificity to Exchange rules.
- Proposed Rule 964NYP(e)(2) would be identical to Arca Options Rule 6.76P–O(e)(2) and would specify ''Priority 2—Display Orders.'' As proposed, non-marketable Limit Orders or quotes with a displayed working price would have second priority. For an order or quote that has a display price that differs from the working price of the order or quote, the order or quote would be ranked Priority 3—Non-Display Orders at the working price.[35] The Exchange believes that the

Stock Contingency Orders).The Exchange believes that these undefined (obsolete) concepts are of no import and reference to them in current Rule 964NY is likely the result of an oversight. As such, the Exchange does not propose to include the concepts of the ''Display Order Process'' or ''Working Order File'' in proposed Rule 964NYP, which exclusion would add clarity, transparency, and internal consistency to Exchange rules.

[33] The second sentence of current Rule 964NY(a) states, ''[t]he System also will disseminate current consolidated quotations/last sale information, and such other market information as may be made available from time to time pursuant to agreement between the Exchange and other Market Centers, consistent with the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information.''

[34] *See* note 32, *supra* (regarding reference to undefined concept of a ''Working Order File,'' which concept the Exchange does not plan to include in proposed Rule 964NYP).

[35] *See supra* note 28 regarding the Pillar Order Type Filing, which will include a description of Non-Routable Limit Orders, which order type will function in substantially the same manner as set forth in Arca Options Rule 6.62P–O(e)(1).

proposed rule change would add transparency and specificity to Exchange rules.

• Proposed Rule 964NYP(e)(3) would be identical to Arca Options Rule 6.76P–O(e)(3) and would specify ''Priority 3—Non-Display Orders.'' As proposed, non-marketable Limit Orders or quotes for which the working price is not displayed, including reserve interest of Reserve Orders, have third priority. This proposed rule is consistent with current functionality as described in current Rule 964NY(b)(2)(E), which affords last priority to orders that are not displayed (except, as noted herein, non-displayed Customer orders are ranked ahead of non-Customer orders in this category). The Exchange believes that the proposed rule would add transparency and specificity to Exchange rules.

Proposed Rule 964NYP(f) is identical to Arca Options Rule 6.76P–O(f) and would set forth that at each price level within each priority category, orders and quotes would be ranked based on time priority. The proposed changes set forth below are consistent with current functionality and would add detail not included in existing Rule 964NY.

• Proposed Rule 964NYP(f)(1) would be identical to Arca Options Rule 6.76P–O(f)(1) and would provide that an order or quote would be assigned a working time when it is first added to the Consolidated Book based on the time such order or quote is received by the Exchange. This proposed process of assigning a working time to orders is current functionality, although not specified in current Rule 964NY. To provide transparency in Exchange rules, the Exchange further proposes to copy Arca Options Rule 6.76P–O(f)(1) by including in proposed Rule 964NYP(f)(1) how the working time would be determined for orders that are routed, which is consistent with current options trading functionality. As proposed:

○ Proposed Rule 964NYP(f)(1)(A) would be identical to Arca Options Rule 6.76P–O(f)(1)(A) and would specify that an order that is fully routed to an Away Market on arrival, per proposed Rule 964NYP(k)(1) (described below), would not be assigned a working time unless and until any unexecuted portion of the order returns to the Consolidated Book. The Exchange notes that this is the current process for assigning a working time to an order, although not described in current Rule 964NY. This proposed rule is also consistent with current Rule 964NY(c)(2)(E), which provides that when an order or portion of an order has been routed away and is not executed either in whole or in part at the other Market Center, it will be ranked and displayed in the Consolidated Book in accordance with the terms of the order.

○ Proposed Rule 964NYP(f)(1)(B) would be identical to Arca Options Rule 6.76P–O(f)(1)(B) and would specify that for an order that, on arrival, is partially routed to an Away Market, the portion that is not routed would be assigned a working time. If any unexecuted portion of the order returns to the Consolidated Book and joins any remaining resting portion of the original order, the returned portion of the order would be assigned the same working time as the resting portion of the order. If the resting portion of the original order has already executed and any unexecuted portion of the order returns to the Consolidated Book, the returned portion of the order would be assigned a new working time. This process for assigning a working time to routed orders that return to the Exchange is the same as currently used on the Exchange.[36]

• Proposed Rule 964NYP(f)(2) would be identical to Arca Options Rule 6.76P–O(f)(2) and would provide that an order or quote would be assigned a new working time if: (A) the display price of an order or quote changes, even if the working price does not change, or (B) the working price of an order or quote changes, unless the working price is adjusted to be the same as the display price of an order or quote. This proposed text would be new, and the Exchange believes that adjusting the working time any time the display price of an order or quote changes, would respect the priority of orders/quotes that were previously displayed at the price to which the display price is changing. In addition, the Exchange believes it is appropriate to adjust the working time of an order or quote any time its working price changes, unless the display price does not change. In addition to being identical to Arca Options Rule 6.76P–O(f)(2), this proposed order handling in Exchange rules is consistent with the rules of other options exchanges.[37]

• Proposed Rule 964NYP(f)(3), which is identical to Arca Options Rule 6.76P–O(f)(3), would provide that an order or quote would be assigned a new working time if the size of an order or quote increases and that an order or quote retains its working time if the size of the order or quote is decreased. This proposed detail about the process for assigning (or not) a new working time when the size of an order changes is not described in the current Rule 964NY but is consistent with existing functionality for how orders (but not quotes) are processed on the Exchange System.[38]

Proposed Rule 964NYP(g) is identical to Arca Options Rule 6.76P–O(g) and would specify that the Exchange would apply ranking restrictions applicable to specific order, quote or modifier instructions as provided for in Rule 900.3NYP.[39]

Proposed Rule 964NYP(h), ''Allocation of Resting Interest: Participation Entitlements and Pro Rata Pool,'' describes the Exchange's participation entitlements and participants constituting the Size Pro Rata Pool. Unless otherwise specified, proposed Rule 964NYP(h) reflects current functionality for allocating non-Customer interest, including participation guarantees, and the ''Size Pro Rata Pool'' as set forth in Rules 964NY(b)(2)(B), (C) and (D) as well as Rules 964.1NY and 964.2NY.[40]

Proposed Rule 964NYP(h)(1) is consistent with current functionality (with one new feature described below) and would provide that when the execution price is the NBBO, a DOMM may be entitled to guaranteed participation for its quote(s) to be matched against the balance of a Directed Order (the ''DOMM Guarantee'').[41] Such DOMM Guarantee

[36] *See, e.g.,* Rule 964NY(c)(2)(E)(ii) (providing that when an order that was routed away and is not fully executed, upon its return such order will be ''will not have time standing relative to other orders received at the same price'' while it was routed away and outside the Exchange).

[37] *See, e.g.,* Cboe BZX (''BZX'') Rule 11.9(g)(1)(B) (providing that, for orders subject to ''display price sliding,'' BZX ''will re-rank an order at the same price as the displayed price in the event such order's displayed price is locked or crossed by a Protected Quotation of an external market'' and that ''[s]uch event will not result in a change in priority for the order at its displayed price'').

[38] Currently, on the Exchange System, if the size of a quote is reduced, the Exchange processes the reduced quantity as a new quote that is assigned a new effective time sequence. By contrast, orders reduced in size are not assigned a new working time by the Exchange System. The Exchange proposes that, on Pillar, both quotes and orders reduced in size would not receive a new working time. The proposed provision would provide for consistent handling of orders and quotes when the size of such interest is reduced.

[39] As discussed, *supra* note 28, the Exchange will file a separate Pillar Order Type Filing. On Pillar, and consistent with Arca Options Rule 6.62P–O (Orders and Modifiers), the Exchange proposes that new Rule 900.3NYP (Order Types and Modifiers) would similarly maintain much of the basic order type functionality while adding detail regarding which Pillar Priority category of each order type as well as additional detail about each such order type would be handled on Pillar.

[40] As noted *supra* note 10, the Exchange notes that much of the text contained in current Rules 964.1NY and 964.2NY is repetitive of information in current Rule 964NY. As such, the Exchange proposes to streamline proposed Rule 964NYP to include in this single rule the salient information related to the participation guarantees.

[41] *See* Rule 964NY(b)(2)(B)(i).

would be 40% of the balance of the Directed Order, unless otherwise determined by the Exchange and announced by Trader Update, which is current functionality.[42] If the DOMM does not qualify to receive the DOMM Guarantee, the bids and offers of that DOMM will be included in the ''Size Pro Rata Pool'' (as described below in proposed Rule 964NYP(h)(3)).[43] The proposed rule would further provide that, in the absence of a DOMM Guarantee, the Specialist Pool (which takes priority behind the DOMM) may be entitled to a guaranteed allocation (as described below in proposed paragraph (h)(2)), which is current functionality.[44]

• Proposed Rule 964NYP(h)(1)(A) is the same as current functionality and would provide that a DOMM will be allocated a number of contracts equal to the greater of the DOMM Guarantee or their ''size pro rata'' allocation as provided in this Rule 964NYP(i) (described below), but in either case, no greater than the DOMM's disseminated size.[45]

○ Proposed Rule 964NYP(h)(1)(A)(i) would provide that if the result of applying the DOMM Guarantee is a fractional allocation of contracts, the DOMM Guarantee would be rounded down to the nearest contract. Further this proposed Rule would provide that if the result of applying the DOMM Guarantee results in less than one contract, the DOMM Guarantee will be equal to one contract. The Exchange believes that including this additional detail (which is the same as current functionality not codified in current rule) in the proposed rule would add transparency to Exchange rules. This methodology is also consistent with Arca Options Rule 6.76AP–O(a)(1)(C) regarding the analogous Lead Market Maker participation guarantee.[46]

○ Proposed Rule 964NYP(h)(1)(A)(ii) would provide that if a DOMM has more than one eligible quote, each quote will receive a pro rata share of the DOMM Guarantee, which text would add granularity and transparency to Exchange rules. This text would be new and reflects that on Pillar, the Exchange would permit multiple quotes from the same DOMM at the same price and that each eligible quote would be entitled to a pro rata share of the DOMM Guarantee consistent with the Exchange's allocation model.[47]

○ Proposed Rule 964NYP(h)(1)(B) would provide that for all Directed Orders of five (5) contracts or fewer, if the DOMM is also the Primary Specialist (as determined per proposed Rule 964.2NYP(b)), such DOMM will be allocated the balance of the Directed Order after any allocation to Customers, not to exceed the DOMM's disseminated size or, if the DOMM has more than one eligible quote, each quote will receive a pro rata share. This proposed functionality would be new but is consistent with the guaranteed participation entitlement afforded to Primary Specialists in the Specialist Pool.[48] As such, the Exchange believes this proposed functionality would add internal consistency to Exchange rules.

Proposed Rule 964NYP(h)(2) is the same as current functionality and would provide that when the execution price is the NBBO, participants in the Specialist Pool may be entitled to guaranteed participation of their quote(s) to be matched against the balance of an Aggressing Order or Aggressing Quote (the ''Specialist Pool Guarantee'').[49] Such Specialist Pool Guarantee would be 40% of the balance of an Aggressing Order or Aggressing Quote, unless otherwise determined by the Exchange and announced by Trader Update.[50] However, the Specialist Pool will not receive a guaranteed allocation if a DOMM has received a guaranteed allocation.[51] Further, if a DOMM has received a guaranteed allocation, the bids and offers of the Specialist Pool will be included in the ''Size Pro Rata Pool'' as described in proposed Rule 964NYP(h)(3) below.[52] Conversely, in the absence of a DOMM Guarantee, the Specialist Pool (which takes priority behind the DOMM) may be entitled to the Specialist Pool Guarantee as described below.[53]

• Proposed Rule 964NYP(h)(2)(A) is the same as current functionality and would provide that the Specialist Pool would be allocated a number of contracts equal to the greater of their share in the Specialist Pool Guarantee or their ''size pro rata'' allocation as provided in proposed Rule 964NYP(i), but in either case, no greater than the Specialist's Pool disseminated size.[54]

○ Proposed Rule 964NYP(h)(2)(A)(i) would provide that if the result of applying the Specialist Pool Guarantee is a fractional allocation of contracts, the Specialist Pool Guarantee is rounded down to the nearest contract. Further, this proposed Rule would provide that if the result of applying the Specialist Pool Guarantee results in less than one contract, the Specialist Pool Guarantee would be equal to one contract. The Exchange believes that including this additional detail (which is the same as current functionality not codified in current rule) in the proposed rule would add transparency to Exchange rules. This methodology is also consistent with Arca Options Rule 6.76AP–O(a)(1)(C) regarding the analogous Lead Market Maker participation guarantee.[55]

○ Proposed Rule 964NYP(h)(2)(A)(ii) is the same as current functionality and would provide that the size pro rata participation for the Primary Specialist (as determined per proposed Rule 964.2NYP(b)) in the Specialist Pool will receive additional weighting, as determined by the Exchange, and announced by Trader Update (the ''Additional Weighting'').[56]

○ Proposed Rule 964NYP(h)(2)(A)(iii) is the same as current functionality and would provide that each Specialist or e-Specialist in the Specialist Pool will be allocated a number of contracts equal to the greater of their share in the Specialist Pool Guarantee or their ''size pro rata'' allocation as provided in proposed Rule 964NYP(i), but in either

[42] *See* Rule 964NY(b)(2)(B)(ii).

[43] *See* Rule 964NY(b)(2)(B)(i); Rule 964.1NY(ii).

[44] *See* Rule 964NY(b)(2)(C).

[45] *See* Rule 964NY(b)(2)(B)(iii).

[46] *See* Arca Options Rule 6.76AP–O(a)(1)(C) (providing that, ''[i]f the result of applying the LMM Guarantee is a fractional allocation of contracts, the LMM Guarantee is rounded down to the nearest contract. If the result of applying the LMM Guarantee results in less than one contract, the LMM Guarantee will be equal to one contract.'').

[47] *See* Rule 925.1NY(a)(1) (providing that a Market Maker's same-side quote will update its previously displayed quote). The ability for Market Makers to send multiple quotes will be new functionality under Pillar and addressed in a separate rule filing. Similar to Arca Options, the Exchange plans to file a separate rule filing to address the handling of Market Maker Quotations on the Exchange, including that such Market Makers can have more than one quote in a series on Pillar. *See, e.g.,* Arca Options Rule 6.37AP–O(a)(1).

[48] *See* Rule 964NY(b)(2)(C)(iv) (providing that ''[f]or all orders of five (5) contracts or fewer, the Primary Specialist (as defined in Rule 964.2NY(a)) will be allocated the balance after any allocation to Customers, not to exceed the size of the Primary Specialist's quote, provided the Primary Specialist is quoting at the NBBO, and the order was not originally allocated to a Directed Order Market Maker.). *See also* Rule 964.2NY(b)(3)(B) (same in substance).

[49] *See* Rule 964NY(b)(2)(C); Rule 964.2NY(b).

[50] *See* Rule 964NY(b)(2)(C)(ii); Rule 964.2NY(b)(2).

[51] *See* Rule 964NY(b)(2)(C); Rule 964.2NY(b)(4).

[52] *See* Rule 964NY(b)(2)(C).

[53] *See* Rule 964NY(b)(2)(C).

[54] *See* Rule 964.2NY(b)(1)(iv).

[55] *See* Arca Options Rule 6.76AP–O(a)(1)(C) (providing that, ''[i]f the result of applying the LMM Guarantee is a fractional allocation of contracts, the LMM Guarantee is rounded down to the nearest contract. If the result of applying the LMM Guarantee results in less than one contract, the LMM Guarantee will be equal to one contract.'').

[56] *See* Rule 964.2NY(b)(3)(A). The Exchange notes that it is not proposing to include in the proposed rule the now obsolete caveat that ''if all participants in the Specialist Pool are quoting the same size, this additional weighting will be no greater than 66⅔% if there is only one e-Specialist, and no greater than 50% if there are two or more e-Specialists'' as the Exchange does not currently impose these limits nor does it plan to do so on Pillar.

case, no greater than the Specialist's disseminated size.[57]

▪ Proposed Rule 964NYP(h)(2)(A)(iii)(a) is the same as current functionality and would provide that if there is only one Specialist or e-Specialist in Specialist Pool, that Specialist or e-Specialist would be allocated a number of contracts equal to the greater of their share in the Specialist Pool Guarantee (*i.e.,* the entire 40%) or their ''size pro rata'' allocation as provided in proposed Rule 964NYP(i), no greater than the size of their disseminated size.[58]

○ Proposed Rule 964NYP(h)(2)(A)(iv) would be new text and would provide that if a Specialist has more than one eligible quote in the Specialist Pool, each such quote will receive a pro rata share of the Specialist Pool Guarantee, no greater than the size of their disseminated size. This would be new text to address the fact that (as noted above), on Pillar, Specialists will have the ability to submit more than one quote in a series at the same time.[59]

▪ Proposed Rule 964NYP(h)(2)(A)(iv)(a) is new text and would provide that if the Primary Specialist has more than one eligible quote, each quote will receive Additional Weighting on its pro rata share of the Specialist Pool Guarantee. This would be new text to address the fact that (as noted above), on Pillar, Specialists will have the ability to submit more than one quote in a series at the same time[60] and, consistent with current functionality, the Primary Specialist is entitled to Additional Weighting.[61]

• Proposed Rule 964NYP(h)(2)(B) is the same as current functionality and would provide that for all Aggressing Orders or Aggressing Quotes of five (5) contracts or fewer, the Primary Specialist (as determined per proposed Rule 964.2NYP(b)) would be allocated the balance of the Aggressing Order or Aggressing Quote after any allocation to Customers, not to exceed the Primary Specialist's disseminated size, or, if the Primary Specialist has more than one eligible quote, each quote will receive a pro rata share.[62] The Exchange also proposes to add Commentary .01 to the proposed rule (which is the same in substance as Commentary .01 of current Rule 964NY) to make clear that on a quarterly basis, the Exchange would evaluate what percentage of the volume executed on the Exchange comprised of orders of five (5) contracts or fewer that was allocated to the Primary Specialist and would reduce the size of the orders included in this provision if such percentage is over 40%.[63]

Proposed Rule 964NYP(h)(3) is the same as current Rule 964NY(b)(2)(D) and would describe interest that is included in the ''Size Pro Rata Pool.'' As proposed, if there are multiple orders and quotes of non-Customers (including Professional Customers) that are displayed in the Consolidated Book at the same price, then such orders and quotes will be afforded priority on a ''size pro rata'' basis and will comprise the ''Size Pro Rata Pool.''[64]

Proposed Rule 964NYP(i) is the same as current functionality and would set forth the pro rata formula and example of its application to same-priced interest in the Size Pro Rata Pool.[65]

• Proposed Rule 964NYP(i)(1) would add non-substantive changes by adding a heading for the ''Size Pro Rata Formula and Example of Application,'' and adding the prefatory words ''[f]or example, assume there are . . .'' to signal the example that follows this text. In addition, the Exchange would make several other non-substantive clarifying changes to make clear that the Size Pro Rata Formula would apply to the ''Remaining Size of Order or Quote to be Allocated'' divided by the ''Participants' Aggregated Order/Quote Size,'' which result is multiplied by each ''Participant's Order/Quote Size, to provide the Size Pro Rata Allocation for each participant in the Size Pro Rata Pool. The Exchange believes these non-substantive changes would add clarity and transparency to Exchange rules making them easier to navigate and understand.

• Proposed Rule 964NYP(i)(2) is consistent with current functionality and would provide that the pro rata share allocated to each participant in the Size Pro Rata Pool will be rounded down to the nearest contract, if applicable and that any residual contracts to be filled after the size pro rata calculation has been completed will be allocated one contract per participant in the following sequence:[66]

○ Proposed Rule 964NYP(i)(2)(A) would provide that the participant in the Size Pro Rata Pool who has the largest remaining size (based on the pro rata calculation) will receive the first contract, and each successive contract (if any) will be allocated to each subsequent participant based on size (largest to smallest).[67] In proposed Rule 964NYP(i)(2)(A), the Exchange also proposes to replace reference to the participant with the ''largest fractional amount'' with reference to the ''largest remaining size'' as the Exchange believes this latter formulation is more accurate and would add clarity and transparency to Exchange rules.

○ Proposed Rule 964NYP(i)(2)(A)(i) would provide that if there are two or more participants with the same remaining size, then the participant in the Size Pro Rata Pool that has first in time priority would be allocated the next contract and then each successive contract (if any) will be allocated in the same manner.[68] Proposed Rule 964NYP(i)(2)(A)(i) would also replace reference to the participant with the ''fractional amount and initial quotes size'' with reference to the ''same remaining size'', which reflects Pillar functionality and would add clarity and transparency to Exchange rules.

Proposed Rule 964NYP(j) would set forth how orders and quotes are matched for execution on Pillar. Proposed Rule 964NY(j) and its subparagraphs would set forth the Exchange's order execution process. The Exchange proposes to refer to an ''Aggressing Order'' and ''Aggressing Quote'' rather than an ''inbound order'' as used in current Rule 964NY(c) because (as described above) the proposed terms allow for interest to be (or become) marketable even after arrival (*i.e.,* not limited to ''inbound'' interest) and would also align with terminology used in regard to order execution per Arca Options Rule 6.76AP–O(a).[69]

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[57] *See* Rule 964.2NY(b)(1)(ii).

[58] *See* Rule 964.2NY(b)(2).

[59] *See supra* note 43 (regarding Pillar functionality that allows Market Makers to enter more than one quote in the same series at the same time, which would update current functionality that limits Specialists (including the Primary Specialist) to sending a single quote in their assigned series using a single unique identifier).

[60] *See id.*

[61] *See supra,* discussion of proposed Rule 964NYP(h)(2)(A)(ii).

[62] *See* Rule 964NY(b)(2)(C)(iv). An ''Aggressing Order'' or ''Aggressing Quote'' refers to a buy (sell) order or quote that is or becomes marketable against sell (buy) interest on the Consolidated Book. See proposed Rule 964NYP(a)(5).

[63] *See* proposed Rule 964NYP, Commentary .01, which will not include cross-reference that appears in the current rule Commentary .01 to Rule 964NY, because cross-reference was superfluous (and would be obsolete) and the Exchange opted to remove verbiage.

[64] *See* Rule 964NY(b)(2)(D).

[65] *See* Rule 964NY(b)(3)(A).

[66] *See* Rule 964NY(b)(3)(B). The Exchange proposes that rather than refer to the size pro rata share being ''rounded down to a whole number'' that such share be ''rounded down to the nearest contract'' as the latter formulation is more precise and would add clarity and transparency to Exchange rules. *See* proposed Rule 964NYP(i)(2).

[67] *See* Rule 964NY(b)(3)(B)(i).

[68] *See* Rule 964NY(b)(3)(B)(ii).

[69] An ''Aggressing Order'' or ''Aggressing Quote'' refers to a buy (sell) order or quote that is or becomes marketable against sell (buy) interest on the Consolidated Book. *See* proposed Rule

Continued

Current Rule 964NY(c) sets forth how orders and quotes are executed on the Exchange. Rule 964NY(c)(1) provides that an ''an inbound order that is marketable will be immediately executed against bids and offers in the Consolidated Book, provided the execution price is at the NBBO.'' In addition, Rules 964NY(c)(2)(A)–(D) set forth the sequence and manner in which an inbound order will be executed against interest resting in the Consolidated Book at a price—first with displayed Customers; second per the DOMM Guarantee or Specialist Pool Guarantee, if applicable; third with non-Customer interest on a size pro rata basis; and fourth with ''orders in the Working Order File in the order of their ranking at the limit price.'' The Exchange believes proposed Rule 964NYP(j) regarding Order Execution on Pillar is substantially similar to the current execution scheme, with the difference being that, at a price, both Customer and non-Customer interest within each priority category executes until all interest in that Pillar Priority category is exhausted before an Aggressing Order or Aggressing Quote then executes with same-priced interest in the next Pillar Priority Category.

Proposed Rule 964NYP(j) would specify that, at each price, an Aggressing Order or Aggressing Quote in an option series that is open for trading would be allocated against contra-side orders or quotes in the Consolidated Book as follows.

- First, to Customer orders ranked Priority 1—Market Orders based on time (proposed Rule 964NYP(j)(1));
- Second, to non-Customer orders ranked Priority 1—Market Orders on a size pro rata basis pursuant to paragraph (i) of this Rule (proposed Rule 964NYP(j)(2));
- Third, to Customer orders ranked Priority 2—Display Limit Orders based on time (proposed Rule 964NYP(j)(3));
- Fourth, to interest ranked Priority 2—Display Limit Orders that is eligible for the DOMM Guarantee or the Specialist Pool Guarantee, as applicable, pursuant to paragraph (h) of this Rule provided that the execution price is the NBBO; (proposed Rule 964NYP(j)(4));
- Fifth, to non-Customer orders and quotes in the Pro Rata Pool ranked Priority 2—Display Limit Orders on a size pro rata basis pursuant to paragraph (i) of this Rule (proposed Rule 964NYP(j)(5));
- Sixth, to Customer orders ranked Priority 3—Non-Display Orders based on time (proposed Rule 964NYP(j)(6)); and
- Finally, to non-Customer orders and quotes ranked Priority 3—Non-Display Orders based on time (proposed Rule 964NYP(j)(7)).

The proposed allocation set forth in proposed Rules 964NYP(j)(1)–(7) are consistent with the Exchange's current Customer priority and pro rata allocation model.[70] However, unlike current functionality, proposed Rules 964NYP(j)(1)–(7) provides that ''at a price'' interest within each of the Pillar Priority categories is exhausted (first Customer then non-Customer) before moving to same-priced interest in the next Pillar Priority category.[71] Under current Rule 964NY, displayed Customer orders at a price are given first priority to trade and this can result in Customer Market Orders and Customer Limit Orders executing first at that price.[72] Proposed Rule 964NYP(j) differs from current functionality in that, for example, at a price, both Customer and non-Customer Market Orders trade and then same-priced Customer Limit Orders trade. Further, under Rule 964NY, non-displayed interest is ranked in time priority with no priority afforded to Customer interest, whereas per proposed Rule 964NYP, at a price, non-displayed Customer orders will trade before same-priced non-Customer interest that is not displayed.

Proposed Rule 964NYP(k) would set forth the Exchange's routing process. Current Rule 964NY(c)(2)(E) provides that any unexecuted portion of an order that is eligible to route is routed to another Market Center.[73] Similarly, proposed Rule 964NYP(k) would provide that, absent an instruction not to route, the Exchange would route marketable orders to Away Market(s) after such orders are matched for execution with any contra-side interest in the Consolidated Book in accordance with proposed paragraph (j) of this Rule regarding Order Execution. In addition, the proposed rule would provide that while determining the venue(s) to which the order(s) would be routed,[74] such order(s) may be held non-displayed at the contra-side ABBO and ranked in its respective priority category, per proposed Rule 964NYP(e), behind displayed interest at that price in that priority category.[75] Proposed Rule 964NYP(k) is identical to Arca Options Rule 6.76AP–O(b), except that it removes the word ''any'' and states that the impacted order would be ranked ''behind displayed interest at that price in that priority category,'' which difference is meant to refer to the Customer priority ranking within each Pillar Priority category.[76]

Proposed Rule 964NYP(k) would then set forth additional details regarding routing that are consistent with current routing functionality, but are not described in current rules:

- Proposed Rule 964NYP(k)(1) would provide that an order that cannot meet the pricing parameters of proposed Rule 964NYP(j) (*i.e.,* cannot trade with interest on the Consolidated Book) may be routed to Away Market(s) before being matched for execution against contra-side orders and quotes in the Consolidated Book. The Exchange believes that this proposed rule text, which is consistent with current functionality, provides transparency that an order may be routed before being matched for execution, for example, to prevent locking or crossing or trading through the NBBO. This proposed rule is identical to Arca Options Rule 6.76AP–O(b)(1), except for the distinct cross-reference to the applicable Exchange rule.
- Proposed Rule 964NYP(k)(2) would provide that an order with an

964NYP(a)(5); Arca Options Rule 6.76P–O(a)(5) (same); Rules 964NY(c)(1)–(2) (regarding the execution of an ''inbound order'').

[70] *See, e.g.,* Rules 964NY(c)(2)(A)–(E) providing that after executing first with displayed Customer interest, inbound orders will trade with interest based on the DOMM or Specialist Pool guaranteed participation and then will be traded on a size pro rata basis, with resting non-Customer interest, with any remaining size of the inbound order being traded with ''orders in the Working Order File,'' by ranking at the limit price.

[71] The Exchange notes that the concept of ''Split-Price Executions'' as set forth in current Rule 964NY(c)(3) is titled as such because, at the time it was adopted, the concept was novel. However, executing trading interest at multiple price points is now customary practice in electronic trading, where incoming orders, at a price, trade up or down the Book to the extent possible (or route). As such, the Exchange does not propose to refer to this concept of Split-Price Executions explicitly because this practice is consistent with proposed Rule 964NYP (generally) and with proposed paragraph (j), specifically.

[72] *See, e.g.,* Rule 964NY(c)(2)(A) providing that an inbound order will be executed first against ''all available displayed Customer interest in the Consolidated Book.''

[73] Under the current rule, each eligible order is routed ''as limit order equal to the price and up to the size of the quote published by the Market Center(s)'' *See* Rule 964NY(c)(2)(E)(ii). In the proposed Pillar rule, the Exchange proposes to use the term ''Away Market'' instead of ''Market Center.''

[74] The Exchange's routing determination typically takes a few microseconds.

[75] To avoid creating a locked or crossed market, the Exchange will hold a routable order in a non-displayed state while making the routing determination. However, when a previously displayed order is to be routed, such order will remain displayed while Pillar makes its routing determination.

[76] As specified herein, proposed Rule 964NYP(e) provides, in relevant part, that ''[a]t each price, all orders and quotes are assigned a priority category and, within each priority category, Customer orders are ranked ahead of non-Customer.''

instruction not to route would be processed as provided for in proposed Rule 900.3NYP.[77] This proposed rule is identical to Arca Options Rule 6.76AP–O(b)(2), except for the distinct cross-refence to the applicable Exchange rule.

• Proposed Rule 964NYP(k)(3) is identical to Arca Options Rule 6.76AP–O(b)(3) and would provide that any order or portion thereof that has been routed would not be eligible to trade on the Consolidated Book, unless all or a portion of the order returns unexecuted. This routing methodology is current functionality and covers the same subject as current Rule 964NY(c)(2)(E). Rule 964NY(c)(2)(E) provides that an order that routed away and returns is ranked and displayed in the Consolidated Book but does not have time standing relative to orders at the same price that arrived while the order was routed. Because, as discussed above, the working time assigned to orders that are routed is being proposed to be addressed in new Rules 964NYP(f)(1)(A) and (B), the Exchange does not propose to include (and restate) such information in the proposed rule.

• Proposed Rule 964NYP(k)(4) is identical to Arca Options Rule 6.76AP–O(b)(4) and would provide that requests to cancel an order that has been routed in whole or in part would not be processed unless and until all or a portion of the order returns unexecuted.

Proposed Rule 964NYP(l), regarding residual interest, would provide that after trading with eligible contra-side interest on the Consolidated Book and/or returning unexecuted after routing to Away Market(s), any unexecuted non-marketable portion of an order would be ranked consistent with new Rule 964NYP. This rule represents current functionality as set forth in Rule 964NY (generally) and paragraph (c)(2)(E) (specifically), as it pertains to orders that were routed away and then returned unexecuted in whole or part to the Exchange without any substantive differences. This proposed rule is identical to Arca Options Rule 6.76AP–O(c), except for the distinct cross-reference to the applicable Exchange rule.

Proposed Rule 964NYP(m) would be applicable to ''Orders Executed Manually'' and would contain the same text as set forth in Rule 964NY(e) without any substantive differences, except that the proposed text would correct certain of the punctuation and capitalization as contained in one provision of the existing rule.[78]

The Exchange notes that current Rules 964NY(d)(1) and (2), regarding Prohibited Conduct Related to Crossing Orders, provide that ''Brokers may not execute as principal orders they represent as agent'' unless the agency orders meet the exposure requirements of Rule 935NY; or the Broker executes the orders pursuant to Rule 934NY. The Exchange does not propose to include this provision in new Rule 964NYP because the information is not related to priority and allocation. Moreover, the Exchange believes it would be duplicative and is unnecessary to state that Brokers must comply with Rules 934NY and 935NY as such compliance is required by those rules and need not be restated. As such, the Exchange believes that not including this language in the proposed rule would add clarity, transparency, and internal consistency to Exchange Rules.

Finally, the Exchange does not propose to include Commentary .02 to Rule 964NY regarding Self-Trade Prevention (STP) Modifiers in proposed Rule 964NYP as the Exchange will add this modifier to proposed Rule 900.3NYP with certain enhancements that will be identical to Arca Options Rule 6.62P–O(i)(2).[79]

Proposed Rule 964.1NYP (Directed Orders and DOMM Quoting Obligations)

Current Rule 964.1NY, titled ''Directed Orders,'' governs Directed Orders, including how such orders may be allocated pursuant to Rule 964NY, as well as DOMM quoting obligations. The Exchange proposes that the new title for Rule 964.1NYP would be ''Directed Orders and DOMM Quoting Obligations,'' as this title is a more apt description. The Exchange proposes to maintain the current preamble to Rule 964.1NY in proposed Rule 964.1NYP(a) but would update the relevant cross-references, such that the new rule would provide that ''Specialists and Market Makers may receive Directed Orders in their appointed classes in accordance with the provisions of Rule 964NYP(h), (j) and this Rule 964.1NYP.''

The Exchange also proposes that proposed Rule 964.1NYP(b)(1) would be identical to current Rule 964N.1(iv), with the only difference being the paragraph numbering.

As noted here, much of the information in current Rule 964.1NY is duplicative and repeats information already contained in current (and separate) Rule 964NY or that has been added to new Rule 964NYP to consolidate information relevant to the DOMM Guarantee into the proposed rule, which would add clarity and consistency to Exchange rules making them easier to navigate. As such, the Exchange does not propose to include in proposed Rule 964.1NYP (duplicative) information contained in Rules 964.1NY(i)–(iii) regarding the possible execution of Directed Orders (*i.e.,* being allocated per the DOMM Guarantee, if available, the Specialist Pool (if no DOMM Guarantee), or as part of the Specialist Pool). The Exchange believes having this information in two different rules is inefficient and would increase the possibility of inconsistencies when rules are updated which may lead to confusion for market participants. As such, the Exchange believes that proposed Rule 964.1NYP in connection with proposed Rule 964NYP, sufficiently describe the potential allocation of Directed Orders, as well as the quoting obligations of each DOMM.

Proposed Rule 964.2NYP (Participation Entitlement of Specialist Pool and Designation of Primary Specialist)

Current Rule 964.2NY, titled ''Participation Entitlement of Specialists and e-Specialists,'' governs participation entitlement for Specialists including the criteria for selecting the Primary Specialist, the Additional Weighting accorded to the Primary Specialist's pro rata allocation, and the potential allocation of orders of five contracts or fewer to the Primary Specialist. The Exchange proposes that the title for new Rule 964.2NYP would be ''Participation Entitlement of Specialist Pool and Designation of Primary Specialist'' instead of ''Participation Entitlement of Specialists and e-Specialists'' because the current title does not indicate that details about the Primary Specialist are included in the current rule.

Proposed Rule 964.2NYP(a) would provide that ''the Exchange may establish from time to time a participation entitlement formula that is applicable to all Specialists and e-Specialists, collectively the Specialist Pool as defined in Rule 900.2NY, pursuant to Rule 964NYP(h)(2),'' which incorporates the first sentence of current Rule 964.2NY(a) together with current Rule 964.2NY(b), but is updated to cross-reference new paragraph (h)(2). In addition, proposed Rule 964.2NYP(b) would include verbatim the information from current Rule 964.2NY(a) (except

[77] *See supra* note 28 regarding the Pillar Order Type Filing.

[78] *See* proposed Rule 964NYP(m)(1)(C) (providing, in relevant part, that ''[b]ids and offers of broker-dealers or Professional Customers (including Market Maker orders and quotes) on the Consolidated Book have third priority.'').

[79] *See supra* note 28 regarding the Pillar Order Type Filing.

for the first sentence) regarding the criteria for selecting the Primary Specialist.

As noted here, much of the information in current Rule 964.2NY (*i.e.,* paragraphs (b)(1)–(4)), is duplicative of current Rule 964NY or, would be duplicative of information that the Exchange proposes to include in proposed Rule 964NYP (*i.e.,* detailed information related to the participation guarantees). As such, the Exchange does not propose to include in proposed Rule 964.2NYP the (duplicative) information contained in Rules 964.2NY(b)(1)–(4) regarding the application of the Specialist Pool Guarantee to Specialists, e-Specialists and the Primary Specialist as well as the fact the Specialist Pool Guarantee is not available when the DOMM Guarantee is provided. The Exchange believes having this information in two different rules is inefficient and would increase the possibility of inconsistencies when rules are updated, which may lead to confusion for market participants. As such, the Exchange believes that proposed Rule 964.2NYP in connection with proposed Rule 964NYP, sufficiently describe the application of the Specialist Pool Guarantee to Specialists, e-Specialists and the Primary Specialist. Moreover, the Exchange believes that including in one rule (*i.e.,* proposed Rule 964NYP) all information pertinent to the participation guarantees, the criteria for achieving such guarantees, as well as how interest that trades pursuant to the guarantees would be allocated would add clarity and consistency to Exchange rules making them easier to navigate.

Finally, the Exchange will not include in proposed Rule 964.2NYP the provision in current rule 964.2NY(b)(1)(v) that provides that an e-Specialist is not eligible for the Special Pool Guarantee with respect to orders represented in open outcry on the Trading Floor. This provision is inapplicable on Pillar.

* * * * *

As discussed above, because of the technology changes associated with the migration to the Pillar trading platform, notwithstanding the timing of the effectiveness of this proposed rule change, the Exchange will announce by Trader Update when rules with a ''P'' modifier will become operative and for which symbols. The Exchange believes that keeping existing rules on the rulebook pending the full migration of Pillar will reduce confusion because it will ensure that the rules governing trading on the Exchange will continue to be available pending the full migration to Pillar.

Implementation

As noted immediately above, the Exchange will not implement the ''P'' rules proposed herein until all other Pillar-related rule filings (*i.e.,* with a ''P'' modifier) are approved or operative, as applicable, and the Exchange announces the migration of underlying symbols to Pillar by Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[80] in general, and furthers the objectives of Section 6(b)(5),[81] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules to support Pillar would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rules would promote transparency in Exchange rules by using consistent terminology governing trading on Pillar on both the Exchange's cash equity and options trading platforms, thereby ensuring that members, regulators, and the public can more easily navigate the Exchange's rulebook and better understand how options trading is conducted on the Exchange.

Generally, the Exchange believes that adding new rules with the modifier ''P'' to denote those rules that would be operative for the Pillar trading platform would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing transparency of which rules would govern trading once a symbol has been migrated to the Pillar trading platform. The Exchange similarly believes that adding a preamble to those current rules that would not be applicable to trading on Pillar would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote transparency regarding which rules would govern trading on the Exchange during and after the transition to Pillar.

In addition, the Exchange believes that incorporating functionality currently available on Arca Options would remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange would be able to offer consistent functionality with its affiliated options trading platform. Accordingly, with the transition to Pillar, the Exchange will be able to offer additional features to its ATP Holders that are currently available on Arca Options. For similar reasons, the Exchange believes that using Pillar terminology for the proposed new rules would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote consistency in trading rules on both the Exchange and its affiliated options exchange, Arca Options.

Proposed Changes to Rule 900.2NY

The Exchange believes that the proposed amendments to Rule 900.2NY would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes are designed to promote clarity and transparency in Exchange rules. Specifically, the Exchange believes that the new terms it proposes to include in Rule 900.2NY (*e.g.,* Away Market, ABBO, and MPID) in connection with the migration to Pillar would promote clarity and transparency in Exchange rules making them easier for the investing public to navigate. The proposed new definitions would also remove impediments to, and perfect the mechanism of, a free and open market and a national market system because the definitions are identical to how the same concepts are described in NYSE Arca Rule 1.1 for trading on Arca Options. The proposed modifications to current definitions would add clarity, transparency, and internal consistency to Exchange rules, including by adding reference to new Pillar rules.

Proposed Rules 964NYP, 964.1NYP and 964.2NYP

The Exchange believes that proposed new Rule 964NYP would remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange plans to retain the fundamental method by which the Exchange would rank and display orders and quotes on Pillar as compared to the current Exchange system. Specifically, the proposed revisions to

[80] 15 U.S.C. 78f(b).

[81] 15 U.S.C. 78f(b)(5).

the Exchange's options trading rules would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes are designed to simplify the structure of the Exchange's options rules and use identical Pillar terminology for trading rules on both the Exchange and its affiliated options exchange, Arca Options. For example, the Exchange believes the proposed definitions set forth in Rule 964NYP, *i.e.,* display price, limit price, working price, working time, and Aggressing Order/Aggressing Quote, would promote transparency in Exchange rules and make them easier to navigate because these proposed definitions would be used in other proposed Pillar options trading rules. The Exchange notes that these proposed definitions are identical to the definitions set forth in Arca Options Rule 6.76P–O for the same terms.

Moreover, the Exchange is not proposing any functional changes to how it would rank and display orders and quotes on Pillar as compared to current functionality, except (as noted herein) with regard to the treatment of reduced quote sizes, which would be handled the same as orders with reduced size under Pillar, thereby adding consistency and transparency to Exchange rules.[82] The Exchange believes that using new terminology to describe ranking and display, including the proposed Pillar Priority categories of Priority 1—Market Orders, Priority 2—Display Orders, and Priority 3—Non-Display Orders would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule would provide more granularity and use Pillar terminology to describe functionality that is consistent with the Exchange System currently set forth in Rule 964NY. The Exchange notes that these proposed Pillar Priority categories are identical to those set forth in Arca Options Rule 6.76P–O.

The Exchange believes that proposed new Rule 964NYP generally, and paragraph (j) in particular, would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule would set forth a priority model on Pillar that is consistent with the Exchange's Customer-centric, pro rata allocation model and affords Customers priority at a price regardless of order type utilized. Specifically, using the Customer priority overlay, interest in each Pillar Priority category at a price would be exhausted before interest in the next category would be eligible to trade. For example, same-priced interest ranked Priority 1—Market Orders will afford Customer orders at a price first priority, followed by same-priced non-Customer interest. And the same concept holds true for each of the Priority 2 and Priority 3 interest. Accordingly, the Exchange believes that proposed Rule 964NYP would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because it would marry the Exchange's current allocation model with the terminology for Pillar Priority Categories already used in Arca Options rules.

The Exchange believes that the proposed modifications to the DOMM Guarantee and Specialist Pool Guarantee would remove impediments to and perfect the mechanism of a free and open market and a national market system because it provides clarity of how multiple quotes from a DOMM or Specialists (including the Primary Specialist) would be allocated. The Exchange similarly believes that eliminating duplicative text from proposed Rules 964.1NYP and 964.2NYP would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes would streamline the Exchange's rules. The Exchange notes that the remaining differences in proposed Rule 964NYP relating to the DOMM Guarantee and the Specialist Pool Guarantee are designed to promote clarity and transparency in Exchange rules and would not introduce new functionality.

The Exchange believes that proposed new Rules 964.1NYP and 964.2NYP would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would not repeat information that is duplicative of current Rule 964NY but would include information solely related to Directed Orders and the provisions of proposed Rule 964NYP that must be satisfied to receive such orders (*i.e.,* proposed Rules 964NYP(h), (j), in particular and Rule 964.1NYP generally) as well as information regarding the provisions of the proposed Rule 964NYP that must be satisfied to receive the Specialist Pool Guarantee. As a result, new Rules 964.1NYP and 964.2NYP would provide information about Directed Orders and DOMM quoting obligations as well as the Primary Specialist criteria in a more streamlined manner, which would add clarity and consistency to Exchange rules, making them easier to navigate.

The Exchange believes that the structure and content of the rule text in proposed Rules 964NYP, 964.1NYP, and 964.2NYP promote transparency by using consistent Pillar terminology. The Exchange also believes that adding more detail regarding current functionality in new Rule Rules 964NYP, as described above, would promote transparency by providing notice of when orders would be executed or routed by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a competitive market and regularly competes with other options exchanges for order flow. The Exchange believes that the transition to Pillar would promote competition among options exchanges by offering a low-latency, deterministic trading platform. The proposed rule changes would support that inter-market competition by allowing the Exchange to offer additional functionality to its ATP Holders, thereby potentially attracting additional order flow to the Exchange. Otherwise, the proposed changes are not designed to address any competitive issues, but rather to amend the Exchange's rules relating to options trading to support the transition to Pillar. As discussed in detail above, with this rule filing, the Exchange is not proposing to change its core functionality regarding its priority model (*e.g.,* how it would rank, display, execute or route orders and quotes). Rather, the Exchange believes that the proposed rule changes would promote consistent use of terminology to support options trading on the Exchange, making the Exchange's rules easier to navigate, and would also offer consistency with the terminology used in the rules of Arca Options, the Exchange's affiliated options exchange. The Exchange does not believe that the proposed rule changes would raise any intra-market competition as the proposed rule changes would be applicable to all ATP Holders, and reflects the Exchange's existing priority model, including the existing DOMM Guarantee and Specialist Pool Guarantee.

[82] *See* proposed Rule 964NYP(f)(3); *supra* note 38 (regarding existing handling of quotes with reduced size).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [83] and Rule 19b–4(f)(6) thereunder.[84] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[85]

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) [86] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2023–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2023–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2023–16 and should be submitted on or before May 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[87]

Sherry R. Haywood,

Assistant Secretary.

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[83] 15 U.S.C. 78s(b)(3)(A)(iii).

[84] 17 CFR 240.19b–4(f)(6).

[85] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[86] 15 U.S.C. 78s(b)(2)(B).

[87] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97300; File No. SR–CboeEDGX–2023–026]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a New Data Product To Be Known as the US Equity Short Volume & Trades Report

April 13, 2023.

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 5, 2023, Cboe EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to Exchange Rule 13.8 to introduce a new data product to be known as the US Equity Short Volume & Trades Report. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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 seeks to amend Rule 13.8 to revise paragraph 13.8(h) in order to introduce a new data product to be known as the US Equity Short Volume & Trades Report. A description of market data products offered by the Exchange is provided in Exchange Rule 13.8 and proposed Rule 13.8(h) provides that the US Equity Short Volume & Trades Report is a report that will contain both an end-of-day short volume report and an end-of-month report that provides a record of all short sale transactions for the month. The proposed US Equity Short Volume & Trades Report will incorporate the existing Short Volume Report [5] currently described in Rule 13.8(h) as well as introduce a new, end-of-month report containing a record of all short sale transactions for the current month. The proposed US Equity Short Volume & Trades Report is nearly identical to the NYSE TAQ Group Short Sales & Short Volume product and Nasdaq's Short Sale Volume Reports (discussed *infra*).

The end-of-day report (''EOD Report'') included within the US Equity Short Volume & Trades Report will be identical to the existing Short Volume Report published by the Exchange. The existing Short Volume Report summarizes certain equity trading activity on the Exchange, including trade date,[6] total volume,[7] short volume,[8] and sell short exempt volume,[9] by symbol.[10] The data fields contained in the existing Short Volume Report will not change when the Short Volume Report is incorporated into the US Equity Short Volume & Trades Report as the EOD Report. The proposed end-of-month report (''EOM Report'') to be included in the US Equity Short Volume & Trades Report will be a new report that provides a record of all short sale transactions for the month, including trade date and time (in microseconds),[11] trade size,[12] trade price,[13] and type of short sale execution,[14] by symbol and exchange.[15] The US Equity Short Volume & Trades Report will be available for purchase to both BZX Members (''Members'') [16] as well as non-Members.[17]

As discussed in the Exchange's previous filing to introduce the EOD Report,[18] the data fields included in the EOD Report are essentially identical to the fields included by the New York Stock Exchange LLC (''NYSE'') in their Daily Short Volume file [19] and similar to the fields provided by the NASDAQ Stock Market LLC (''Nasdaq'') in its Daily Short Sale file.[20] The data fields contained in the EOD Report found within the proposed US Equity Short Volume & Trades Report are identical to the data fields found in the existing Short Volume Report.[21] NYSE offers its Daily Short Volume file as one component of its NYSE TAQ Group Short Sales & Short Volume product [22] and Nasdaq offers its Daily Short Sale file as one component of its Short Sale Volume Reports.[23] The Exchange is proposing to include its EOD Report within the US Equity Short Volume & Trades Report in the same manner as NYSE and Nasdaq incorporate their daily short sale files within a more robust data offering.

The Exchange notes that the data fields included in the EOM Report are nearly identical to the fields included by NYSE in its Monthly Short Sales file, except that the Exchange will not include two fields that appear within the NYSE Monthly Short Sales file.[24] Specifically, the NYSE Monthly Short Sales file also includes date,[25] time,[26] size,[27] price,[28] type of short sale execution,[29] market center,[30] and symbol.[31] Additionally, the data fields included in the EOM Report are nearly identical to the fields found in the Nasdaq Monthly Short Sale File, except that the Exchange will not include two fields that appear within the Nasdaq Monthly Short Sale File.[32] Both the

[5] *See* Securities Exchange Act Release No. 95551 (August 18, 2022), 87 FR 52084 (August 24, 2022), SR–CboeEDGX–2022–036 (''Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a New Data Product To Be Known as the Short Volume Report'').

[6] ''Trade date'' is the date of trading activity in yyyy-mm-dd format.

[7] ''Total volume'' is the total number of shares transacted.

[8] ''Short volume'' is the total number of shares sold short.

[9] ''Short exempt volume'' is the total number of shares sold short classified as exempt.

[10] ''Symbol'' refers to the Cboe formatted symbol in which the trading activity occurred. *See https://cdn.cboe.com/resources/membership/US_Symbology_Reference.pdf.*

[11] ''Trade date and time'' is the date and time of trading activity in yyyy-mm-dd hh:mm:ss.000000 ET format.

[12] ''Trade size'' is the number of shares transacted.

[13] ''Trade price'' is the price at which shares were transacted.

[14] ''Short type'' is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction. A short sale transaction is a transaction in which a seller sells a security which the seller does not own, or the seller has borrowed for its own account (*see* 17 CFR 242.200). A short sale exempt transaction is a short sale transaction that is exempt from the short sale price test restrictions of Regulation SHO Rule 201 (*see* 17 CFR 242.201(c)).

[15] ''Exchange'' is the market identifier (Z = BZX, Y = BYX, X = EDGX, A = EDGA).

[16] *See* Rule 1.5(n) (''Member''). The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

[17] The Exchange intends to submit a separate filing to establish fees for the US Equity Short Volume & Trades Report.

[18] *Supra* note 5.

[19] *See* NYSE Daily Short Volume Client Specification, available at: *https://www.nyse.com/publicdocs/nyse/data/Daily_Short_Volume_Client_Spec_v1.3a.pdf.*

[20] *See* Nasdaq OMX Daily and Monthly Short Sale File Format and Specifications, available at: *https://nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/ShortSaleFile Specifications.pdf.*

[21] *Supra* note 5.

[22] See *https://www.nyse.com/market-data/historical/taq-nyse-group-short-sales.*

[23] *See https://nasdaqtrader.com/Trader.aspx?id=shortsale.*

[24] *See* NYSE Monthly Short Sales Client Specification, available at: *https://www.nyse.com/publicdocs/nyse/data/Monthly_Short_Sales_Client_Spec_v1.3a.pdf.* The NYSE Monthly Short Sales file includes trade date and time, size, price, type of short sale execution, market center, and symbol. Unlike the NYSE file, the US Equity Short Volume & Trades Report will not include the linked indicator or short size fields. The Exchange does not currently offer a linked indicator tied to short sale executions and the size field found within the US Equity Short Volume & Trades Report will provide the size of the short sale execution.

[25] NYSE ''Date'' is the trade date of the short sale transaction in YYYYMMDD format.

[26] NYSE ''Time'' is the time of the short sale transaction in microsecond (HH:MM:SSnnnnnn) format.

[27] NYSE ''Size'' is the size of the trade in shares.

[28] NYSE ''Price'' is the price of the trade.

[29] NYSE ''Short Type'' is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction (E = Short Sale Exempt execution, S = Short not exempt).

[30] NYSE ''Market center'' is the market identifier (A = NYSE American, N = NYSE, P = NYSE Arca, C = NYSE National, M = NYSE Chicago).

[31] NYSE ''Symbol'' refers to the NYSE formatted symbol in which the trading activity occurred. *See https://www.nyse.com/publicdocs/nyse/data/NYSE__Spec_v1.0c.pdf.*

[32] *See* NASDAQ OMX Daily and Monthly Short Sale File Format and Specification, available at: *https://nasdaqtrader.com/content/technicalsupport/specifications//ShortSaleFile Specifications.pdf.* The Nasdaq Monthly Short Sale File includes trade date and time, size, price, type of short sale execution, market center, and ticker symbol. Unlike the Nasdaq file, the US Equity Short Volume & Trades Report will not include the link indicator or short size fields. The Exchange does

Continued

Exchange and Nasdaq include date,[33] time,[34] size,[35] price,[36] short sale execution type,[37] market center,[38] and symbol.[39] The Exchange notes that the only difference between its proposed EOM Report and the corresponding NYSE and Nasdaq monthly files is that the Exchange will not include a linked indicator[40] field or short size[41] field in its EOM Report. As the Exchange does not currently offer a linked indicator field, it will not include this field within the EOM Report. Additionally, the Exchange will not include a short size field in its EOM Report because the size shown in the trade size field included in the Exchange's EOM Report will be the number of shares in the transaction that executed with a sell short or sell short exempt marking.[42]

Both the EOD Report and EOM Report will be included in the cost of the US Equity Short Volume & Trades Report and will be available for purchase by both Members and non-Members on an annual or monthly subscription basis.[43] Additionally, like NYSE, the Exchange will offer historical reports containing both the end-of-day volume and end-of-month trading activity.[44] Historical reports will be available for purchase dating back to January 2, 2015, and will include the same data fields as the US Equity Short Volume & Trades Report.

The Exchange anticipates that a wide variety of market participants will purchase the proposed US Equity Short Volume & Trades Report, including, but not limited to, active equity trading firms and academic institutions. For example, the Exchange notes that academic institutions may utilize the US Equity Short Volume & Trades Report data and as a result promote research and studies of the equities industry to the benefit of all market participants. The Exchange further believes the proposed US Equity Short Volume & Trades Report may provide helpful trading information regarding investor sentiment that may allow market participants to make more informed trading decisions and may be used to create and test trading models and analytical strategies and provide comprehensive insight into trading on the Exchange. The proposal is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[45] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[46] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[47] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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. The Exchange believes that the proposed US Equity Short Volume & Trades Report would further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency through the dissemination of short volume and short sale execution data. The proposed rule change would benefit investors by providing access to the US Equity Short Volume & Trades data, which may promote better informed trading, as well as research and studies of the equities industry.

Moreover, as noted above, both NYSE and Nasdaq offer data products that contain both a daily and monthly short sale file. These products provide data that is nearly identical to the offering proposed by the Exchange. The proposed EOD Report that will be offered as one component of the US Equity Short Volume & Trades Report is the Exchange's existing Short Volume Report, which is substantially similar to the NYSE and Nasdaq daily short volume product offerings. The proposed EOM Report that will be offered as the second component of the US Equity Short Volume & Trades Report will contain date, time, size, price, short sale type, market center, and symbol, which is nearly identical to the data fields found within the NYSE and Nasdaq monthly short volume reports.[48] As stated previously, the Exchange's EOM Report is nearly identical to the NYSE and Nasdaq monthly reports in that the Exchange will offer identical data fields except for a linked indicator value and a short size value. Accordingly, the proposed US Equity Short Volume & Trades Report does not provide a unique or novel data offering, but rather offers data points consistent with other data products already available and utilized by market participants today.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote fair competition among the national securities exchanges by permitting the Exchange to offer a data

not currently offer a link indicator tied to short sale executions and the size field found within the US Equity Short Volume & Trades Report will provide the size of the short sale transaction.

[33] Nasdaq ''Date'' is the date that the trade was reported to the tape in YYYYMMDD format.

[34] Nasdaq ''Time'' is the time of the trade in HH:MM:SS format.

[35] Nasdaq ''Size'' is the number of shares in the transaction in mixed or round lot as reported to the tape.

[36] Nasdaq ''Price'' is the price of the trade as reported to the tape.

[37] Nasdaq ''Short Type'' is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction (E = Short Exempt, S = Short Not Exempt).

[38] Nasdaq ''Market Center'' is the market identifier (Q = NASDAQ, T = NASDAQ, B = Boston, X = PSX).

[39] Nasdaq ''Ticker Symbol'' refers to the Nasdaq formatted symbol in which the trading activity occurred.

[40] NYSE defines ''LinkedIndicator'' as null for all unbundled executions and the Auction Reference Trade ID for all bundled executions. Nasdaq defines ''Link Indicator'' as a market center defined character variable used to flag records that will be difficult to match to tape data ([blank] = matches tape, P = multiple parts of a batch trade included in the short sale data, B = the only part of a batch trade included in the short sale data, M may represent multiple prints, A = ''As-Of'' trade).

[41] NYSE defines ''ShortSize'' as the number of shares sold short. Nasdaq defines ''Short Size'' as the number of shares in the transaction that were designated for short sale.

[42] The EOM Report will not distinguish between ''Short Size'' and ''Trade Size'' in that all transactions reflected in the EOM Report will be marked sell short or sell short exempt. *Supra* note 14.

[43] *Supra* note 17.

[44] *Supra* note 22.

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(5).

[47] *Id.*

[48] *Supra* notes 24 and 32.

product that provides substantially the same data offered by competing equities exchanges. The Exchange's proposed US Equity Short Volume & Trades Report will contain both an EOD Report and an EOM Report, both of which are substantially similar to the competing NYSE and Nasdaq data product offerings, with the only difference being that the Exchange will not include a linked indicator field or short size field in its EOM Report.

Additionally, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The US Equity Short Volume & Trades Report will be available equally to Members and non-Members. Market participants are not required to purchase the US Equity Short Volume & Trades Report, and the Exchange is not required to make the US Equity Short Volume & Trades Report available to investors. Rather, the Exchange is voluntarily making the US Equity Short Volume & Trades Report available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. Given the above, the Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[49] and Rule 19b–4(f)(6) thereunder.[50]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[51] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange states that waiver of the operative delay will permit the Exchange to immediately make the US Equity Short Volume & Trades Report available to subscribers as an alternative to the competing products offered by NYSE and Nasdaq. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[52]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2023–026.

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–CboeEDGX–2023–026. 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–CboeEDGX–2023–026, and should be submitted on or before May 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Sherry R. Haywood,

Assistant Secretary.

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[49] 15 U.S.C. 78s(b)(3)(A).

[50] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[51] 17 CFR 240.19b–4(f)(6)(iii).

[52] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[53] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97305; File No. SR–PEARL–2023–17]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Options Fee Schedule

April 13, 2023.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 3, 2023, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Pearl Options Fee Schedule (the ''Fee Schedule'') to amend fees for historical Open-Close Report to: (i) add a fee for ad hoc requests for end-of-day data and no longer provide such data free of charge; (ii) respond to requests for ad hoc intra-day data and adopt a new fee for such requests; and (iii) adopt academic discounts for requests for ad hoc historical end-of-day and intra-day Open-Close data.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange adopted a new data product for options known as the Open-Close Report,[3] which the Exchange made available for purchase to Exchange Members[4] and non-Members on June 1, 2021.[5] The Open-Close Report is described under Exchange Rule 531(b)(1). The Exchange now proposes to amend fees for historical Open-Close Report to: (i) add a fee for ad hoc requests for end-of-day data and no longer provide such data free of charge; (ii) respond to requests for ad hoc intra-day data and adopt a new fee for such requests; and (iii) adopt academic discounts for requests for ad hoc historical end-of-day and intra-day Open-Close data. The Exchange previously filed this proposal on March 23, 2023 (SR–PEARL–2023–14). On April 3, 2023, the Exchange withdrew SR–PEARL–2023–14 and resubmitted this proposal.

General

By way of background, the Exchange offers two versions of the Open-Close Report, an end-of-day summary and intra-day report.[6] The end-of-day version is a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker),[7] side of the market (buy or sell), contract volume, and transaction type (opening or closing). The Priority Customer, Non-Priority Customer volume is further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Open-Close Report data is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed. The Exchange notes that Open-Close Report data is not necessary for trading and subscribing to the Open-Close Report is completely optional.

Members and non-Members may purchase the Open-Close Report on a monthly basis. The Exchange currently assess a monthly fee of $600 per month for subscribing to the end-of-day summary Open-Close Report and $2,000 per month for subscribing to the intra-day Open-Close Report. For mid-month subscriptions, new subscribers are currently charged for the full calendar month for which they subscribe and will be provided Open-Close Report data for each trading day of the calendar month from the day on which they subscribed and receive data for each trading day of the calendar month prior to the day on which they subscribe.

End-of-Day Ad Hoc Request (Historical Data)

The Exchange currently provides Members and Non-Members who request on an ad hoc basis historical end-of-day Open-Close Report data free of charge. The Exchange initially proposed to provide such data for free because it only recently launched the Open-Close Report and had minimal amount of historical end-of-day data. The Exchange also wanted to support the introduction of the new product through such a pricing incentive to attract additional subscribers.

An ad hoc request may be for any number of months beginning with June 2021, the month in which the Exchange first made the Open-Close Report available. For example, a market participant may request end-of-day Open-Close Report data for the month of June 2021 or July 2021, or may request such data for both June and July 2021 and would not be currently charged a fee for such request(s). The Exchange notes that other exchanges that provide similar data products allow for ad hoc requests of their end-of-day data for a fee.[8] Similar to other exchanges, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 91964 (May 21, 2021), 86 FR 28667 (May 27, 2021) (SR–PEARL–2021–24) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a New Historical Market Data Product To Be Known as the Open-Close Report).

[4] 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.

[5] *See* Securities Exchange Act Release No. 92137 (June 9, 2021), 86 FR 31748 (June 15, 2021) (SR–PEARL–2021–26) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Options Fee Schedule To Adopt Fees for the Open-Close Report).

[6] The intraday Open-Close Report provides similar information to that of Open-Close Data but will be produced and updated every 10 minutes during the trading day. Data is captured in ''snapshots'' taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period.

[7] *See* Exchange Rule 100.

[8] *See* Price List—U.S. Derivatives Data for Nasdaq PHLX, LLC (''PHLX''), The Nasdaq Stock Market, LLC (''Nasdaq''), Nasdaq ISE, LLC (''ISE''), and Nasdaq GEMX, LLC (''GEMX''), *available at http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#web.* Particularly, PHLX offers ''Nasdaq PHLX Options Trade Outline (PHOTO)'' and assesses $400 for historical end-of-day data;

Exchange now proposes to charge a fee of $500 per request per month for ad-hoc requests for end-of-day historical data.[9]

The Exchange currently makes the historical end-of-day Open-Close data available fifteen (15) days after the end of the month for which it is requested. The Exchange implemented this delay because historical end-of-day Open-Close Report data was free of charge and the Exchange sought to not encourage subscribers to request historical end-of-day Open-Close Report data over a paid subscription. Now that the Exchange proposes to charge a fee for historical end-of-day Open-Close Report data, it believes the fifteen (15) day delay in making the data available is no longer necessary and proposes to remove this language from its Fee Schedule.

Intra-Day Ad Hoc Request (Historical Data)

The Exchange now proposes to provide Members and Non-Members who request on an ad hoc basis historical intra-day Open-Close Report data for a fee of $1,000 per request per month. When the Exchange proposed to provide for ad-hoc requests for end-of day data, it did not also propose to allow for ad hoc requests for intra-day Open-Close Report data.[10] Based on interest from Members and non-Members, the Exchange now proposes to do so for the above proposed fee.

As it currently specifies for historical end-of-day Open-Close data, an ad hoc request may be for any number of months beginning with June 2021, the month in which the Exchange first made the Open-Close Report available. Similarly, the Exchange will provide historical intra-day Open-Close data for the same time period. The Exchange notes that other exchanges that provide similar data products allow for ad hoc requests of their intra-day data for a fee.[11]

Academic Discounts for Ad Hoc Historical End-of-Day and Intra-Day Open-Close Report Data

The Exchange also proposes to adopt an academic discount for ad-hoc requests of historical months of these data sets. Specifically, the Exchange proposes to charge qualifying academic purchasers per request $1,500 per year for the first year (instead of $6,000 per year) and $125 per month thereafter for historical end-of-day Open-Close Report data covering all of the Exchange's securities. Further, the Exchange proposes to charge qualifying academic purchasers per request $3,000 per year for the first year (instead of $12,000 per year) and $250 per month thereafter for historical intra-day Open-Close Report data covering all of the Exchange's securities.

Particularly, the Exchange believes that academic institutions and researchers provide a valuable service for the Exchange in studying and promoting the options market. Though academic institutions and researchers have need for granular options data sets, they do not trade upon the data for which they subscribe. The Exchange believes the proposed reduced fee for qualifying academic purchasers of historical end-of-day Open-Close Report data and intra-day Open-Close Report data will encourage and promote academic studies of its market data by academic institutions. In order to qualify for the academic pricing, an academic purchaser must: (1) be an accredited academic institution or member of the faculty or staff of such an institution, and (2) use the data in independent academic research, academic journals and other publications, teaching and classroom use, or for other bona fide educational purposes (*i.e.* academic use). Furthermore, use of the data must be limited to faculty and students of an accredited academic institution, and any commercial or profit-seeking usage is excluded. Academic pricing will not be provided to any purchaser whose research is funded by a securities industry participant. Academic users interested in qualifying will be required to submit a brief application.[12] Exchange Business Development personnel will have the discretion to review and approve such applications and request additional information when it deems necessary.

The Exchange notes that competing exchanges currently offer academic discounts for similar data sets on those exchanges.[13] The Exchange recognizes the high value of academic research and educational instruction and publications, and believes that the proposed academic discounts for historical end-of-day Open-Close Report data and intra-day Open-Close Report data will encourage the promotion of academic research of the options industry, which will serve to benefit all market participants while also opening up a new potential user base among students. Finally, the Exchange notes that academic purchasers' ad hoc requests of historical end-of-day Open-Close and intra-day Open-Close data would be educational in use and purpose, and not vocational.

Implementation Date

The Exchange intends to implement the proposed fee changes immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposed changes to its Fee Schedule concerning fees for the Open-Close Report is consistent with Section 6(b) of the Act [16] in general, and furthers the objectives of Section 6(b)(4) of the Act [17] in particular, in that it is

Nasdaq offers the ''Nasdaq Options Trade Outline (NOTO)'' and assesses $250 for historical end-of-day data; ISE offers the ''Nasdaq ISE Open/Close Trade Profile'' and assesses $600 per month for historical end-of-day data and $27,500 for complete history; and GEMX offers the ''Nasdaq GEMX Open/Close Trade Profile'' and assesses $400 for historical end-of-day data. Cboe EDGX Exchange, Inc. (''EDGX'') and Cboe BZX Exchange, Inc. (''BZX'') both assess $400 for historical end-of-day data per request per month. *See* the EDGX fee schedule *available at http://markets.cboe.com/us/options/membership/fee_schedule/edgx/ and* the BZX fee schedule *available at http://markets.cboe.com/us/options/membership/fee_schedule/bzx/.*

[9] *Id.*

[10] *See* Securities Exchange Act Release No. 93019 (September 16, 2021), 86 FR 52705 (September 22, 2021) (SR–PEARL–2021–41).

[11] *See* Price List—U.S. Derivatives Data for PHLX, ISE, and GEMX, *available at http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#web.* Particularly, PHLX offers ''Nasdaq PHLX Options Trade Outline (PHOTO)'' and assesses $1,000 for historical intra-day data; ISE offers the ''Nasdaq ISE Open/Close Trade Profile'' and assesses $1,000 per month for historical intra-day; and GEMX offers the ''Nasdaq GEMX Open/Close Trade Profile'' and assesses $750 for historical end-of-day data. EDGX and BZX both assess $750 for historical intra-day data per request per month. *See* the EDGX fee schedule *available at http://markets.cboe.com/us/options/membership/fee_schedule/edgx/ and* the BZX fee schedule *available at http://markets.cboe.com/us/options/membership/fee_schedule/bzx/.*

[12] The Exchange notes that it will have an academic user application available on the Exchange's website soon but it has not received any such requests from potential academic users at the time of this filing (or the previous filing).

[13] *See supra note* 8, BZX, EDGX, and ISE fee schedules; *see also* Cboe Exchange, Inc. (''Cboe'') Options Fee Schedule, Livevol Fees, Open Close Data *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf.*

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4).

an equitable allocation of dues, fees and other charges among its members and other recipients of Exchange data.

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, the Open-Close Report 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 the Open-Close Report. Particularly, information regarding opening and closing activity across different option series during the trading day may indicate investor sentiment, which may allow market participants to make better informed trading decisions throughout the day. Subscribers to the data may also be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes the Open-Close Report provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading and completely optional. Moreover, other exchanges offer a similar data product.[18] This proposal seeks to provide historical Open-Close Report data to market participants by amending the fees for the Open-Close Report to: (i) add a fee of $500 per request per month for ad hoc requests for end-of-day historical data; (ii) respond to requests for ad hoc intra-day data and adopt a fee of $1,000 per request per month for such requests; and (iii) adopt academic discounts for requests for ad hoc historical end-of-day and intra-day Open-Close data. The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, for the month of March 2023, no single options exchange had more than approximately 13% of the equity options market share and the Exchange represented only approximately 6.96% of the equity options market share for the month of March 2023.[19] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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.'' [20] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products.

The Exchange believes its proposal to respond to requests and add fees for ad hoc requests for historical end-of-day and intra-day data and adopt academic discounts for such requests is reasonable as the proposed rates are similar to fees assessed by other exchanges that provide data in response to ad hoc request for their similar data products.[21] The Exchange believes its proposal is reasonable and not unfairly discriminatory because the Exchange now has almost two years of historical Open-Close Report data to provide to market participants that request historical intra-day or end-of-day Open-Close Report data since the Exchange began offering the Open-Close Report in June 2021. Further, the Exchange notes that no competing exchange provides their own historical Open-Close report data free of charge.[22] Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Like the Exchange's Open-Close Report, other exchanges offer similar data products that each provide insight into trading on those markets and may likewise aid in assessing investor sentiment. Although each of these similar Open-Close data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different option series based on open and closing interest on any one exchange.[23] Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and analytical strategies using only Open-Close data relating to trading activity on one or more of the other markets that provide similar data products. As such, if a market participant views another exchange's historical end-of-day or intra-day Open-Close data as more attractive than the Exchange's historical end-of-day or intra-day Open-Close Report data, then such market participant can merely choose not to request such data from the Exchange and instead purchase another exchange's historical end-of-day or intra-day Open-Close data, which offer similar data points, albeit based on that other market's trading activity.

The Exchange also believes its proposal is reasonable as it would further support its offer of the Open-Close Report, which is designed to aid investors by providing insight into trading on the Exchange. Providing market data, such as the Open-Close Report, is also a means by which exchanges compete to attract business. Subscribers that receive end-of-day Open-Close data, and now intra-day Open-Close data as a result of this proposal, in response to an ad hoc request may use such data to evaluate the usefulness of the Exchange's Open-Close Report and decide, based on that data, whether to subscribe to the Open-Close Report on a monthly basis. To the extent that the Exchange is successful in attracting subscribers for the Open-Close Report through this proposal, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposal to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges.[24] The Exchange therefore believes that its proposal reflects the competitive environment and would be properly assessed on Member or non-Member subscribers. The Exchange also believes the proposal is equitable and not unfairly discriminatory as it would apply equally to all users who choose to purchase or receive such data.

The Exchange believes its proposal is equitably allocated because a wide variety of market participants may choose to request historical Open-Close Report intra-day or end-of-day data,

[18] *See supra* notes 8 and 11.

[19] *See* the Exchange's ''The market at a glance,'' *available at https://www.miaxoptions.com/* (last visited April 3, 2023).

[20] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[21] *See supra* notes 8 and 11.

[22] *See id.*

[23] The Exchange notes that its Open-Close Report data product does not include data on any exclusive, singly-listed option series.

[24] *See supra* notes 8 and 11.

including but not limited to individual customers, buy-side investors and investment banks, all of which will be charged the same rates for the monthly data requests depending on the type of request (*i.e.,* intra-day or end-of-day ad hoc historical requests). The Exchange reiterates that the decision as to whether or not to make an ad hoc request for historical end-of-day or intra-day data Open-Close Report data is entirely optional and available for all market participants. Indeed, no market participant is required to make such ad hoc request for historical end-of-day or intra-day Open-Close Report data, and the Exchange is not required to make historical end-of-day or intra-day Open-Close Report data available to all investors. The Exchange is voluntarily making a subset of existing Open-Close Report data available via ad hoc requests for intra-day and end-of-day data under this proposal at the request of customers, and market participants may choose to receive this data based on their own business needs and for the proposed fees specified herein. Potential purchasers of ad hoc data may request the data at any time if they believe it to be valuable or may decline to subscribe such data.

The Exchange believes it is reasonable to remove the mandatory fifteen (15) day waiting period in order to receive historical ad hoc end-of-day Open-Close data because the Exchange initially implemented this delay because it made historical end-of-day Open-Close Report data free and sought to not encourage subscribers to request historical end-of-day Open-Close Report data over a paid subscription. Now that the Exchange proposes to charge a fee for historical end-of-day Open-Close Report data and because no other options exchange imposes similar delay requirements for the same data, the Exchange believes the fifteen (15) day waiting period is no longer necessary and is reasonable to remove this language from the Fee Schedule.

The Exchange believes that the discount for qualifying academic purchasers of the ad hoc historical end-of-day Open-Close and intra-day Open-Close Report data is reasonable because academic users are not able to monetize access to the data as they do not trade on the data set. The Exchange believes the proposed discount will allow for more academic institutions and faculty members to purchase historical end-of-day Open-Close and intra-day Open-Close Report data, and, as a result, promote research and studies of the options industry to the benefit of all market participants. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all academic users that submit applications and meet the accredited academic institution or faculty member and academic use criteria. As stated above, qualified academic users will subscribe to the data set for educational use and purposes and are not permitted to use the data for commercial or monetizing purposes, nor can qualify if they are funded by an industry participant. As a result, the Exchange believes the proposed discount is equitable and not unfairly discriminatory because it maintains equal treatment for all industry participants or other subscribers that use the data for vocational, commercial or other for-profit purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to enhance the value of a data product that is similar to those offered by other competitor options exchanges.[25] The Exchange made historical end-of-day and intra-day Open-Close Report data available in order to keep pace with changes in the industry and evolving customer needs, and believes that providing such data to market participants that make requests for it will continue to contribute to robust competition among national securities exchanges. At least eight other U.S. options exchanges offer historical end-of-day and intra-day Open-Close report data on an ad hoc basis with fees that are substantially similar to the Exchange's proposed fees herein. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. While the proposed academic discount is a fee reduction that applies only to qualifying academic purchasers, the Exchange believes that academic purchasers' research and publications as a result of access to historical market data benefits all market participants.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price ad hoc requests for end-of-day and intra-day Open-Close Report data is constrained by competition among exchanges that offer similar fees for similar ad hoc requests for end-of-day and intra-day Open-Close report data to their customers. The Exchange notes that there are currently a number of similar products available to market participants and investors. At least eight other U.S. options exchanges offer similar fees for ad hoc requests for end-of-day and intra-day Open-Close report data that is substantially similar to the fees for ad hoc requests for end-of-day and intra-day Open-Close Report data proposed in this filing, which the Exchange must consider in its pricing discipline in order to compete for the market data.[26] For example, proposing fees that are excessively higher than established fees for similar ad hoc requests for historical end-of-day and intra-day Open-Close Report data on the Exchange would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposal 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 for ad hoc historical requests to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposal would apply uniformly to any market participant, in that it does not differentiate between requests for ad hoc historical Open-Close Report data, other than for qualifying academic users. The proposal allows any interested Member or non-Member to request on an ad hoc basis historical end-of-day or intra-day Open-Close Report databased on their business needs.

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.

[25] *See supra* notes 8 and 11.

[26] *See, e.g.* Cboe Options Fee Schedule, Livevol Fees, Open-Close Data, *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf. See also supra* note 8, ISE fee schedule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[27] and Rule 19b–4(f)(2)[28] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2023–17 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–PEARL–2023–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2023–17, and should be submitted on or before May 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Sherry R. Haywood,

Assistant Secretary.

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[27] 15 U.S.C. 78s(b)(3)(A)(ii).

[28] 17 CFR 240.19b–4(f)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97304; File No. SR–CboeBZX–2023–024]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a New Data Product To Be Known as the US Equity Short Volume & Trades Report

April 13, 2023.

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 5, 2023, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to Exchange Rule 11.22 to introduce a new data product to be known as the US Equity Short Volume & Trades Report. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to amend Rule 11.22 to revise paragraph 11.22(f) in order to introduce a new data product to be known as the US Equity Short Volume & Trades Report. A description of market data products offered by the Exchange is provided in Exchange Rule 11.22 and proposed Rule 11.22(f) provides that the US Equity Short Volume & Trades Report is a report that will contain both an end-of-day short volume report and an end-of-month report that provides a record of all short sale transactions for the month. The proposed US Equity Short Volume & Trades Report will incorporate the existing Short Volume Report[5] currently described in Rule 11.22(f) as well as introduce a new, end-of-month report containing a record of all short

[5] *See* Securities Exchange Act Release No. 95546 (August 18, 2022), 87 FR 52099 (August 24, 2022), SR–CboeBZX–2022–044 (''Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a New Data Product To Be Known as the Short Volume Report'').

sale transactions for the current month. The proposed US Equity Short Volume & Trades Report is nearly identical to the NYSE TAQ Group Short Sales & Short Volume product and Nasdaq's Short Sale Volume Reports (discussed *infra*).

The end-of-day report (''EOD Report'') included within the US Equity Short Volume & Trades Report will be identical to the existing Short Volume Report published by the Exchange. The existing Short Volume Report summarizes certain equity trading activity on the Exchange, including trade date,[6] total volume,[7] short volume,[8] and sell short exempt volume,[9] by symbol.[10] The data fields contained in the existing Short Volume Report will not change when the Short Volume Report is incorporated into the US Equity Short Volume & Trades Report as the EOD Report. The proposed end-of-month report (''EOM Report'') to be included in the US Equity Short Volume & Trades Report will be a new report that provides a record of all short sale transactions for the month, including trade date and time (in microseconds),[11] trade size,[12] trade price,[13] and type of short sale execution,[14] by symbol and exchange.[15] The US Equity Short Volume & Trades Report will be available for purchase to both BZX Members (''Members'')[16] as well as non-Members.[17]

As discussed in the Exchange's previous filing to introduce the EOD Report,[18] the data fields included in the EOD Report are essentially identical to the fields included by the New York Stock Exchange LLC (''NYSE'') in their Daily Short Volume file[19] and similar to the fields provided by the NASDAQ Stock Market LLC (''Nasdaq'') in its Daily Short Sale file.[20] The data fields contained in the EOD Report found within the proposed US Equity Short Volume & Trades Report are identical to the data fields found in the existing Short Volume Report.[21] NYSE offers its Daily Short Volume file as one component of its NYSE TAQ Group Short Sales & Short Volume product[22] and Nasdaq offers its Daily Short Sale file as one component of its Short Sale Volume Reports.[23] The Exchange is proposing to include its EOD Report as one component of the US Equity Short Volume & Trades Report in the same manner as NYSE and Nasdaq incorporate their daily short sale files within a more robust data offering.

The Exchange notes that the data fields included in the EOM Report are nearly identical to the fields included by NYSE in its Monthly Short Sales file, except that the Exchange will not include two fields that appear within the NYSE Monthly Short Sales file.[24] Specifically, the NYSE Monthly Short Sales file also includes date,[25] time,[26] size,[27] price,[28] type of short sale execution,[29] market center,[30] and symbol.[31] Additionally, the data fields included in the EOM Report are nearly identical to the fields found in the Nasdaq Monthly Short Sale File, except that the Exchange will not include two fields that appear within the Nasdaq Monthly Short Sale File.[32] Both the Exchange and Nasdaq include date,[33] time,[34] size,[35] price,[36] short sale execution type,[37] market center,[38] and symbol.[39] The Exchange notes that the only difference between its proposed EOM Report and the corresponding NYSE and Nasdaq monthly files is that the Exchange will not include a linked

[6] ''Trade date'' is the date of trading activity in yyyy-mm-dd format.

[7] ''Total volume'' is the total number of shares transacted.

[8] ''Short volume'' is the total number of shares sold short.

[9] ''Short exempt volume'' is the total number of shares sold short classified as exempt.

[10] ''Symbol'' refers to the Cboe formatted symbol in which the trading activity occurred. *See https://cdn.cboe.com/resources/membership/US_Symbology_Reference.pdf.*

[11] ''Trade date and time'' is the date and time of trading activity in yyyy-mm-dd hh:mm:ss.000000 (microseconds) ET format.

[12] ''Trade size'' is the number of shares transacted.

[13] ''Trade price'' is the price at which shares were transacted.

[14] ''Short type'' is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction. A short sale transaction is a transaction in which a seller sells a security which the seller does not own, or the seller has borrowed for its own account (*see* 17 CFR 242.200). A short sale exempt transaction is a short sale transaction that is exempt from the short sale price test restrictions of Regulation SHO Rule 201 (*see* 17 CFR 242.201(c)).

[15] ''Exchange'' is the market identifier (Z = BZX, Y = BYX, X = EDGX, A = EDGA).

[16] *See* Rule 1.5(n) (''Member''). The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

[17] The Exchange intends to submit a separate filing to establish fees for the US Equity Short Volume & Trades Report.

[18] *Supra* note 5.

[19] *See* NYSE Daily Short Volume Client Specification, available at: *https://www.nyse.com/publicdocs/nyse/data/Daily_Short_Volume_Client_Spec_v1.3a.pdf.*

[20] *See* Nasdaq OMX Daily and Monthly Short Sale File Format and Specifications, available at: *https://nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/ShortSaleFileSpecifications.pdf.*

[21] *Supra* note 5.

[22] See *https://www.nyse.com/market-data/historical/taq-nyse-group-short-sales.*

[23] *See https://nasdaqtrader.com/Trader.aspx?id=shortsale.*

[24] *See* NYSE Monthly Short Sales Client Specification, available at: *https://www.nyse.com/publicdocs/nyse/data/Monthly_Short_Sales_Client_Spec_v1.3a.pdf.* The NYSE Monthly Short Sales file includes trade date and time, size, price, type of short sale execution, market center, and symbol. Unlike the NYSE file, the US Equity Short Volume & Trades Report will not include the linked indicator or short size fields. The Exchange does not currently offer a linked indicator tied to short sale executions and the size field found within the US Equity Short Volume & Trades Report will provide the size of the short sale execution.

[25] NYSE ''Date'' is the trade date of the short sale transaction in YYYYMMDD format.

[26] NYSE ''Time'' is the time of the short sale transaction in microsecond (HH:MM:SSnnnnnn) format.

[27] NYSE ''Size'' is the size of the trade in shares.

[28] NYSE ''Price'' is the price of the trade.

[29] NYSE ''Short Type'' is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction (E = Short Sale Exempt execution, S = Short not exempt).

[30] NYSE ''Market center'' is the market identifier (A = NYSE American, N = NYSE, P = NYSE Arca, C = NYSE National, M = NYSE Chicago).

[31] NYSE ''Symbol'' refers to the NYSE formatted symbol in which the trading activity occurred. *See https://www.nyse.com/publicdocs/nyse/data/NYSESymbology__Spec_v1.0c.pdf.*

[32] *See* NASDAQ OMX Daily and Monthly Short Sale File Format and Specification, available at: *https://nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/ShortSaleFileSpecifications.pdf.* The Nasdaq Monthly Short Sale File includes trade date and time, size, price, type of short sale execution, market center, and ticker symbol. Unlike the Nasdaq file, the US Equity Short Volume & Trades Report will not include the link indicator or short size fields. The Exchange does not currently offer a link indicator tied to short sale executions and the size field found within the US Equity Short Volume & Trades Report will provide the size of the short sale transaction.

[33] Nasdaq ''Date'' is the date that the trade was reported to the tape in YYYYMMDD format.

[34] Nasdaq ''Time'' is the time of the trade in HH:MM:SS format.

[35] Nasdaq ''Size'' is the number of shares in the transaction in mixed or round lot as reported to the tape.

[36] Nasdaq ''Price'' is the price of the trade as reported to the tape.

[37] Nasdaq ''Short Type'' is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction (E = Short Exempt, S = Short Not Exempt).

[38] Nasdaq ''Market Center'' is the market identifier (Q = NASDAQ, T = NASDAQ, B = Boston, X = PSX).

[39] Nasdaq ''Ticker Symbol'' refers to the Nasdaq formatted symbol in which the trading activity occurred.

indicator [40] field or short size [41] field in its EOM Report. As the Exchange does not currently offer a linked indicator field, it will not include this field within the EOM Report. Additionally, the Exchange will not include a short size field in its EOM Report because the size shown in the trade size field included in the Exchange's EOM Report will be the number of shares in the transaction that executed with a sell short or sell short exempt marking.[42]

Both the EOD Report and EOM Report will be included in the cost of the US Equity Short Volume & Trades Report and will be available for purchase by both Members and non-Members on an annual or monthly subscription basis.[43] Additionally, like NYSE, the Exchange will offer historical reports containing both the end-of-day volume and end-of-month trading activity.[44] Historical reports will be available for purchase dating back to January 2, 2015, and will include the same data fields as the US Equity Short Volume & Trades Report.

The Exchange anticipates that a wide variety of market participants will purchase the proposed US Equity Short Volume & Trades Report, including, but not limited to, active equity trading firms and academic institutions. For example, the Exchange notes that academic institutions may utilize the US Equity Short Volume & Trades Report data and as a result promote research and studies of the equities industry to the benefit of all market participants. The Exchange further believes the proposed US Equity Short Volume & Trades Report may provide helpful trading information regarding investor sentiment that may allow market participants to make more informed trading decisions and may be used to create and test trading models and analytical strategies and provide comprehensive insight into trading on the Exchange. The proposal is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[45] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [46] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [47] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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. The Exchange believes that the proposed US Equity Short Volume & Trades Report would further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency through the dissemination of short volume and short sale execution data. The proposed rule change would benefit investors by providing access to the US Equity Short Volume & Trades data, which may promote better informed trading, as well as research and studies of the equities industry.

Moreover, as noted above, both NYSE and Nasdaq offer data products that contain both a daily and monthly short sale file. These products provide data that is nearly identical to the offering proposed by the Exchange. The proposed EOD Report that will be offered as one component of the US Equity Short Volume & Trades Report is the Exchange's existing Short Volume Report, which is substantially similar to the NYSE and Nasdaq daily short volume product offerings. The proposed EOM Report that will be offered as the second component of the US Equity Short Volume & Trades Report will contain date, time, size, price, short sale type, market center, and symbol, which is nearly identical to the data fields found within the NYSE and Nasdaq monthly short volume reports.[48] As stated previously, the Exchange's EOM Report is nearly identical to the NYSE and Nasdaq monthly reports in that the Exchange will offer identical data fields except for a linked indicator value and a short size value. Accordingly, the proposed US Equity Short Volume & Trades Report does not provide a unique or novel data offering, but rather offers data points consistent with other data products already available and utilized by market participants today.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote fair competition among the national securities exchanges by permitting the Exchange to offer a data product that provides substantially the same data offered by competing equities exchanges. The Exchange's proposed US Equity Short Volume & Trades Report will contain both an EOD Report and an EOM Report, both of which are nearly identical to the competing NYSE and Nasdaq data product offerings, with the only difference being that the Exchange will not include a linked indicator field or short size field in its EOM Report.

Additionally, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The US Equity Short Volume & Trades Report will be available equally to Members and non-Members. Market participants are not required to purchase the US Equity Short Volume & Trades Report, and the Exchange is not required to make the US Equity Short Volume & Trades Report available to investors. Rather, the Exchange is voluntarily making the US Equity Short Volume & Trades Report

[40] NYSE defines ''LinkedIndicator'' as null for all unbundled executions and the Auction Reference Trade ID for all bundled executions. Nasdaq defines ''Link Indicator'' as a market center defined character variable used to flag records that will be difficult to match to tape data ([blank] = matches tape, P = multiple parts of a batch trade included in the short sale data, B = the only part of a batch trade included in the short sale data, M may represent multiple prints, A = ''As-Of'' trade).

[41] NYSE defines ''ShortSize'' as the number of shares sold short. Nasdaq defines ''Short Size'' as the number of shares in the transaction that were designated for short sale.

[42] The EOM Report will not distinguish between ''Short Size'' and ''Trade Size'' in that all transactions reflected in the EOM Report will be marked sell short or sell short exempt. *Supra* note 14.

[43] *Supra* note 17.

[44] *Supra* note 22.

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(5).

[47] *Id.*

[48] *Supra* notes 24 and 32.

available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. Given the above, the Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [49] and Rule 19b–4(f)(6) thereunder.[50]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[51] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange states that waiver of the operative delay will permit the Exchange to immediately make the US Equity Short Volume & Trades Report available to subscribers as an alternative to the competing products offered by NYSE and Nasdaq. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[52]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2023–024.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2023–024. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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–CboeBZX–2023–024, and should be submitted on or before May 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08222 Filed 4–18–23; 8:45 am]

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[49] 15 U.S.C. 78s(b)(3)(A).

[50] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[51] 17 CFR 240.19b–4(f)(6)(iii).

[52] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[53] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97308; File No. SR–PEARL–2023–16]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Equities Fee Schedule

April 13, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2023, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the fee schedule (the ''Fee Schedule'') applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to: (i) increase the rebate for Adding Liquidity Displayed Orders and Adding Liquidity Non-Displayed Orders in securities priced below $1.00 per share; (ii) increase the fee for Removing Liquidity in securities priced below $1.00 per share; (iii) update the corresponding liquidity indicator codes to reflect the aforementioned proposed changes in (i) and (ii) above; and (iv) increase the percentage threshold for Add Volume Tier 3 from 0.20% to 0.30% of total consolidated volume (''TCV'').[3]

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of many venues, including 16 registered equities exchanges as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 15–16% of the total market share of executed volume of equities trading.[4]

Proposal To Increase the Rebate for Adding Liquidity Displayed Orders and Adding Liquidity Non-Displayed Orders in Securities Priced Below $1.00 per Share

Currently, the Exchange provides a rebate of (0.10%) [5] of the total dollar value of any transaction in securities priced below $1.00 per share that adds liquidity (displayed or non-displayed) across all Tapes to the Exchange.[6] The Exchange now proposes to increase the rebate from (0.10%) to (0.15%) of the total dollar value of any transaction in securities priced below $1.00 per share that adds liquidity (displayed or non-displayed) across all Tapes to the Exchange. The purpose of the proposed change is for business and competitive reasons.

Proposal To Increase the Fee for Removing Liquidity in Securities Priced Below $1.00 per Share

Currently, the Exchange assesses a fee of 0.20% of the total dollar value of any transaction in securities priced below $1.00 per share that removes liquidity across all Tapes from the Exchange.[7] The Exchange now proposes to increase the fee from 0.20% to 0.25% of the total dollar value of any transaction in securities priced below $1.00 per share that removes liquidity across all Tapes from the Exchange. The purpose of the proposed change is for business and competitive reasons.

Proposal To Harmonize Section 1)b), Liquidity Indicator Codes and Associated Fees, With the Proposed Changes to the Standard Rates Table

The Exchange provides a table of liquidity indicator codes and associated fees/rebates that are applied to transactions so that Equity Members [8] may better understand the fee or rebate that is applied to each execution. The liquidity indicator code for each execution is returned on the real-time trade report sent to the Equity Member that submitted the order. Currently, the Exchange provides over thirty different liquidity indicator codes, nine of which relate to adding liquidity to the Exchange and nine that relate to removing liquidity from the Exchange.

The Exchange now proposes to update the rebates for liquidity indicator codes that add liquidity to the Exchange to align to the aforementioned proposed change to increase the standard rebate for Adding Liquidity Displayed Orders and Adding Liquidity Non-Displayed Orders from (0.10%) to (0.15%) of the total dollar value of the transaction in securities priced below $1.00 per share. Specifically, the Exchange proposes to amend the column titled ''Fee/(Rebate) Securities Priced Below $1.00'' in Section 1)b) of the Fee Schedule to reflect the proposed increase to the standard rebate for Adding Liquidity (Displayed Orders and Non-Displayed Orders) in securities priced below $1.00 per share for the following liquidity indicator codes: AA, AB, AC, AR, Aa, Ab, Ac, Ap, and Ar.

Additionally, the Exchange proposes to update the fees for liquidity indicator codes that remove liquidity from the Exchange to align to the aforementioned proposed change to increase the standard fee for Removing Liquidity from 0.20% to 0.25% of the total dollar value of the transaction in securities priced below $1.00 per share. Specifically, the Exchange proposes to amend the column titled ''Fee/(Rebate) Securities Priced Below $1.00'' in Section 1)b) of the Fee Schedule to reflect the proposed increase to the standard fee for Removing Liquidity in securities priced below $1.00 per share for the following liquidity indicator codes: RA, RB, RC, RR, Ra, Rb, Rc, Rp, and Rr. The purpose of these changes is to harmonize the table in Section 1)b) of the Fee Schedule to the changes proposed in Section 1)a) of the Fee Schedule.

Proposal To Amend the Percentage Threshold for Tier 3 of the Add Volume Tiers

Currently, the Exchange provides a volume-based tier structure in Section 1)c) of the Fee Schedule, referred to as the Add Volume Tiers, in which the Exchange provides an enhanced rebate for executions of Adding Liquidity Displayed Orders in securities priced at or above $1.00 per share for Equity Members that meet certain specified volume thresholds on the Exchange (applicable to Liquidity Indicator Codes AA, AB and AC). Pursuant to the Add Volume Tiers table in Section 1)c) of the Fee Schedule, an Equity Member qualifies for an enhanced rebate under Tier 1 by achieving an average daily

[3] The term ''TCV'' means total consolidated volume calculated as the volume in shares reported by all exchanges and reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes from its calculation of TCV volume on any given day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours, on any day with a scheduled early market close, and on the ''Russell Reconstitution Day'' (typically the last Friday in June). *See* the Definition Section of the Fee Schedule.

[4] Market share percentage calculated as of March 29, 2023. The Exchange receives and processes data made available through consolidated data feeds.

[5] The Exchange indicates rebates in parentheses in the Fee Schedule. *See* the General Notes Section of the Fee Schedule.

[6] *See* Fee Schedule, Section 1)a). *See also* Fee Schedule, Section 1)b), Liquidity Indicator Codes AA, AB, AC, AR, Aa, Ab, Ac, Ap, and Ar.

[7] *See* Fee Schedule, Section 1)a). *See also* Fee Schedule, Section 1)b), Liquidity Indicator Codes RA, RB, RC, RR, Ra, Rb, Rc, Rp and Rr.

[8] The term ''Equity Member'' is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. *See* Exchange Rule 1901.

volume added (''ADAV'') [9] of at least 0.07% of the TCV. Equity Members that qualify for Tier 1 receive an enhanced rebate of ($0.0032) per share for executions of Adding Liquidity Displayed Orders for executions of orders in securities priced at or above $1.00 per share across all Tapes. An Equity Member qualifies for an enhanced rebate under Tier 2 by achieving an ADAV of at least 0.10% of the TCV. Equity Members that qualify for Tier 2 receive an enhanced rebate of ($0.0035) per share for executions of Added Displayed Volume for executions of orders in securities priced at or above $1.00 per share across all Tapes. An Equity Member qualifies for an enhanced rebate under Tier 3 by achieving an ADAV of at least 0.20% of the TCV. Equity Members that qualify for Tier 3 receive an enhanced rebate of ($0.0036) per share for executions of Added Displayed Volume for executions of orders in securities priced at or above $1.00 per share across all Tapes.

The Exchange now proposes to amend the Add Volume Tiers table in Section 1)c) of the Fee Schedule to increase the percentage threshold for Add Volume Tier 3 from 0.20% to 0.30% of TCV. The Exchange does not propose to amend the percentage thresholds for Add Volume Tiers 1 or 2 and does not propose to amend any of the enhanced rebates applicable to the Add Volume Tiers table. With the proposed change, an Equity Member will now qualify for an enhanced rebate under Tier 3 by achieving an ADAV of at least 0.30% of the TCV (enhanced rebate of ($0.0036) per share for executions of Added Displayed Volume for executions of orders in securities priced at or above $1.00 per share across all Tapes). The purpose of this change is for business and competitive reasons and to level-set the Tier 3 volume threshold in light of recent market share change on the Exchange.

Implementation

The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on April 1, 2023.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4) of the Act [11] in particular, in that it is an equitable allocation of reasonable fees and other charges among its Equity Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5) [12] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of many venues, including 16 registered equities exchanges as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 15–16% of the total market share of executed volume of equities trading.[13] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents less than 2% of the overall market share.[14] The Commission and the courts have repeatedly expressed their 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.'' [15]

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 to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance liquidity and market quality to the benefit of all Equity Members and market participants.

Proposal To Increase the Rebate for Adding Liquidity (Displayed Orders and Non-Displayed Orders) in Securities Priced Below $1.00 per Share

The Exchange believes that the proposed increased rebate for executions of all orders in securities priced below $1.00 per share that add displayed and non-displayed liquidity to the Exchange is reasonable, equitable, and non-discriminatory because it would further incentivize Equity Members to submit displayed and non-displayed liquidity-adding orders in sub-dollar securities to the Exchange. The Exchange believes that this would deepen liquidity and promote price discovery in such securities to the benefit of all Equity Members, and such rebates would continue to apply equally to all Equity Members. The Exchange further believes that the proposed increased rebate is reasonable because the proposed rebates for executions of liquidity-adding orders in sub-dollar securities are higher than the rebates provided by competing exchanges for sub-dollar securities.[16]

[9] The term ''ADAV'' means average daily added volume calculated as the number of shares added per day and ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. *See* the Definitions Section of the Fee Schedule.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* ''The Market at a Glance,'' *available at https://www.miaxoptions.com/* (last visited March 29, 2023).

[14] *Id.*

[15] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

[16] *See e.g.,* NYSE Arca Equities Fee Schedule, III. Standard Rates—Transactions, *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf* (providing a standard rebate of 0.0% of the total dollar value of the transaction for liquidity-adding transactions in securities priced below $1.00 per share, and tiered rebates for such transactions ranging from 0.05% to 0.15% of the total dollar value of the transaction based on a participant achieving certain volume thresholds); *see also* MEMX Fee Schedule,

Continued

Proposal To Increase the Fee for Removing Liquidity in Securities Priced Below $1.00 per Share

The Exchange believes that the proposed change to increase the standard fee for executions of all orders in securities priced below $1.00 per share that remove liquidity from the Exchange is reasonable, equitable, and consistent with the Act because it represents a modest increase from the current standard fee (change from 0.20% to 0.25% of the total dollar value). Even with the proposed increase, the Exchange's standard fee for executions of all orders in securities priced below $1.00 per share that remove liquidity from the Exchange remains lower than, or similar to, the standard fee to remove liquidity in securities priced below $1.00 per share charged by competing equities exchanges.[17] The Exchange further believes that the proposal to increase the standard fee for executions of all orders in securities priced below $1.00 per share that remove liquidity from the Exchange is equitably allocated and not unfairly discriminatory because it will apply to all Equity Members that remove liquidity from the Exchange.

Proposal To Amend the Percentage Threshold for Tier 3 of the Add Volume Tiers

The Exchange believes that the proposed change to increase the percentage threshold for Add Volume Tier 3 is reasonable, equitable, and consistent with the Act because the Exchange's market share has risen over the past few months and the proposed change is designed to level-set Equity Members' trading activity on the Exchange with recent performance. Even with the proposed percentage threshold increase, the Exchange's percentage thresholds and corresponding enhanced rebates for executions of orders in securities priced at or above $1.00 per share that add liquidity in displayed orders remains similar to the enhanced rebates to add such liquidity by at least one competing equities exchange.[18] The Exchange believes that even with the proposed volume threshold change to the Add Volume Tier 3, the Exchange's enhanced rebates and volume thresholds will still allow the Exchange to remain highly competitive such that the thresholds should enable the Exchange to continue to attract order flow and maintain market share. As the amount and type of volume that is executed on the Exchange has shifted since it first established the Add Volume Tier thresholds, the Exchange has determined to level-set the volume criteria threshold amount in Tier 3 so that is more reflective of the current operating conditions and the current type and amount of volume executed on the Exchange.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Equity Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed changes will continue to encourage Equity Members to maintain or increase their order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. As a result, the Exchange believes the proposal will enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [19]

Intra-Market Competition

The Exchange believes that the proposed changes will continue to incentivize market participants to direct order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, will continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Equity Members by providing more trading opportunities and encourages Equity Members to send orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all Equity Members.

The opportunity to qualify for the Add Volume Tiers, and thus receive the proposed enhanced rebates for executions of displayed added volume will continue to be available to all Equity Members that meet the associated volume requirement in any month. The Exchange believes that meeting the volume requirement of the Add Volume Tiers is attainable for market participants, as the Exchange believes the thresholds are relatively low, even with the proposed change to Tier 3, and are reasonably related to the enhanced liquidity and market quality that the Add Volume Tiers are designed to promote. Similarly, the proposed increase to the standard fee for executions of orders that remove volume from the Exchange will continue to apply equally to all Equity Members. As such, the Exchange believes the proposed changes would not impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The Exchange believes its proposal will benefit competition as the Exchange operates in a highly competitive market. Equity Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other

Transaction Fees, *available at https://info.memxtrading.com/fee-schedule/* (providing standard rebates ranging from 0.075% to 0.15% of the total dollar value for executions in securities priced below $1.00 per share).

[17] *See* Cboe EDGX Equities Fee Schedule, Standard Rates, *available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/* (charging a standard fee of 0.30% of the dollar value to remove liquidity in securities priced below $1.00 per share); *see also* MEMX Fee Schedule, Transaction Fees (charging a standard fee of 0.28% of the total dollar value to remove liquidity in securities priced below $1.00 per share) *and* NYSE American Equities Price List, Section I.A.2., *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf* (charging a standard fee of 0.25% of the total dollar value of the transaction to remove liquidity in securities priced below $1.00 per share).

[18] *See* MEMX Fee Schedule, Liquidity Provision Tiers, *available at https://info.memxtrading.com/fee-schedule/* (providing enhanced rebate for added displayed volume in Tier 1 of $0.00335 if the member has an ADAV (excluding retail orders) greater than or equal to 0.45% of the TCV).

[19] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 47396 (June 29, 2005).

equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than 15–16% of the total market share of executed volume of equities trading.[20] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates generally, including with respect to executions of orders that remove volume from the Exchange, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable.

As described above, the proposed changes are competitive proposals through which the Exchange is seeking to encourage additional order flow to the Exchange. Such proposed changes to (i) increase the Adding Liquidity (displayed and non-displayed orders) rebates and Removing Liquidity fee and (ii) increase the threshold to achieve the enhanced Tier 3 Add Volume rebate are comparable to, and competitive with, rates charged by other exchanges.[21] The proposed change to update the Liquidity Indicator Codes and Associated Fees table is in conjunction with the Exchange's abovementioned proposed changes.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [22] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. circuit stated: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possess a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .'' [23] Accordingly, the Exchange does not believe its proposed pricing 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[24] and Rule 19b–4(f)(2) [25] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2023–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2023–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2023–16, and should be submitted on or before May 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08225 Filed 4–18–23; 8:45 am]

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[20] *See* supra note 13.

[21] *See supra* notes 16, 17 and 18.

[22] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[23] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

[24] 15 U.S.C. 78s(b)(3)(A)(ii).

[25] 17 CFR 240.19b–4(f)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97296; File No. SR–NYSEAMER–2023–25]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Certain Standard Rates in the NYSE American Equities Price List and Fee Schedule

April 13, 2023.

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 3, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain Standard Rates in the NYSE American Equities Price List and Fee Schedule (''Price List'') for transaction fees and credits that add and remove liquidity in securities at or above $1. The Exchange proposes to implement the fee changes effective April 3, 2023. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend certain Standard Rates in its Price List for transaction fees and credits that add and remove liquidity in securities at or above $1. Specifically, the Exchange proposes to (1) lower the Tier 1 fee of $ 0.0026 per share for orders that remove liquidity from the Exchange; (2) lower the Tier 2 credit of $0.0024 per share for orders adding liquidity that set a new best bid or offer (''BBO'') on the Exchange; [4] (3) increase the Tier 2 fee of $0.0028 per share for orders removing liquidity; and (4) decrease the Non-Tier credits of $0.0020 per share for orders adding displayed liquidity and $0.0020 per share for orders adding liquidity that set a new BBO on the Exchange.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing and liquidity-removing orders by offering further incentives for ETP Holders to send additional adding and removing liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective April 3, 2023.

Competitive Environment

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.'' [5]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [6] Indeed, cash equity trading is currently dispersed across 16 exchanges,[7] numerous alternative trading systems,[8] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 17% market share.[9] Therefore, no exchange possesses significant pricing power in the execution of cash equity order flow. More specifically, the Exchange currently has less than 1% market share of executed volume of cash equities trading.[10]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which the firm routes order flow.

In response to this competitive environment, the Exchange has established incentives for ETP Holders who submit orders that provide and remove liquidity on the Exchange. The proposed fee change is designed to attract additional order flow to the Exchange by incentivizing ETP Holders to send additional adding and removing liquidity to the Exchange to qualify for the liquidity adding and removing tiers and corresponding higher credits and lower fees, as follows.

Proposed Rule Change

Currently, for transactions in securities priced at or above $1.00, other than transactions by eDMMs in assigned securities, the Exchange offers the following tiered credits and fees for displayed and non-displayed orders, including orders setting a new Exchange BBO, that add and removed liquidity. The credits and fees are divided into Tier 1, Tier 2, and Non-Tier rates.

[4] *See* Rule 1.1E(h) (definition of BBO).

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[6] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[7] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[8] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[9] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[10] *See id.*

Tier 1 Rates

Currently, ETP Holders that add liquidity to the Exchange with an average daily volume (''ADV'') [11] (''Adding ADV'') of at least 3,500,000 shares are eligible under Tier 1 for a fee of $0.0026 per share for orders removing liquidity. The Exchange proposes to decrease the fee to $0.0025 per share.

The proposed lower fee, together with the increased fee under Tier 2 for removing liquidity discussed below, seeks to encourage ETP Holders that are meeting or exceeding the minimum ADV requirement to qualify for Tier 2 rates to send additional liquidity in order to meet the higher Tier 1 requirement and therefore qualify for a lower fee.

Tier 2 Rates

Currently, ETP Holders with an Adding ADV of at least 700,000 shares are eligible for a credit of $0.0024 per share under Tier 2 for orders adding liquidity that set a new BBO on the Exchange. The Exchange proposes to decrease the credit to $0.0023 per share.

The Exchange determined that the current higher credit for setting the Exchange BBO did not incentivize setting activity by ETP Holders as expected and that lowering it was therefore reasonable. The Exchange notes that the proposed lower credit would bring the Tier 2 credit for setting the Exchange BBO into line with the current $0.0023 Tier 2 credit for adding displayed liquidity.

Similarly, ETP Holders with an Adding ADV of at least 700,000 shares are eligible for a fee of $0.0028 under Tier 2 for removing liquidity orders. The Exchange proposes to increase the current fee to $0.0029 per share.

In addition, as noted above, to seeking to encourage ETP Holders that are meeting or exceeding the minimum ADV requirements under Tier 2 to send additional liquidity to the Exchange, the proposed change would be consistent with the applicable rate on other marketplaces. For instance, Nasdaq charges a $0.0029 per share fee for removing liquidity for members meeting certain requirements; otherwise, its fee for removing liquidity is $0.0030 per share.[12] The Exchange's proposed fee increase to $0.0029 for removing liquidity from the Exchange would still be competitive with respect to Nasdaq PSX.

Non-Tier Rates

The Exchange's current Non-Tier rates are available to ETP Holders that do not qualify for either Tier 1 or Tier 2. Currently, orders adding displayed liquidity and orders adding liquidity that set a new BBO on the Exchange are both eligible for a Non-Tier credit of $0.0020 per share. The Exchange proposes to decrease both credits to $0.0016.

The proposed change would encourage ETP Holders to send additional liquidity in order to qualify for the minimum Tier 2 ADV requirements and therefore qualify for a higher credit. In addition, the proposed change would be consistent with the applicable rate on other marketplaces.[13]

Overall, the proposed fee changes are designed to be available to all ETP Holders on the Exchange and is intended to provide ETP Holders a greater incentive to direct more orders to the Exchange.

As noted, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. The Exchange does not know how many ETP Holders could qualify for the proposed credits and fees based on their current trading profile on the Exchange and if they choose to direct order flow to the Exchange. However, without having a view of ETP Holder's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder directing more orders to the Exchange.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[15] 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, is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Fee Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16]

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 to reduce use of certain categories of products, in response to fee changes. ETP Holders can choose from any one of the 16 currently operating registered exchanges, and numerous off-exchange venues, to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

In light of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors. The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of orders transacted on the Exchange by ETP Holders, which would benefit all market participants by offering greater price discovery and an increased opportunity to trade on the Exchange.

More specifically, the Exchange believes that the proposed lower Tier 1 fee, together with the increased Tier 2 fee, for liquidity removing orders are

[11] As defined in the Fee Schedule, Adding ADV means an ETP Holder's average daily volume of shares executed on the Exchange that provided liquidity.

[12] *See* Nasdaq Pricing at *https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2*.

[13] Both Cboe BZX Equities and Cboe EDGX Equities, for instance, offer a $0.0016 credit for adding displayed liquidity. *See https://www.cboe.com/us/equities/membership/fee_schedule/bzx/* & *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/*.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) and (5).

[16] *See* Regulation NMS, *supra* note 5, 70 FR at 37499.

reasonable. The purpose of these changes, taken together, is to encourage additional liquidity on the Exchange because market participants benefit from the greater amounts of displayed liquidity present on a public exchange. The Exchange believes that the proposed fees will incentivize additional liquidity on a public exchange to qualify for lower fees for removing liquidity, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders. The proposal is thus reasonable because all ETP Holders would benefit from such increased levels of liquidity.

The Exchange believes that the proposed changes to the credits available for orders adding liquidity to the Exchange are also reasonable.

The Exchange believes that lowering the Tier 2 credit for setting the Exchange BBO is reasonable because the current higher credit did not incentivize setting activity by ETP Holders and result in greater liquidity as the Exchange had anticipated. The Exchange believes it is reasonable to revise credits when such incentives become underutilized. In addition, the Exchange believes the proposed credit is reasonable because it would bring the credit into line with the current $0.0023 Tier 2 credit for adding displayed liquidity.

Finally, the proposed changes to Non-Tier credits for orders adding displayed liquidity and orders adding liquidity that set a new Exchange BBO are reasonable because the proposed change would encourage ETP Holders to increase the liquidity-adding orders they send to the Exchange to qualify for higher credits under Tier 2, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. The Exchange notes that the adding ADV requirement for Tier 2 is 700,000 shares, which the Exchange believes is an achievable level for many member organizations, given the higher requirements at other marketplaces. For example, the requirement for the Cboe BZX Adding Tier 1 adding credit of $0.0020 is 5,000,000 shares or 0.05% of CADV. The Exchange believes that by correlating the level of credits to the level of executed adding volume on the Exchange, the Exchange's fee structure would encourage ETP Holders to submit more liquidity-providing orders to the Exchange that are likely to be executed, thereby increasing the potential for incoming marketable orders submitted to the Exchange to receive an execution. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders that add liquidity to the Exchange. In addition, the proposed change would be consistent with the applicable rate on other marketplaces.[17]

Because the proposal involves the introduction of new fee and credit levels, the Exchange does not know how many more ETP Holders could qualify for the new fees and credits based on their current trading profile on the Exchange and if they choose to direct order flow to the Exchange. As previously noted, without a view of ETP Holder activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any ETP Holder directing additional liquidity to qualify for a better tier, and corresponding higher credit, or lower fee. The Exchange believes the proposed changes are reasonable as it would provide an incentive for ETP Holders to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the credits, thereby contributing to depth and market quality on the Exchange.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees and credits among its market participants by fostering liquidity provision and stability in the marketplace.

The Exchange believes the proposal equitably allocates fees and credits among its market participants because all ETP Holders that participate on the Exchange may qualify for the proposed fees and credits. The Exchange believes that the proposed changes, taken together, will incentivize ETP Holders to send additional liquidity to achieve lower fees when removing liquidity from the Exchange, thereby increasing the number of orders that are executed on the Exchange, promoting price discovery and transparency and enhancing order execution opportunities and improving overall liquidity on a public exchange. The Exchange also believes that the proposed change is equitable because it would apply to all similarly situated ETP Holders that add or remove liquidity. The proposed change also is equitable because it would be consistent with the applicable rate on other marketplaces.[18]

As previously noted, the Exchange operates in a competitive environment, particularly as it relates to attracting orders that add liquidity to the Exchange. The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Because the proposed introduces new fees and credits, the Exchange does not know how many ETP Holders could qualify for the new rates based on their current trading profiles on the Exchange and if they choose to direct order flow to the Exchange. Without having a view of ETP Holder's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder directing orders to the Exchange. The Exchange anticipates that ETP Holders would endeavor to send more of their orders for execution on the Exchange in order to earning higher credits and lower fees.

The Exchange further believes that the proposed change is equitable because it is reasonably related to the value to the Exchange's market quality associated with higher volume in orders. The Exchange believes that the proposed pricing adjustments would attract order flow to the Exchange, thereby contributing to price discovery on the Exchange and benefiting investors generally.

The Exchange believes that the proposed rule change is equitable because maintaining or increasing the proportion of orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency, and improving investor protection.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. All ETP Holders would be eligible to qualify for the proposed fees and credits. The Exchange believes that offering fees for removing liquidity and credits for providing liquidity will continue to attract order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently meet the Adding ADV requirements to qualify for the Exchange's best prices, the proposal would not adversely impact the ability of those ETP Holders to qualify for other credits or fees provided by the Exchange

[17] *See* note 13, *supra.*

[18] *See* notes 12–13, *supra.*

and in fact would encourage them to increase the orders sent to the Exchange in order to qualify for the Exchange's best prices.

The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value. The Exchange believes it is not unfairly discriminatory to provide the proposed fees and credits for ETP Holders that add or remove liquidity because the proposed fees and credits would be provided on an equal basis to all ETP Holders.

Further, the Exchange believes the proposed fees and credits would incentivize ETP Holders to send more orders to the Exchange to qualify for the revised fees and credits, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders. Since the proposed fees and credits would be new, no ETP Holder currently qualifies for them. As noted, without a view of ETP Holder activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holders qualifying for the proposed adding tiers. The Exchange believes the proposal is reasonable as it would provide an incentive for ETP Holders to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the credits, thereby contributing to depth and market quality on the Exchange.

In addition, the Exchange believes that the proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant. All ETP Holders would be eligible to qualify for the proposed credits if they meet the proposed Adding ADV requirements for each proposed tier. The proposal does not permit unfair discrimination because the proposed rates would be applied to all similarly situated ETP Holders and other market participants, who would all be eligible for the same rates on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would not be disadvantaged by the proposed allocation of fees and credits. The Exchange believes that offering credits for providing liquidity will continue to attract order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently qualify for the revised fees and credits, the proposal will not adversely impact their ability to qualify for other credits provided by the Exchange. Finally, the submission of orders is optional for ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, they can choose the extent of their activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described above and 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,[19] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed fee change 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 ETP Holders. As a result, the Exchange believes that the proposed change 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.'' [20]

Intramarket Competition. The Exchange believes the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to attract additional orders to the Exchange. The Exchange believes that the proposed changes would incentivize market participants to direct orders to the Exchange. Greater overall order flow, trading opportunities, and pricing transparency benefit all market participants on the Exchange by enhancing market quality and continuing to encourage ETP Holders to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange currently has less than 1% market share of executed volume of equities trading. In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, 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) [21] of the Act and subparagraph (f)(2) of Rule 19b–4 [22] 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) [23] of the Act to determine whether the proposed rule

[19] 15 U.S.C. 78f(b)(8).

[20] *See* Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(2).

[23] 15 U.S.C. 78s(b)(2)(B).

change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAMER–2023–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2023–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2023–25, and should be submitted on or before May 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08226 Filed 4–18–23; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 12049]

Determination and Certification Under Section 490(b)(1)(A) of the Foreign Assistance Act Relating to the Largest Exporting and Importing Countries of Certain Precursor Chemicals

Pursuant to Section 490(b)(1)(A) of the Foreign Assistance Act of 1961, as amended, I hereby determine and certify the top five exporting and importing countries and economies of pseudoephedrine and/or ephedrine (cumulatively, Belgium, Czech Republic, Egypt, France, Germany, India, Indonesia, China, Republic of Korea, Romania, Singapore, Switzerland, Taiwan, and the United Kingdom) have cooperated fully with the United States, or have taken adequate steps on their own, to achieve full compliance with the goals and objectives established by the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

This determination and certification shall be published in the **Federal Register**, and copies shall be provided to Congress together with the accompanying Memorandum of Justification.

Dated: February 10, 2023.

Wendy R. Sherman,

Deputy Secretary of State.

[FR Doc. 2023–08209 Filed 4–18–23; 8:45 am]

BILLING CODE 4710–17–P

DEPARTMENT OF STATE

[Public Notice 12048]

Amendment of the Designation of Qari Amjad (and Other Aliases) as a Specially Designated Global Terrorist

Based upon a review of the administrative record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, I have concluded that there is a sufficient factual basis to find that Qari Amjad uses the additional aliases Mufti Hazrat Deroji and Mufti Hazrat Ali. I also conclude that Mufti Hazrat Deroji is the primary name for this person.

Therefore, pursuant to Section 1(a)(ii) of E.O. 13224, I hereby amend the designation of Qari Amjad as a Specially Designated Global Terrorist to include the following new aliases: Mufti Hazrat Deroji and Mufti Hazrat Ali.

This notice shall be published in the **Federal Register**.

Dated: March 25, 2023.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2023–08208 Filed 4–18–23; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice 12047]

Designation of Sami Mahmud Mohammed al-Uraydi as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of E.O. 13224 of September 23, 2001, as amended by E.O. 13268 of July 2, 2002, E.O. 13284 of January 23, 2003, and E.O. 13886 of September 9, 2019, I hereby determine that the person known as Sami Mahmud Mohammed al-Uraydi (also known as Sami Mahmoud Mohammad Eridi and Abu Mahmud al-Shami) is a leader of Hurras al-Din, a group whose property and interests in property are currently blocked pursuant to a determination by the Secretary of State pursuant to E.O. 13224.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the order.

This notice shall be published in the **Federal Register**.

Authority: E.O. 13224.

Dated: February 6, 2023.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2023–08210 Filed 4–18–23; 8:45 am]

BILLING CODE 4710–AD–P

[24] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–0289]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Alternative Pilot Physical Examination and Education Requirements (BasicMed)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 7, 2023. The Federal Aviation Administration Extension, Safety, and Security Act of 2016 (FESSA) was enacted on July 15, 2016.

DATES: Written comments should be submitted by May 19, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Brad Zeigler by email at: *bradley.c.zeigler@faa.gov;* phone: 202–267–9601.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0770.

Title: Alternative Pilot Physical Examination and Education Requirements (BasicMed).

Form Numbers: FAA forms 8700–2 and 8700–3.

Type of Review: Renewal.

Background: Section 2307 of FESSA, Medical Certification of Certain Small Aircraft Pilots, directed the FAA to ''issue or revise regulations to ensure that an individual may operate as pilot in command of a covered aircraft'' without having to undergo the medical certification process prescribed by FAA regulations if the pilot and aircraft meet certain prescribed conditions as outlined in FESSA. This collection enables those eligible airmen to establish their eligibility with the FAA.

The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 7, 2023 (88 FR 8029). The FAA will use this information to determine that individual pilots have met the requirements of section 2307 of Public Law 114–190. It is important for the FAA to know this information as the vast majority of pilots conducting operations described in section 2307 of Public Law 114–190 must either hold a valid medical certificate or be conducting operations using the requirements of section 2307 as an alternative to holding a medical certificate. The FAA published a final rule, Alternative Pilot Physical Examination and Education Requirements, to implement the provisions of section 2307, on January 11, 2017.

Respondents: Approximately 50,000 individuals.

Frequency: Course: Once every two years; medical exam: once every four years.

Estimated Average Burden per Response: 21 minutes.

Estimated Total Annual Burden: 17,500 hours.

Issued in Washington, DC, on April 11, 2023.

D.C. Morris,

Senior Analyst, Airmen and Airspace Rules Division, Office of Rulemaking.

[FR Doc. 2023–07852 Filed 4–18–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0175]

Hours of Service of Drivers: National Propane Gas Association; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the exemption request from the National Propane Gas Association (NPGA). NPGA sought an exemption from various hours-of-service (HOS) requirements to enable the propane industry to prepare and respond to peak periods of consumer demand among residential, agricultural, and commercial consumers in anticipation of, during, and to recover from emergency conditions. NPGA requests that the exemption apply on a per-driver, per-route basis, and that each company that elects to utilize it must maintain appropriate documentation to demonstrate the presence of peak consumer demand conditions within the scope of the exemption. FMCSA analyzed the exemption application and public comments and determined that the exemption would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards at (202) 366–2722 or *richard.clemente@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to *www.regulations.gov,* insert the docket number ''FMCSA–2022–0175'' in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click ''Browse Comments.''

To view documents mentioned in this notice as being available in the docket, go to *www.regulations.gov,* insert the docket number ''FMCSA–2022–0175'' in the keyword box, click ''Search,'' and chose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption

request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulation Requirements

FMCSA's hours of service (HOS) regulations in 49 CFR part 395 place limits on the amount of time drivers of commercial motor vehicles (CMVs) may drive to reduce the possibility of driver fatigue. The regulations in 49 CFR 395.3(a)(2)—commonly referred to as the 14-hour ''driving window''—allow an individual a period of 14 consecutive hours in which to drive up to 11 hours after being off duty for 10 or more consecutive hours. The regulations in 49 CFR 395.3(a)(3) prohibit individuals from driving again after 11 hours driving until they have been off duty for a minimum of 10 consecutive hours. The regulation in 49 CFR 395.3(b)(1) prohibits a motor carrier that does not operate vehicles every day of the week from requiring or permitting a driver to drive, nor may the driver drive, a CMV after being on duty 60 hours during any 7 consecutive days, and 49 CFR 395.3(b)(2) prohibits a motor carrier that operates CMVs every day of the week from requiring or permitting a driver to drive, nor may the driver drive, a CMV after being on duty 70 hours in any 8 consecutive days. These are generally called the 60- and 70-hour ''weekly'' limits.

Applicant's Request

The National Propane Gas Association (NPGA) requests a five-year exemption for its member company drivers to extend the 14-hour duty period in § 395.3(a)(2) to no more than 17 hours; extend the 11-hour driving period in § 395.3(a)(3) to no more than 14 hours, following 10 consecutive hours off duty; waive the 60- and 70-hour rules in § 395.3(b) for a period of no more than six consecutive days; and a period of six consecutive days may end with the beginning of an off-duty period of 34 or more consecutive hours. The exemption request is made in order to enable the propane industry to prepare and respond to peak periods of consumer demand among residential, agricultural, and commercial consumers.

NPGA is the national trade association of the propane industry with a membership of nearly 2,500 companies and 36 State and regional associations representing members in all 50 States. Its membership includes retail marketers of propane gas who deliver fuel to the end user, propane producers, transporters and wholesalers, and manufacturers and distributors of equipment, containers, and appliances. NPGA's petition states that, in order to meet consumer demand, long- and short-haul propane drivers often reach the maximum ''weekly'' HOS limits within three or four days, making them unavailable for the rest of the ''week'' while consumer demand continues. According to NPGA, the purpose of its request is to prepare and serve residential, commercial, and agricultural consumers ahead of and during peak consumption periods efficiently and safely. To clearly define the scope in its application, NPGA provided a brief outline of the terms and conditions that would apply to those individuals providing propane services for periods of peak consumer demand.

IV. Method To Ensure an Equivalent or Greater Level of Safety

To ensure an equivalent or greater level of safety, the NPGA application states that before operating under the special exemption, drivers must complete the Fatigue and Wellness Awareness course available online from the Propane Education & Research Council. NPGA further adds that recordkeeping relating to use of a special permit for exemption shall be in accordance with requirements of 49 CFR 390.29, 49 CFR 390.31, and 49 CFR 395.8. Drivers operating under the exemption would be allowed only six consecutive days to utilize the exemption, and NPGA members must comply with all other provisions of the Federal Motor Carrier Safety Regulations.

V. Public Comments

On September 30, 2022, FMCSA published notice of this application and requested public comments (87 FR 59486). The Agency received seven comments, six of which opposed the exemption. The six commenters that opposed the exemption were the following: the Commercial Vehicle Safety Alliance (CVSA); Owner-Operator Independent Drivers Association (OOIDA); Advocates for Highway and Auto Safety (Advocates)/ Truck Safety Coalition (TSC); AWM Associates, LLC; Rebecca Transport; and one individual commentor. One commenter took no position on the application.

Advocates/TSC stated ''. . . the exemption could be triggered by such common occurrences as cold temperatures and fallen trees [and t]he Petitioner also fails to meet the statutory requirements for requesting such an exemption.'' CVSA opposed granting the exemption and suggested that ''. . . FMCSA find alternative solutions to meet this need that are narrower and more targeted to the individual scenarios. One possible solution would be to direct the service centers to monitor needs and coordinate with industry to provide region specific waivers as appropriate.''

OOIDA's comment focused on the impact the exemption would have on individual drivers: ''While we believe drivers should be provided maximum flexibility under HOS regulations, we fear this proposal could lead to greater coercion of employee drivers, with propane providers applying pressure to complete hauls while drivers are fatigued. Furthermore, it is unclear at what point drivers may waive the 60- and 70-hour rule.'' AWM Associates, LLC, provided the following comment: ''If a community is impacted, then the local government official may declare an emergency per Part 390.23 so the drivers needed may function as needed. A blanket exemption is far reaching and would exempt areas not impacted by the shortage of drivers.''

VI. FMCSA Safety Analysis and Decision

FMCSA has evaluated the NPGA application and the public comments and denies the exemption. Research studies demonstrate that long work hours contribute to driver fatigue and can cause harm to a driver's health. Research also shows that crash risk increases with long work hours. The Agency established the HOS regulations to ensure that drivers stay awake and alert, and to reduce the possibility of

cumulative fatigue. NPGA's application does not provide an analysis of the safety impacts the requested exemption from the HOS regulations may cause. It also does not provide countermeasures to ensure that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulations. The Agency cannot ensure that the exemption would achieve the requisite level of safety.

Furthermore, what constitutes an emergency, sufficient to be exempted from existing safety regulations, is a fact-specific inquiry. Among the conditions specified in the NPGA application were ''railcar delays in excess of five business days,'' ''limitation of pipeline services due to pipeline allocation,'' and ''weather- and storm-related events including but not limited to fallen trees, rock and mudslides and other debris on the roadways . . .'' The Agency does not find a categorical exemption for the scenarios requested is appropriate.

For the above reasons, NPGA's exemption application is denied.

Robin Hutcheson,

Administrator.

[FR Doc. 2023–08192 Filed 4–18–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0032]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 15 individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or before May 19, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2023–0032 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2023–0032) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2023–0032), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/docket?D=FMCSA-2023-0032.* Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2023–0032) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. 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 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 15 individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders

prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The criteria states that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the ME in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication, and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

As a result of MEs misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified ME based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a notice of final disposition titled, ''Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders,'' (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' Since that time, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in § 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (78 FR 3069).

III. Qualifications of Applicants

Jeffrey Baker

Jeffrey Baker is a 36-year-old class CM1 license holder in California. They have a history of epilepsy and have been seizure free since February 2015. They take anti-seizure medication with the dosage and frequency remaining the same since February 2015. Their physician states that they are supportive of Jeffrey Baker receiving an exemption.

Robert Bennett

Robert Bennett is a 37-year-old class AM commercial driver's license holder in New York. They have a history of focal epilepsy and have been seizure free since January 2014. They take anti-seizure medication with the dosage and frequency remaining the same since January 2014. Their physician states that they are supportive of Robert Bennett receiving an exemption.

Karl Bohmuller

Karl Bohmuller is a 24-year-old class C license holder in North Carolina. They have a history of generalized idiopathic epilepsy and have been seizure free since October 2012. They take anti-seizure medication with the dosage and frequency remaining the same since 2012. Their physician states that they are supportive of Karl Bohmuller receiving an exemption.

David Brown

David Brown is a 69-year-old class E license holder in Florida. They have a history of seizure disorder and have been seizure free since 2003. They take anti-seizure medication with the dosage and frequency remaining the same since 2018. Their physician states that they are supportive of David Brown receiving an exemption.

John Carroll

John Carroll is a 35-year-old class 3 license holder in Hawaii. They have a history of epilepsy and have been seizure free since 2007. They take anti-seizure medication with the dosage and frequency remaining the same since January 2007. Their physician states that they are supportive of John Carroll receiving an exemption.

Jean Daza

Jean Daza is a 55-year-old class D license holder in New Jersey. They have a history of focal epilepsy and have been seizure free since July 2013. They take anti-seizure medication with the dosage and frequency remaining the same since April 2014. Their physician states that they are supportive of Jean Daza receiving an exemption.

Jerrid Hielscher

Jerrid Hielscher is a 41-year-old class A license holder in South Dakota. They have a history of seizures and have been seizure free since April 1999. They take anti-seizure medication with the dosage and frequency remaining the same since April 1999. Their physician states that they are supportive of Jerrid Hielscher receiving an exemption.

Brandon Kirby

Brandon Kirby is a 23-year-old class D license holder in Connecticut. They have a history of seizures and have been seizure free since 2012. They take anti-seizure medication with the dosage and frequency remaining the same since 2012. Their physician states that they are supportive of Brandon Kirby receiving an exemption.

Alexander Kumm

Alexander Kumm is a 47-year-old class D license holder in Illinois. They have a history of idiopathic generalized epilepsy and have been seizure free since 2013. They take anti-seizure medication with the dosage and

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

frequency remaining the same since 2013. Their physician states that they are supportive of Alexander Kumm receiving an exemption.

Armando Leandry

Armando Leandry is a 41-year-old class D license holder in New Jersey. They have a history of epilepsy and have been seizure free since 2014. They take anti-seizure medication with the dosage and frequency remaining the same since October 2016. Their physician states that they are supportive of Armando Leandry receiving an exemption.

Nicholas Liebe

Nicholas Liebe is a 28-year-old class D license holder in Wisconsin. They have a history of complex partial epileptic seizure and have been seizure free since 2013. They take anti-seizure medication with the dosage and frequency remaining the same since 2020. Their physician states that they are supportive of Nicholas Liebe receiving an exemption.

Sheldon Martin

Sheldon Martin is a 40-year-old class A license holder in New York. They have a history of idiopathic generalized epilepsy and have been seizure free since July 2008. They take anti-seizure medication with the dosage and frequency remaining the same since January 2013. Their physician states that they are supportive of Sheldon Martin receiving an exemption.

Robert Moseler

Robert Moseler is a 65-year-old class C chauffeur license holder in Michigan. They have a history of seizure disorder and have been seizure free since 1996. They take anti-seizure medication with the dosage and frequency remaining the same since 1996. Their physician states that they are supportive of Robert Moseler receiving an exemption.

Tammy Snyder

Tammy Snyder is a 51-year-old class A license holder in North Carolina. They have a history of an unprovoked seizure and have been seizure free since July 2013. They take anti-seizure medication with the dosage and frequency remaining the same since March 2021. Their physician states that they are supportive of Tammy Snyder receiving an exemption.

Michael Urbshot

Michael Urbshot is a 38-year-old class 23 license holder in Hawaii. They have a history of partial complex seizures and have been seizure free since 2012. They take anti-seizure medication with the dosage and frequency remaining the same since 2009. Their physician states that they are supportive of Michael Urbshot receiving an exemption.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–08191 Filed 4–18–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0238]

Parts and Accessories Necessary for Safe Operation; Exemption Renewal for TowMate LLC

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of provisional renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision provisionally to renew the TowMate, LLC (TowMate) exemption which allows motor carriers to operate rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations that do not meet the vehicle power supply requirements for all required lamps in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemption is renewed for 5 years, unless rescinded earlier.

DATES: This renewed exemption is effective February 9, 2023, through February 9, 2028, unless rescinded earlier. Comments must be received on or before May 19, 2023.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2015–0238 using any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number for this notice (FMCSA–2015–0238). Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption 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.dot.gov/privacy,* the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Mr. Luke Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–0676; *MCPSV@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2015–0238), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency

can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2015–0238'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on the ''Comment'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) and 49 CFR 381.300(b) to renew an exemption from the FMCSRs for a 5-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.''

III. Background

Current Regulation(s) Requirements

Under 49 CFR 393.23, all required lamps must be powered by the electrical system of the motor vehicle with the exception of battery powered lamps used on projecting loads. This requirement ensures that vehicle-supplied electrical power is connected to all required vehicle lamps during normal operation of the vehicle.

Application for Renewal of Exemption

TowMate has requested a 5-year renewal of its exemption from 49 CFR 393.23, *Power supply for lamps,* previously granted on February 9, 2016,[1] and renewed on February 13, 2018,[2] to allow motor carriers to operate rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations. TowMate stated in the application:

> [T]he use of conventional hard wired temporary stop, turn, and tail lights has many drawbacks that wireless tow lights solve. These drawbacks include broken connections, frayed wires, burnt out incandescent bulbs, and the potential to be snagged or pulled from the tow light receptacle due to improper running of wires, and road hazards, along with the safety hazard of increasing the amount of time spent on the roadside or the scene of an accident by stringing wired lighting systems between vehicles and securing the wires. With the advent of LED technology coupled with advancements in battery technologies, wireless tow lights are more reliable and better equipped for the rigors of daily temporary use. . . .
>
> Temporary wireless stop, turn, tail lighting systems can operate for 10+ hours of continuous use on a full charge, and in-cab wire-less monitoring systems give the driver constant information on the functioning of the system, displaying state of charge of the battery inside the unit, displaying the functioning of the system during operation, and warning the driver if the unit is no longer functioning. In this sense, wireless tow lights provide a level of safety and redundancy that is not currently required on wired temporary lighting systems. In an emergency situation with a drained battery, power can be directly connected to the temporary wireless stop, turn, and tail lighting system from a standard 4 pin or 7 pin electrical connection. . . .
>
> Without the proposed temporary exemption, [tow and haul away] operators will be forced to continue to use cumbersome wired temporary towing light systems, placing an unnecessary burden on their daily operations. The current temporary lighting requirements for stop, tail, and turn lamps require that the lamps receive their power from a direct wired connection to the towing vehicle with no ascertainable benefit from doing such. Wireless tow lights afford benefits that wired systems are unable to, such as redundancies like monitoring the status of the unit in real time, thus assuring their proper operation at all times.

Original Application for Exemption and Operations Under Exemption

In its original application, TowMate utilized the same justification that rechargeable wireless temporary stop, turn, and tail lighting systems solve many of the safety issues inherent with wired temporary lighting systems. Based on TowMate's application, FMCSA granted a two-year exemption on February 9, 2016 (81 FR 6927), and subsequently renewed that exemption for five years from February 9, 2018, to February 9, 2023 (83 FR 6306).

IV. Equivalent Level of Safety Analysis

FMCSA is not aware of any evidence showing that the operation of rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations during the current exemption has resulted in any degradation of safety. The Agency believes that extending the exemption for a period of five years will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption because the use of hard-wired temporary stop, turn, and tail lights has many drawbacks that wireless tow lights solve. These include broken connections, frayed wires, the potential for lights to be snagged or pulled from the tow light receptacle due to improper running of wires, and road hazards. The use of rechargeable wireless lighting system also reduces the amount of time that would be spent on the roadside or the scene of an accident stringing wired lighting systems between vehicles and securing the wires. With the advent of LED technology, coupled with advancements in battery technologies, wireless tow lights are more reliable and better equipped for the rigors of daily temporary use and will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

V. Exemption Decision

FMCSA is provisionally renewing the exemption for a period of five years subject to the terms and conditions of this decision and the absence of public comments that would cause the Agency to terminate the exemption at an earlier date under Sec. V.D. below. The exemption from the requirements of 49 CFR 393.23, is otherwise effective from February 9, 2023, through February 9, 2028, 11:59 p.m. EST unless rescinded.

A. Applicability of Exemption

The exemption is restricted to motor carriers operating rechargeable wireless temporary stop, turn, and tail lighting systems that do not meet the lighting power supply requirements of 49 CFR 393.23, provided the requirements of 49 CFR 393.17(b)(2) are met.

B. Terms and Conditions

Drivers operating under the exemption must comply with all other applicable FMCSRs (49 CFR parts 350–399).

C. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

D. Termination

The exemption will be valid for five years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) motor carriers and/or

[1] *See* 81 FR 6927.

[2] *See* 83 FR 6306.

commercial motor vehicles fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objects of 49 U.S.C. 31136(e) and 31315.

Interested parties possessing information that would demonstrate that companies operating under this exemption are not achieving the requisite statutory level of safety should immediately notify FMCSA. Such information may be reported via email to *MCPSV@dot.gov.* The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

VI. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on TowMate's application for renewal of its exemption from 49 CFR 393.23.

All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Robin Hutcheson,

Administrator.

[FR Doc. 2023–08193 Filed 4–18–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0032]

Metro-North Railroad's Request To Amend Its Positive Train Control Safety Plan and Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on April 11, 2023, Metro-North Railroad (MNR) submitted a request for amendment (RFA) to its FRA-approved Positive Train Control Safety Plan (PTCSP). As this RFA involves a request for FRA's approval of proposed material modifications to an FRA-certified positive train control (PTC) system, FRA is publishing this notice and inviting public comment on the railroad's RFA to its PTCSP. MNR state that this RFA is for an update to MNR's PTC Onboard Software, release OBC 5.04.000, correcting existing defects. With the successful completion of Factory and Field Testing and Supplier Safety Certification, MNR confirms the changes meet all technical requirements, provide an equivalent or greater level of safety than the existing PTC System in service, and does not adversely impact interoperability with tenant railroads.

DATES: FRA will consider comments received by May 9, 2023. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES:

Comments: Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0032. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/research-development/program-areas/train-control/ptc/railroads-ptc-dockets.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, title 49 United States Code (U.S.C.) section 20157(h) requires FRA to certify that a host railroad's PTC system complies with title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that, on April 11, 2023, MNR submitted an RFA to its PTCSP for its Advanced Civil Speed Enforcement System II (ACSES II), seeking FRA's approval of a new software release, Onboard Computer (OBC) 5.04.000 Software Baseline, and that RFA is available in Docket No. FRA–2010–0032.

Interested parties are invited to comment on MNR's RFA to its PTCSP by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA to its PTCSP at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2023–08282 Filed 4–18–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. 2023–0022]

Pipeline Safety: Request for Special Permit; Florida Gas Transmission Company, LLC

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on a request for special permit received from the Florida Gas Transmission Company, LLC (FGT). The special permit request is seeking relief from compliance with certain requirements in the federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by May 19, 2023.

ADDRESSES: Comments should reference the docket number for this special permit request and may be submitted in the following ways:

- *E-Gov Website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

Confidential Business Information: 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 notice 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 notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Steve Nanney by telephone at 713–272–2855, or by email at *steve.nanney@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA received a special permit request from FGT on March 27, 2023, seeking a waiver from the requirements of 49 CFR 192.611(a)(3)(iii): Change in class location: Confirmation or revision of maximum allowable operating pressure. Section 49 CFR 192.611(a)(3)(iii) requires a pressure test of 0.667 times the alternative maximum allowable operating (Alternative MAOP) for a Class 3 location.

This special permit is being requested in lieu of a pressure reduction or new pressure tests for Class 1 or 2 to Class 3 location changes on four (4) gas transmission special permit segments totaling 3,135 feet (approximately 0.594 miles). The proposed special permit segments have been previously pressure tested to either 1,899 pounds per square inch gauge (psig) or 1,900 psig. An Alternative MAOP of 1,333 psig in a Class 3 location requires a pressure test of 2,000 psig. The pipe wall thickness and strength meet the requirements of 49 CFR 192.611(a) for a Class 1 or 2 to Class 3 location change. The pipeline segments are as follows:

Proposed special permit segment No.	Outside diameter (inches)	Line name	Length (feet)	Class location change	County, State	Number dwellings	Year installed	Seam type	Alternative MAOP (psig)	Current test pressure (psig)	Required test pressure (psig)
201350 ...	18	St. Petersburg Sarasota Connector.	703	Class 1 to Class 3.	Hillsborough, Florida.	2	1992	DSAW	1,333	1,899	2,000
188251 ...	30	West Leg Station 27 to Ft Myers.	783	Class 2 to Class 3.	Hillsborough, Florida.	8	2000	DSAW	1,333	1,900	2,000
188253 ...	30	West Leg Station 27 to Ft Myers.	1,255	Class 1 to Class 3.	Hillsborough, Florida.	2	2000	DSAW	1,333	1,900	2,000
188257 ...	30	West Leg Station 27 to Ft Myers.	394	Class 1 to Class 3.	Hillsborough, Florida.	36	2000	DSAW	1,333	1,900	2,000

Note: DSAW is double submerged arc welded longitudinal seam pipe. The pipe is externally coated with fusion bonded epoxy coating.

The special permit request, proposed special permit with conditions, and draft environmental assessment (DEA) for the above listed FGT pipeline segments are available for review and public comments in Docket Number PHMSA–2023–0022. PHMSA invites interested persons to review and submit comments on the special permit request

and DEA in the docket. Please submit comments on any potential safety, environmental, and other relevant considerations implicated by the special permit request. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comments closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2023–08207 Filed 4–18–23; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://ofac.treasury.gov*).

Notice of OFAC Actions

On April 14, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals

1. RUBIO ZEA, Ana Gabriela, Guatemala; DOB 07 Jul 1990; POB Guatemala; nationality Guatemala; Gender Female; NIT # 60724218 (Guatemala); C.U.I. 1997455950101 (Guatemala) (individual) [ILLICIT-DRUGS-EO14059].

   Designated pursuant to section 1(a)(i) of Executive Order 14059 of December 15, 2021, "Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade," 86 FR 71549 (December 17, 2021) (E.O. 14059) for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

2. WU, Yaqin (Chinese Simplified: 吴雅琴), China; DOB 13 Nov 1992; POB Hubei, China; nationality China; Email Address lilywu921206@gmail.com; alt. Email Address furody@icloud.com; alt. Email Address 2390864901@qq.com; Gender Female; Phone Number 8615623932350; National ID No. 429004199211135144 (China) (individual) [ILLICIT-DRUGS-EO14059] (Linked To: YAO, Huatao).

   Designated pursuant to sections 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

   Also designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Huatao Yao, a person sanctioned pursuant to E.O. 14059.

3. WU, Yonghao (Chinese Simplified: 吴永昊), China; DOB 28 Jan 1992; POB Hubei, China; nationality China; National ID No. 429004199201280014 (China) (individual) [ILLICIT-DRUGS-EO14059] (Linked To: YAO, Huatao).

   Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

   Also designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Huatao Yao, a person sanctioned pursuant to E.O. 14059.

4. WANG, Hongfei (Chinese Simplified: 王洪飞), China; DOB 02 Dec 1991; POB Hebei, China; nationality China; Email Address shuokangw@163.com; Gender Male; Digital Currency Address - XBT 3PKiHs4GY4rFg8dpppNVPXGPqMX6K2cBML; Phone Number 8615927270571; alt. Phone Number 8613313017588; alt. Phone Number 8615030111720; National ID No. 13053119911202021X (China) (individual) [ILLICIT-DRUGS-EO14059] (Linked To: WUHAN SHUOKANG BIOLOGICAL TECHNOLOGY CO., LTD; Linked To: YAO, Huatao).

   Designated pursuant to section 1(b)(i) of E.O. 14059 for having provided or attempted to provide, financial, material, or technological support for, or goods or services in support of Wuhan Shuokang Biological Technology Co., Ltd and Huatao Yao, persons sanctioned pursuant to E.O. 14059.

5. YAO, Huatao (Chinese Simplified: 姚华涛), China; DOB 16 Aug 1990; POB Hebei, China; nationality China; Gender Male; Phone Number 8618233039691; alt. Phone Number 862787366298; National ID No. 130531199008160212 (China) (individual) [ILLICIT-DRUGS-EO14059]

   Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

Entities

1. SUZHOU XIAOLI PHARMATECH CO., LTD (Chinese Simplified: 苏州小栗医药科技有限公司), Room 508, 5th Floor, Office Building, Joyshang Center, No. 88, Nanxijiang Road, Yuexi, Wuzhong District, Suzhou, Hubei, China (Chinese Simplified: 吴中区越溪南溪江路88号喜悦尚中心写字楼5层508室附近企业, 苏州市, 湖北, China); Website www.xiaolipharma.com; Organization Established Date 15 Feb 2017; Organization Type: Retail sale of pharmaceutical and medical goods, cosmetic and toilet articles in specialized stores; Registration Number 320506000647396 (China); Unified Social Credit Code (USCC) 91320506MA1NDQ9J4N (China) [ILLICIT-DRUGS-EO14059].

   Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

2. WUHAN SHUOKANG BIOLOGICAL TECHNOLOGY CO., LTD (Chinese Simplified: 武汉硕康生物科技有限公司), H05106, Building 1, No. 58, Guangxi Avenue, East Lake New Technology Development Zone, Wuhan, Hubei, China (Chinese Simplified: 东湖新技术开发区光谷大道58号1栋H05106, 武汉, 湖北, China); Organization Established Date 25 May 2021; Organization Type: Retail sale of pharmaceutical and medical goods, cosmetic and toilet articles in specialized stores; Registration Number 420100001731665 (China); Unified Social Credit Code (USCC)

91420100MA49RQRJ87 (China) [ILLICIT-DRUGS-EO14059] (Linked To: YAO, Huatao).

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Huatao Yao, a person sanctioned pursuant to E.O. 14059.

Dated: April 14, 2023.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–08251 Filed 4–18–23; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals Who Have Chosen To Expatriate

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

This notice is provided in accordance with IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending March 31, 2023. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

Last name	First name	Middle name/initials
ABE	MICHIO.	
ABERCROMBIE	STUART	C.
ABHISHEK	FNU-FIRST NAME UNKNOWN.	
ABRAMOVICH	GIL.	
ABRESCH	RONALD	WALTER.
ABRESCH	URSULA	IRENE.
ABUD-DAWOOD	SULIMAN	ABDULRAZAK.
ACEITUNO	FELIPE	EDUARDO.
ADAMS	SETH	ERIC.
AKASHI	RIE.	
ALIAS	TUNKU	ALINA BINTI RAJA MUHD.
ALIREZA	PATRICIA	BEATRIZ LEBRE.
ALON	DANIEL	SOLOMONOVICH.
ALSTER	SHAHAR.	
ALTMANN	THOMAS	LEE.
AMBEROSE	JONAH	ELAN.
AMERDING	PHILIP	E.
ANDROUTSOS	MICHAIL.	
ANNANDALE	MORNAY.	
ANSOT	LYNN	M.
AO	HAI.	
ASHOOR	NADER.	
AYLWARD	KATHERINE	RENEE.
BAARS	CORNELIS	T.
BALCIUNAITE	EGLE.	
BALISKY	LYNDON	J.
BALLE-PEDERSEN	MICHAEL.	
BALLE-PEDERSEN	TOVE.	
BARAT	PHILIP.	
BARBIER	MARCO.	
BARKMAN	STEPHEN	KYLE.
BARRY	MAUREEN	THERESA.
BARTHOLDY	BORIS	ALEXANDER.
BASHINSKI	JOHN	ROBERT.
BATKE	LINDSAY	ANNE MARIE.
BAUR	LAURENCE	CARINE LYNDA.
BAXTER	DONALD	ALEC.
BELIARD	ANNE	MARIE.
BEMELMANS	JADE.	
BERMAN	ASHLEIGH	FIONA.

Last name	First name	Middle name/initials
BERMUDEZ	MARCUS	ALFREDO.
BEZUIDENHOUT	KRISTIAN	HARALD.
BILGIN-FREIERT	ARZU.	
BLACK	PETER	NEWMAN.
BODNAR	SALLYJANE	EVANS.
BOUTIN	HAILEY	CHRISTINE.
BOWERS	LESLIRAE	JEANNE.
BRACKEN	SALLY	ANN.
BRADLEY	ALISTAIR	DAVID.
BRADLEY	ANDREA	MARIE.
BRADLEY	ALISON	LYNN.
BRAUX	NANCY	LEE.
BRAZZONI	LAURIE	ANN.
BREWER	JACK	RILEY.
BREWER	DARBY	JAY.
BROWN	DUANE	KIRBY.
BROZZI-KIANDOST	DANIELLE	CORINNE.
BURCH	BARRETT.	
BUTCHER	RAYMOND	GERALD.
CANTOR	HEATHER	DAWN.
CARUANA	SANTINA.	
CAVANNA	MARTIN	STEPHEN.
CHAPMAN	DAVID	FRANCIS.
CHARLTON	LOUISE	MARY.
CHARRIAUD	ISABELLE	FRANCOISE.
CHIARUCCI	ANDREA.	
CHO	MINJUNG.	
CHONG	EUGENE	NICHOLAS.
CHU	YI.	
CHUAH	BRYAN	WEI JEN.
CHUNG	MOON	JUNG.
CLEARWATER	PRUDENCE	SEQUOIA.
CLINE	KIYOE.	
CLIPSHAM	ELIZABETH	A.
CODERRE	KARRIE	DEANNE.
COHEN	MARY	LOUISE.
COLBORN	JUDY	MARIE.
COMITOS	CYNTHIA	ANN.
CONLIN	CATHERINE	ELLEN.
CONNERY	JASON	JOSEPH.
CORTI	BARBARA.	
CRAIG	CECIL	ROBERT.
CRAWFORD	JERRY	LEE.
CREED	ANTHONY	LIONEL.
CSUZI	KRISZTIAN.	
DANIELS	NICHOLAS	RYAN.
DAWSON	ANNE	MARGARET.
DAY	MATTHEW	JOHN.
DE DORLODOT	CHARLES-EMMANUEL	E.
DE GUERRE	JULIA	ANN.
DEL GIUDICE	PAUL	THOMAS.
DENG	YUQING.	
DI MAIO	JESSICA.	
DICK	ALAYNE	KATHERINE.
DICK	KAREN	GATES.
DONOVAN	KEITH	DUANE.
DOWELL	BEATRICE	ELIZABETH.
DRIFTMIER	PETER	ALLEN.
DULEK	YFKE	MARIE.
DUNNE	MARCELLA	CLARE.
DUTCHESHEN	CAROLE	LOUISE.
DUYSENS	FRANK	ANTONIE.
DWYER	CHRISTOPHER	J.
EMCKE	MATTHIAS	J.
EPELBAUM IBERKLEID	IRIT	IONA.
ERMENIDIS	ILIYA.	
EUGSTER	KARIN.	
FARREN	ANNE	M.
FARREN	KEVIN	A.
FEBBRARI	RICCARDO.	
FIFE	WILLIAM	SHANNAN.
FINNIS	JOHN	MITCHELL.
FIRTH	JONATHAN	HOWARD.
FISHER	SCOTT	C.

Last name	First name	Middle name/initials
FORREST	REID	W.
FRAYNE	MICHAEL.	
FREEMAN	INES	SUSAN.
FRENZEL	GABRIELE.	
GARLAND	LESLIE	ALLISON.
GARRETT	SHARON	JAYNE.
GAUVIN	DAVID	DAVID.
GENTLEMAN	MICHAEL	ANTHONY.
GIARD	HANAE	NARADATE.
GLIEMER	MARK.	
GLOOR	SEVERIN	JONAS.
GOEBEL (ENZ-MORRISON)	MARCIA	DEE.
GOKA	SEYNA	ESI NGOZI.
GOLDING	JAMES	ALEXANDER.
GOMEZ	LUCRECIA	REGINA CONCEPCION.
GOMMERS	ROBIN	MARINUS.
GONZALEZ	SUSANA.	
GOODSON	FIONA	L.
GRAHAM	LAWRENCE	GORDON.
HAGEMAN	HANS	ERIK.
HAJDUK	JAN	OLAV JONATHAN MARTIN.
HAMPSHIRE	HEIDI	JANE.
HARDING	DOMITILLA	EDITH MARY VIRGINIA.
HARDING	SANDRA	ANNE.
HARGIS	MARCUS	PAUL.
HARTLEY	URSULA	SARAH.
HASKINS	CRAIG	ROBERT.
HATORI	YURILO.	
HAVLAS	MELINDA	SUE.
HE	RUIPING.	
HOCHSTRASSER	THOMAS	MICHAEL.
HOEN	MATTHEW	RANDOLPH.
HOGLUND	ERIK	MAGNUS.
HOLLAND	SARAH	LOUISE.
HONG	SONNY	S.
HORSBURGH	ALISON	MARGARET.
HOSONO	MITSUNORI.	
HOWIE	MICHELE	MARIE.
HOYNE	THOMAS	PATRICK.
HUANG	CHENG-YEN.	
HUEBNER	BENEDIKT	PETER MARIA.
HUNG	MEI	FEN.
HURLOCK IV	EDWARD	CLIFTON.
HUSHION	DANIEL	SHANNON.
HUSHION	SHANE	DANIEL.
HUSHION	THERESA	DIANE.
HUTCHINSON	MICHAEL	JOHN.
HYODO	HIROSUKE.	
ICHINOSE	MAYUMI.	
ILLI	JEAN	JACQUES.
IRIE	AKIRA.	
ISHIDA	YOSHIKO.	
ISHII	MARI.	
IZUMO	KAZUKO.	
JAEGER	SIMON	ALEXANDER.
JAFFE	DANIEL	ELAN.
JAHRIG	HEATHER	JEAN.
JAKSIC	ALEKSANDAR.	
JAKSIC	TAMARA.	
JASCHKE	MICHAEL	S.
JETZER CORTI	JEAN	NOEL.
JINDAL	SAMEER.	
JOHNSON	MEAGHAN	HEATHER.
JONES	HELEN	SANDRA.
JOSLOVE	LAURENCE	MICHELE.
JUNGNELIUS	ANNETTE	GUNILLA.
KABUTO	YASUTAKA.	
KAMEOKA	AMY.	
KAMEOKA	ERIKA.	
KAMEOKA	HITOMI.	
KARTASOVA	ANTONINA	ANDREEVNA.
KEARNEY	IDE	MARIA.
KELLY	DONALD	CHARLES.
KENNEDY	DOUGLAS	JAMES.

Last name	First name	Middle name/initials
KENNEDY	JANE	SYLVIA.
KERI	JONAH	M.
KETTLE	REBECCA	MARIE.
KETTLE	REAGAN	CATHERINE-MAY.
KIM	SEEUN.	
KIM	YUN	HEE.
KIRK	NEIL	WALLACE.
KITAMURA	ATSUSHI.	
KITAMURA	KEIKO.	
KLARENBACH	MEGAN	BONNIE.
KLEFFMAN	JOHN	ROBERT.
KNOOP	ISABELLA.	
KNOOP	LETICIA.	
KNOOP	UWE.	
KOEDYK	DAVID	JAMES.
KOEN	ROBERT	JOHN.
KOETTING	ALEXIS	THERESA MARIE.
KOJIMA	YUKIKO.	
KORA	INEKO.	
KOREY	ANDREW	GEORGE.
KOSHIRO	SEIKO.	
KOSTYTSKA	MARIA	MYKHAILIVNA.
KOTWAL	BHARATI.	
KOYAMA	ELLIE.	
KRAMER	ALBERT	T.
KRAPIVAN	YURY	YURYEVICH.
KRUSEMEYER	JOCELYN	KAREN.
KUNKEL	NIKLAS.	
KUTSCHER	DANIEL.	
LAAKSO	ARTO	OLAVI.
LADD	TOM.	
LALONDE	SERGE	ROBERT.
LAM	RAYMOND.	
LANDELAAR	ALEXANDER	DAVID.
LAURICELLA	ISABELLE	LUCETTE.
LAY	MARIA	INES CUNHA.
LAY	PHILIP	FREDERICK.
LEACH	THOMAS	EDWARD.
LEARDINI	LORETTA.	
LEE	ANDREA	H.
LEE	ROBERT	WAIWANG.
LEE	KANGHYUP.	
LEE	YEON	SUE.
LEE	ROBERT	GEORGE.
LEENDERS	MATTHEUS	J.
LELIEVRE	SOPHIE	ANDREE JEANNE.
LEMONDE	PATRICE	R.
LENTINI	CLAUDIO.	
LEONOV	VLADIMIR.	
LEUMANN	FRANZISKA.	
LEVINE	DAVIS	ALEXANDER.
LEWTON BRAIN	PETER	RALPH.
LEYSNER	JAN	D.
LI	LORI.	
LI	ASHWICK	YUK-TUNG.
LI	JENNIFER	J F.
LI	SHUXIN.	
LIEGEL	MICHAEL.	
LIGTHART	ELISABETH	MARIA.
LIN	YUANQING.	
LIN	ANN	TING YU.
LINTERN	GAVAN	THOMAS.
LIOY	MICHELE	LOUISETTE.
LO	MEI	HUNG.
LOMBARDI	BRUNA	P.
LOOSLI	TAMARA	R.
LOWRY	CHRISTINA	DIANE.
LU	JIE.	
LUCCISANO	GUILLAUME.	
LUTSCH	NIKOLAUS	FRANZ.
MA	CHAO.	
MACDONALD	CAROLE	H.
MACLAREN	JULIAN	ROSCOE.
MACLELLAN	DEBRA	JEAN.

Last name	First name	Middle name/initials
MACMILLAN	PATRICIA	L.
MACMILLAN	JEFFREY.	
MACRAE	DONALD	CORBETT.
MALAGUTI	LEARCO.	
MANN	JACLYN	L.
MANN	JACLYN	LEE.
MANSION	TOM	C.
MANSION	BENOIT	L.
MANSURI LAZEZARI	KAMRAN.	
MANTHA	FREDERIC.	
MARLATT	KAREN.	
MARQUIS	LEV	ABRAHAM.
MARTI	FELIX	ANDREAS.
MARTIN	MARGARET	JENIFER.
MARTIN	CLAIRE	MADELAINE.
MARUYAMA	HIROSHI.	
MASEK	TIMOTHY	KENNETH.
MASON	LARA	BARBARA.
MCCABE	URSULA	ELIZABETH.
MCELWAIN	LESTER	CORLEY.
MCFADYEN	JENNIFER	L.
MCFARLANE	ELIZABETH	THOMSON.
MCKAY	CAMERON	ANDREW.
MCLAUGHLIN	DANIELLE	SUSAN.
MCLEOD	KATE	BETH.
MCMAHON	LAYTON	RYAN.
MCONEGAL	CLAIRE	ELIZABETH.
MCONEGAL	NIALL	TALBOT.
MCQUIN	DEBRA	J KOHN.
MELANSON	JULIE	MICHELLE.
MELVIN	DENISE	ROSAIRE.
MENGEL	BENEDICTE.	
MENGEL	CHRISTIAN	V.
MEROZ	CAROLINE	LEA.
MEYER	CHERYL	ANN.
MILLAR	SANDRA	E.
MILLER-JOBSON	KATHLEEN.	
MILNE	EDWARD	LAWRENCE.
MISEUR	DANIEL.	
MITTON	ROBERT	LLOYD.
MIYASHITA	MUTSUKO.	
MOATE	PETER	JULIAN.
MOCK	BART	CHRISTIAAN.
MONTANO	TERESA	ANN.
MOREL	WILLIAM	PAUL.
MORIKAWA	JULIE	GRACE.
MOSELEY	ANDREW	JOHN.
MOSELEY	CHERYL	JOY.
MOYLE	VIVIENNE	ANN.
MUMA	KATHERINE	ELIZABETH.
MUYSHONDT DE SOLA	ROGELIO	JOSE ORLANDO.
NADIR	SERHAN	SELIM.
NAGALLO	JAIME	MARQUEZ.
NAIR	ROOPA.	
NASSER	JAIME	EZRA.
NASTASI	SALVATORE	ROMEO.
NASTASI PALACIOS	LAURE	SOPHIE.
NEGRE	HELENE	MARIE.
NEGRE	OLIVIER	JACQUES.
NELSON	RUTH	SHIRLEY.
NESSETH	WENDY	J H.
NEWSOME	MATTHEW	DAVID.
NIKLAUS	ARLENE	IONE.
NIU	HUI LIAN.	
NOJIMA	MIYUKI.	
NOWOWIEJSKI	DANA	LEA.
NUTIU	RAZVAN.	
OH	YOUNG RAN.	
OLENIC	NANCY	ANN.
OLENIC	RONALD	WAYNE.
OMALLEY	MARY	ELIZABETH R.
OSULLIVAN	LORNA	MARY.
OSULLIVAN	PATRICK	MICHAEL.
OZTURK	ERDINC.	

Last name	First name	Middle name/initials
PAGE	CAROLA	FRIEDBURGA.
PAM	LILIAN	AUDREY.
PARK	JOUNG CHUL.	
PATEL	KARTICK	ATULBHAI.
PEAT	ROBERT	DOUGLAS.
PEIRSON	RICHARD	JOHN.
PENG	HAIBING.	
PETERSEN	SHERRY	LEE.
PETERSEN	LARS	WEXOE.
PETIT	NICOLAS	PHILIPPE.
PETRASEK	ANNE	FRANCES.
PICATOSTE	FERNANDO	DANIEL.
PIGULA	LYLE	PETER.
POIRIER	JOSEE.	
POLICKER	SHAI.	
POLLACK	GAVIN	HUGO.
POLLET	STEPHANIE	CLAIRE.
POLOSUKHIN	ILLIA.	
POMERANTZ	DANIEL	JEREMY.
PRASKEY	DENISE	ANN.
PRATT	SUSAN	S.
PRESCOTT	DAVID	STARR.
PUNGENTE	MARA.	
PYTHON	GISELE	ALBRECHT.
QI	LI.	
QIAN	LIHUI.	
RAICHURA	JULIE	B.
RAPOPORT	ALEXANDER.	
REID	WILLIAM	STEPHEN.
REID	KEITH	STUART BRIAN.
RIDDING	ROBERT	DAVID PAUL.
RIDER	BEVERLEY	ANNE.
RIEDL	AKIYO.	
RIGHETTI	MARCO	CESARE.
RIPPENHAGEN	MYLES	STACY.
ROBINSON	GLENDA	EVELYN.
ROBINSON	PETER	GERAD.
ROBINSON	MARIE	THERESE.
ROBINSON	MADELYN	JEAN.
ROLLE	BARBARA	FRANZISKA.
ROSENBLATT	JASON	MICHAEL.
ROSKIES	AMALIA.	
ROSS	JOHN	WESLEY.
ROSSMANITH	MATTHIAS	PETER.
ROSTECK	DOMINIQUE	MIRIAM.
ROUSSEEUW	PETER.	
ROY	ROBERT	GIRARD.
ROY	ANNE	MARIE MARIE.
RUSH	SIMON	PAUL.
RUSH	CHRISTY	CATHEEN.
RYLAND	RONALD	RAY.
RYPPA	XAVER	ROMUALD.
SANCHEZ	JEREMIE	ANTOINE.
SANDERSON	BARBARA	LYNN.
SAUTEROT	SIMONE	PATRICIA.
SAWCHUK	JOAN	COLLEEN.
SAWYER	THOMAS	JOHN.
SCHEYER	SHANNON	ASHLEY.
SCHIEBEL	ROLAND.	
SCHMEISTER	NANCY	EVA.
SCHMEISTER	THOMAS	ALLAN.
SCHRUM	LARRY	LAMONT.
SCHWERDTFEGER	ULRIKE	AMY.
SCOTTEN	SHAE	MICHAEL.
SEMPLE	ANDREW	SCOTT.
SENGA	CHIYORI.	
SEQUEIRA	KYOKO	YOSHIDA.
SETT	MERRILEE	JEANNE.
SHAW PEIRSON	CAROL	ANNE.
SHEFSIEK	DAVID	KARL.
SHELTON	SCOTT	JAMES.
SHERPA	GAMBU.	
SHIACH	PATRICIA	JOY.
SIM	DAVID	FORBES.

Last name	First name	Middle name/initials
SIMPSON	ROBERT	NEIL.
SMEEKES	MIRJAM	ANNA CATHARINA.
SMITH	IAN	DAVID.
SMITH	MALCOLM	H.
SON	WOO	SEONG.
SOOD	SUSHEEL	KUMAR.
SORDO	ANA	PAULA.
SPAELTI	LUDWIG	FRITZ.
SPERANZA	KIMBERLY	DAWN.
SPROULE	JULIAN	ST GEORGE.
SQUILLANTE	ALBERTO.	
STAUB	RENE.	
STEENSTRUP	ANNE	MARGRETHE.
STEENSTRUP	JENS	RESEN.
STIEBEN	DANNY	BRIAN.
STOLZ	CHRISTIAN.	
SU	GUIYING	CHING.
SUTHERLAND	LINDA	KAY.
TAI	ALBERT	HUA.
TAKAO	YOSHIE.	
TAMERIN	RON	SHAY.
TANG	XIANGLUN.	
TAYLOR	SHARON	A.
TESHIMA	TATSUHISA.	
TESHIMA	TOMOKO.	
THAPER	AMIT.	
THARIN	OLIVER	CAMILLE.
THERIAULT	WILMON	W.
THOMA	CATHARINA	GEERTRUIDA SUZANNA.
THOMPSON	KIURSTAN	ANNE.
THOMPSON	ZOE	HELEN.
THUT	DIMITRI	LIAM.
TOH	KEITH	HSIANG WEN.
TOLONE	DAVID	MICHAEL.
TOPP	HELEN	MARGARET.
TOTIK	VILMOS.	
TOWELL	ANTHONY	P.
TRAINER	RANDALL	MARK.
TRICOT	MARIE	RAFAELE COLETTE.
TRONOLONE	CHARLES	MICHAEL.
TRUMAN	CHARLES	MICHAEL.
TRUMAN	SUSAN	JANE.
TSAI	I	CHEN.
UEN	NAZIRE.	
UJIKE	TAKANORI.	
ULMER	JENNIFER	COLEEN.
UNGERMAN	ZACHARIAH	JONAS.
VAN ARK	CHATREE.	
VAN ARK	HUBERTUS	HERMAN.
VAN BENTUM	OTTO ADRIANUS MARIA.	
VAN DER KAMP	CHRISTINA	MAGDALENE.
VAN DOORN	YVO	M.
VAN ERVEN	SYBELLE	BIRGITTA EIRENE.
VAN GELDER	MARLA	ANN.
VAN HILTEN	NICHOLAS.	
VAN HOYE	ERMINA.	
VAN NIEKERK	PIETER	ANDRIES.
VAN TONDER	GAVIN	JOHN.
VASCONCELLOS	JULIO	CESAR.
VELINOVA-LEVAK	GERGANA	VESSELINOVA.
VICAT-BLANC	JEROME	DANIEL.
VOELMAN	EGBERT	HARMEN JACOB.
VOHRA	ANITA.	
VOITENLEITNER	CHRISTIAN	ALFONS.
VOUTAS	SAMUEL	A.
WAHL	FRANKLIN	CLAUDE.
WALKER	TIMOTHY	C.
WALRAF	PATRICIA	MARIE LOUISE.
WALTER	MICHAEL	ST GEORGE.
WARING	IAN	ANTONY.
WARNER	ERIN	KIMBERLY.
WARRICK	DANIEL	JOSEPH.
WARRINER	MARIAH	RUTH FOSSGREEN.
WARRINER	MCKENZIE	ELIZABETH FOSSGREEN.

Last name	First name	Middle name/initials
WASSEN	JEAN	MARC ALBERT.
WATANABE	MEGURU.	
WATTS	JEANNIE.	
WAYRETHMAYR	DANIEL	TOSHIHIKO.
WEATHERLY	WILLIAM	BOLLIN.
WEBB	STEVEN	ROBERT.
WEBB	JOHN	PATRICK.
WEBER	TAIYO	CHRISTIAN.
WEIBEL	ANNELISE.	
WELLS	HEATH	JAMES.
WHITEHOUSE	MICHELLE.	
WHITTAKER	SUSAN	ANNE.
WILCZEWSKA CLAIRET	MARIA	J.
WILHITE	MATTHEW	OWEN.
WILKINSON	EMMA	CATHERINE.
WILL	DEBORAH	LEE.
WILLACY	CHRISTOPHER	N.
WILLIAMS	DANE	WOODGATE.
WILLIAMS	ROBERT	DAHL.
WILLIAMS	SHARON	KAY.
WILLIAMS	LINDA	KAY.
WILSON	PAULA	BOYCE.
WILSON	ERIC	BRYCE.
WILSON	LESLIE	CAROL.
WILSON (CROFT)	VICTORIA	JOSCELYN.
WISEMAN	ZAVIE	PHILIP.
WOLF	PAUL	CARVER.
WOLFE	WILLIAM	JOSEPH JOHN.
WOLFE	HARRISON	ROBERTS.
WOLSKE	ANDREW	THOMAS.
WOODMAN	STEPHEN	T.
WRIGHT	SHIRLEY	GALE.
WUENDERLING	ALEXANDRA.	
WUNDERWALD	SILKE	SOFIE.
WUSSING	URSULA	SOPHIE DORA.
XIN	FANG.	
XU	YI.	
YANAGAWA	MUTSUKO	YANAGAWA.
YANG	CHIA-JUNG.	
YANG	XIAO	LING.
YAO	SHU.	
YEN	PAU	YONG.
YOSHIDA	SATORI.	
YOSHINO	MICHAEL	Y.
YU	JIALI.	
ZACCAGNINI	MARTA	GRACE.
ZAKHER	BERNADETTE.	
ZHAI	LIHONG.	
ZHANG	KUN.	
ZHANG	WEIYANG	T.
ZHAO	HUANGLUNNAN.	
ZHOU	RENQIU.	

Dated: April 14, 2023.

Steven B. Levine,

Manager, Team 1940, CSDC—Compliance Support, Development & Communications, LB&I:WEIIC:IIC:T4.

[FR Doc. 2023–08262 Filed 4–18–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, 10(a)(2), that a meeting will be held at the United States Treasury Department, 15th Street and Pennsylvania Avenue NW, Washington, DC on May 2, 2023, at 9:15 a.m., of the following debt management advisory committee: Treasury Borrowing Advisory Committee.

At this meeting, the Treasury is seeking advice from the Committee on topics related to the economy, financial markets, Treasury financing, and debt management. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, 10(d) and Public Law 103–202, § 202(c)(1)(B)(31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202,§ 202(c)(1)(B).

Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the

meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622–1876.

Dated: April 14, 2023.

Frederick E. Pietrangeli,

Director, (for Office of Debt Management).

[FR Doc. 2023–08263 Filed 4–18–23; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Matching Program

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a re-establishment for a matching program.

SUMMARY: This computer matching agreement sets forth the terms, conditions, and safeguards under which the Internal Revenue Services (IRS) will disclose tax return information to the Department of Veterans Affairs, Veterans Health Administration (VA/VHA). VA/VHA will use the tax return information to verify veterans' employment status and earnings to determine eligibility for its health benefit programs.

DATES: Comments on this matching program must be received no later than May 19, 2023. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new agreement will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary. This matching program will be valid for 18 months from the effective date of this notice.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to Computer Matching Agreement Between The Internal Revenue Services and The Department of Veterans Affairs Veterans Health Administration. Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Stacey Echols, Director, Health Eligibility Center VHA Member Services, Department of Veterans Affairs, 2957 Clairmont Rd. NE, Suite 200, Atlanta, GA 30329, Email: *stacey.echols@va.gov,* Telephone: 404–828–5303.

SUPPLEMENTARY INFORMATION: The Health Eligibility Center (HEC) verifies the self-reported income of certain veterans whose eligibility for medical care is based on income level. HEC is an entity within the VHA, Member Services.

''Tax return information,'' for purposes of this agreement, means IRS records obtained under the authority of 26 U.S.C. 6103 concerning the amount of an individual's earnings from wages or self-employment income, the period(s) involved, and the identities and addresses of employers.

Participating Agencies

Department of Veterans Affairs, Veterans Health Administration (VA/VHA), and Internal Revenue Services (IRS)

Authority for Conducting the Matching Program

The Internal Revenue Code (IRC), 26 U.S.C. 6103(l)(7)(B), authorizes the IRS to disclose return information with respect to unearned income, as defined by relevant sections of the IRC, to VHA for the purposes or administering certain health care programs under sections 1710(a)(2)(G), 1710(a)(3), and 1710(b) of Title 38, United States Code (U.S.C). The authority for VHA to enter into this matching program with IRS is contained in 38 U.S. C. 5317. VHA has a statutory obligation to collect income information from certain applicants for benefits and to use that income data to determine the applicant's eligibility for the benefits sought.

Purpose(s)

This computer matching agreement sets forth the terms, conditions, and safeguards under which the Internal Revenue Services (IRS) will disclose tax return information to the Department of Veterans Affairs, Veterans Health Administration (VA/VHA). VA/VHA will use the tax return information to verify veterans' employment status and earnings to determine eligibility for its health benefit programs.

Categories of Individuals

Veterans applying for VA Health Care Benefits

Categories of Records

VA/VHA will provide IRS with the following information for each individual for whom VA/VHA requests tax return information: SSN and the Name Control (first four characters of the surname) in accordance with the current IRS Publication 3373, *Disclosure of Information to Federal, State, and Local Agencies Handbook.* The IRS will then disclose, when there is a match of individual identifier, to the VHA the: payee account number, payee name and mailing address, payee Tax Identification Number (TIN), payer TIN number, payer name and address, and the income type and amount.

System(s) of Records

VHA will provide the IRS with identifying information with respect to applicants for and recipients of benefits available under programs cited in Article I.B. of this Agreement from VHA's System of Records entitled ''Income Verification Records—VA'' (89VA10NB) (Routine use nineteen (19)), as published at 73 FR 26192 (May 8, 2008), and updated at 78 FR 76897 (December 19, 2013). IRS will extract return information with respect to unearned income from the Information Return Master File (IRMF), Treas/IRS 22.061, as published at 80 FR 54081 (September 8, 2015), through the Disclosure of Information to Federal, State and Local Agencies (DIFSLA) Program.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John Oswalt, Chief Privacy Officer and Chair of the Data Integrity Board, Department of Veterans Affairs approved this document on March 10, 2023 for publication.

Dated: April 14, 2023.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

[FR Doc. 2023–08234 Filed 4–18–23; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0799]

Agency Information Collection Activity: Casket and Urn Allowance

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each new collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed that implements statutory authority for NCA to provide an allowance for the purchase of caskets and urns for the interment of the remains of Veterans without next of kin (NOK) or sufficient resources available for burial.

DATES: Written comments and recommendations on the proposed collection of information should be received on or June 20, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Brian Hurley, National Cemetery Administration (42E), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Brian.Hurley1@va.gov.* Please refer to ''OMB Control No. 2900–0799'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0799'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 2306; 38 CFR 38.628.

Title: Casket/Urn Allowance, VA Form 40–10088.

OMB Control Number: 2900–0799.

Type of Review: Extension of a currently approved collection.

Abstract: The Department of Veterans Affairs, National Cemetery Administration has established VA regulations to implement statutory authority for NCA to provide allowance for the purchase of caskets and urns for the interment of the remains of Veterans without next of kin and sufficient resources available for burial.

Affected Public: Individuals or households.

Estimated Annual Burden: 56 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 336.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt.), Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–08236 Filed 4–18–23; 8:45 am]

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FEDERAL REGISTER

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Part II

Securities and Exchange Commission

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments Nos. 1 and 2, To Amend the Codes of Arbitration Procedure To Modify the Current Process Relating to the Expungement of Customer Dispute Information; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97294; File No. SR–FINRA–2022–024]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments Nos. 1 and 2, To Amend the Codes of Arbitration Procedure To Modify the Current Process Relating to the Expungement of Customer Dispute Information

April 12, 2023.

I. Introduction

On July 29, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the FINRA Rule 12000 Series (Code of Arbitration Procedure for Customer Disputes) (''Customer Code'') and the FINRA Rule 13000 Series (Code of Arbitration Procedure for Industry Disputes) (''Industry Code'') (together, ''Codes'') to modify the current process relating to the expungement of customer dispute information.[3]

The proposed rule change, as modified by Amendments Nos. 1 and 2, (hereinafter referred to as the ''proposed rule change'' unless otherwise specified) would amend the Codes to: (1) set forth requirements on expungement requests (a) filed during an investment-related, customer initiated arbitration (''customer arbitration'') by an associated person, or by a party to the customer arbitration on behalf of an associated person (an ''on-behalf-of request''), or (b) filed by an associated person separate from a customer arbitration (''straight-in request''); (2) establish a roster of experienced public arbitrators from which a three-person panel [4] would be randomly selected to decide straight-in requests (the ''Special Arbitrator Roster''); [5] (3) establish procedural requirements for expungement hearings; and (4) codify and update FINRA's Notice to Arbitrators and Parties on Expanded Expungement Guidance (''Guidance'') that arbitrators and parties would be required to follow.[6] In addition, the proposed rule change would amend the Customer Code to specify procedures for requesting expungement of customer dispute information arising from simplified arbitrations.[7] The proposed rule change would also amend the Codes to establish requirements for notifying state securities regulators and customers of expungement requests and allow participation of state securities regulators in straight-in requests.[8]

The proposed rule change was published for comment in the **Federal Register** on August 15, 2022.[9] On September 27, 2022, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to November 11, 2022.[10] On November 10, 2022, FINRA responded to the comment letters received in response to the Notice and filed an amendment to the proposed rule change (''Amendment No. 1'').[11] On November 10, 2022, the Commission published a notice of filing of Amendment No. 1 and an order instituting proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[12] On December 8, 2022, FINRA consented to an extension of the time period in which the Commission must approve or disapprove the proposed rule change to April 12, 2023.[13] On April 3, 2023 FINRA responded to the comment letters received in response to the Order Instituting Proceedings and filed a second amendment to the proposed rule change (''Amendment No. 2'').[14] The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons and is approving the proposed rule change, as modified by Amendments Nos. 1 and 2, on an accelerated basis.

II. Description of the Proposed Rule Change

Background

Information regarding customer disputes involving associated persons is maintained in the Central Registration Depository (''CRD''). In general, the information in the CRD system is reported by registered broker-dealer firms (''firms'' or ''member firms''), [15] associated persons, and regulatory authorities in response to questions on the uniform registration forms.[16] These

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change was published for comment in the **Federal Register** on August 15, 2022. *See* Exchange Act Release No. 95455 (Aug. 9, 2022), 87 FR 50170 (Aug. 15, 2022) (File No. SR–FINRA–2022–024) (''Notice'').

[4] Under the Codes, the term ''panel'' means the arbitration panel, whether it consists of one or more arbitrators. *See* FINRA Rules 12100(u) and 13100(s). Under the Codes, a customer's or claimant's damage request determines whether a single arbitrator or a three-person panel will consider and decide an arbitration case, though in some cases the parties may agree to a different number. *See* FINRA Rules 12401 and 13401; *see also* Notice at 50171 n.10. Unless otherwise specified in the Order, the term ''panel'' will mean either a panel or single arbitrator.

[5] Among other requirements, public arbitrators are not employed in the securities industry and do not devote 20 percent or more of their professional work to the securities industry or to parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry. *See* FINRA Rules 12100(aa) and 13100(x).

[6] *See* Guidance, available at *https://www.finra.org/arbitration-and-mediation/notice-arbitrators-and-parties-expanded-expungement-guidance.*

[7] *See* Notice at 50170.

[8] *See id.* at 50171.

[9] *See* Notice *supra* note 3.

[10] *See* letter from Mignon McLemore, Associate General Counsel, Office of General Counsel, FINRA, to Lourdes Gonzalez, Assistant Chief Counsel, Division of Trading and Markets, Commission, dated September 27, 2022, available at *https://www.finra.org/sites/default/files/2022-09/sr-finra-2022-024-extension1.pdf.*

[11] *See* letter from Mignon McLemore, Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated November 10, 2022 (''FINRA November 10 Letter''). The FINRA November 10 Letter is available at the Commission's website at *https://www.sec.gov/comments/sr-finra-2022-024/srfinra2022024-20150592-319706.pdf.* Comment letters received on the proposed rule change are available at *https://www.sec.gov/comments/sr-finra-2022-024/srfinra2022024.htm.*

[12] *See* Exchange Act Release No. 96298 (Nov. 10, 2022), 87 FR 68779 (Nov. 16, 2022) (File No. SR–FINRA–2022–024) (''Order Instituting Proceedings'').

[13] *See* letter from Mignon McLemore, Associate General Counsel, Office of General Counsel, FINRA, to Lourdes Gonzalez, Assistant Chief Counsel, Division of Trading and Markets, Commission, dated December 8, 2022, available at *https://www.finra.org/sites/default/files/2022-12/sr-finra-2022-024-extension2.pdf.*

[14] *See* letter from Mignon McLemore, Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated April 3, 2023, (''FINRA April 3 Letter'') available at *https://www.sec.gov/comments/sr-finra-2022-024/srfinra2022024-20163319-333785.pdf.* Amendment No. 2 is available at *https://www.finra.org/sites/default/files/2023-04/sr-finra-2022-024-partial-amendment-2.pdf.*

[15] Under the Codes, a ''member'' includes any broker or dealer admitted to membership in FINRA, whether or not the membership has been terminated, suspended, cancelled, revoked, the member has been expelled or barred from FINRA, or the member is otherwise defunct. *See* FINRA Rules 12100(s) and 13100(q); *see also* Exchange Act Release No. 88254 (Feb. 20, 2020), 85 FR 11157 (Feb. 26, 2020) (Order Approving File No. SR–FINRA–2019–027).

[16] The uniform registration forms are Form BD (Uniform Application for Broker-Dealer Registration), Form BDW (Uniform Request for Broker-Dealer Withdrawal), Form BR (Uniform Branch Office Registration Form), Form U4 (Uniform Application for Securities Industry Registration or Transfer), Form U5 (Uniform Termination Notice for Securities Industry Registration), and Form U6 (Uniform Disciplinary Action Reporting Form). *See* Notice at 50172 n.20.

forms are used to collect registration information, which includes, among other things, administrative, regulatory, and criminal history, and financial and other information about associated persons, such as investment-related, customer-initiated arbitrations, civil litigations, or customer complaints (*i.e.,* ''customer dispute information'').[17] Among other things, FINRA makes specific information in the CRD system publicly available through BrokerCheck, including customer dispute information for associated persons who are currently or were formerly registered with FINRA.[18]

FINRA rules allow broker-dealers and their associated persons to seek expungement of certain customer dispute information from the CRD system and BrokerCheck.[19] In general, an associated person seeks expungement of customer dispute information through the FINRA arbitration process.[20] The Customer Code, which comprises the series of rules governing customer arbitrations, governs expungement requests filed by firms or associated persons during customer arbitrations.[21] In contrast, the Industry Code comprises the series of rules governing arbitrations for disputes between or among industry parties, such as between a broker-dealer and an associated person, including straight-in requests.[22] As a result, whether an expungement request is governed by the Customer Code or Industry Code will generally depend on whether the request is filed during a customer arbitration or is a straight-in request filed separately from a customer arbitration.[23]

Both the Customer Code and the Industry Code require arbitrators to hold a recorded hearing regarding, and review materials related to, the appropriateness of expungement of customer dispute information.[24] According to FINRA, its rules and guidance provide that arbitrators may recommend expungement for only three reasons: (1) the claim, allegation, or information is factually impossible or clearly erroneous; (2) the associated person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; or (3) the claim, allegation, or information is false.[25] In addition, arbitrators are required to indicate which reason is the basis for a recommendation (*i.e.,* ''factual impossibility, mistake, or falsity'') [26] and to provide a brief written explanation of the reasons for recommending expungement.[27]

Regardless of whether expungement of customer dispute information is sought directly through a court or in arbitration, FINRA Rule 2080 requires a broker-dealer firm or associated person seeking expungement to obtain an order of a court of competent jurisdiction directing such expungement or confirming an award containing expungement.[28] FINRA will expunge customer dispute information only pursuant to a court order.[29] If a court directs expungement or confirms an arbitration award containing expungement, the customer dispute information is removed from the CRD system, and is no longer made public through BrokerCheck.[30]

Proposed Rule Change

A. Requests for Expungement Under the Customer Code

FINRA Rule 12805 requires that arbitrators meet certain conditions in order to issue an award containing expungement of customer dispute information under the Customer Code.[31] The rule generally does not, however, address when and how a request for expungement can be made by an associated person or as an on-behalf-of request during a customer arbitration, including the types of expungement requests that can and cannot be made during a customer arbitration, or when arbitrators must make expungement determinations during the customer arbitration.

The proposed rule change would amend FINRA Rule 12805 to set forth requirements addressing the method and timing for, and required contents of, expungement requests filed during a customer arbitration by an associated person or as an on-behalf-of request, including the types of expungement requests that must (or cannot) be made.[32] Among other restrictions, proposed Rule 12805 would require that an expungement request made during a customer arbitration involve the same customer dispute information that is associated with the customer's statement of claim.[33] It would further require an associated person who is a named respondent in a customer arbitration to seek expungement of customer dispute information associated with the arbitration claim during the arbitration proceedings or forfeit the ability to seek to expunge the customer dispute information associated with the customer's statement of claim in any

[17] *See* Notice at 50172.

[18] BrokerCheck is a free tool available on FINRA's website to help investors make informed choices about the associated persons and broker-dealer firms with whom they may conduct business. *See* ''About BrokerCheck,'' available at *http://www.finra.org/investors/about-brokercheck.* Broker records are available in BrokerCheck for ten years after an associated person leaves the industry, and associated persons who are the subject of disciplinary actions and certain other events remain on BrokerCheck permanently. *See* Notice at 50172 at n.24.

[19] *See* Notice at 50172–73.

[20] *See id.* at 50190. An associated person may also seek expungement by going directly to court without first going to arbitration. According to FINRA, from January 2016 through December 2021, associated persons sought expungement of 194 customer dispute information disclosures in direct-to-court expungement cases, or less than 2 percent of the customer dispute information disclosures that were sought to be expunged in FINRA's Dispute Resolution Forum (''DRS arbitration forum''). *See id.* at 50191.

[21] *See id.* at 50175–78; *see also* FINRA Rule 12000 series.

[22] *See Notice* at 50178–80; *see also* FINRA Rule 13000 series.

[23] *See infra* notes 69–70 and accompanying text.

[24] *See* FINRA Rules 12805 and 13805; *see also* Notice at 50173.

[25] *See* Notice at 50173.

[26] *See* FINRA Rules 2080, 12805, and 13805. These requirements are supplemented by the Guidance, providing arbitrators with ''best practices'' and recommendations to follow when deciding expungement requests. *See* Notice at 50173 n.35 and accompanying text.

[27] *See* FINRA Rules 12805(c) and 13805(c).

[28] *See* Notice at 50172; *see also* FINRA Rule 2080.

[29] *See* Notice at 50172. FINRA Rule 2080 also requires firms and associated persons seeking a court order or confirmation of the arbitration award containing expungement to name FINRA as a party and serve FINRA with all appropriate documents. FINRA may, however, waive the requirement to be named as a party if it determines that the award containing expungement is based on affirmative judicial or arbitral findings that: (1) the claim, allegation, or information is factually impossible or clearly erroneous; (2) the associated person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; or (3) the claim, allegation, or information is false. In addition, FINRA has sole discretion ''under extraordinary circumstances'' to waive the requirement that it be named in a court proceeding if it determines that the request for expungement and accompanying award are meritorious and expungement would not have a material adverse effect on investor protection, the integrity of the information in the CRD system, or regulatory requirements. *See* FINRA Rule 2080(b).

[30] *See* Notice at 50173–74.

[31] FINRA Rule 12805 provides that a panel must comply with the following requirements in order to grant expungement: (1) hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement; (2) in cases involving settlements, review settlement documents and consider the amount of payments made to any party and any other terms and conditions of a settlement; (3) indicate in the arbitration award which of the Rule 2080 grounds for expungement serve(s) as the basis for its expungement order and provide a brief written explanation of the reason(s) for its finding that one or more Rule 2080 grounds for expungement applies to the facts of the case; and (4) assess all DRS arbitration forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the parties requesting expungement relief. *See also* FINRA Rule 13805.

[32] *See* Notice at 50174–77 (methods), 50180–81 (limitations), 50181–82 (timing).

[33] *See id.* at 50174–77.

subsequent proceeding.[34] In addition, the proposed rule would authorize the Director of FINRA Dispute Resolution Services (''Director'') to deny the forum to expungement requests that do not meet, among other things, the proposed method, timing, or content requirements.[35] In addition, the proposed rule change would also provide guidance on when a panel can rule on an expungement request made in the course of a customer arbitration.[36] Further, the proposed rule change would prohibit an associated person from: (1) intervening in an ongoing customer arbitration to request expungement [37] or (2) filing an expungement request as a new claim against a customer separate from a customer arbitration.[38]

1. Expungement Requests During a Customer Arbitration

a. Expungement Requests by a Respondent Named in a Customer Arbitration

Currently, an associated person who is named as a respondent in a customer arbitration (''named associated person'') is not required to seek expungement of customer dispute information associated with the arbitration claim during the arbitration proceedings. Rather, the associated person can either request expungement at any time during the customer arbitration or separately from the customer arbitration in a straight-in request.[39] If a named associated person requests expungement during the customer arbitration, does not withdraw the request, and the case goes to hearing and closes by award, the panel in the customer arbitration will decide the expungement request and include the decision as part of the customer's award.[40] If the customer arbitration does not close by award after a hearing (*e.g.,* the case settles), and the associated person continues to pursue the expungement request, the panel from the customer arbitration will hold an expungement-only hearing to decide the expungement request.[41]

The proposed rule change would amend FINRA Rule 12805 to modify existing requirements and set forth new requirements for when and how a named associated person would file an expungement request during a customer arbitration.[42] Under proposed Rule 12805(a)(1)(A), if a named associated person wants to seek expungement of customer dispute information associated with the customer's statement of claim, the named associated person would be required to make the expungement request during the customer arbitration.[43] As discussed below, these requests would be subject to limitations on how and when the requests may be made.[44] If the associated person does not request expungement of the customer dispute information associated with the customer's statement of claim during the customer arbitration, the associated person would forfeit the opportunity to seek expungement of that customer dispute information in any subsequent proceeding.[45]

Proposed Rule 12203(b) would authorize the Director to deny the DRS arbitration forum to requests made during a customer arbitration to expunge customer dispute information that is not associated with the customer's statement of claim. The Director would also be authorized to deny the forum if a named associated person does not request expungement of the customer dispute information associated with the customer's statement of claim during the customer arbitration but then seeks expungement of the same customer dispute information in a subsequent proceeding.[46]

i. Method and Timing of Requesting Expungement in Customer Arbitration

The proposed rule change would limit how and when expungement requests may be made by a named associated person during the customer arbitration. Under the proposed rule change, if a named associated person requests expungement during the customer arbitration, the request would be required to be included in the answer to the statement of claim or in a separate pleading requesting expungement.[47] If the request is included in the answer, it must be filed within 45 days of receipt of the customer's statement of claim in accordance with existing requirements under the Codes.[48] If the named associated person requests expungement in a separate pleading, rather than the answer, the request would be required to be filed no later than 60 days before the first scheduled hearing begins.[49] FINRA believes these proposed deadlines should provide adequate time for: (1) the named associated person to assess the customer's case, the potential merits of an expungement request, and whether to file the request; and (2) the parties to the customer arbitration to prepare their expungement-related arguments, since the expungement issues will overlap with the issues raised by the customer's claim.[50] To request expungement after the filing deadline, the named associated person would be required to file a motion requesting an extension, which would be decided by the panel.[51]

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[34] *See* proposed Rule 12805(a)(1)(A).

[35] *See* Notice at 50182; *see also* proposed Rules 12203 and 13203.

[36] *See* Notice at 50177–78.

[37] *See id.* at 50178; *see also* proposed Rules 12805(a)(2)(E)(iii) and 12800(d)(2)(D).

[38] *See* Notice at 50178; *see also* proposed Rule 12805(a)(3). As elaborated below, where an associated person is neither named in a customer arbitration nor the subject of an on-behalf-of request, the associated person would be required to file a request to expunge customer dispute information as a straight-in request under proposed Rule 13805 against the member firm with whom they were associated at the time the subject of the request arose. Similarly, requests to expunge customer dispute information that is not associated with a customer arbitration—and that as a result are ineligible for expungement under proposed Rule 12805—would need to be filed as straight-in requests under proposed Rule 13805 against member firms under the proposed rule change. *See* proposed Rule 12805(a)(2)(E)(iii)b.; *see also* Section II.A.2. ''No Intervening in Customer Arbitrations to Request Expungement.''

[39] *See* Notice at 50175. There are currently several ways in which a named associated person may request expungement during a customer arbitration. The request may be included in the answer to the statement of claim that must be submitted within 45 days of receipt of the statement of claim, and may include other claims and remedies requested. *See* FINRA Rules 12303(a) and (b); *see also* FINRA Rules 13303(a) and (b). The expungement request may also be included in other pleadings (*e.g.,* a counterclaim, a cross claim, or a third party claim). *See* FINRA Rule 12100(x). In general, parties must file initial statements of claim and all pleadings and other documents with the Director. *See* FINRA Rule 12300(b). The associated person may also request at any time during the case (outside of a pleading) that the panel consider the person's expungement request during the hearing. Under FINRA Rule 12503, such a request is treated like a motion, which gives the other parties an opportunity to state objections. If there is an objection, the panel must decide the motion pursuant to FINRA Rule 12503(d)(5). *See also* FINRA Rule 13503(d)(5).

[40] FINRA stated that if an arbitration closes by award after a hearing, the panel from the customer arbitration would be best situated to decide the related issue of expungement. *See* Notice at 50175.

[41] *See id.*

[42] *See* proposed Rule 12805.

[43] *See* proposed Rule 12805(a)(1)(A). FINRA stated that ''[r]equiring the named associated person to request expungement in the customer arbitration increases the likelihood that a panel will have input from all parties and access to all of the evidence, testimony and other documents to make an informed decision on the expungement request.'' Notice at 50175.

[44] *See* proposed Rule 12805(a)(1)(B); *see also* Section II.C., ''Limitations on Expungement Requests.''

[45] *See* proposed Rule 12805(a)(1)(A).

[46] *See* proposed Rule 12203(c).

[47] *See* proposed Rule 12805(a)(1)(C)(i). FINRA Rules 12100(x) and 13100(v) would be amended to include a ''separate document requesting expungement'' as a pleading under the Codes.

[48] *See* FINRA Rule 12303(a).

[49] *See* proposed Rule 12805(a)(1)(C)(i).

[50] *See* Notice at 50176.

[51] *See id.* Pursuant to FINRA Rule 12503, if an associated person files a motion seeking an extension of the 60-day deadline, the opposing parties may state objections to extending the deadline, and the panel would decide the motion.

ii. Required Contents of an Expungement Request in Customer Arbitration

The proposed rule change would also set forth content requirements for an expungement request made by a named associated person during a customer arbitration. Under the proposed rule change, a request for expungement by a named associated person in a customer arbitration would be required to include the applicable filing fee under the Customer Code.[52] In addition, a named associated person would be required to provide the CRD number of the party requesting expungement, each CRD occurrence number that is the subject of the request, and the case name and docket number associated with the customer dispute information.[53] Moreover, the proposed rule change would require the named associated person requesting expungement to explain whether expungement of the same customer dispute information was previously requested and, if so, how that request was decided.[54] Under the proposed rule change, if an expungement request fails to include any of the proposed requirements for requesting expungement, the request would be considered deficient and would not be served unless the deficiency is corrected.[55]

b. Expungement Requests by a Party Named in a Customer Arbitration on Behalf of an Unnamed Person

According to FINRA, the Codes do not specifically address on-behalf-of requests.[56] Currently, a party to a customer arbitration may file an on-behalf-of request for expungement during the customer arbitration. If the party files the request and the customer arbitration closes by award after a hearing, the panel will decide the expungement request and include the decision in the award. If the customer arbitration does not close by award after a hearing (*e.g.,* the case settles), either the requesting party or the unnamed person could ask the panel to consider and decide the expungement request before it disbands. Under current practice, in this circumstance the panel from the customer arbitration will hold a hearing regarding the appropriateness of expungement pursuant to FINRA Rule 12805.[57]

Proposed Rule 12805(a)(2) would codify this practice to permit a party to a customer arbitration to file an on-behalf-of request that seeks to expunge customer dispute information associated with the customer's statement of claim during the customer arbitration (provided the request is eligible for arbitration under proposed Rule 12805).[58] As with expungement requests made by a named associated person, the proposed rule change would set forth requirements governing how and when an on-behalf-of request may be made, and the contents of such request.

i. Method and Timing of Requesting Expungement on Behalf of an Unnamed Person

To help ensure that an associated person that is the subject of an on-behalf-of request is aware of the request, the proposed rule change would require the unnamed person to consent in writing[59] to the on-behalf-of request by signing the Form Requesting Expungement on Behalf of an Unnamed Person (''Form'').[60] By signing the Form, the unnamed person would be: (1) consenting to the on-behalf-of request;[61] (2) agreeing to be bound by the panel's decision on the request;[62] and (3) acknowledging their understanding that if the customer arbitration closes by award after a hearing, the unnamed person would be barred from filing a request for expungement for the same customer dispute information in a subsequent proceeding.[63]

The party making the request would also be required to file the request (including the Form) no later than 60 days before the first scheduled hearing.[64] Under the proposed rule change, filing and serving the on-behalf-of request would obligate the requesting party to represent the unnamed person and the unnamed person's interests and to pursue the request for expungement on behalf of the unnamed person during the customer arbitration.[65]

ii. Required Contents of an On-Behalf-Of Request and Filing Fee

Under the proposed rule change, an on-behalf-of request would be required to include the same elements as a request for expungement by a named associated person during a customer arbitration.[66] Thus, the party requesting expungement on behalf of an unnamed person would be required to provide the applicable filing fee; the CRD number of the unnamed person; each CRD occurrence number that is the subject of the request; the case name and docket number associated with the customer dispute information; and an explanation of whether expungement of the same customer dispute information was previously requested and, if so, how it

[52] *See* proposed Rule 12805(a)(1)(C)(ii)a.

[53] *See* proposed Rule 12805(a)(1)(C)(ii)b. through d. An occurrence is a disclosure event that is reported to the CRD system via one or more Disclosure Reporting Pages. *See* Notice at 50176 n.58. For example, Form U4 (Uniform Application for Broker-Dealer Registration) requires disclosure of information concerning an associated person that relates to the occurrence of an event reportable under Item 14 of Form U4 (*e.g.,* certain customer complaints, arbitrations, and civil litigations) on the appropriate Disclosure Reporting Page. FINRA stated that these content requirements ''would help ensure that FINRA, the panel, and the parties understand who is requesting expungement and which customer dispute information is the subject of the request.'' *See* Notice at 50176; *see also* Guidance (stating that ''arbitrators should ask a party requesting expungement whether an arbitration panel or a court previously denied expungement of the customer dispute information at issue and, if there was a prior denial, the expungement request should be denied.'' *See supra* note 6.

[54] *See* proposed Rule 12805(a)(1)(C)(ii)e.

[55] *See* proposed Rules 12307(a)(8) through (11) and 12805(a)(1)(C)(ii). FINRA stated that ''these proposed requirements for named associated persons requesting expungement are necessary for the timely consideration and orderly administration of expungement requests as well as to maintain the integrity of the CRD system.'' Notice at 50176.

[56] The proposed rule change would define an ''unnamed person'' as ''an associated person, including a formerly associated person, who is identified in a Form U4, Form U5, or Form U6, as having been the subject of an investment-related, customer-initiated arbitration claim that alleged that the associated person or formerly associated person was involved in one or more sales practice violations, but who is not named as a respondent in the arbitration.'' *See* proposed Rule 12100(ff).

[57] *See* Notice at 50176.

[58] *See* proposed Rule 12805(a)(2)(B). As with expungement requests filed by a named associated person in a customer arbitration, proposed Rule 12203(b) would authorize the Director to deny the DRS arbitration forum to requests made during a customer arbitration to expunge customer dispute information that is not associated with the customer's statement of claim. *See* Notice at 50175.

[59] *See* proposed Rule 12805(a)(2)(A).

[60] The unnamed person whose CRD record would be expunged and the party requesting expungement on the unnamed person's behalf must both sign the Form. *See* proposed Rule 12805(a)(2)(C)(ii).

[61] *See* Notice at 50176.

[62] *See* proposed Rule 12805(a)(2)(D)(i). Signing the Form would also obligate the unnamed person to maintain the confidentiality of documents and information from the customer arbitration to which the unnamed person is given access and to adhere to any confidentiality agreements or orders associated with the customer arbitration. *See* proposed Rule 12805(a)(2)(D)(ii).

[63] *See* Notice at 50177.

[64] *See* proposed Rule 12805(a)(2)(C)(iii).

[65] *See* proposed Rule 12805(a)(2)(D)(iii). FINRA stated that requiring the parties' consent ''would help ensure that the unnamed person is fully aware of the request and that the firm is agreeing to represent the unnamed person for the purpose of requesting expungement during the customer arbitration.'' *See* Notice at 50176. This would help prevent ''associated persons filing arbitration claims seeking expungement of the same customer dispute information that was the subject of a previous denial by a panel of an on-behalf-of request.'' *See* Notice at 50177.

[66] *See* proposed Rules 12805(a)(1)(C)(ii) and 12805(a)(2)(C)(i).

was decided.[67] In addition, the party requesting expungement would be required to include the Form, signed by the unnamed person whose CRD record is the subject of the expungement request and the party filing the request.[68]

c. Deciding Expungement Requests during Customer Arbitrations

The proposed rule change would change when a panel is required to decide an expungement request (whether made by a named associated person or on behalf of an unnamed one) made during a customer arbitration. Specifically, when the panel would be required to decide an expungement request would depend on whether or not the customer arbitration closes: (1) by award after a hearing or (2) other than by award or by award without a hearing.

i. Panel Decides the Expungement Request if the Customer's Arbitration Closes by Award After a Hearing

Currently, if a named associated person requests expungement, or a party files an on-behalf-of request, and the customer's claim closes by award after a hearing, the panel may consider and decide the expungement request during the customer arbitration and issue its decision in the award. If, however, the party requesting expungement does not pursue the issue of expungement during the hearing, the panel may not decide the request and may deem it withdrawn.[69] Under these circumstances, the associated person may request expungement again at a later date.[70]

Under the proposed rule change, if a named associated person requests expungement or a party files an on-behalf-of request during a customer arbitration and the customer's claim closes by award after a hearing, the panel in the customer arbitration would be required to consider and decide the expungement request and issue its decision in the same award, even if the requesting party withdraws or fails to pursue the request (in which case the panel would deny the expungement request with prejudice).[71]

ii. Panel Does Not Decide Expungement if the Customer's Arbitration Closes Other Than by Award or by Award Without a Hearing

Currently, if a named associated person requests expungement, or a party files an on-behalf-of request, the customer arbitration does not close by award after a hearing (*e.g.,* the case settles), and the requesting party continues to pursue the expungement request, the panel from the customer arbitration will hold a hearing regarding the appropriateness of expungement.[72] If the named associated person or party requesting expungement does not request that the panel hold a separate hearing to decide the expungement request, the panel may deem the request withdrawn, and the associated person may seek to file the request again at a later date.[73]

The proposed rule change would change this process. If the customer arbitration closes other than by award or by award without a hearing, the panel from the customer arbitration would not be permitted to decide the expungement request.[74] Instead, the associated person could only seek expungement through a straight-in-request under proposed Rule 13805 against the member firm at which the person was associated at the time the customer dispute arose, and a panel from the Special Arbitrator Roster would decide the request.[75]

2. No Intervening in Customer Arbitrations To Request Expungement

The proposed rule change would provide that if an associated person is not a party to a customer arbitration (*i.e.,* they are an unnamed person), and no party to the customer arbitration requests expungement on their behalf, the unnamed person would be prohibited from intervening in the customer arbitration to request expungement.[76] Instead, the unnamed person would be able to file the request as a new claim against the member firm at which the person was associated at the time the customer dispute arose under proposed Rule 13805 under the Industry Code, and a panel from the Special Arbitrator Roster would decide the request.[77]

3. No Straight-In Requests Against Customers

Currently, although the practice is relatively rare, associated persons sometimes file expungement requests against customers as new claims, separate from a customer arbitration.[78] FINRA stated that such requests may unduly delay the resolution of a customer's claim and require a customer to participate in the resolution of the request.[79] The proposed rule change would prevent an associated person from requiring a customer to participate once the customer's claims have been resolved, by prohibiting the associated person from filing a request for expungement of the customer dispute information as a new claim against a customer separate from the investment-related, customer-initiated arbitration.[80] Customers would have the option to attend and participate in expungement hearings in straight-in requests, and the proposed rule change would include provisions to facilitate such attendance and participation.[81]

B. Straight-In Requests Under the Industry Code and the Special Arbitrator Roster

As stated above, the Industry Code comprises the series of rules governing arbitrations for disputes between or among industry parties, such as between a member firm and an associated person. Under the proposed rule change, all requests to expunge customer dispute information that is not associated with a customer arbitration would be required to be filed as a straight-in request against the member firm with whom the associated person was associated at the time the subject of the request arose under proposed Rule 13805.[82] In addition, an associated person could request expungement of

[67] *See* proposed Rules 12805(a)(1)(C)(ii) and 12805(a)(2)(C)(i).

[68] *See* proposed Rule 12805(a)(2)(C)(ii).

[69] *See* Notice at 50177; *see also* FINRA Rules 12702 and 13702.

[70] *See* Notice at 50177.

[71] *See* proposed Rules 12805(a)(1)(D)(i) and 12805(a)(2)(E)(i). FINRA stated that requiring a panel to deny with prejudice such requests ''would prevent associated persons from withdrawing expungement requests to avoid having their requests decided by the panel that heard the evidence on the customer's arbitration claim, then seeking to re-file the request and receiving a potentially more favorable decision from a different set of arbitrators.'' Notice at 50177.

[72] *See* FINRA Rule 12805; *see also* Notice at 50177.

[73] *See* Notice at 50177.

[74] *See* proposed Rules 12805(a)(1)(D)(ii)a. and 12805(a)(2)(E)(ii)a.

[75] *See* proposed Rules 12805(a)(1)(D)(ii)b. and 12805(a)(2)(E)(ii)b. *See also* Section II.B., ''Straight-in Requests under the Industry Code and the Special Arbitrator Roster.''

[76] *See* proposed Rules 12805(a)(2)(E)(iii) and 12800(d)(2)(D).

[77] *See* proposed Rule 12805(a)(2)(E)(iii)b.

[78] *See* Notice at 50178. From January 2016 through December 2021, FINRA identified 6,476 straight-in requests to expunge customer dispute information, 116 of which were requests filed against a customer. *See id.* at 50178 n.89.

[79] *See id.* at 50178.

[80] *See* proposed Rule 12805(a)(3). FINRA stated that customers should not be compelled to attend or participate in a separate proceeding to decide an expungement request after the customer has resolved their arbitration claim or civil litigation. *See* Notice at 50178.

[81] *See* Notice at 50178.

[82] *See* proposed Rules 12805(a)(1)(A) and 13805(a)(1). As discussed above, under proposed Rule 12805, an associated person may request expungement in a customer arbitration of a customer complaint or civil litigation associated with a customer's statement of claim. *See supra* note 43 and accompanying text.

customer dispute information that was associated with a customer arbitration under proposed Rule 13805 if: (1) the associated person is named in the arbitration or is the subject of an on-behalf-of request and the customer arbitration closes other than by award or by award without a hearing; [83] or (2) the associated person is the subject of a customer arbitration, but is neither named in the arbitration nor is the subject of an on-behalf-of request, and the customer arbitration closes for any reason.[84] If an associated person requests expungement under proposed Rule 13805, a three-person panel randomly selected from the Special Arbitrator Roster in accordance with proposed Rule 13806 would decide the expungement request.[85]

1. Filing a Straight-In Request Under the Industry Code

a. Applicability

The process for initiating a straight-in-request for expungement of customer dispute information under the Industry Code would be governed, in part, by FINRA Rule 13302. This rule provides, in relevant part, that to initiate an arbitration, a claimant must file with the Director a signed and dated Submission Agreement, and a statement of claim specifying the relevant facts and remedies requested through the DR Party Portal (''Portal'').[86] Under proposed Rule 13805, an associated person requesting expungement of customer dispute information as a straight-in request under the Industry Code would be required to file a statement of claim, in accordance with the procedures contained in FINRA Rule 13302, against the member firm at which the person was associated at the time the customer dispute arose.[87] Under the proposed rule change, the Director would be authorized to deny the use of the DRS arbitration forum for the request if this connection is not present.[88]

b. Required Content of Straight-In Requests

The required content of a straight-in request under the Industry Code would be the same as that required for expungement requests filed under the Customer Code.[89] Thus, the associated person's straight-in request would be required to contain the applicable filing fee; [90] the CRD number of the party requesting expungement; each CRD occurrence number that is the subject of the request; the case name and docket number associated with the customer dispute information, if applicable; and an explanation of whether expungement of the same customer dispute information was previously requested and, if so, how it was decided.[91] In addition, as discussed below, the proposed rule change would impose limitations on when such requests may be made.[92]

2. Panel From the Special Arbitrator Roster Decides Requests Filed Under the Industry Code

If an associated person files a straight-in request in accordance with proposed Rule 13805, a three-person panel randomly selected from the Special Arbitrator Roster pursuant to proposed Rule 13806 would be required to hold an expungement hearing, decide the expungement request, and issue an award.[93] The proposed rule change would provide that if the associated person withdraws or does not pursue the request, the panel would be required to deny the expungement request with prejudice.[94]

a. Eligibility Requirements for the Special Arbitrator Roster

The proposed rule change would include several requirements to help ensure that arbitrators on the Special Arbitrator Roster have the qualifications and training to decide straight-in requests.

First, the proposed rule change would require arbitrators on the Special Arbitrator Roster to be public arbitrators who are eligible for the chairperson roster (''public chairperson'').[95] In general, public arbitrators are persons who are not employed in the securities industry and do not devote 20 percent or more of their professional work to the securities industry or to parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry.[96] Arbitrators are eligible for the chairperson roster if they have completed chairperson training provided by FINRA and: (1) have a law degree and are either a member of a bar of at least one jurisdiction and have served as an arbitrator through award on at least one arbitration administered by a self-regulatory organization (''SRO'') in which hearings were held; or (2) have served as an arbitrator through award on at least three arbitrations administered by an SRO in which hearings were held.[97] FINRA stated that these requirements would help ensure that the persons conducting the expungement hearing are impartial and experienced in managing and

[83] *See* proposed Rules 12805(a)(2)(D)(ii) and 12805(a)(2)(E)(ii).

[84] *See* proposed Rule 13805(a)(1).

[85] *See* Notice at 50178.

[86] FINRA's DR Portal, among other things, permits arbitration case participants to file an arbitration claim, view case documents, submit documents to FINRA and send documents to other Portal case participants, and schedule hearing dates. *See* FINRA Dispute Resolution Services, DR Portal, available at *www.finra.org/arbitration-mediation/dr-portal.*

[87] *See* proposed Rule 13805(a)(1).

[88] *See* proposed Rule 13203(b).

[89] *See* proposed Rule 13805(a)(3); *see also* Section II.A.1.a.ii, ''Required Contents of an Expungement Request in Customer Arbitration.''

[90] FINRA stated that it ''would not assess a second filing fee when an associated person files a straight-in request if the associated person, or the requesting party in the case of an on-behalf-of request, had previously paid the filing fee to request expungement of the same customer dispute information during a customer arbitration.'' Notice at 50179 n.95.

[91] *See* proposed Rule 13805(a)(3). If an expungement request under the Industry Code fails to include any of the proposed requirements for requesting expungement, the request would be considered deficient and would not be served unless the deficiency is corrected. *See* proposed Rule 13307(a).

[92] *See* Section II.C., ''Limitations on Expungement Requests.'' As discussed in more detail below, the straight-in request would be ineligible for arbitration under the Industry Code if: (1) a panel held a hearing to consider the merits of the associated person's request for expungement of the same customer dispute information; (2) a court of competent jurisdiction previously denied the associated person's request to expunge the same customer dispute information; (3) the customer arbitration or civil litigation or customer complaint associated with the customer dispute information is not closed; (4)(a) a panel or court of competent jurisdiction previously found the associated person liable in a customer arbitration or civil litigation associated with the same customer dispute information, or (b) the customer dispute information involves the same conduct that is the basis of a final regulatory action taken by a securities regulator or SRO; (5) more than two years have elapsed since the customer arbitration or civil litigation associated with the customer dispute information has closed; (6) there was no customer arbitration or civil litigation associated with the customer dispute information and more than three years have elapsed since the date that the customer complaint was initially reported to the CRD system; or (7) a named associated person is seeking expungement even though they did not request expungement in the associated customer arbitration under proposed Rule 12805(a)(1)(A). *See* proposed Rule 13805(a)(2).

[93] *See* proposed Rule 13805(a)(4).

[94] *See id.* According to FINRA, ''[t]his requirement would foreclose the ability of associated persons to withdraw expungement requests to avoid having their requests decided by a panel that they believe does not favor their request, and then seek to re-file the request with the hope of obtaining a potentially more favorable decision from a different panel.'' Notice at 50179.

[95] *See* proposed Rule 13806(b).

[96] *See* Notice at 50170 n.3; *see also* FINRA Rules 12100(aa) and 13100(x).

[97] *See* FINRA Rules 12400(c) and 13400(c). FINRA stated that for purposes of this proposed rule change, ''public arbitrators who are eligible for the chairperson roster would include those arbitrators who have met the chairperson eligibility requirements of FINRA Rules 12400(c) or 13400(c), regardless of whether they have already served as a chair on an arbitration case.'' Notice at 50179 n.102.

conducting arbitration hearings in the DRS arbitration forum.[98]

Second, the proposed rule change would require arbitrators on the Special Arbitrator Roster to have evidenced successful completion of, and agreement with, enhanced expungement training provided by FINRA.[99] FINRA currently provides an Expungement Training module for arbitrators.[100] This training, however, would be expanded for arbitrators seeking to qualify for the Special Arbitrator Roster.[101]

Third, the proposed rule change would require arbitrators on the Special Arbitrator Roster to have served as an arbitrator through award on at least four customer arbitrations administered by FINRA or by another SRO in which a hearing was held.[102] FINRA stated that ''if an arbitrator has served on four arbitrations through to award, it would indicate that the arbitrator has gained the knowledge and experience in the DRS arbitration forum to conduct hearings.'' [103]

b. Composition of the Panel

The proposed rule change would require the Neutral List Selection System (''NLSS'') [104] to select randomly the three public chairpersons from the Special Arbitrator Roster to decide a straight-in request filed by an associated person.[105] The parties would not be permitted to agree to fewer than three arbitrators.[106] The parties requesting expungement also would not be permitted to strike any arbitrators selected by NLSS nor stipulate to their removal,[107] but would be permitted to challenge an arbitrator selected for cause.[108] If an arbitrator is removed, NLSS would randomly select a replacement.[109] FINRA stated that the proposed rule change would ''prevent the associated person and member firm from collaboratively seeking to influence the outcome of the expungement request through arbitrator selection.'' [110]

C. Limitations on Expungement Requests

Currently, the Codes provide minimal constraints on making expungement requests. FINRA Rules 12805 and 13805 do not address when a party would not be permitted to file an expungement request in the DRS arbitration forum.[111] The Guidance, however, describes circumstances in which an expungement request should be ineligible for arbitration. The proposed rule change would incorporate the limitations contained in the Guidance and add time limits to when an associated person may file a straight-in request.

1. Limitations Applicable to Both Straight-In Requests and Expungement Requests During a Customer Arbitration

The Guidance provides that if a panel or a court has issued an award or decision denying an associated person's expungement request, the associated person may not request expungement of the same customer dispute information in another arbitration proceeding. In particular, the Guidance states that arbitrators should ask a party requesting expungement whether an arbitration panel or a court previously denied expungement of the customer dispute information at issue and, if there has been a prior denial, the arbitration panel should deny the expungement request.[112]

The proposed rule change would codify the Guidance by providing that an associated person may not file a request for expungement of customer dispute information if: (1) a panel held a hearing to consider the merits of the associated person's expungement request for the same customer dispute information; or (2) a court of competent jurisdiction previously denied the associated person's request to expunge the same customer dispute information.[113] According to FINRA, these proposed amendments would prevent an associated person from forum shopping, or seeking to return to the DRS arbitration forum to garner a favorable outcome on his or her expungement request.[114]

2. Limitations Applicable to Straight-In Requests Only

As discussed below, under the proposed amendments, four additional limitations would apply to straight-in requests.

a. No Straight-In Request if the Customer Arbitration, Civil Litigation or Customer Complaint Has Not Closed

The Guidance provides that an associated person may not file a separate request for expungement of customer dispute information arising from a customer arbitration until the customer arbitration has concluded.[115] The proposed rule change would codify and expand upon this limitation by providing that an associated person may not file a straight-in request under proposed Rule 13805 if the customer arbitration, civil litigation or customer complaint associated with the customer dispute information has not closed.[116] According to FINRA, the proposed rule change would, among other things, prevent an associated person from filing a straight-in request while a customer arbitration or civil litigation associated with the customer dispute information that is the subject of the straight-in request is pending.[117]

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[98] *See* Notice at 50179.

[99] *See* proposed Rule 13806(b)(2)(A).

[100] *See* Notice at 50179.

[101] *See id.*

[102] *See* proposed Rule 13806(b)(2)(B). This requirement would not be satisfied by serving on arbitrations administered under the special proceeding option of the simplified arbitration rules. *Id.; see also* FINRA Rule 12800(c)(3)(B).

[103] Notice at 50179–80.

[104] NLSS is a computer algorithm used to generate lists of arbitrators on a random basis from DRS's rosters of arbitrators for the selected hearing location.

[105] *See* proposed Rule 13806(b)(1). The first arbitrator selected would be the chair of the panel. *See* proposed Rule 13806(b)(3).

[106] *See* proposed Rule 13806(b)(5).

[107] *See* proposed Rule 13806(b)(4), as modified by Amendment No. 2. The parties also would not be permitted to stipulate to the use of pre-selected arbitrators (*i.e.,* arbitrators that the parties find on their own to use in their cases). *See* proposed Rule 13806(b)(1).

[108] *See* proposed Rule 13806(b)(4). The Director may remove an arbitrator for conflict of interest or bias (*i.e.,* ''cause'') upon request of a party. The Director will grant a party's request to remove an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration. The interest or bias must be definite and capable of reasonable demonstration, rather than remote or speculative. *See* FINRA Rule 13410.

[109] *See* proposed Rule 13806(b)(4).

[110] Notice at 50180. FINRA stated that ''outside of the expungement context, the parties to an arbitration are typically adverse, which means that during arbitrator selection, each side may rank arbitrators on the lists whom they believe may be favorable to their case. The adversarial nature of the proceedings serves to minimize the impact of each party's influence in arbitrator selection. In contrast, a straight-in request filed by an associated person against a firm is less likely to be adversarial in nature.'' *Id.*

[111] *But see infra* note 127 (describing time limits that apply to all arbitration claims, including expungement requests).

[112] *See supra* note 6; *see also* Notice at 50180.

[113] *See* proposed Rules 12805(a)(1)(B)(i) and (ii) and 13805(a)(2)(A)(i) and (ii). The proposed rule change would require that the requesting party provide information about previous expungement requests and how such requests were decided. *See* proposed Rules 12805(a)(1)(C)(ii)e. and 13805(a)(3)(E).

[114] FINRA stated that if a panel holds a hearing that addresses the merits of an associated person's request for expungement, the Director would be authorized to deny the DRS arbitration forum to any subsequent request by the associated person or another party on behalf of the associated person to expunge the same customer dispute information. *See* proposed Rules 12203(b) and 13203(b). *See* Notice at 50180 n.117.

[115] *See* Notice at 50180; *see also supra* note 6.

[116] *See* proposed Rule 13805(a)(2)(A)(iii).

[117] *See* Notice at 50180.

b. Straight-In Request Prohibited if a Panel or Court of Competent Jurisdiction Previously Found the Associated Person Liable

Under the Codes, arbitration awards are final and binding unless vacated based on the limited grounds set forth in applicable state or federal statutes.[118] The only avenue for challenging a prior adverse arbitration award is to file a timely motion with an appropriate court to vacate, modify, or correct the award.[119] Thus, if an associated person is found liable in a customer arbitration, FINRA considers the associated person legally bound by the award and the Director will decline the use of the DRS arbitration forum if the associated person then requests expungement of customer dispute information that is associated with the customer arbitration in which the associated person was found liable. FINRA stated that it considers such expungement requests a collateral attack on the binding arbitration award, which is contrary to the Codes.[120] Accordingly, the proposed rule change would provide that an associated person shall not file a claim requesting expungement of customer dispute information from the CRD system if the customer dispute information is associated with a customer arbitration or civil litigation in which a panel or court of competent jurisdiction previously found the associated person liable.[121]

c. Straight-In Request Prohibited if Named Associated Person Did Not Request Expungement in Customer Arbitration

As discussed above, under proposed Rule 12805(a)(1)(A) an associated person who is named in a customer arbitration would be required to request expungement of associated customer dispute information during the arbitration or forfeit the ability to seek to expunge the customer dispute information associated with the customer's statement of claim in any subsequent proceeding.[122] Proposed Rule 13805(a)(2)(A)(vii) would provide a mechanism to enforce the forfeiture established in proposed Rule 12805(a)(1)(A).[123] Specifically, proposed Rule 13805(a)(2)(A)(viii) would prohibit an associated person who is named, but failed to request expungement of the customer dispute information associated with the customer's statement of claim in a customer arbitration, from subsequently filing a straight-in request seeking to expunge this customer dispute information.[124]

d. Time Limits Applicable to Disclosures Arising After the Effective Date of the Proposed Rule Change

FINRA Rules 12206(a) and 13206(a) require an associated person to submit a claim within six years from the occurrence or event giving rise to the claim. This six-year eligibility rule applies to all arbitration claims, including those requesting expungement of customer dispute information.[125] As a result, FINRA stated that many straight-in requests are filed many years after the customer arbitration closes or the customer complaint is reported in the CRD system.[126] To encourage prompt filing of expungement requests, the proposed amendments would establish time limits for expungement requests that are specifically tied to the closure of customer arbitrations and civil litigations, or the reporting of customer complaints in the CRD system, as applicable.[127] The proposed rule change would allow an associated person to request expungement of customer dispute information associated with a customer arbitration or civil litigation—including any associated customer complaint disclosures—within two years after the customer arbitration or civil litigation closes.[128] If no customer arbitration or civil litigation associated with the customer complaint is filed, the associated person would have three years from the date the customer complaint was initially reported in the CRD system to file the expungement request.[129] If a customer arbitration is filed after a panel has issued an award on a request to expunge a customer complaint associated with the newly filed customer arbitration, the proposed rule would provide that the prior expungement award shall not be admissible in the customer arbitration.[130]

The proposed rule change would also establish time limits for requests to expunge customer dispute information arising from customer arbitrations and civil litigations that close, and for customer complaints that were initially reported to the CRD system, on or prior to the effective date of the proposed rule change.[131] Specifically, the proposed rule change would provide that if an expungement request is otherwise eligible under the six-year limitation

[118] *See id.* at 50173.

[119] *See id.* at 50173 n.33.

[120] *See* FINRA November 10 Letter at 28; FINRA Rules 12904(b) and 13904(b).

[121] *See* proposed Rule 13805(a)(2)(A)(iv). Amendment No. 2 would modify the proposed rule change to provide that an associated person shall not file a claim requesting expungement of customer dispute information from the CRD system against a member firm at which the person was associated at the time the customer dispute arose if the customer dispute information involves the same conduct that is the basis of a final regulatory action taken by a securities regulator or SRO. If an associated person requests expungement of such customer dispute information, the Director will deny the DRS arbitration forum to the expungement request. *See* FINRA April 3 Letter at 14; *see also infra* note 430 and accompanying text. However, if an associated person is successful at appealing a final regulatory action, the associated person may file a claim requesting expungement of the customer dispute information involving the same conduct that is the basis of the final regulatory action, provided that the request is not otherwise ineligible for arbitration (*e.g.,* that the request is time barred). *See* FINRA April 3 Letter at 14.

[122] *See* proposed Rule 12805(a)(1)(A); *see also* Section II.A.1.a., ''Expungement Requests by a Respondent Named in a Customer Arbitration.''

[123] *See* Notice at 50175.

[124] *See* proposed Rule 13805(a)(2)(A)(viii).

[125] *See* Notice at 50174 n.38.

[126] *See id.* at 50181.

[127] *See* proposed Rules 13805(a)(2)(A)(vi) and (vii). FINRA Rules 12206 and 13206 provide that no claim shall be eligible for submission to arbitration where six years have elapsed from the occurrence or event giving rise to the claim. Under these Rules, the panel has discretion to determine if the claim, including an expungement request, is eligible for arbitration. *See supra* note 125. As discussed below, under the proposed rule change, requests to expunge customer dispute information that arose up to six years prior to the effective date of the proposed rule change would continue to be eligible for expungement but would need to be filed within two or three years, as applicable. *See* proposed Rule 13805(a)(2)(B).

[128] *See* proposed Rule 13805(a)(2)(A)(vi). FINRA stated that with respect to requests to expunge customer dispute information associated with a customer arbitration, an associated person would be permitted to file a straight-in request under this two-year time limitation only if expungement of the customer dispute information was not required to be decided during the customer arbitration. *See* Notice at 50181 n.126. FINRA stated that a two-year limitation period would allow the associated person sufficient time to determine whether to seek expungement by filing a straight-in request and provide a sufficient amount of time for the associated person to gather the documents, information and other resources required to file the expungement request. In addition, a two-year period would help ensure that the expungement hearing is held close enough in time to the customer arbitration or civil litigation, when information regarding the customer arbitration or civil litigation is available and in a timeframe that could increase the likelihood for the customer to attend and participate if the customer chooses to do so. *See* Notice at 50181.

[129] *See* Notice at 50181. FINRA stated that the three-year time limitation would help ensure that the expungement hearing is held close in time to the events that gave rise to the customer dispute and increase the likelihood of customer attendance and participation. Three years should also provide sufficient time for firms to complete their investigation of the complaint, for associated persons to develop a sense of whether the complaint may evolve into an arbitration or civil litigation, and for the associated person to gather the necessary resources and determine whether to seek expungement. *See id.*

[130] *See* proposed Rules 12604(c) and 13604(c). FINRA stated that the proposed rule change would avoid unfairly impacting the customer arbitration. *See also* Notice at 50181.

[131] *See* Notice at 50182.

period of FINRA Rule 13206(a),[132] an associated person would be permitted to file a straight-in request under the Industry Code if: (1) the request for expungement is made within two years of the effective date of proposed rule change, and the disclosure to be expunged is associated with a customer arbitration or civil litigation that closed on or prior to the effective date; [133] or (2) the request for expungement is made within three years of the effective date of the proposed rule change, and the disclosure to be expunged is associated with a customer complaint initially reported to the CRD system on, or prior to, the effective date.[134]

3. Director's Authority To Deny the Forum

The proposed rule change would require the Director to decline the use of the DRS arbitration forum if an associated person files an expungement request that the Director determines is ineligible for arbitration under proposed Rules 12805 and 13805.[135] The proposed rule change would also provide the Director with authority to decline the use of the DRS arbitration forum if the Director determines that the expungement request was not filed under, or considered in the DRS arbitration forum in accordance with, proposed Rules 12805 or 13805.[136] FINRA stated that the proposed rule change would help ensure additional safeguards around the expungement process by expanding the circumstances in which the Director is authorized to deny the DRS arbitration forum.[137]

D. Procedural Requirements Relating to All Expungement Hearings

FINRA Rules 12805 and 13805 currently provide a list of requirements panels must follow in order to issue an award containing expungement relief.[138] In addition, the Guidance recommends that arbitrators follow certain practices when deciding expungement requests. The proposed rule change would amend the current expungement hearing requirements by incorporating relevant provisions from the Guidance. The proposed amended requirements would apply to all expungement hearings.[139]

1. Recorded Hearing Sessions

The Codes currently require a panel deciding an expungement request to hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement.[140] The proposed rule change would provide that the panel would be required to hold one or more separate recorded hearing sessions regarding the expungement request, clarifying that the panel would not be limited in the number of hearing sessions it should hold to decide the expungement request. The proposed rule change would also eliminate the reference to the hearing being held by telephone or in person since the participants in the hearing may, under the proposed rule change, also appear by video conference; the proposed rule change would also allow different participants to attend using different methods (*e.g.,* one by phone, one by video conference).[141]

2. Requesting Party's Appearance

The proposed rule change would require the associated person whose information in the CRD system is the subject of the expungement request to appear in person or by video conference at the expungement hearing and eliminate the ability to appear via telephone.[142] The proposed rule change would also require a party requesting expungement on behalf of an unnamed person or the party's representative to appear in person or by video conference at the hearing.[143] The panel would determine the method of appearance.[144] FINRA stated that requiring that attendance be in person or by video conference would help the panel assess the associated person's credibility.[145]

3. Customer's Attendance and Participation During the Expungement Hearing

The Guidance states that it is important to allow customers and their representatives to participate in the expungement hearing if they wish to do so.[146] Specifically, the Guidance provides that arbitrators should:

- Allow the customer and their representative to appear at the expungement hearing;
- Allow the customer to testify (telephonically, in person, or by other method) at the expungement hearing;
- Allow the representative for the customer or a pro se customer to introduce documents and evidence at the expungement hearing;
- Allow the representative for the customer or a pro se customer to cross-examine the associated person or other witnesses called by the party seeking expungement; and
- Allow the representative for the customer or a pro se customer to present opening and closing arguments if the panel allows any party to present such arguments.

The proposed rule change would codify these provisions of the Guidance.[147]

Specifically, the proposed rule change would state that all customers whose customer dispute information is associated with the expungement request are entitled to attend and participate in all aspects of the prehearing conferences and the expungement hearing.[148] And the

[132] The Codes provide that no claim shall be eligible for submission to arbitration where six years have elapsed from the occurrence or event giving rise to the claim. *See* FINRA Rules 12206(a) and 13206(a).

[133] *See* proposed Rule 13805(a)(2)(B)(i).

[134] *See* proposed Rule 13805(a)(2)(B)(ii).

[135] *See* proposed Rules 12203(b) and 13203(b). For example, FINRA stated that under the proposed rule change the Director would decline the use of the DRS arbitration forum if: (1) an expungement request is ineligible under the proposed time limitations; (2) a panel has previously considered the merits of, or a court has previously decided, an expungement request associated with the same customer dispute information; (3) an associated person was named as a respondent in a customer arbitration but did not request expungement; (4) an associated person requested expungement but withdrew or did not pursue the expungement request; or (5) a party to a customer arbitration requested expungement on behalf of an unnamed person but the party withdrew or did not pursue an expungement request on behalf of the unnamed person. *See* Notice at 50182.

[136] *See* proposed Rules 12203(c) and 13203(c). For example, FINRA stated that the Director may decline the use of the DRS arbitration forum if the Director determines that: (1) a panel is proposing to issue an award containing expungement of customer dispute information other than pursuant to proposed Rules 12805, 12800(d) and (e) or 13805, as applicable; or (2) an associated person seeks expungement of customer dispute information other than pursuant to proposed Rules 12805, 12800(d) and (e) or 13805, as applicable. *See* Notice at 50182.

[137] *See* Notice at 50182.

[138] *See supra note* 31.

[139] *See* proposed Rules 12805(c) and 13805(c). The proposed requirements for expungement hearings would apply to expungement hearings held during a customer arbitration under proposed Rule 12805, a simplified customer arbitration under proposed Rule 12800 (*see* Section II.G., ''Expungement Requests During Simplified Customer Arbitrations'') and a straight-in request under proposed Rule 13805, unless otherwise specified. *See* Notice at 50182 n.137.

[140] *See* FINRA Rules 12805(a) and 13805(a).

[141] *See* proposed Rules 12805(c)(1) and 13805(c)(1).

[142] *See* proposed Rules 12805(c)(2) and 13805(c)(2).

[143] *See id.*

[144] *See id.*

[145] *See* Notice at 50182.

[146] The Guidance states that arbitrators should permit customers and their counsel to participate in the expungement hearing. *See supra* note 6.

[147] *See* Notice at 50182–83.

[148] *See* proposed Rules 12805(c)(3)(A) and 13805(c)(3)(A). A prehearing conference is any hearing session, including an Initial Prehearing Conference, that takes place before the hearing on the merits begins. *See* FINRA Rules 12100(y) and 13100(w); *see also* FINRA Rules 12500 and 13500. Under the proposed rule change, all customers whose customer dispute information is associated with the straight-in request would be entitled to representation at prehearing conferences. *See* proposed Rule 13805(c)(4).

proposed rule change would provide that the customer could choose to attend and participate by telephone, in person or by video conference.[149]

The proposed rule change would also specify certain parameters of the customer's participation.[150] First, the proposed rule change would provide that a customer or a customer's representative could introduce evidence during the expungement hearing.[151] If the customer or customer's representative introduces any evidence at the expungement hearing, a party could state objections to the introduction of the evidence during the expungement hearing.[152]

Second, the customer and the customer's witnesses would be allowed to testify at the expungement hearing and be questioned by the customer or customer's representative.[153] If a customer or their witnesses testify, the associated person or a party requesting expungement on behalf of an unnamed person would be allowed to conduct cross-examination.[154]

Third, the customer or customer's representative would be permitted to state objections to evidence and cross-examine the associated person or party requesting expungement on behalf of an unnamed person and any other witnesses called during the expungement hearing.[155]

Fourth, the customer or customer's representative would be permitted to present opening and closing arguments if the panel permits any party to present such arguments.[156]

FINRA stated that customer attendance and participation during an expungement hearing would provide the panel with important information and perspective that it might not otherwise receive. In addition, by providing customers with options for how to attend and participate in hearings FINRA seeks to encourage customer attendance and participation.[157] However, FINRA also stated that the proposed rule should give the associated person or party requesting expungement on behalf of an unnamed person the opportunity to substantiate arguments in support of the expungement request.[158]

4. Panel Requests for Additional Documents or Evidence

The proposed rule change would explicitly authorize a panel to request from the associated person, the party requesting expungement on behalf of an unnamed person, and the member firm at which the person was associated at the time the customer dispute arose, as applicable, any documentary, testimonial or other evidence that the panel deems relevant to the expungement request.[159] FINRA stated that this proposed rule change would help ensure that arbitrators have the information necessary to make an informed decision on an expungement request, particularly in cases that settle before an evidentiary hearing or in cases where the customer does not attend or participate in the expungement hearing.[160]

5. Review of Settlement Documents

Current FINRA Rules 12805(b) and 13805(b) provide that, in the event a customer dispute is resolved by settlement, the panel considering the expungement request must review the settlement documents and consider the amount of payments made to any party and any other terms and conditions of the settlement.[161] The proposed rule change would retain this requirement.[162]

In addition, the Guidance currently recommends that arbitrators inquire and fully consider whether a party conditioned a settlement of a customer dispute upon an agreement not to oppose the request for expungement in cases in which the customer does not attend or participate in the expungement hearing or the requesting party states that a customer has indicated that the customer will not oppose the expungement request.[163] The proposed rule change would codify the language in the Guidance,[164] in part, because conditioned settlements violate FINRA Rule 2081 and may be grounds to deny an expungement request.[165]

6. Unanimous Decision To Issue an Award Containing Expungement Relief

Unlike arbitration cases generally, which may be decided based on a majority decision of the panel, the proposed rule change would require that the arbitrators agree unanimously to issue an award containing expungement relief.[166] The proposed amendments would also provide that in order to issue an award containing expungement relief, the panel must unanimously find that one or more of the grounds for expungement enumerated in the proposed rule has been established: (1) the claim, allegation or information is factually impossible or clearly erroneous; (2) the associated person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or (3) the claim, allegation or information is false.[167] The proposed rule change would also state that the panel shall not issue, and the Director shall not serve, an award containing expungement relief based on any other grounds.[168] FINRA stated that these proposed rule changes would help ensure that expungement is awarded only in limited circumstances in

[149] *See* proposed Rules 12805(c)(3)(B) and 13805(c)(3)(B).

[150] *See* Notice at 50183.

[151] *See* proposed Rules 12805(c)(5)(A) and 13805(c)(5)(A).

[152] *See id.*

[153] *See* proposed Rules 12805(c)(5)(B) and 13805(c)(5)(B).

[154] *See id.*

[155] *See* proposed Rules 12805(c)(5)(C) and 13805(c)(5)(C).

[156] *See* proposed Rules 12805(c)(5)(D) and 13805(c)(5)(D).

[157] *See* Notice at 50183.

[158] *Id.*

[159] *See* proposed Rules 12805(c)(6) and 13805(c)(7).

[160] *See* Notice at 50183.

[161] FINRA stated that the panel must review settlement documents that are related to the customer dispute information associated with the expungement request, regardless of whether the associated person was a party to the settlement. *Id.* at 50183 n.152.

[162] *See* proposed Rules 12805(c)(7) and 13805(c)(8). FINRA Rule 2081 provides that no member firm or associated person shall condition or seek to condition settlement of a dispute with a customer on, or to otherwise compensate the customer for, the customer's agreement to consent to, or not to oppose, the member's or associated person's request to expunge such customer dispute information from the CRD system. *See also* Prohibited Conditions Relating to Expungement of Customer Dispute Information FAQ, *https://www.finra.org/arbitration-mediation/faq/prohibited-conditions-relating-expungement-customer-dispute-information.*

[163] *See* Notice at 50184.

[164] *See* proposed Rules 12805(c)(7) and 13805(c)(8).

[165] *See* Notice at 50184.

[166] *See* proposed Rules 12805(c)(8)(A) and 13805(c)(9)(A). FINRA stated that when deciding a customer's claims, a majority decision of the arbitrators would continue to be sufficient. Notice at 50184 n.156.

[167] *See* proposed Rules 12805(c)(8)(A)(i) and 13805(c)(9)(A)(i). FINRA stated that current FINRA Rules 12805 and 13805 require that, in order to issue an award containing expungement of customer dispute information, the panel must indicate in the arbitration award which of the FINRA Rule 2080 grounds for expungement serves as the basis for its expungement order. *See* Notice at 50184; *see also* FINRA Rule 2080 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System). FINRA Rule 2080 is not part of the Codes, and the proposed rule change would not amend FINRA Rule 2080. FINRA explained that the proposed rule change would codify the grounds identified in FINRA Rule 2080(b)(1) as the exclusive grounds upon which an arbitration panel may issue an award containing expungement of customer dispute information from the CRD system. *See* Notice at 50184 at n.162.

[168] *See* proposed Rules 12805(c)(8)(A)(ii) and 13805(c)(9)(A)(ii).

accordance with the narrow standards in its rules.[169]

7. Contents of the Expungement Award

The panel is currently required ''to provide a 'brief' written explanation of the reasons for its finding that one or more of the [FINRA Rule 2080] grounds for expungement applies to the facts of the case.'' [170] According to FINRA, the Guidance suggests that the panel's explanation should be complete and not solely a recitation of one of the FINRA Rule 2080(b)(1) grounds or language provided in the expungement request.[171] The proposed rule change would retain the requirement to provide the written explanation, but would remove the word ''brief,'' and would incorporate language from the Guidance that the panel's explanation should identify any specific documentary, testimonial or other evidence on which the panel relied in awarding expungement relief.[172] Thus, FINRA stated that under the proposed rule change, the panel would be required to provide enough detail in the award to explain its rationale for awarding expungement relief.[173]

8. Evidentiary Weight of Decision Not To Attend or Participate

The proposed rule change would state that a panel shall not give any evidentiary weight to a decision by a customer or an authorized representative of state securities regulators (''authorized representative'') not to attend or participate in an expungement hearing when making a determination of whether expungement is appropriate.[174] FINRA stated that a customer or an authorized representative may not attend, participate in or appear at an expungement hearing for a variety of reasons that may be unrelated to the merits of the expungement request. Accordingly, a customer's or an authorized representative's decision not to attend or participate should not be given any evidentiary weight by the panel when making the expungement determination.[175]

9. Forum Fees

The proposed rule change would retain the current requirements in FINRA Rules 12805(d) and 13805(d) that address how DRS arbitration forum fees are assessed in expungement hearings. Specifically, the proposed rule change would state that the panel must assess against the parties requesting expungement all DRS arbitration forum fees for each hearing session in which the sole topic is the determination of the appropriateness of expungement.[176]

E. Notifications to Customers and to State Securities Regulators Regarding Expungement Requests

1. Notification to Customers by the Associated Person

According to FINRA, the Guidance suggests that when a straight-in request is filed against a firm, arbitrators order the associated person to provide a copy of the statement of claim to the customers involved in the customer dispute that gave rise to the customer dispute information maintained in the CRD system.[177] The proposed rule change would codify this practice in the Industry Code by requiring the associated person to serve all customers whose customer arbitrations, civil litigations or customer complaints are a subject of the expungement request with a copy of the statement of claim requesting expungement and any answer.[178] The associated person would be required to serve a copy of the statement of claim and a copy of any answer within 10 days of filing.[179] The panel would be authorized to decide whether extraordinary circumstances exist that make service on the customers impracticable.[180]

The proposed rule change also would require the associated person to file with the panel proof of service for the statement of claim and any answers, copies of all documents provided by the associated person to the customers, and copies of all communications sent by the associated person to the customers and any responses received from the customers.[181]

FINRA stated that providing notification to customers would help ensure that the customers know about the expungement request and have an opportunity to attend and participate in the expungement hearing or provide a position in writing regarding the associated person's request. FINRA also stated that requiring the panel to review all documents that the associated person used to inform the customers about the expungement request as well as any customer responses received would help ensure that the associated person does not attempt to dissuade a customer from attending or participating in the expungement hearing.[182]

2. Notifications to the Customer by the Director

The proposed rule change would require the Director to notify all customers whose customer arbitrations, civil litigations or customer complaints are a subject of the expungement request, of the time, date and place of any prehearing conferences and the expungement hearing.[183] The Director would also provide the notified customers with access to all documents on the Portal related to the request for expungement prior to their attendance and participation in the expungement hearing.[184]

3. Notifications to State Securities Regulators

The proposed rule change would require FINRA to notify state securities

[169] *See* Notice at 50184; *see also supra* note 25 and accompanying text.

[170] *See* Notice at 50184; *see also* FINRA Rules 12805(c) and 13805(c).

[171] *See* Notice at 50184.

[172] *See* proposed Rules 12805(c)(8)(B) and 13805(c)(9)(B).

[173] *See* Notice at 50184.

[174] *See* proposed Rules 12805(c)(8)(C) and 13805(c)(9)(C); *see also* Amendment No. 1; *see also* Section II.F., ''Attendance and Participation of an Authorized Representative of State Securities Regulators in Straight-in Requests'' (discussing the attendance and participation in straight-in requests of an authorized representative of state securities regulators).

[175] *See* Notice at 50185; *see also* FINRA November 10 Letter at 10–11.

[176] *See* proposed Rules 12805(c)(9) and 13805(c)(10).

[177] *See* Notice at 50185; *see also supra* note 6.

[178] *See* proposed Rule 13805(b)(1)(A)(i) and (ii). This proposed requirement would apply to straight-in requests filed under the Industry Code; notice to customers would not be necessary for requests filed under proposed Rule 12805 of the Customer Code as the customer would be a named party. *See* Notice at 50185 n.168.

[179] *See* proposed Rules 13805(b)(1)(A)(i) and (ii).

[180] *See id.*

[181] *See* proposed Rule 13805(b)(1)(A)(iv).

[182] *See* Notice at 50185.

[183] *See* proposed Rule 13805(b)(1)(B)(i). This requirement would apply to straight-in requests filed under the Industry Code; notice to customers would not be necessary for requests filed under proposed Rule 12805 of the Customer Code as the customer would be a named party. *See also* Section II.G.3., ''Customer Notification of Expungement Hearings during Simplified Arbitrations'' (discussing customer notification of expungement hearings in connection with simplified arbitrations). FINRA stated that the Director would be required to include language in the notice encouraging the customer to attend and participate in the expungement hearing. *See* Notice at 50185.

[184] *See* proposed Rule 13805(b)(1)(B)(ii); *see also* Notice at 50185. FINRA would provide customers with access to the documents through the Portal. The Portal has two parts: the DR Neutral Portal is for arbitrators and mediators serving on the Dispute Resolution roster, and the DR Party Portal is for arbitration and mediation case participants. Once registered on the Portal, parties may use the portal to, among other things, file an arbitration claim, view case documents, submit documents to FINRA and send documents to other portal case participants, and schedule hearing dates. *See supra* note 86. FINRA stated that these proposed rule changes would help encourage customer attendance and participation in the expungement hearing, which would help the panel fully develop a record on which to decide the expungement request. *See* Notice at 50185.

regulators, in the manner determined by the Director in collaboration with state securities regulators, of an expungement request within 15 days of receiving an expungement request.[185] FINRA stated that the proposed notification requirement would help ensure that state securities regulators are timely notified of expungement requests.[186]

F. Attendance and Participation of an Authorized Representative of State Securities Regulators in Straight-In Requests

The proposed rule change would provide a mechanism for an authorized representative of a state securities regulator to provide their position or positions on an expungement request in writing or by attending and participating in the expungement hearing in person or by video conference.[187] The proposed rule change would limit attendance and participation by an authorized representative to straight-in requests.[188]

The proposed rule change would also require the Director to provide state securities regulators with access to all documents relevant to: (1) the expungement request filed in the arbitration requesting expungement relief; and (2) any other customer arbitration brought under the Customer Code that is associated with the customer dispute information that is a subject of the expungement request.[189] Such access would be required to be provided at the same time as providing notification to state securities regulators of the straight-in request.[190]

If the Director receives notification from an authorized representative no later than 30 days after the last answer is due that the authorized representative intends to attend and participate in the expungement hearing, the proposed rule change would require the Director to notify the authorized representative of the time, date and place of any prehearing conferences and the expungement hearing.[191] Under proposed Rule 13805(c)(6), at the expungement hearing, the authorized representative would be permitted to: (1) introduce documentary, testimonial, or other evidence; (2) cross-examine witnesses; and (3) present opening and closing arguments if the panel allows any party to present such arguments.[192] Under the proposed rule change, the other persons appearing at the expungement hearing could state objections to the authorized representative's evidence and cross-examine the authorized representative's witnesses.[193]

According to FINRA, the authorized representative would not be considered a party to the proceeding and their attendance and participation would be limited to what is authorized by proposed Rule 13805(c)(6).[194] As such, an authorized representative would not be entitled to seek discovery from the parties through the DRS arbitration forum, file motions, or seek to postpone a hearing.[195] In addition, the proposed rule change provides that the panel would not be permitted to allow the attendance or participation of the authorized representative to materially delay the scheduling of the expungement hearing.[196]

FINRA stated that allowing an authorized representative to attend and participate in straight-in requests may provide meaningful opposition to the expungement request, which might otherwise be unopposed, and thus help create a more complete factual record for the panel to rely upon to decide the expungement request.[197]

G. Expungement Requests During Simplified Customer Arbitrations

FINRA Rule 12800, governing simplified arbitration,[198] was designed to make the DRS arbitration process less burdensome for customer arbitrations involving $50,000 or less (exclusive of interest and expenses) by providing such customers with expedited procedures. Simplified arbitrations are decided on the pleadings and other materials submitted by the parties, unless the customer requests a hearing.[199] Further, a single arbitrator from the public chairperson roster is appointed to consider and decide simplified arbitrations, unless the parties agree in writing otherwise.[200]

The customer who files a simplified arbitration determines how the claim will be decided. In particular, the customer has the option of having the case decided in one of three ways: (1) without a hearing (referred to as ''on the papers''), where the arbitrator decides the case on the pleadings or other materials; (2) in an ''Option One'' full hearing, in which prehearings and hearings on the merits take place pursuant to the regular provisions of the Customer Code; or (3) in an ''Option Two'' special proceeding, whereby the parties present their case in a hearing to the arbitrator in a compressed timeframe, so that the hearings last no longer than one day.[201]

FINRA Rule 12800 does not expressly address how an expungement request should be filed or considered during a simplified arbitration.[202] The proposed rule change would codify an associated person's ability to request expungement when named as a respondent in a simplified arbitration, and for other parties to request expungement on behalf of an unnamed person. The proposed rule change would also establish procedures for requesting and considering expungement requests in simplified arbitrations that are consistent with the expedited nature of these proceedings.[203]

1. Requesting Expungement

The proposed rule change would permit a named associated person to request expungement, or a party to file an on-behalf-of request, during a simplified arbitration.[204] Unlike in a non-simplified arbitration, if expungement is not requested during the simplified arbitration, the associated person would be permitted to request it as a straight-in request filed under the Industry Code.[205]

[185] *See* proposed Rules 12800(f)(1), 12805(b) and 13805(b)(2)(A). FINRA stated that it would make this notification in connection with expungement requests under the Customer and Industry Codes. Such notification could be achieved by notifying NASAA of the expungement requests. *See* Notice at 50185 n.176.

[186] *See* Notice at 50185.

[187] *See* proposed Rule 13805(c)(6)(A).

[188] *See* Notice at 50185–86; *see also* proposed Rule 1305(c)(6). The proposed rule change would not allow an authorized representative to attend or participate in a customer arbitration where expungement has been requested; FINRA believes that such attendance or participation could substantially disrupt the customer's case and would be less impactful, as the panel hears the customer's evidence on the merits. *See id.* at 50186.

[189] *See* proposed Rule 13805(b)(2)(B).

[190] *See id.;* see also Notice at 50186. The state securities regulators' access to the documents would be subject to confidentiality restrictions. *See* proposed Rule 13805(b)(2)(B).

[191] *See* proposed Rule 13805(b)(3).

[192] *See* proposed Rule 13805(c)(6)(B).

[193] *See* proposed Rule 13805(c)(6)(C).

[194] *See* Notice at 50186.

[195] *See id.* at 50186 n.182.

[196] *See* proposed Rule 13805(c)(6)(A).

[197] *See* Notice at 50186. FINRA also stated that NASAA and state securities regulators have a shared interest with FINRA in protecting the integrity of the information contained in the CRD system, as it is a crucial tool in their registration and oversight responsibilities. *See id.*

[198] *See supra* note 7 and accompanying text.

[199] *See* FINRA Rule 12800(a).

[200] *See* FINRA Rule 12800(b). The parties could agree to have a three-person panel decide the simplified case. For ease of reference, when discussing expungement requests in simplified arbitrations under the proposed rule change, this order uses the term ''arbitrator,'' unless otherwise specified, to mean either a panel or single arbitrator.

[201] *See* FINRA Rule 12800(c).

[202] *See* Notice at 50186.

[203] *See* Notice at 50186, proposed Rules 12800(d) and (e).

[204] *See* proposed Rules 12800(d)(1) and (2).

[205] *See* proposed Rule 12800(e)(2). *See* Section II.G.1.c., ''No Expungement Request is Filed.''

a. Request by a Named Associated Person During a Simplified Arbitration

Under the proposed rule change, an associated person named as a respondent in a simplified arbitration could request expungement during the arbitration of the customer dispute information associated with the customer's statement of claim, provided the request is eligible for arbitration.[206] If a named associated person requests expungement during a simplified arbitration, the proposed rule change would require the request to be filed in an answer or a separate pleading requesting expungement.[207] If the named associated person requests expungement in a pleading other than an answer, the request would be required to be filed within 30 days after the date FINRA notifies the parties of the appointment of the arbitrator.[208] The request would be required to include the same information as a request filed in a non-simplified arbitration.[209]

The arbitrator would be required to decide an expungement request that is filed by the associated person.[210] If an associated person withdraws or does not pursue the request after filing, the arbitrator would be required to deny the request with prejudice so that it could not be re-filed.[211]

b. Request by a Party on Behalf of an Unnamed Person

Under the proposed rule change, the requirements for a party to file an on-behalf-of request during a simplified arbitration would be the same as the requirements for a named associated person filing an expungement request during a simplified arbitration. A named party would only be able to file an on-behalf-of request during a simplified arbitration with the consent of the unnamed person.[212] As with on-behalf-of requests filed in customer arbitrations under proposed Rule 12805(a)(2), the unnamed person who would benefit from the expungement request would be required to consent to such filing by signing the Form.[213]

The arbitrator would be required to decide an on-behalf-of request that is filed by the requesting party.[214] If the requesting party withdraws or does not pursue the on-behalf-of request after filing, the arbitrator would be required to deny the request with prejudice so that it could not be re-filed.[215]

c. No Expungement Request Is Filed

If expungement is not requested during a simplified arbitration under proposed Rule 12800(d), the associated person would be able to file a straight-in request under proposed Rule 13805 and have the request decided by a three-person panel randomly selected from the Special Arbitrator Roster.[216] The request would be subject to the limitations on whether and when such requests may be filed under the Industry Code.[217]

2. Deciding Expungement Requests During Simplified Arbitrations

If expungement is requested during simplified arbitration, the arbitrator would be required to decide the expungement request, regardless of how the simplified arbitration closes (*e.g.,* even if the arbitration settles).[218] Under the proposed rule change, how and when the expungement request is decided would depend on which option the customer selects to decide the simplified arbitration.[219]

a. No Hearing or ''Option Two'' Special Proceeding

If the customer opts not to have a hearing or chooses an ''Option Two'' special proceeding, the arbitrator would decide the customer's dispute first and issue an award.[220] After the customer's dispute is decided, the arbitrator would hold a separate expungement-only hearing to consider and decide the expungement request and issue a separate, subsequent award.[221] FINRA stated that the proposed rule change is designed to minimize any delays in resolving the customer arbitration and any delays in potential recovery that a customer may be awarded.[222]

b. ''Option One'' Full Hearing

If the customer chooses to have an ''Option One'' full hearing on their claim and it closes by award, the arbitrator would be required to consider and decide the expungement request during the customer arbitration and include the decision on the expungement request in the same award as the decision on the customer arbitration.[223] This process would be the same as deciding an expungement request during a non-simplified customer arbitration that closes by award after a hearing, where the customer's claim and expungement request are addressed during the customer arbitration.[224]

If the customer arbitration closes other than by award or by award without a hearing, the arbitrator would be required to hold a separate expungement-only hearing to consider and decide the expungement request and issue a separate award containing the decision on the expungement

[206] *See* proposed Rule 12800(d)(1)(A). The limitations that apply to expungement requests filed by a named associated person under proposed Rule 12805(a)(1)(B) would apply to requests made in simplified arbitration. *See* Notice at 50187 n.191. *See* Section II.C., ''Limitations on Expungement Requests.''

[207] *See* proposed Rule 12800(d)(1)(B)(i). Pursuant to FINRA Rule 12303(a), a respondent's answer must be submitted within 45 days of receipt of the statement of claim. *See* Notice at 50187 n.192; *see supra* note 48 and accompanying text.

[208] *See* proposed Rule 12800(d)(1)(B)(i). FINRA stated that when it notifies the parties that an arbitrator has been appointed, it informs the parties that they have 30 days from the date of notification to submit additional documents or other information before the case is submitted to the arbitrator. *See* Notice at 50187 n.193.

[209] *See* proposed Rules 12800(d)(1)(B)(i) and 12805(a)(1)(C)(ii). More specifically, the associated person's expungement request would be required to contain the applicable filing fee; the CRD number of the party requesting expungement; each CRD occurrence number that is the subject of the request; the case name and docket number associated with the customer dispute information; and an explanation of whether expungement of the same customer dispute information was previously requested and, if so, how it was decided.

[210] *See* proposed Rules 12800(d)(1)(B)(ii) and 12800(e)(1).

[211] *See* proposed Rule 12800(d)(1)(C). FINRA stated this provision would limit arbitrator-shopping. *See* Notice at 50187.

[212] *See* proposed Rule 12800(d)(2)(A).

[213] *See* proposed Rule 12800(d)(2). The request must also meet the same requirements as an on-behalf-of request filed under proposed Rule 12805(a)(2). *See* proposed Rules 12805(a)(1)(C)(ii), 12805(a)(2)(C)(ii) and 12805(a)(2)(D); *see also* Section II.A.1.b., ''Expungement Requests By a Party Named in a Customer Arbitration on Behalf of an Unnamed Person.''

[214] *See* proposed Rules 12800(d)(2)(B)(ii) and 12800(e)(1).

[215] *See* proposed Rule 12800(d)(2)(C).

[216] *See* proposed Rules 12800(e)(2), 13805(a)(1) and 13806. FINRA stated that because there may be less information available for the arbitrator to evaluate an expungement request during a simplified arbitration—even when the simplified arbitration results in an award—the associated person would retain the ability to choose to file the request as a straight-in request under the Industry Code. This would allow the associated person to obtain and present evidence from the member firm at which they were associated at the time the customer dispute arose without interfering with the simplified customer arbitration process. *See* Notice at 50187 n.203 and accompanying text.

[217] *See* proposed Rule 12800(e)(2); *see also* Section II.C., ''Limitations on Expungement Requests.''

[218] *See* proposed Rule 12800(e)(1). Simplified arbitration is a more streamlined arbitration process. *See* Notice at 50186. In part, a single arbitrator from the public chairperson roster is appointed to consider and decide simplified arbitrations, unless the parties agree in writing otherwise. *Id.*

[219] *See* proposed Rule 12800(e).

[220] *See* proposed Rule 12800(e)(1)(A).

[221] *See id.* The arbitrator must conduct the expungement hearing pursuant to proposed Rule 12805(c). The expungement award must meet the requirements of proposed Rule 12805(c)(8), and the DRS arbitration forum fees would be assessed pursuant to proposed Rule 12805(c)(9). *See* Notice at 50188 n.206.

[222] *See* Notice at 50188.

[223] *See* proposed Rule 12800(e)(1)(B)(i).

[224] *See* Notice at 50188.

request.[225] The arbitrator would conduct a separate expungement-only hearing to develop the factual record and help the arbitrator make a fully informed decision on the expungement request.[226]

3. Customer Notification of Expungement Hearings During Simplified Arbitrations

The proposed rule change would require the Director to notify all customers from the simplified arbitration of a separate expungement-only hearing.[227] FINRA stated that the Director's notice would provide the customers with timely notice of the expungement hearing so that the customers and their representatives may participate.[228]

H. Non-Substantive Changes

The proposed rule change would also amend the Codes to make non-substantive, technical changes to the rules impacted by the proposed rule change. For example, the proposed rule change would require the renumbering of paragraphs and the updating of cross-references in the rules impacted by the proposed rule change. In addition, the title of Part VIII of the Customer Code would be amended to add a reference to ''Expungement Proceedings.'' Similarly, the title of Part VIII of the Industry Code would be amended to add a reference to ''Expungement Proceedings'' and ''Promissory Note Proceedings.'' FINRA is also proposing to re-number current FINRA Rule 13806 (Promissory Note Proceedings) as new FINRA Rule 13807, without substantive change to the current rule language and to amend FINRA Rule 13214 to change the cross references from Rules 13806(d)(1) and 13806(f) to Rules 13807(d)(1) and 13807(f), respectively. Finally, FINRA would also amend FINRA Rule 13600 to change the cross reference from Rule 13806(e)(1) to Rule 13807(e)(1).

III. Discussion and Commission Findings

After careful review of the proposed rule change, the comment letters, and FINRA's responses to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[229] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,[230] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 15A(b)(5) of the Exchange Act,[231] 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.

A. Requests for Expungement Under the Customer Code

1. Expungement Requests by Respondents Named in Customer Arbitration

The proposed rule change to amend FINRA Rule 12805 would, in part, govern how and when named associated persons may request expungement during a customer arbitration. Among other things, the proposed rule change would require that a named associated person file a request for expungement of the customer dispute information associated with the customer's statement of claim in the customer arbitration or forfeit the ability to request expungement of the same customer dispute information in a subsequent proceeding.[232]

The proposed rule change would also dictate the method of and deadline for filing an expungement request.[233] Under the proposed rule change, a named associated person would need to include their request for expungement in their answer to the customer's statement of claim or in a separate pleading requesting expungement.[234] If the associated person includes their request in the answer, they must file the answer within 45 days of receipt of the statement of claim.[235] If the named associated person requests expungement in a separate pleading requesting expungement, rather than the answer, they would need to file the pleading no later than 60 days before the first scheduled hearing begins.[236]

Finally, the proposed rule change would further prescribe the contents of an expungement request.[237] For example, the proposed rule change would require the named associated person requesting expungement to explain whether expungement of the same customer dispute information was: (1) previously requested and, if so, (2) how it was decided.[238]

FINRA stated that requiring the named associated person to request expungement in the customer arbitration increases the likelihood that a panel will have input from all parties and access to all of the evidence, testimony and other documents to make an informed decision on the expungement request.[239] FINRA further stated that the potential costs that would be incurred by associated persons, arbitrators and the DRS arbitration forum if named associated persons file expungement requests are appropriate given the potential benefit of having customer input and a complete factual record for the panel to decide an expungement request.[240] Moreover, FINRA stated that requiring the named associated person requesting expungement to explain whether expungement of the same customer dispute information was previously requested and, if so, how it was decided would further link the request to a specific case and help prevent multiple requests for expungement.[241]

Finally, FINRA stated the proposed 60-day deadline would provide adequate time for: (1) the named associated person to assess the customer's case, the potential merits of an expungement request, and whether to file the request; and (2) the parties to a customer arbitration to prepare their expungement-related arguments, since the expungement issues will overlap with the issues raised by the customer's claim.[242]

Four commenters supported, and there was no opposition to, these aspects of the proposed rule change.[243]

[225] *See* proposed Rule 12800(e)(1)(B)(ii).

[226] *See* Notice at 50188.

[227] *See* proposed Rule 12800(f)(2).

[228] *See* Notice at 50188.

[229] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[230] 15 U.S.C. 78o–3(b)(6).

[231] 15 U.S.C. 78o–3(b)(5).

[232] *See* proposed Rule 12805(a)(1)(A).

[233] *See* proposed Rule 12805(a)(1)(C)(i).

[234] *See id.*

[235] *See* FINRA Rule 12303(a).

[236] *See* proposed Rule 12805(a)(1)(C)(i); *see also supra* notes 49–50 and accompanying text. *See also* Section II.A.1.a.i., ''Method and Timing of Requesting Expungement in Customer Arbitration.''

[237] *See* proposed Rule 12805(a)(1)(C)(ii).

[238] *See* proposed Rule 12805(a)(1)(C)(ii)e.

[239] *See* Section II.A.1.a., ''Expungement Requests by a Respondent Named in a Customer Arbitration.''

[240] *See* Notice at 50175.

[241] *See id.* at 50176.

[242] *Id.*

[243] *See* letters from Seth A. Miller, General Counsel, President, Advocacy & Administration, Cambridge Investment Research, Inc., to the

Continued

One commenter stated that requiring an associated person to request expungement in a customer dispute matter, if the associated person is a party to the matter, reduces the need for additional hearings, filing fees, attorney fees, and other arbitration costs concerning the same parties and the same evidence.[244] Three commenters supported the proposed rule change on the basis that it would allow the panel that heard all of the evidence, including the customer's evidence, to be best situated to decide the expungement request.[245] One of these commenters stated that the requirement would prevent ''arbitrator-shopping'' (*i.e.,* purposefully not raising, or withdrawing, an expungement request in an arbitration in order to file a request with a panel more likely to award expungement).[246]

The Commission believes that the proposed rule change should improve the integrity of the expungement process. Where a customer arbitration closes by award after a hearing, the panel's experience with the parties and the dispute, as well as the panel's review of the documents, testimony, and other evidence in connection with the arbitration, should leave the panel well positioned to make a decision regarding the related expungement request. Moreover, requiring the expungement request to be made within 45 days of receipt of the customer's statement of claim (if included in the answer) or no later than 60 days before the first scheduled hearing begins (if included in a pleading) should allow the requesting party a reasonable amount of time to make an informed decision about whether to request expungement while at the same time providing the parties with reasonable case-preparation time, since the expungement issues will likely overlap with the issues raised by the customer's claim.

Further, the content required for an expungement request under the proposed rule change, including the CRD occurrence number that is the subject of the request, the case name and docket number associated with the customer dispute information, and whether expungement of such information had previously been requested and any resolution thereof, should improve the expungement process by clearly documenting both the request and whether it repeats a previous request. The required content would provide the panel with information sufficient to understand who is requesting expungement and in connection with which customer dispute.[247] In addition, requiring the party requesting expungement to explain whether expungement of the same customer dispute information was previously requested and, if so, how it was decided will help prevent parties from pursuing second requests for expungement, consistent with the proposed rule change prohibiting repeat requests, which is discussed in more detail below.[248]

2. Content and Timing of on-Behalf-of Requests in Customer Arbitration

As with expungement requests made by a named associated person, the proposed rule change would, in part, govern how and when an on-behalf-of request may be made during a customer arbitration. For example, proposed Rule 12805(a)(2)(C)(iii) would require the party making the request to file it no later than 60 days before the first scheduled hearing.

In addition, proposed Rule 12805(a)(2)(C)(ii) would require the party filing an on-behalf-of request to submit to the Director the Form signed by the unnamed person and a statement requesting expungement. As discussed above, by signing the Form the unnamed person would be: (1) consenting to the on-behalf-of request, (2) agreeing to be bound by the panel's decision on the on-behalf-of request, and (3) acknowledging their understanding that if the customer arbitration closes by award after a hearing, the unnamed person would be barred from filing a request for expungement for the same customer dispute information in a subsequent proceeding.[249]

Finally, proposed Rules 12805(a)(1)(C)(ii) and 12805(a)(2)(C)(i) would require the party requesting expungement on behalf of an unnamed person to provide: the applicable filing fee; the CRD number of the unnamed person; each CRD occurrence number that is the subject of the request; the case name and docket number associated with the customer dispute information; and an explanation of whether expungement of the same customer dispute information was previously requested and, if so, how it was decided.[250]

FINRA believes that requiring associated persons to sign and submit the Form would help address its concern that some associated persons are filing arbitration claims seeking expungement of the same customer dispute information that was the subject of a previous denial by a panel of an on-behalf-of request.[251] Specifically, requiring submission of the signed Form would help ensure that an unnamed person is aware of an on-behalf-of request.[252] In addition, by signing the Form, the associated persons would be acknowledging that, if the customer arbitration closes by award after a hearing and an expungement decision is made, the unnamed person would be barred from filing a request for expungement for the same customer dispute information in a subsequent proceeding.[253]

In addition, under the proposed rule change, on-behalf-of requests would resemble named associated person requests in timing (the proposed rule would require service on all parties no later than 60 days before the first scheduled hearing), and in content (an on-behalf-of request would be required to include the same elements as a named associated person request).[254]

The Commission received no comment letters supporting or opposing this proposed rule change.

For reasons similar to those discussed above for expungement requests made by a named associated person in a customer arbitration, the Commission believes that these timing and content requirements should improve the integrity of the expungement process.[255] In addition, the panel's decision would preclude the unnamed party from

Commission, dated September 6, 2022 (''Cambridge'') at 1–2; Melanie Senter Lubin, NASAA President and Maryland Securities Commissioner, North American Securities Administrators Association, Inc., to the Commission, dated September 6, 2022 (''NASAA September 6 Letter'') at 2–3; Scott Eichhorn, et. al., Acting Director, University of Miami Investor Rights Clinic, to the Commission, dated September 6, 2022 (''Miami'') at 2–3; William A. Jacobson, Esq., Clinical Professor, Cornell Law School, and Director, Cornell Securities Law Clinic, et. al., to the Commission, dated September 6, 2022 (''Cornell'') at 2.

[244] *See* Cambridge at 2.

[245] *See* NASAA September 6 Letter at 2–3; Miami at 2–3; Cornell at 2.

[246] *See* Cornell at 2.

[247] *See* Notice at 50176.

[248] *See* Section III.A.5., ''Limitations Applicable to Straight-in Requests and Expungement Requests during a Customer Arbitration.''

[249] *See* Notice at 50177; *see also* Section II.A.1.b., ''Expungement Requests by a Party Named in a Customer Arbitration on Behalf of an Unnamed Person.''

[250] *See* Notice at 50177.

[251] *See id.*

[252] *See id.*

[253] *See id.*

[254] *See id.* at 50176–77; *see also* Section III.A.1., ''Expungement Requests by Respondents Named in Customer Arbitration.'' The proposed rule change would not require that an on-behalf-of request be included in an answer or pleading requesting expungement (although it could be) as such requests are made on behalf of non-parties. *See* Notice at 50176.

[255] *See* Section III.A.1., ''Expungement Requests by Respondents Named in Customer Arbitration.''

seeking expungement of the same customer dispute information in another forum by claiming their interests were inadequately represented in the hearing under the terms of the Form. Moreover, requiring the expungement request to be made no later than 60 days before the first scheduled hearing begins should allow the requesting party a reasonable amount of time to make an informed decision about whether to request expungement while at the same time providing the parties with reasonable case-preparation time, as the expungement issues will overlap with the issues raised by the customer's claim.

Further, the notice provided to the associated person pursuant to the requirement to submit the Form with the associated person's written consent should help ensure that the associated person is made aware of the on-behalf-of request and will likely help prevent inadvertent duplicative filings. The requirement that the associated person agree to be bound by the panel's decision on the request, and be barred from filing a request for expungement for the same customer dispute information, will help prevent the associated person from requesting expungement from a different panel if they are unsatisfied with the decision issued by the first panel. Such safeguards also help conserve resources and prevent inconsistent determinations.

3. Deciding Expungement Requests During Customer Arbitrations

As stated above, the proposed rule change would treat customer claims that close by award after a hearing differently from customer claims that close other than by award (*e.g.,* the case settles) or that close by award without a hearing. Where the customer's claim closes by award after a hearing, the proposed rule change would require the panel in a customer arbitration to consider and decide a request for expungement made during the proceeding. In addition, if the party requesting expungement withdraws or does not pursue the expungement request, the panel will be required to deny the expungement request with prejudice. FINRA stated that this change should make efficient use of the panel's familiarity with the case-in-chief, and help protect investors by precluding arbitrator-shopping by associated persons or those requesting expungement on their behalf.[256]

Conversely, where the customer's claim closes other than by award or closes by award without a hearing, the proposed rule change would preclude the panel that heard the customer claim from considering the ongoing expungement request.[257] In such cases, the efficiency rationale becomes less compelling, and FINRA believes that such expungement requests are best considered as straight-in requests by a panel from the Special Arbitrator Roster, discussed in more detail below.[258] These proposed rule changes are intended to protect investors by reducing opportunities for arbitrator-shopping and by providing arbitrators with special training and factual-development tools specific to the expungement context.[259]

Two commenters supported the proposed requirement that the panel in a customer arbitration decide an expungement request where the customer arbitration closes by award after a hearing.[260] These commenters reasoned that because the panel would have presided over the case-in-chief, assessing input from all involved parties, it is best situated to decide the expungement request.[261] Three commenters further supported the proposed requirement that, in the event an expungement request is withdrawn or not pursued, the panel would be required to deny the request with prejudice, reasoning that the proposed rule change would prevent arbitrator-shopping by discouraging requesting parties from withdrawing an expungement request in order to seek a potentially more favorable panel.[262]

Three commenters, however, suggested that associated persons should be able to voluntarily withdraw expungement requests without prejudice.[263] One of these commenters stated that customers are free to withdraw claims without prejudice,[264] while another argued that there is no evidence to support the claim that a person that withdraws an expungement request is doing so in the hopes of finding a more favorable panel.[265] A third commenter stated that there are a number of valid and practical reasons for why a non-party associated person's request for expungement may be withdrawn prior to final hearing (*e.g.,* time and costs), and thus that it is inappropriate to penalize an associated person for withdrawing their expungement request.[266]

FINRA declined to amend the proposed rule change in response to comments. FINRA expressed concern that arbitrator-shopping and repeated attempts to seek expungement of the same customer dispute information are inconsistent with the arbitration process and threaten the integrity of the information in the CRD system because they permit parties to request expungement until they get a favorable response.[267] FINRA highlighted the extent of its concern by pointing out that among the requests to expunge customer dispute information in arbitration from January 2016 through December 2021, FINRA identified 282 disclosures that were the subject of a previously withdrawn or denied requests to expunge.[268] FINRA further stated, in response to a commenter's statement that an associated person may have valid and practical reasons for withdrawing an expungement request, that it is not in a position to determine or assess, on a case-by-case basis, the legitimacy of an associated person's reason for withdrawing an expungement request during a customer arbitration.[269]

Two commenters also supported the proposed requirement that expungement requests made during customer arbitrations that close other than by award or close by award without a hearing, be heard by a panel from the Special Arbitrator Roster.[270] One of these commenters reasoned that the original arbitration panels do not get to hear the full presentation of the evidence on the merits of the underlying

[256] *See* Notice at 50177. FINRA expressed concern that, absent this change, associated persons (or other requesters) might seek to withdraw and refile their expungement requests to avoid having the requests decided by the panel who heard evidence on the customer's arbitration claim (receiving a new list of arbitrators and a potentially more favorable decision). *See id.*

[257] *See id.* at 50177–78.

[258] *See* Section III.B., ''Straight-in Requests under the Industry Code and the Special Arbitrator Roster.''

[259] *See* Notice at 50178 and 50194.

[260] *See* letter from Christine Lazaro, Director of the Securities Arbitration Clinic and Professor of Clinical Legal Education, et. al., Securities Arbitration Clinic at St. John's University School of Law, to the Commission, dated September 6, 2022 (''St. John's) at 2; Cornell at 2.

[261] *See id.*

[262] *See* Cornell at 2; Miami at 4; St. John's at 3.

[263] *See* letters from Dochtor D. Kennedy, President & Founder, AdvisorLaw, LLC, to the Commission, dated August 9, 2022 (''AdvisorLaw'') at 2–3; Jennifer W. Burke, Esq., Hennion & Walsh, Inc., to the Commission, dated September 6, 2022 (''Hennion'') at 6; Russell Del Toro, Esq., TCM, P.S.C., to the Commission, dated December 21, 2022 (''Del Toro'').

[264] *See* Hennion at 6.

[265] *See* Advisorlaw at 2–3.

[266] *See* Del Toro.

[267] *See* FINRA November 10 Letter at 28–29.

[268] *See* FINRA November 10 Letter at 29; *see also* FINRA April 3 Letter at 5.

[269] *See* FINRA April 3 Letter at 5.

[270] *See* letter from Michael S. Edmiston, PIABA President, Public Investors Advocate Bar Association, to the Commission, dated September 6, 2022 (''PIABA September 6 Letter'' at 3 and St. John's at 2.

customer case and that customers or their representatives have little incentive to attend and participate in an expungement hearing once their case has settled.[271]

One commenter, however, contended that a named associated person who requests expungement during a customer arbitration that closes other than by award or that closes by award without a hearing should continue to be allowed to request an expungement-only hearing before the same panel from the customer arbitration.[272] Specifically, this commenter stated that, even in cases that are settled or dismissed, the panel has often had an opportunity to review the pleadings, participate in the disposition of discovery and other prehearing motions, and otherwise familiarize itself with the facts of the case.[273] Furthermore, according to the commenter, permitting the same panel to decide an expungement hearing may be more efficient because, in many cases, the parties will have already researched and ranked the panel members and the expungement hearing will have been scheduled for the same day as the hearing on the merits.[274] According to the commenter, already-scheduled expungement hearings would reduce scheduling issues and increase the likelihood of customer participation, as customers will have already set aside the time.[275]

FINRA considered these comments but declined to amend the proposed rule change.[276] FINRA stated that, when a customer arbitration closes other than by award or by award without a hearing, the panel may not have heard the presentation of the evidence on the merits of the case. In addition, FINRA stated that customers or their representatives have little incentive to attend and provide their interpretation of the facts in a subsequent expungement hearing once their case has settled.[277] Because a customer arbitration that closes other than by award, or by award without a hearing, has the potential for an inadequately developed, or nonexistent, record, FINRA contended that the integrity of information in the CRD system would be better maintained by requiring a panel randomly selected from the Special Arbitrator Roster to hear and decide such expungement requests.[278] Furthermore, FINRA stated that requiring an associated person to file such an expungement request as a straight-in request under the Industry Code would strengthen the expungement process because the Special Arbitrator Roster panel deciding the request would have the experience, qualifications, and training necessary to help ensure the development of a more complete factual record; [279] in addition, FINRA stated that the proposed rule change would make it easier for customers to participate in the expungement proceeding, further helping the panel establish a more complete factual record.[280]

The Commission believes the proposed rule changes are aimed at enhancing FINRA's expungement framework. On the one hand, they require a panel of arbitrators that has decided the merits of a case to leverage their understanding of the case to decide any related expungement requests; the panel would be required to decide the request even if the requesting party withdraws or fails to present a case in support of the request—in which case the panel would deny the expungement request with prejudice. This is both efficient and helps protect investors by preventing those requesting expungement from withdrawing and refiling their request to obtain new arbitrators when unsatisfied with the original panel. On the other hand, when a case closes other than by award or closes by award without a hearing, the efficiency benefits of having the same panel decide the request (while not eliminated) are diminished. Moreover, the risk that the expungement hearing will not benefit from either a fully developed record or the adversarial process increases. For example, a case may settle before the record has had a chance to develop and a customer who has settled their claims may have little incentive to commit more time and resources in a subsequent expungement hearing. Rather than leave it to arbitrators in individual cases to decide whether they have enough information to proceed to hear an expungement request, FINRA has established uniform, separate procedures to help ensure the development of an adequate factual record in connection with every expungement request. The proposed rule changes also aim to help ensure that arbitrators deciding straight-in expungement requests have the training and tools to develop an adequate factual record, particularly in the absence of customer participation. Finally, the proposed rule change allows for the effective administration of the expungement process and provides certainty to the parties about when requests for expungement may be made.

The Commission recognizes that in some cases the arbitrators from a customer arbitration could bring to a related standalone expungement hearing insights gleaned from their engagement with a well-developed factual record. Nevertheless, the proposed rule changes help ensure that every expungement request benefits from an adequate factual record. Moreover, it arms arbitrators on the Special Arbitrator Roster with the expungement-specific training and procedural tools necessary to develop and understand the factual record, regardless of both the state of the record prior to their involvement and the presence or absence of customers at the expungement hearing. Finally, it makes procedural improvements to facilitate customer participation in expungement hearings.

4. No Straight-In Requests Against Customers or Intervening in Customer Arbitrations To Request Expungement

The proposed rule changes would prohibit an associated person from filing a straight-in request against a customer, and would prohibit unnamed persons from intervening in a customer arbitration and requesting expungement. FINRA stated that the proposed rule would help protect investors by preventing associated persons from interrupting, and thus delaying,

[271] *See* PIABA September 6 Letter at 3.

[272] *See* letter from Kevin M. Carroll, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to the Commission, dated September 2, 2022 (''SIFMA September 2 Letter'') at 8.

[273] *See id.*

[274] *See id.*

[275] *See id.*

[276] *See* FINRA November 10 Letter at 24.

[277] *See id.* FINRA formed its Dispute Resolution Task Force (''Task Force''), whose members included representatives from the industry and the public with a broad range of interests in securities dispute resolution, to consider possible enhancements to the DRS arbitration and mediation forum. In 2015, the Task Force stated that ''the majority of issues that arise in the expungement process are those involving settled cases that do not go to final resolution because in such cases: (1) the panel selected by the parties may not have heard the full merits of the customer dispute and, therefore, may not bring to bear any special insights in determining whether to grant an expungement request and (2) claimants or their counsel have little incentive to participate in an expungement hearing once their dispute has been settled.'' *See* Notice at 50174 n.37; *see also* Final Report and Recommendations of the FINRA Dispute Resolution Task Force (Dec. 16, 2015), available at *http://www.finra.org/sites/default/files/Final-DR-task-force-report.pdf.*

[278] *See* FINRA November 10 Letter at 24.

[279] *See* Notice at 50178, 80; *see also* Section III.B.3., ''Straight-in Requests under the Industry Code and the Special Arbitrator Roster, The Special Arbitrator Roster.''

[280] *See* Notice at 50183; *see also* Section III.D.3., ''Customer's Attendance and Participation During the Expungement Hearing.''

customer cases, thereby safeguarding customer time and resources.[281]

One commenter opposed the proposed prohibition against an associated person filing a straight-in request against a customer.[282] This commenter argued that permitting straight-in requests against customers would solve many of the issues addressed in the proposed rule change, including customer notice and participation.[283]

Two commenters objected to the proposed prohibition against expungement interventions by unnamed persons in customer arbitrations.[284] One of these commenters stated that prohibiting an unnamed person from intervening to clear their name results in potentially false allegations remaining in the CRD for upwards of a year (*i.e.,* until expungement can be awarded in the straight-in request and confirmed by a court).[285] The other commenter stated that the rules should allow for the most fair, speedy, and inexpensive resolution of the matters and recommended that the proposed rule change allow for a sub-proceeding between the intervening affected associated person and the parties where a separate award on the matter of expungement is issued by the same panel without affecting the resolution of the main award.[286]

FINRA declined to amend the proposed rule change in response to comments. In the Notice and in response to comments, FINRA stated that in circumstances where an associated person is neither a named party nor the subject of an on-behalf-of request, the associated person's conduct is unlikely to be fully addressed by the parties during the customer arbitration, and permitting the unnamed person's intervention could unnecessarily interrupt or delay resolution of the case.[287] FINRA further stated that it does not believe that customers should be compelled to attend or participate in a separate proceeding to decide an expungement request after the customer has resolved their arbitration claim or civil litigation.[288] FINRA also stated that the requirement that an associated person file a straight-in request against the member firm at which the person was associated at the time the customer dispute arose would help ensure that there is a connection between the respondent firm and the subject matter of the expungement request.[289]

The Commission believes that prohibiting straight-in requests against customers, and prohibiting expungement interventions by unnamed persons in customer arbitrations, as proposed, will protect investors by conserving their time, resources, and ability to make their case efficiently and without interruption. The Commission appreciates that this will require the associated person to wait until the customer claim has been resolved to initiate a straight-in expungement proceeding, but believes such a delay is reasonable to help ensure that the related customer arbitration can be resolved as expeditiously as possible. Moreover, the panel selected from the Special Arbitrator Roster deciding the expungement request would have the benefit of any final factual record from the related customer dispute.

5. Limitations Applicable to Straight-in Requests and Expungement Requests During a Customer Arbitration

The proposed rule change would provide that an associated person may not file a request for expungement of customer dispute information if: (1) a panel held a hearing to consider the merits of the associated person's expungement request for the same customer dispute information; or (2) a court of competent jurisdiction previously denied the associated person's request to expunge the same customer dispute information.[290]

FINRA stated that the proposed rule changes would prevent an associated person from forum shopping, or seeking to return to the DRS arbitration forum to garner a favorable outcome on their expungement request.[291] The Commission received no comment letters supporting or opposing this proposed rule change.

The proposed rule changes should help prevent an associated person, or firm seeking expungement on their behalf, from forum-shopping to garner a more favorable outcome on an expungement request. As such, the proposed rule change should help protect the integrity of the information in the CRD system.[292] In addition, the proposed rule change should promote more efficient use of resources by precluding duplicative claims.

B. Straight-In Requests Under the Industry Code and the Special Arbitrator Roster

1. Filing a Straight-In Request

a. Form of a Straight-In Request

Proposed Rule 13805 would require an associated person to make any request to expunge disclosures of customer dispute information (other than requests made in a customer arbitration itself) as a straight-in request, and would limit the circumstances in which an associated person could request expungement.[293] Specifically, proposed Rule 13805(a)(1) would require an associated person to make such an expungement request against the member firm with which they were associated at the time the customer dispute arose.[294] FINRA stated that this requirement would help ensure that there is a connection between the respondent firm and the subject matter of the expungement request and that the panel selected from the Special Arbitrator Roster would be able to request evidence from the member firm with information that is relevant to the expungement request.[295]

Two commenters recommended that FINRA adopt an alternative for unnamed parties to request expungement other than by straight-in requests.[296] For example, one of these commenters recommended that FINRA establish a method for unnamed parties who ''had no say in whether the [underlying] case should be settled.''[297] Similarly, the other commenter expressed concern that an unnamed

[281] *See* Notice at 50178; *see also* Section II.A.2., ''No Intervening in Customer Arbitrations to Request Expungement.''

[282] *See* Del Toro.

[283] *See id.*

[284] *See* AdvisorLaw at 4 and Del Toro.

[285] *See* AdvisorLaw at 4.

[286] *See* Del Toro.

[287] *See* FINRA November 10 Letter at 29; *see also* FINRA April 3 Letter at 5; *see also* Notice at 50178.

[288] *See* FINRA April 3 Letter at 6.

[289] *See id.* at 7.

[290] *See* proposed Rule 12805(a)(1)(B).

[291] *See* Notice at 50180.

[292] The proposed rule change would give unnamed persons the authority to reject the on-behalf-of request to preserve their ability to request expungement on their own if they believe their interests would be insufficiently represented by the named firm requesting expungement on their behalf. *See* proposed Rule 12805(a)(2)(C) and (D).

[293] *See* Section II.B.1., ''Filing a Straight-in Request Under the Industry Code.''

[294] Proposed Rule 13805(a)(2) would bar an associated person from filing a straight-in request against a member firm where the request has previously been heard or denied, the relevant customer dispute has not been resolved, specified temporal limitations have passed, the associated person is prohibited from seeking expungement under Rule 12805(a)(1)(A) (for example, by failing to seek expungement in the customer arbitration), or a panel or court of competent jurisdiction previously found the associated person liable or the customer dispute information involves the same conduct that is the basis of a final regulatory action taken by a securities regulator or self-regulatory organization. *See* Section III.B.6., ''Limitations Applicable to Straight-in Requests Only.''

[295] *See* Notice at 50179.

[296] *See* letter from Robin M. Traxler, Senior Vice President, Policy & Deputy General Counsel, Financial Services Institute, to the Commission, dated September 6, 2022 (''FSI'') at 5–6; letter from Josh Barber to the Commission, dated August 24, 2022 (''Barber'').

[297] *See* Barber.

person may not be aware of a customer arbitration (or have input in the resolution of customer's case) and thus may not be aware they need to make a straight-in request.[298]

FINRA responded that its existing rules help ensure that associated persons are aware of arbitration disclosures on their Forms U4 and U5.[299] In addition, if a party to a customer arbitration is unwilling to file an on-behalf-of request or if a party files an on-behalf-of request and the arbitration settles, the proposed rule change would allow the associated person to seek expungement by filing a request to expunge the same customer dispute information as a straight-in request.[300]

Two commenters supported the proposed rule change regarding straight-in requests, but recommended that FINRA prohibit associated persons from filing a straight-in request to expunge multiple, unrelated requests in one arbitration claim.[301] According to one of these commenters, the practice of bundling expungement requests permits ''gaming the system'' by having such claims heard by ''expungement-friendly arbitrators.'' [302] One of these commenters further suggested that FINRA require a nexus between the hearing location and the conduct at issue so that customers and state regulators would have more of an incentive to participate.[303] These commenters reasoned that these changes would prevent unnecessary complications for the panel considering the expungement request and provide a common set of facts for the panel to consider.[304]

FINRA responded that the proposed time limits for filing a request [305] may curtail the common practice of bundling unrelated and aged expungement requests in one straight-in request; and the requirement under the proposed rule change that an associated person would be required to file a straight-in request against the member firm at which the person was associated at the time the customer dispute arose would help ensure that there is a connection between the respondent firm and the subject matter of the straight-in request. With respect to requiring a locational nexus, FINRA stated that the ability for a customer to attend and participate in an expungement hearing by telephone or by video conference should help address concerns about there being a connection between the hearing location and the allegation at issue.[306] FINRA further stated that concerns about expungement requests being brought before expungement-friendly arbitrators should be mitigated by several proposed requirements to minimize the potential for associated person or broker-dealer influence in the arbitrator selection process for straight-in requests. For example, the proposed change would require FINRA's list selection algorithm to randomly select a three-person panel from the Special Arbitrator Roster and the parties would not be able to agree to fewer than three arbitrators, strike any arbitrators selected by the list selection algorithm or stipulate to their removal, or be permitted to stipulate to the use of pre-selected arbitrators.[307] According to FINRA, ''these requirements would help ensure that arbitrators on the Special Arbitrator Roster have the qualifications and training to decide straight-in requests and that the arbitrators conducting the expungement hearings are impartial and experienced in managing and conducting arbitration hearings in the DRS arbitration forum.'' [308]

The Commission believes the requirements set forth in the proposed rule change are designed to promote investor protection because it should enhance the integrity of the CRD system. The firm with which the person requesting expungement was associated at the time the dispute arose should have knowledge of the dispute and access to relevant documentary or other evidence.[309] Thus, requiring that a straight-in request be filed against the member firm with which the person was associated at the time of the conduct would increase the likelihood that the firm would be in a position to contribute to the development of any record, including at the request of the panel.[310]

Also, the practice of bundling multiple, unrelated claims should be largely curtailed by the proposed time limits and requirement that claims be filed against the member firm at which the person was associated at the time the customer dispute arose; and that the constraints on parties' ability to influence the composition of the panel should minimize the use of pre-selected, expungement-friendly arbitrators.

Finally, associated persons should be aware of arbitration disclosures on their Forms U4 and U5.[311] To the extent they are not, the proposed time limits (discussed below) provide associated persons a reasonable amount of time to become aware and seek expungement by filing a request to expunge the same customer dispute information as a straight-in request.[312] Thus, seeking expungement via a straight-in request, with the procedural safeguards discussed herein, should not unduly burden an associated person seeking expungement.

b. Content of a Straight-In Request

In addition, as with named associated person requests, the proposed rule change also would establish content requirements for straight-in expungement requests.[313] The required content of a straight-in request would be the same as those required for expungement requests filed under proposed Rule 12805.[314] Specifically, an associated person would be required to include the following in a straight-in request: the applicable filing fee; the CRD number of the party requesting expungement; each CRD occurrence number that is the subject of the request; the case name and docket number associated with the customer dispute information, if applicable; and an explanation of whether expungement of the same customer dispute information was previously requested and, if so, how it was decided.[315]

The Commission received no comment letters supporting or opposing this proposed rule change.

The proposed form and content requirements are reasonable for straight-in requests. In particular, requiring an associated person to file their expungement request against the

[298] *See* FSI at 5–6.

[299] *See* FINRA November 10 Letter at 30; *see, e.g.,* FINRA Rule 1010(c)(2)(A)–(B) and FINRA By-Laws, Article V, Sections 3(a) and 3(b).

[300] *See* FINRA November 10 Letter at 30.

[301] *See* PIABA September 6 Letter at 4–5; Miami at 4–5.

[302] *See* Miami at 4–5.

[303] *See id.* at 6.

[304] *See* PIABA September 6 Letter at 5; Miami at 5–6.

[305] *See* Section III.B.6., ''Limitations Applicable to Straight-in Requests Only.''

[306] *See* FINRA November 10 Letter at 20.

[307] *See id.* at 20–21.

[308] *See id.* at 21.

[309] *See* Notice at 50179.

[310] Proposed Rule 13203(b) would provide the Director authority to deny the use of the forum to decide the request if the requisite connection between the associated person and the firm is not present. *See* Notice at 50179. In addition, proposed Rule 13805(a)(2) would impose limitations on when such requests may be made. *See* Section III.B.6., ''Limitations Applicable to Straight-in Requests Only.''

[311] *See supra* note 299.

[312] *See supra* note 300; *see also* Section III.B.6.b., ''Limitations Applicable to Straight-in Requests Only, Time Limits for Expungement Requests.''

[313] *See* Notice at 50179.

[314] *See* proposed Rule 13805(a)(3); *see also* Notice at 50179; *see also* Section III.A.1., ''Expungement Requests by Respondents Named in Customer Arbitration.''

[315] *See* proposed Rule 13805(a)(3); *see also* Notice at 50179.

member firm with which they were associated at the time the customer dispute arose should provide the panel deciding the expungement request with another source of documents potentially pertinent to its consideration of the request. As such, it could help a panel establish a more complete factual record upon which to base an award. In addition, as discussed in more detail above, the content required for an expungement request under the proposed rule change, including the CRD occurrence number that is the subject of the request, the case name and docket number associated with the customer dispute information, and whether expungement of such information had previously been requested and any resolution thereof, should improve the expungement process by clearly documenting both the request and whether it repeats a previous request. The required content would provide the panel with information sufficient to know who is requesting expungement and the customer dispute with which it is connected. In addition, requiring the party requesting expungement to explain whether expungement of the same customer dispute information was previously requested and, if so, how it was decided will help prevent parties from pursuing second requests for expungement, consistent with the proposed prohibition against repeat requests.[316]

2. Deciding Straight-In Expungement Requests

The proposed rule change would establish a new framework for arbitrators hearing straight-in expungement requests. The proposed rule change would require a three-person panel [317] to hold an expungement hearing, decide the expungement request, and issue an award in response to a straight-in request filed in accordance with proposed Rule 13805.[318] As with expungement requests decided in customer arbitration, the panel would be required to deny an expungement request with prejudice in cases in which an associated person withdraws or does not pursue the request. FINRA stated that requiring a panel to deny a request that is withdrawn or not pursued would protect investors by preventing associated persons from withdrawing and refiling expungement requests until they obtain a panel whose composition they believe is more likely to deliver a favorable recommendation.[319]

The Commission received no comment letters supporting or opposing this proposed rule change. However, as discussed above, the Commission received, and FINRA responded to, comments supporting and opposing similar procedures for deciding expungement requests during customer arbitration.[320]

The Commission believes that requiring a panel selected from the Special Arbitrator Roster to decide a straight-in expungement request and deny a claim that is withdrawn or not pursued, would help to prevent an associated person from undermining the enhanced expungement framework with this form of arbitrator-shopping.[321]

3. The Special Arbitrator Roster

The proposed rule change would establish a Special Arbitrator Roster from which a three-person panel would be drawn to decide all straight-in expungement requests.[322] Proposed Rule 13806(b) would limit the Special Arbitrator Roster to arbitrators with specified experience and training. Specifically, the proposed rule change would limit the roster to public arbitrators who are eligible for the chairperson roster, have completed FINRA's enhanced expungement training, and have served as an arbitrator through award on at least four customer-initiated arbitrations administered by FINRA or by another SRO in which a hearing was held.[323] In proposing the rule, FINRA stated that these requirements would help ensure that arbitrators on the Special Arbitrator Roster: have the experience, qualifications, and training to conduct a fair and impartial expungement hearing; appreciate the unique, distinct role they play as expungement hearing arbitrators; and understand the limited circumstances in which expungement should be awarded.[324]

Once the Special Arbitrator Roster has been established, the proposed rule change would require that three members of that roster be selected at random to decide each expungement request filed under proposed Rule 13805.[325] In addition, the first arbitrator selected would be the chair of the panel,[326] the parties would not be permitted to agree to fewer than three arbitrators,[327] and the parties would not be permitted to strike any arbitrators or to stipulate to their removal, but would be permitted to challenge an arbitrator selected for cause.[328] In proposing the rule, FINRA stated that this process would minimize the potential for influence in the arbitrator selection process by the associated person and member firm, whose interests may be aligned.[329]

Four commenters supported the proposed rule change's establishment of a Special Arbitrator Roster, the selection of a panel from this roster for expungement requests under the Industry Code, and the restrictions on parties' ability to influence the panel's composition.[330] Three of these four commenters supported the proposed rule change on the basis that the three-person panel would minimize the impact of unopposed expungement requests, facilitate expanded fact-finding during the expungement request, and that the prohibition on ranking and striking, or agreeing to arbitrators would reduce both the prevalence of arbitrator-shopping and repeat-player incentives for arbitrators (*i.e.,* from choosing arbitrators who are historically more likely to award expungements).[331] The fourth commenter further stated that the proposed rule change would increase efficiency and decrease costs for all parties to the expungement matter, since the parties will no longer need to spend hours researching and ranking arbitrators to find the individuals most experienced at handling these issues.[332] In addition, one commenter also stated that the enhanced training to be received by the Special Arbitrator Roster would give associated persons fewer causes for removal of an arbitrator for cause.[333]

Five commenters, however, objected to the proposed rule change's limitations on ranking and striking

[316] *See* Section III.A.2., ''Content and Timing of On-Behalf-of Requests in Customer Arbitration.''

[317] As discussed in more detail below, the three-person panel would be selected from the Special Arbitrator Roster pursuant to proposed Rule 13806. *See* Section III.B.3., ''Straight-in Requests under the Industry Code and the Special Arbitrator Roster, The Special Arbitrator Roster.''

[318] *See* proposed Rule 13805(a)(4).

[319] *See* Notice at 50179.

[320] *See* Section III.A.3., ''Deciding Expungement Requests during Customer Arbitrations.''

[321] *See* Section III.A.3., ''Deciding Expungement Requests during Customer Arbitrations'' (discussing comments received regarding the proposed rule change's treatment of expungement claims that are withdrawn or not pursued).

[322] *See* proposed Rule 13806.

[323] *See id.; see also* Notice at 50179–80.

[324] *See* Notice at 50179–80.

[325] *See* proposed Rule 13806(b).

[326] *See* proposed Rule 13806(b)(3).

[327] *See* proposed Rule 13806(b)(5).

[328] *See* proposed Rule 13806(b)(4).

[329] *See* Notice at 50180.

[330] *See* Cambridge at 2; Cornell at 1–2; PIABA September 6 Letter at 3; St. John's at 2–3.

[331] *See* Cornell at 1–2; PIABA September 6 Letter at 3; St. John's at 2–3.

[332] *See* Cambridge at 2.

[333] *See* Cornell at 2.

arbitrators.[334] One of these commenters stated that ranking and striking is ''enjoyed by all other participants in FINRA arbitration proceedings'' [335] while another commenter similarly stated that customers have the ability to rank and strike arbitrators.[336] A third commenter argued that because different arbitrators approach issues differently, there is a benefit to starting with a large pool of potential panelists and then letting the parties ''winnow the pool.'' [337]

FINRA stated that currently, based on its experience with straight-in requests filed in the DRS arbitration forum, associated persons typically file straight-in request for expungement against the broker-dealer firm at which the associated person is currently employed.[338] In such instances, the proceeding is less likely to be adversarial in nature than if the associated person files an expungement request against a customer.[339] For example, FINRA stated that a respondent firm may support the request for expungement because it has an interest in removing negative information from the associated person's CRD record.[340] Accordingly, FINRA stated that it would not be appropriate to continue to use the current process for selecting arbitrators—striking and combining ranked lists—to select arbitrators to decide straight-in requests.[341] FINRA reasoned that in arbitrations that occur outside of the expungement context, the parties are typically adverse, which means that during arbitrator selection, each side may rank arbitrators on the lists whom they believe may be favorable to their case.[342] Therefore, the adversarial nature of the proceedings serves to minimize the impact of each party's influence in arbitrator selection.[343] An adversarial proceeding is less likely to occur in straight-in requests.[344] Thus, the proposed rule change would prevent associated persons and member firms from collaboratively seeking to influence the outcome of the expungement request through arbitrator selection.[345]

FINRA also recognized the potential for the proposed rule change to limit the associated person's and member firm's input on arbitrator selection for reasons that may be unrelated to whether the arbitrator would potentially be sympathetic to the expungement request, such as their perception of the arbitrator's competence or efficiency.[346] However, FINRA stated that the higher standards that the arbitrators would be required to meet to serve on the Special Arbitrator Roster should mitigate the impact of the absence of party input on the selection of arbitrators.[347] In addition, associated persons and member firms would still be permitted to challenge any arbitrator for cause.[348]

Given the potential lack of adverse parties in straight-in expungement requests, FINRA reasonably determined that the random selection of a set number of arbitrators is appropriate. Random arbitrator selection, along with other aspects of the proposed rule change (*e.g.,* the requirement that a panel decide an expungement request that is filed by an associated person, and the prohibition on an associated person withdrawing and re-filing their expungement request), should help eliminate arbitrator-shopping and serve to protect investors and the integrity of information in the CRD system. In addition, parties would continue to be able to challenge and remove arbitrators for cause.

Several commenters also recommended that FINRA expand the pool of arbitrators eligible to serve on the Special Arbitrator Roster, in particular to allow for non-public arbitrators, stating that such a change would bring securities industry expertise to deciding expungement requests.[349] One commenter suggested that industry participants who have worked as a general securities principal for a least five consecutive years, in the prior seven-year period, be eligible for inclusion on the Special Arbitrator Roster.[350] This commenter also suggested that at least one person on each three-person panel be required to have securities industry experience either as a general securities principal or as an attorney who has the requisite five years' experience in state or federal securities regulation or as a securities regulator.[351] Another commenter likewise recommended including the ability to have an industry arbitrator on any expungement panel where more than one arbitrator was required.[352] A third commenter argued that requiring one public arbitrator, one non-public arbitrator, and a chairperson that can either be public or non-public, would help create a diverse knowledge base and would help the panel make better, more informed decisions.[353]

Another commenter suggested not limiting the Special Arbitrator Roster to chair-qualified public arbitrators.[354] This commenter stated that experience in understanding and appreciating the regulatory value of a customer complaint should be the most important qualification, thus concluding that the Special Arbitrator Roster should be expanded to include current and former state, federal and SRO securities regulators. This commenter further suggested that the most experienced arbitrators should not be on the Special Arbitrator Roster as they have exhibited bias in favor of granting expungements in the past.[355]

FINRA declined to amend the proposed rule change in response to these comments. FINRA stated that it ''believes that having experienced public arbitrators, without significant ties to the financial industry, deciding straight-in requests would help achieve the goal of balancing the competing interests in the expungement process of providing a fair process and ensuring that information about associated persons that is available to investors is accurate.'' [356] Such arbitrators would be provided training that is neutral and

[334] *See* letter from Tosh Grebenik to the Commission, dated November 21, 2022 (''Grebenik''); letter from Ronald Beckner to the Commission, dated October 12, 2022 (''Beckner''); Del Toro; Advisorlaw at 2; Hennion at 6.

[335] *See* AdvisorLaw at 2–3.

[336] *See* Hennion at 6.

[337] *See* Grebenik.

[338] *See* Notice at 50174 n.41; FINRA April 3 Letter at 6.

[339] *See* FINRA November 10 Letter at 26–27; FINRA April 3 Letter at 5; Notice at 50180.

[340] See *id.* at 50174.

[341] *See* FINRA November 10 Letter at 26; FINRA April 3 Letter at 5; Notice at 50180.

[342] *See* FINRA November 10 Letter at 26; FINRA April 3 Letter at 5; Notice at 50180.

[343] *See* FINRA November 10 Letter at 26; FINRA April 3 Letter at 5; Notice at 50180.

[344] *See* FINRA November 10 Letter at 26–27; FINRA April 3 Letter at 5; Notice at 50180.

[345] *See* FINRA November 10 Letter at 27; FINRA April 3 Letter at 5; Notice at 50180.

[346] *See* FINRA November 10 Letter at 27; FINRA April 3 Letter at 5; Notice at 50180.

[347] *See* FINRA November 10 Letter at 27; FINRA April 3 Letter at 5.

[348] *See* FINRA November 10 Letter at 27; FINRA April 3 Letter at 5.

[349] *See* FSI at 4; Hennion at 6; Grebenik.

[350] *See* FSI at 4.

[351] *Id.*

[352] *See* Hennion at 6. Hennion further suggested that arbitrators should be required to pay for the training. *See id.* at 5. FINRA responded that it does not now, and will not in the future, charge arbitrators for any arbitrator training. *See* FINRA November 10 Letter at 25.

[353] *See* Grebenik. This commenter further suggested that the enhanced expungement training should be made public and be neutral rather than ''persuasive'' in an attempt to prevent panels from granting expungement. *Id.* FINRA responded that like other arbitrator training provided by DRS, the proposed training will be neutral and informative and it will be publicly available on FINRA's website. *See* FINRA April 3 Letter at 4 n.10. The Commission believes that FINRA has addressed the commenter's suggestion.

[354] *See* letter from Celiza Braganca, President, et. al., The PIABA Foundation, to the Commission, dated September 6, 2022 (''PIABA Foundation September 6 Letter'') at 2–3.

[355] *See id.*

[356] FINRA November 10 Letter at 25.

informative and the training would be made publicly available on FINRA's website. Moreover, FINRA stated that the enhanced training that arbitrators on the Special Arbitrator Roster would be required to take (as well as the other eligibility requirements) would help ensure that arbitrators on the Special Arbitrator Roster have the qualifications and training to appropriately decide straight-in requests and that the persons conducting the expungement hearings are impartial and experienced in managing and conducting arbitration hearings in the DRS arbitration forum.[357]

The Commission believes that FINRA reasonably determined which arbitrators would be eligible to serve on the Special Arbitrator Roster. Specifically, limiting eligibility to public arbitrators reasonably balances the competing interests in the expungement process of providing a fair process and ensuring the integrity of the information in the CRD system. This approach should also enhance the public's perception that the expungement process and rules are fair, which, in turn, should enhance the perception of the integrity of the information on the CRD system. In addition, the proposed eligibility requirements should help ensure that experienced arbitrators are deciding expungement requests in light of the public interest in the integrity of the information in the CRD system.

4. State Attendance and Participation in Straight-In Expungement Requests

The proposed rule change would provide a mechanism for an authorized representative of a state securities regulator to present the state securities regulator's position on an expungement request in writing or by attending and participating in the expungement hearing in person or by video conference.[358] The proposed rule change would limit the authorized representative's ability to attend and participate to only straight-in requests, where the panel may otherwise only hear evidence from the party requesting expungement.[359] To facilitate attendance and participation, the Director would notify the applicable state securities regulator (in a manner determined by the Director in collaboration with state securities regulators) and provide applicable information and documents related to the associated customer arbitration.[360] In addition, under the proposed rule change, the panel would not be permitted to allow the attendance or participation of the authorized representative to materially delay the scheduling of an expungement hearing.[361]

While an authorized representative of a state securities regulator would not be a party to the expungement hearing, the authorized representative would be permitted to: (1) introduce documentary, testimonial, or other evidence; (2) cross-examine witnesses; and (3) present opening and closing arguments if the panel allows any party to present such arguments.[362] The other persons appearing at the expungement hearing could state objections to the authorized representative's evidence and cross-examine the authorized representative's witnesses.[363]

In the Notice, FINRA stated that allowing an authorized representative to attend and participate in straight-in requests may provide meaningful opposition to the expungement request, which might otherwise be unopposed, and thus help create a more complete factual record for the panel to rely upon to decide the expungement request.[364] Moreover, FINRA believes that state participation in straight-in requests is important in light of the importance of the CRD to state registration and oversight responsibilities.[365]

Seven commenters supported the proposed rule change's inclusion of state securities regulators in the expungement process.[366] These commenters supported including a representative of a state securities regulator in straight-in expungement requests on the basis that such participation would serve to counterbalance a potentially unopposed expungement request since customers are less likely to participate in straight-in requests,[367] and would therefore help protect the integrity of the information in the CRD system needed for the performance of state regulatory obligations.[368] One commenter stated that while it appreciates the opportunity to appear for arbitration proceedings hearing expungement requests, state participation in such proceedings would be limited by resources and state-specific procedural hurdles that could inhibit the ability to appear.[369]

Five commenters expressed concern about permitting state securities regulator participation in straight-in expungement hearings.[370] One of these commenters suggested that notification to state securities regulators should instead occur at the point FINRA seeks to obtain an order from a court of competent jurisdiction confirming an award containing expungement.[371] Another commenter objected to a non-party participating in an expungement proceeding without being subject to the forum's jurisdiction because: (1) a panel could not sanction a non-party for perjury, and (2) ''increasing the barriers'' to expungement would decrease the proceeding's efficiency.[372] A third commenter argued that participation of state securities regulators would increase costs.[373]

FINRA responded that state securities regulators are already notified about, and can participate in, proceedings at the state court confirmation level. FINRA Rule 2080 requires that FINRA be named as a party in such proceedings, unless this requirement is waived by FINRA. Upon receipt of a complaint naming FINRA or a request for a waiver from the requirement to name FINRA as an additional party, FINRA will notify NASAA of the complaint or waiver request. NASAA, in turn, will notify the appropriate state securities regulator.[374] FINRA stated that under the proposed rule change FINRA would notify state securities regulators within 15 days of receiving a request for expungement, giving them time to review and decide whether to participate in a straight-in request, including in any prehearing conference.[375]

FINRA also responded that the arbitrators who would decide straight-in

[357] *See* FINRA November 10 Letter at 25–26; *see also* FINRA April 3 Letter at 4–5.

[358] *See* proposed Rule 13805(c)(6)(A).

[359] *See* Notice at 50185–86.

[360] *See* proposed Rules 13805(b)(2)(A) and (B).

[361] *See* proposed Rule 13805(c)(6)(A).

[362] *See* proposed Rule 13805(c)(6)(B).

[363] *See* proposed Rule 13805(c)(6)(C).

[364] *See* Notice at 50186.

[365] *See id.; see also* NASAA September 6 Letter at 1 (stating that securities regulators depend on accurate information to make regulatory decisions).

[366] *See* letter from Benjamin P. Edwards, Associate Professor of Law, University of Nevada, Las Vegas William S. Boyd School of Law, to the Commission, dated September 6, 2022 (''Edwards'') at 1–2; Miami at 6–7; PIABA September 6 Letter at 2; Cornell at 3; NASAA September 6 Letter at 3–4; PIABA Foundation September 6 Letter at 2; St. John's at 3–4.

[367] *See* PIABA Foundation September 6 Letter at 2; Miami at 6–7; Cornell at 3; Edwards at 1–2.

[368] *See* PIABA September 6 Letter at 3; NASAA September 6 Letter at 3–4; Cornell at 3; St. John's at 3–4.

[369] *See* NASAA September 6 Letter at 3.

[370] *See* letter from Michael Neal, Financial Advisor, M. A. NEAL Financial Services, to the Commission, dated August 31, 2022 (''Neal''); Hennion at 6; AdvisorLaw at 3; Beckner; Grebenik (supporting notification and attendance of state regulators, but opposing participation).

[371] *See* Hennion at 6; *see also supra* notes 28–30.

[372] *See* AdvisorLaw at 3.

[373] *See* Neal.

[374] *See* FINRA November 10 Letter at 8 n.33.

[375] *See* Notice at 50196 n.251 and accompanying text.

requests would have the experience, qualifications and training necessary to conduct a fair and impartial expungement hearing in accordance with the proposed rules and that the proposed rule change would provide an associated person requesting expungement the opportunity to cross-examine any witness called by a state securities regulator's authorized representative. FINRA stated that these mechanisms should be sufficient to help ensure that a non-party's testimony or documentary information presented is appropriately scrutinized.[376] FINRA responded further by stating that concerns about state participation increasing costs to file an expungement request may be overstated, as under the proposed rule change the authorized representative would not be a party to the request, and thus, would not be permitted to take actions that could delay the proceeding or add to the parties' costs.[377]

FINRA acknowledged that in person attendance and participation by an authorized state representative may be limited given state resource constraints. FINRA pointed out that the proposed rule change provides low-cost options to help facilitate state participation; specifically, that it would permit the authorized representative to attend and participate via video conference or submit a state's position in writing.[378]

The Commission believes that permitting attendance and participation by state securities regulators in straight-in expungement proceedings, which have a higher likelihood of proceeding unopposed, and providing state regulators low-cost options to do so, will enhance the straight-in expungement process. Specifically, including state securities regulators and providing them with access to documents relevant to the expungement request provides them the opportunity to fulfill their own regulatory obligations, while at the same time increasing the likelihood that the panel in an expungement proceeding will hear evidence from multiple viewpoints, thus allowing the panel to make more informed decisions. At the same time, the conditions applicable to state securities regulator participation are designed so that they do not delay the resolution of an expungement request and allow the claimants the opportunity to challenge any information presented in the forum by the state's representative. As such, the proposed rule change appropriately balances the interests of state regulators in the expungement process, as well as their need to allocate and preserve resources, with the importance of maintaining an efficient and cost effective process for associated persons requesting expungement.

Two commenters recommended that FINRA extend the option for a state regulator's representative to participate in other expungement requests, including those in customer arbitration,[379] and simplified arbitration.[380] These commenters considered state participation in other contexts as providing a similar counterbalance as in a straight-in request because expungement requests in both customer arbitrations, whether standard or simplified, are similarly often unopposed because customers do not participate in that aspect of the proceeding.[381]

FINRA declined to amend the proposed rule change in response to these comments. FINRA stated that attendance or participation in a customer arbitration could substantially disrupt the customer's case and would likely be less impactful, as the panel from the customer arbitration hears the customer's evidence on the merits.[382] Furthermore, in simplified arbitration the expungement-only hearing would likely be scheduled shortly after the customer's dispute is decided or closes, increasing the likelihood of customer attendance and participation. Thus, FINRA does not believe that it is necessary for state securities regulators to also attend and participate in expungement-only hearings in simplified arbitrations.[383]

The Commission believes that it is reasonable for FINRA to limit state securities regulator participation to straight-in requests where there is a higher likelihood of proceeding without meaningful opposition and state participation may provide the greatest benefit. In customer arbitration, the panel will have the benefit of a balanced presentation of the merits of the case that should allow it to make an informed decision on the expungement request. Moreover, in simplified arbitration it is more likely that a customer will participate, providing their version of events, in an expungement hearing when it occurs soon after the panel makes an award based on the merits of the claim. Finally, FINRA stated it will continue to evaluate whether there are other ways to further strengthen the current expungement process, including whether to allow state securities regulators to attend and participate in separate expungement-only hearings in simplified arbitrations.[384]

5. Alternatives to Deciding Expungement Requests Through Arbitration

While expressing support for the proposed rule change, three commenters contended that expungement determinations are more appropriately a regulatory decision not properly adjudicated by FINRA's arbitration process.[385] One of these commenters argued that the degree to which such records are preserved in CRD and BrokerCheck for all stakeholders should not turn on the varying abilities of any party—state securities regulator, authorized representative or customer—to appear to make an argument. According to the commenter, doing so would continue to lead to inconsistent results that have no relationship to the importance of this information.[386]

FINRA did not amend the proposed rule change in response to these comments. FINRA stated that it believes it is important to pursue a two-track approach to improving the expungement process. In the near term, FINRA stated the integrity of the information in the CRD system should be better protected by adopting the ''substantial improvements'' to the current expungement process that can be achieved with the proposed rule change.[387] Concurrently, FINRA stated that it would continue working with NASAA and other interested parties to consider a redesign of the current expungement process.[388]

The proposed rule change is designed to strengthen the current expungement framework and to protect investors and the public interest. The proposed rule change's establishment of a special roster of specially qualified and trained arbitrators to decide certain expungement requests should help mitigate the potentially non-adversarial nature of straight-in expungement requests. In particular, the Commission believes that having three specially qualified and trained arbitrators available to ask questions and

[376] *See* FINRA November 10 Letter at 9–10.

[377] *See id.* at 9; *see also* FINRA April 3 Letter at 8.

[378] *See* FINRA November 10 Letter at 8; *see also* proposed Rule 13805(c)(6)(A).

[379] *See* Edwards at 1–2.

[380] *See* Miami at 6–7.

[381] *See* Edwards 1–2; *see also* Miami at 6–7.

[382] *See* FINRA November 10 Letter at 8.

[383] *See id.* at 22.

[384] *See* FINRA April 3 Letter at 18–19.

[385] *See* PIABA September 6 Letter at 3–4; PIABA Foundation September 6 Letter at 2; NASAA September 6 Letter at 3–4.

[386] *See* NASAA September 6 Letter at 3.

[387] *See* FINRA November 10 Letter at 6.

[388] *See id.* at 6–7.

empowered to request evidence, along with the proposed rule change's inclusion of state securities regulators in straight-in requests where there may otherwise be no opposing viewpoint, should help ensure that a complete factual record is created upon which the arbitrators can base a decision in such expungement hearings. The proposed rule change also updates the Codes to incorporate provisions from FINRA Guidance that, among other things, facilitate customer attendance and participation in expungement hearings, permit panels to request additional documents or evidence relevant to an expungement request, and codify the grounds for awarding expungement.[389] In addition, the Commission believes that continuing dialogue among FINRA, state regulators, industry participants, consumer advocates, and other stakeholders in the expungement process will lead to future improvements as the expungement process continues to evolve.

6. Limitations Applicable to Straight-In Requests Only

The proposed rule change also would codify and expand upon other aspects of the Guidance applicable to straight-in requests, in particular those related to eligibility to file the request. For example, the proposed rule change would: prohibit an associated person from filing a straight-in request if the customer arbitration, civil litigation, or customer complaint that gave rise to the customer dispute information has not closed; establish time limits for expungement requests that are specifically tied to the close of customer arbitrations and civil litigations, or the reporting of customer complaints in the CRD system; and, prevent an associated person from filing an expungement request if (1) a panel or court of competent jurisdiction previously found the associated person liable in a customer arbitration or civil litigation associated with the same customer dispute information or (2) the customer dispute information involves the same conduct that is the basis of a final regulatory action [390] taken by a securities regulator or SRO.[391]

a. No Expungement Request Until Underlying Case Closes

The proposed rule change would codify and expand upon the Guidance by providing that an associated person may not file a straight-in request if the customer arbitration, civil litigation, or customer complaint that gave rise to the customer dispute information has not closed, a limitation that is designed to prevent an associated person from obtaining a decision on an expungement request while the related customer dispute is ongoing.[392] FINRA stated this change would prevent potentially inconsistent expungement decisions on related customer dispute information and help ensure that the panel that would decide the straight-in request is able to consider the final factual record from the customer arbitration or civil litigation.[393] The Commission received no comment letters supporting or opposing this proposed rule change.

The proposed rule change would help maintain the integrity of the information in the CRD system by helping to prevent inconsistent expungement decisions on related customer dispute information. The proposed rule change would also help ensure that the panel deciding the straight-in request is able to consider the final factual record from the customer arbitration or civil litigation.

b. Time Limits for Expungement Requests

Currently, FINRA Rules 12206(a) and 13206(a) require an associated person to submit an arbitration claim, including requests for expungement of customer dispute information, within six years from the occurrence or event giving rise to the claim.[394] The proposed rule change would eliminate this six-year eligibility rule and instead establish shorter time limits for expungement requests that are specifically tied to the close of customer arbitrations and civil litigations, or the reporting of customer complaints in the CRD system, as applicable.[395] FINRA stated that the time periods provided for in the proposed rule changes for each situation would provide a sufficient amount of time for associated persons and their firms to, among other things, gather the documents, information, and other resources required to file the expungement request.[396]

With respect to customer arbitrations and civil litigations, FINRA stated that it believes the two-year period would help ensure that expungement hearings are held close enough in time to the customer arbitration or civil litigation such that information regarding the dispute is available and in a timeframe that could increase the likelihood of customer participation where a customer so chooses. The shorter timeframe, FINRA believes, should help encourage customer attendance and participation in expungement proceedings and help ensure that straight-in requests are brought before relevant evidence and testimony

[389] *See* Section III.D., ''Procedural Requirements Relating to All Expungement Hearings.''

[390] FINRA stated that a ''final regulatory action'' includes any final action, including any action that is on appeal, by a securities regulator or SRO. *See* FINRA Rule 8312(c); *see also* Regulatory Notice 09–66 (November 2009) (stating that ''actions that are delineated in current Form U4 Questions 14C, 14D or 14E will be considered 'final regulatory actions.' Similarly, actions that are detailed in current Form U5 Question 7D, and have a status of 'final' or 'on appeal,' will be considered 'final regulatory actions' as such actions are also addressed in Form U4.''). For example, a Letter of Acceptance, Waiver, and Consent and an accepted Offer of Settlement are two examples, among others, of final regulatory actions taken by FINRA. *See* FINRA Rule 9216(a)(4) and Rule 9270(g). A ''final regulatory action'' may also include a final action reported by a regulator on Form U6. *See* Regulatory Notice 09–66 (November 2009). *See* FINRA April 3 Letter at 14 n.49. For purposes of this proposed rule, a ''final regulatory action'' would not include a final action by a securities regulator or SRO that is dismissed, vacated or withdrawn. If, after dismissal, vacatur, or withdrawal of the final regulatory action, the associated person's expungement request in the DRS arbitration forum would be ineligible pursuant to Rule 13805(a)(2) (*e.g.,* because the request is time barred), the associated person could seek a court order directing expungement of the customer dispute information. *See* FINRA April 3 Letter at 14 n.52.

[391] *See* Amendment No. 2; *see also infra* note 430 and accompanying text.

[392] *See* proposed Rule 13805(a)(2)(A)(iii); *see also* Notice at 50180.

[393] *See* Notice at 50180.

[394] *See supra* note 125 and 127 and accompanying text.

[395] *See* Notice at 50181. As described above, the proposed rule change would prescribe different time limits in connection with customer arbitrations or civil litigations and customer complaints. In the case of a customer arbitration or civil litigation that gave rise to the customer dispute information in question, proposed Rule 13805(a)(2)(A)(iv) would require an associated person to file a straight-in request within two years of such matters closing. In the case of customer complaints, proposed Rule 13805(a)(2)(A)(v) would prohibit an associated person from filing a straight-in request where more than three years has elapsed from the time the complaint was first reported to the CRD system and there was no customer arbitration or civil litigation that gave rise to the customer dispute information. The proposed rule change would also establish similar time limits for requests to expunge customer dispute information arising from customer arbitrations and civil litigations that close, and for customer complaints that were initially reported to the CRD system, on or prior to the effective date of the proposed rule change. *See* Notice at 50181–82; *see also* Section II.C.2.d., ''Time Limits Applicable to Disclosures Arising After the Effective Date of the Proposed Rule Change.''

[396] *See* Notice at 50181.

becomes stale or unavailable.[397] Accordingly, FINRA believes the proposed time limit would help provide panels with more complete factual records on which to base their expungement decisions, while at the same time allowing the associated person adequate time to determine whether to seek expungement.[398]

With respect to customer complaints where there was no customer arbitration or civil litigation associated with the customer dispute information, FINRA stated that it believes that the three-year period would help ensure that the expungement hearing is held close in time to the events that gave rise to the customer dispute and increase the likelihood of customer attendance and participation. The three-year time limitation should also provide sufficient time for firms to complete their investigation of the complaint, for associated persons to develop a sense of whether the complaint may evolve into an arbitration or civil litigation, and for the associated person to gather the necessary resources and determine whether to seek expungement. FINRA also believes that the three-year time limitation may curtail requests to expunge customer complaints that are filed many years after first being reported to the CRD system and the bundling of multiple unrelated and aged disclosures in a single expungement request.[399]

Six commenters supported the proposed time limitations.[400] Two of these commenters stated that the time limitations will make it more likely that customers will participate[401] and one of these commenters stated that the timeframes provide enough time for associated persons to determine whether to file an expungement request and gather the relevant information to support their request.[402] Another commenter stated that the time limitations would increase the efficiency of the expungement process and decrease the cost to member firms because when expungement requests are filed ''four or five or even ten years'' after the event giving rise to the request, a party's ability to respond to discovery requests and produce relevant information becomes much more difficult and time consuming.[403]

Seven commenters objected to the time period limitations.[404] One commenter stated that time limits for filing an expungement request should mirror those provided to customers (a six-year period of eligibility with expansion for good cause).[405] This commenter argued that providing the associated person the opportunity to file for expungement within a six-year time frame—regardless of whether there was a customer-filed arbitration—recognizes that representatives may not have been meaningfully involved in the underlying arbitration for a variety of reasons (*e.g.,* separation from the firm).[406] Two other commenters stated that the amount of time that passes has no bearing on the merits of the expungement request.[407] Another commenter stated that time limits may preclude expungement requests because associated persons are not aware of the expungement process and suggested grandfathering in associated persons with existing disclosures or sending notifications to such persons.[408] Two other commenters stated that associated persons may lack the resources to seek expungement within the proposed two-year time limit.[409] One of these commenters added that associated persons may not consider expungement important at the time only to change their minds later on in their careers; however, the commenter recommended that if FINRA moved forward with the two-year time limit, it should ensure all associated persons affected by a given arbitration claim are given proper notice of the case's closure, as well as a description of any applicable time limits for making an expungement request.[410] Finally, one commenter that otherwise supported the proposed rule change argued that less time was necessary and urged FINRA to adopt a shorter, one-year time period for all straight-in expungement requests.[411]

FINRA considered these comments but declined to amend the proposed rule change. FINRA responded that it believes that the proposed time limitations appropriately address its concern that a number of expungement requests are currently filed many years after a customer arbitration closes or the reporting of a customer complaint in the CRD system.[412] FINRA stated that requiring associated persons to file straight-in requests within three years of the filing of the customer complaint, rather than six, would help ensure that expungement hearings are held close in time to the events that led to the customer dispute information disclosure.[413] FINRA stated that, in turn, this may: (1) increase the likelihood of customer participation; (2) ensure that straight-in requests are filed before relevant evidence and testimony becomes stale or unavailable; and (3) generally help to develop a more complete factual record on which to decide an expungement request.[414]

FINRA also stated that allowing two years from the close of the customer arbitration or civil litigation to bring an

[397] *See id.*

[398] *See id.*

[399] *See id.*

[400] *See* Miami at 5; Cambridge at 2; Cornell at 3–4; NASAA at 2; St. John's at 3; PIABA September 6 Letter at 4.

[401] *See* Cornell at 4; St. John's at 3.

[402] *See* Cornell at 3–4.

[403] *See* Cambridge at 2.

[404] *See* letter from James P. Galvin, Esq., Galvin Legal PLLC, to the Commission, dated April 7, 2023 (Galvin) at 2; Hennion at 6; AdvisorLaw at 3; Grebenik; Beckner; Del Toro; Barber.

[405] *See* Hennion at 6. *See also* FINRA Rule 12206 (Time Limits) (stating that no claim shall be eligible for submission to arbitration under the Customer Code where six years have elapsed from the occurrence or event giving rise to the claim).

[406] *See* Hennion at 6.

[407] *See* AdvisorLaw at 3; Barber; *see also* letter from John O'Bannon, Financial Advisor, Diversified Financial Group, to the Commission, dated October 11, 2022 (stating that ''[i]f a customer complaint is truly meritless, then the advisor should not continue to be potentially harmed by having there [sic] meritless disclosures continue to be on record.'' And recommending: (1) that ''[d]isclosures that were dropped by clients should be dropped by FINRA no later than 3 years after filing''; (2) allowing ''[e]diting of [Form] U4 listings [to] correctly describe the issue and resolution [in a manner that does not] immediately give the negative connotation that the advisor is a cheat/liar if it's not accurate''; and (3) establish ''an expungement process for those convictions that [are more than 15 years old]''); *see also* Grebenik (stating that ''FINRA should evaluate the complaint first to determine a basic level of legitimacy. Otherwise, the meritless and frivolous complaints will continue to be filed and will continue to be expunged at a high rate of success.''). These comments from O'Bannon and Grebnik are outside the scope of the proposed rule change.

[408] *See* Grebenik.

[409] *See* Galvin at 2; Del Toro.

[410] *See* Del Toro.

[411] *See* PIABA September 6 Letter at 4.

[412] *See* FINRA November 10 Letter at 19. In response to a commenter's request that associated persons with existing disclosure be ''grandfathered in'' or provide notice, FINRA stated such ''grandfathering'' would be contrary to the purpose of the proposed rule change to address concerns about expungement requests made many years after the fact, and further stated that if the proposed rule change is approved, it would issue a Regulatory Notice that will provide notice to associated persons of when the time period will commence for seeking expungement of customer dispute information already on their records. *See* Grebenik; FINRA April 3 Letter at 11–12.

[413] *See* FINRA April 3 Letter at 10–11.

[414] *See id.* FINRA recognized that as a result of the three-year time limitation, an associated person may be prevented from filing a request for expungement of customer dispute information because the member firm's investigation of the customer complaint has not concluded and, therefore, the customer complaint associated with the customer dispute information has not closed. However, FINRA stated that it believes that such instances would occur rarely. Furthermore, in the event that an associated person is prevented from filing a request for expungement of customer dispute information in the DRS arbitration forum because of the three-year time limitation, the associated person could seek a court order directing expungement of the customer dispute information. *See id.*

expungement request would provide a reasonable amount of time for associated persons and firms to gather the necessary documents, information and other necessary resources required to file the expungement request and help ensure that the expungement hearing is held close enough in time to the customer arbitration. In addition, the two-year time limitation would reduce the potential for such information to become stale and increase the likelihood of customer participation.[415] Moreover, FINRA stated that it believes the three-year time period for expungement requests in connection with customer complaints would: (1) allow firms to complete their investigation of the customer complaint and close it in the CRD system; (2) allow associated persons to develop a sense of whether the complaint may evolve into an arbitration or civil litigation; and (3) allow associated persons to determine whether to proceed with a request to expunge the complaint.[416]

FINRA acknowledged that there could be instances when associated persons may not be aware that a customer arbitration has closed, and that the two-year time limit for requesting expungement of customer dispute information has begun to run.[417] To facilitate an associated person's awareness of the proposed time limits, FINRA stated that if the proposed rule change is approved, it would issue a *Regulatory Notice* providing notice to associated persons of when the time period will commence for seeking expungement of customer dispute information already on their records. FINRA also stated it would update the cover letter that is provided by DRS to respondents once a statement of claim has been filed to explain that: (1) an associated person is prohibited from filing a straight-in request while a customer arbitration or civil litigation associated with the customer dispute information that is the subject of the straight-in request is pending; (2) an associated person is permitted to file a straight-in request within two years of the close of a customer arbitration or a civil litigation associated with the customer dispute information, unless such request is barred under the Industry Code; and (3) associated persons may remain apprised of the status of the customer arbitration, including case closure, by contacting the parties to the arbitration or DRS.[418] FINRA further stated that the updated cover letter would also encourage member firms to provide updates about the status of the customer arbitration to associated persons who are not named parties to the customer arbitration, including case closure.[419] Finally, FINRA stated it would publish guidance on its website about the changes to the Codes that would include information about how associated persons can remain apprised of the status of a customer arbitration, including through contacting DRS.[420]

FINRA's time limitations seek to balance two competing interests: (1) promoting customer participation and the availability of evidence and (2) providing sufficient time for an associated person to determine whether to seek expungement and, in the case of customer complaints, for firms to investigate and close a complaint and for the complaint to evolve, or not, into arbitration or civil litigation. The Commission believes that the proposed rule change strikes a reasonable balance between these competing interests. Holding expungement hearings closer in time to the event that gave rise to the customer dispute information should promote the availability of evidence and customer participation, which would help contribute to more informed expungement determinations and therefore to investor protection and the integrity of information in the CRD system.[421]

c. Preclusion of Certain Expungement Requests

The proposed rule change, as modified by Amendments No. 1 and No. 2, would also preclude an associated person from filing an expungement request if: (1) a panel or court of competent jurisdiction previously found the associated person liable in a customer arbitration or civil litigation associated with the same customer dispute information or (2) the customer dispute information involves the same conduct that is the basis of a final regulatory action [422] taken by a securities regulator or SRO.[423]

FINRA included the proposed preclusion of expungement requests where the associated person was previously found liable in a customer arbitration or civil litigation associated with the same customer dispute information as an amendment to its proposed rule change in response, in part, to a commenter's recommendation.[424] FINRA reasoned that these expungement requests are in effect a collateral attack on the binding arbitration award and that a collateral attack is not contemplated under FINRA rules and is contrary to the Codes.[425] FINRA stated that the only avenue for challenging a prior adverse arbitration award is to file a timely motion with an appropriate court to vacate, modify, or correct the award.[426]

Two commenters supported the amendment.[427] These commenters agreed that an arbitral or judicial finding that a claim is valid should preclude the ability to have such information expunged.[428] A third commenter supported the amendment, but suggested the reason for the amendment would apply equally in other contexts, and recommended that associated persons should be prevented from seeking expungement of customer dispute information that forms the basis for a finding of liability in all of the contexts in which such information forms part of a regulatory record, such as state regulatory proceedings, proceedings brought by the Commission, or self-regulatory proceedings.[429]

After further consideration of the issue, FINRA proposed a modification to the proposed rule change in Amendment No. 2 to provide that an associated person shall not file a claim requesting expungement of customer dispute information from the CRD system against a member firm at which the person was associated at the time the customer dispute arose if the customer dispute information involves

[415] *See* FINRA November 10 Letter at 19; FINRA April 3 Letter at 11–12 and n.39.

[416] *See* FINRA November 10 Letter at 19.

[417] *See* FINRA April 3 Letter at 9.

[418] *Id.*

[419] *Id.* at 9–10.

[420] *Id.* at 10.

[421] As stated above, the proposed rule changes would give the Director the express authority to deny the use of the DRS arbitration forum to decide expungement requests, including where the request is ineligible under the proposed time limitations. The Commission believes that these powers are a reasonable method to help ensure adherence to the limitations contained in proposed Rules 12805 and 13805.

[422] *See supra* note 390.

[423] *See* proposed Rule 13805(a)(2)(A)(v).

[424] *See* St. John's at 2 (suggesting that associated persons be prohibited from seeking expungement if there has been a finding of liability in the underlying customer arbitration). *See* Amendment No. 1; *see also* FINRA November 10 Letter at 28.

[425] *See* FINRA November 10 Letter at 28; *see also* FINRA Rules 12904(b) and 13904(b).

[426] *See* FINRA November 10 Letter at 28.

[427] *See* letters from Celiza P. Bragança, Past-President & Director, et. al., The PIABA Foundation, to the Commission, dated December 7, 2022 (''PIABA Foundation December 7 Letter'') at 2; *see also* Hugh D. Berkson, President, Public Investors Arbitration Bar Association, to the Commission, dated December 7, 2022 (''PIABA December 7 Letter'') at 2–3.

[428] *See id.*

[429] *See* letter from Andrew Hartnett, President, North American Securities Administrators Association, Inc., to the Commission, dated December 7, 2022 (''NASAA December 7 Letter'') at 3.

the same conduct that is the basis of a final regulatory action taken by a securities regulator or SRO. If an associated person requests expungement of such customer dispute information, the Director would deny the forum to the expungement request.[430] FINRA stated that prohibiting an associated person from filing such expungement requests would promote greater efficiency in the DRS arbitration forum because it would preclude requests that otherwise would be unsuccessful.[431]

Permitting expungement following a finding of liability in an arbitration or civil litigation associated with the same customer dispute information or a final regulatory action based on the same conduct sought to be expunged would be inconsistent with the specified grounds that can form the basis for an expungement award under the proposed rule change (*i.e.,* factual impossibility, mistake, or falsity). Permitting an expungement claim in these circumstances would, in addition to constituting a collateral attack on the results of the underlying dispute, contribute to inefficiencies in the expungement process by allowing for claims to proceed that could not succeed.

C. Expungement Requests During Simplified Arbitrations

1. Filing and Considering Requests During Simplified Arbitration

The proposed rule change would permit a named associated person to request expungement, or a party to file an on-behalf-of request, during a simplified arbitration,[432] and would establish procedures for requesting and considering expungement requests in simplified arbitrations that are consistent with the expedited nature of these proceedings.[433]

The proposed rule change would require an arbitrator in a simplified arbitration to decide an expungement request that is filed by an associated person or as an on-behalf-of request.[434] In addition, as in the proposed rule change governing regular customer arbitration, under the proposed rule change if the requesting party withdraws or does not pursue the request after filing, the arbitrator would be required to deny the request with prejudice so that it could not be re-filed.[435] FINRA stated that these proposed rule changes would help eliminate arbitrator-shopping by requiring the panel in which the request is made to decide the request.[436] FINRA also stated that, unlike the proposed amendments to a regular customer arbitration, FINRA was not proposing that a panel from the Special Arbitrator Roster decide an expungement request made during a simplified customer arbitration where the arbitration closes other than by award or closes by award without a hearing, because the public chairpersons who decide simplified arbitrations would be fully capable of making appropriate expungement decisions on the basis of their experience and would have the same enhanced expungement training as the arbitrators on the Special Arbitrator Roster.[437]

In addition, unlike in a regular customer arbitration, if expungement is not requested during a simplified arbitration, the proposed rule change would permit the associated person to file a straight-in expungement request for the same customer dispute information under the Industry Code and have the request decided by a three-person panel randomly selected from the Special Arbitrator Roster.[438]

One commenter requested that a named associated person should be required to request expungement during the arbitration of the customer's claim, as proposed for non-simplified cases.[439] The commenter stated that arbitrators in simplified arbitrations are experienced public arbitrators who have the same enhanced expungement training as the arbitrators on the Special Arbitrator Roster and would therefore be able to make an informed decision on the merits of an expungement request.[440] The commenter also stated that requiring a named party to request expungement during the arbitration of the customer's claim in simplified arbitration would encourage customer participation because the expungement request would be closer in time to the complained-about conduct and therefore easier for the customer to recall the facts.[441]

FINRA declined to amend the proposed rule change, referencing the expedited nature of simplified arbitrations.[442] FINRA stated that because there may be less discovery in simplified arbitration and the customer can dictate the extent of the evidence presented to the arbitrator, there may be less information available for the arbitrator to evaluate an expungement request.[443] Accordingly, FINRA stated that it is appropriate that an associated person should retain the ability to choose to file the request as a straight-in request under the Industry Code.[444] FINRA also stated, however, that it will continue to monitor expungement requests and decisions in simplified arbitrations to determine if additional changes are warranted, including whether a panel from the Special Arbitrator Roster should be required to decide an expungement request in simplified arbitrations.[445]

Requiring an arbitrator to decide an expungement request that is filed in a simplified arbitration, regardless of the outcome of that arbitration, along with requiring an arbitrator to a reject such a request with prejudice if it is withdrawn, will help protect the integrity of the information in the CRD system by limiting an associated person's ability to request expungement for the same claim (even if it has been denied in the past) until they find a panel willing to award it. By allowing an associated person to determine

[430] *See* FINRA April 3 Letter at 14; Amendment No. 2; *see also* proposed Rule 13203(b).

[431] *See* FINRA April 3 Letter at 13–14.

[432] *See* proposed Rule 12800(d)(1)(A). If the requesting party requests expungement in a pleading other than an answer, the request must be filed within 30 days from the date that FINRA notifies the associated person of arbitrator appointment. *See* proposed Rule 12800(d)(1)(B). When FINRA notifies the parties that an arbitrator has been appointed, FINRA informs the parties that they have 30 days from the date of notification to submit additional documents or other information before the case is submitted to the arbitrator. *See* Notice at 50187 n.193 and accompanying text. The request would be required to include the same information as a request filed in a non-simplified arbitration. *See* proposed Rules 12800(d)(1)(B)(i) and 12805(a)(1)(C)(ii); *see also* Notice at 50187.

[433] *See* proposed Rules 12800(d) and (e); *see also* Notice at 50186. *See* Section II.A., ''Requests for Expungement under the Customer Code.''

[434] *See* proposed Rules 12800(d)(1)(B)(ii) and 12800(e)(1); *see also* Notice at 50187.

[435] *See* proposed Rule 12800(d)(1)(C); *see also* Notice at 50187.

[436] *See* Notice at 50187.

[437] *See* Notice at 50188. Under the proposed rule change, the public chairperson would be required to evidence successful completion of, and agreement with, the enhanced expungement training provided by DRS prior to considering and deciding the expungement request. *See also* proposed Rule 12800(b).

[438] *See* proposed Rule 12800(e)(2).

[439] *See* Miami at 2–3.

[440] *See* Miami at 3–4. Similarly, Cornell requested that FINRA add to the proposed rule change that if an expungement is requested during a simplified arbitration and if the parties agree to have a specific arbitrator, this arbitrator must be required to undergo the enhanced expungement training provided to the arbitrators on the Special Arbitrator Roster prior to considering the expungement request. *See* Cornell at 4–5. In response, FINRA stated that the proposed rule change would require that arbitrators deciding expungement requests in simplified arbitrations be experienced public arbitrators who have taken the same expungement training as arbitrators on the Special Arbitrator Roster, including where the parties agree to a specific arbitrator. *See* FINRA November 10 Letter at 22.

[441] *See* Miami at 3–4.

[442] *See* FINRA November 10 Letter at 23.

[443] *See id.; see also* Notice at 50187.

[444] *See* Notice at 50187.

[445] *See id.; see also* FINRA April 3 Letter at 18–19.

whether to request expungement in a simplified arbitration or to instead file the request as a straight-in request under the Industry Code, the proposed rule change appropriately puts the decision to seek expungement in the hands of the party most impacted by the outcome. Because claims in simplified arbitration generally are decided by one arbitrator based on the documents that are submitted by the parties, with limited discovery, and without a hearing, there may be less information available for the arbitrator to evaluate an expungement request during a simplified arbitration. Therefore, the Commission believes that associated persons should be given the choice of how they want to proceed with their request for expungement, while at the same time balancing customer and regulator interests in the process. The Commission notes, however, that FINRA has stated it will monitor this issue and propose changes as warranted.

2. Deciding Requests in Simplified Arbitration

As stated above, if expungement is requested during a simplified arbitration, the proposed rule change would require the arbitrator to decide the expungement request regardless of how the simplified arbitration case closes, including by settlement, in one of two ways, depending on the how the customer chooses to have their claim decided.[446]

If the customer chooses to have their claim decided either (1) ''on the papers'' (*i.e.,* without a hearing) or (2) in an ''Option Two'' special proceeding, the arbitrator would decide the customer's dispute first and then issue an award before deciding the expungement request.[447] After the customer's dispute is decided, the arbitrator would hold a separate expungement-only hearing to consider and decide the expungement request and issue a separate award.[448] FINRA reasoned that this requirement would minimize any delays in resolving the customer arbitration and in determining any potential recovery that a customer may be awarded.[449] FINRA further stated that the separate expungement-only hearing would be necessary to enable the arbitrator to request any documentary, testimonial, or other evidence it deems relevant to the expungement request to make a fully informed decision.[450]

Alternatively, if the customer chooses to have their claim decided by an ''Option One'' full hearing and it closes by award, the proposed rule change would require the arbitrator to consider and decide the expungement request during the customer arbitration and include the decision in the award.[451] This process would be the same as deciding an expungement request during a regular customer arbitration that closes by award after a hearing, where the customer's claim and expungement request are addressed during the customer arbitration.[452]

If a simplified arbitration closes other than by award or closes by award without a hearing, however, the proposed rule change would require the arbitrator to hold a separate expungement-only hearing to consider and decide the expungement request and issue a separate award containing the decision on the expungement request.[453] Under the proposed rule change, the Director would notify all customers from the simplified arbitration of the separate expungement-only hearing, if applicable.[454] FINRA believes that a separate expungement hearing would be necessary in these circumstances for the arbitrator to develop a complete factual record in order to make a fully informed decision on the expungement request.[455] FINRA also believes that the Director's notice would further this objective by providing a timely reminder to customers of the expungement hearing so that they may plan and prepare to attend and participate if they choose.[456] Moreover, FINRA stated that it would continue to monitor expungement requests and decisions in simplified arbitrations to determine if additional changes are warranted.[457]

Three commenters voiced support for the proposed rule change, specifically identifying the bifurcation of the expungement hearing and simplified arbitration where the customer's claim is decided ''on the papers'' or in an ''Option Two'' hearing.[458] One of these commenters reasoned that by requiring a separate hearing on the expungement request following a final decision on the customer's claim, the proposed rule change would allow for a just resolution of the request because the arbitrator would have all of the facts and special insights necessary to decide whether to award expungement, while ensuring the resolution of the investor's claim is not delayed.[459] Another commenter similarly stated that deciding the customer dispute before the request for expungement would minimize delays in customer recovery but allow the arbitrator to make a more fully developed record before deciding the expungement request.[460]

Another commenter suggested that FINRA create a simplified process for expungement with similar fees and an ''on the papers'' option before a single arbitrator for requests for expungement associated with customer complaints and customer arbitrations under $50,000.[461] In response, FINRA declined to amend the proposed rule change, stating that an important part of ensuring the expungement process works as intended is for arbitrators to hold recorded expungement hearings during which they can hear testimony and assess the credibility of the associated person requesting expungement and any witnesses.[462]

The proposed rule change's procedure for determining the order in which a panel would decide an expungement request in a simplified arbitration based on the type of proceeding chosen by the customer is reasonable. For example, where a customer opts to have their claim decided without a hearing (*i.e.,* ''on the papers'') or chooses an ''Option Two'' special proceeding, the arbitrator would hold a separate expungement-only hearing to consider and decide the expungement request after it decides the customer's dispute. The Commission believes that this process benefits both customers and associated persons. The customer would avoid any delay in resolving their claim that consideration of an expungement request would cause; and the associated person would have a separate hearing to help ensure that the arbitrator has sufficient evidence upon which to rule on their expungement request. Alternatively, where the customer chooses to have their claim decided after a full hearing

[446] *See* Notice at 50187–88; *see also* proposed Rules 12800(d)(1)(B)(ii) and 12800(e)(1).

[447] *See* proposed Rule 12800(e)(1)(A).

[448] *See* proposed Rule 12800(e)(1)(A). The arbitrator would have to conduct the expungement hearing pursuant to proposed Rule 12805(c); the expungement award would have to meet the requirements of proposed Rule 12805(c)(8); and forum fees would be assessed pursuant to proposed Rule 12805(c)(9). *See id.; see also* Notice at 50188 n.206.

[449] *See* Notice at 50188.

[450] *See id.* FINRA stated that the customer arbitration may not be as fully developed when a customer has requested an ''on the papers'' or special proceeding. *See id.*

[451] *See* proposed Rule 12800(e)(1)(B)(i); *see also* Section III.A.3., ''Deciding Expungement Requests during Customer Arbitrations.''

[452] *See* Notice at 50188.

[453] *See* proposed Rule 12800(e)(1)(B)(ii).

[454] *See* proposed Rule 12800(f)(2).

[455] *See* Notice at 50188.

[456] *See id.*

[457] *See id.*

[458] *See* Miami at 2–3; St. John's at 2; Cornell at 4.

[459] *See* St. John's at 2.

[460] *See* Cornell at 4.

[461] *See* Hennion at 6.

[462] *See* FINRA November 10 Letter at 23.

(*i.e.,* an ''Option One'' proceeding), it is reasonable to allow the panel to rule on an expungement request because the request would not unduly burden the customer or an associated person requesting expungement in the hearing. By choosing ''Option One'', a customer has agreed to participate in a more involved and time-consuming process than having their claim decided ''on the papers.'' Likewise, the customer has assumed the risk that the resolution of their claim could be delayed by an associated person's expungement request. In addition, the associated person gets an opportunity during the hearing to help the panel fully develop a record on which to decide the expungement request.

D. Procedural Requirements Relating to All Expungement Hearings

The proposed rule changes would include certain procedural provisions that would apply to all expungement hearings. As described above, these would include procedural requirements relating to: (1) hearing format; (2) associated person's appearance; (3) customer attendance and participation; (4) panel requests for additional documents or evidence; (5) review of settlement documents; (6) requirement for a unanimous decision to issue an award containing expungement relief; (7) contents of an expungement award; (8) grounds for awarding expungement; (9) evidentiary weight of a decision by customers or authorized representatives not to attend or participate; and, (10) forum fees.[463] In addition, the proposed rule change would expand the authority of the Director to deny the use of the DRS arbitration forum.[464]

1. Hearing Format

Current FINRA rules require a panel that is deciding an expungement request to hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement.[465] The proposed rule change would also permit the panel to hold a recorded hearing session by video conference. The proposed rule change would also clarify that a panel would not be limited in the number of hearing sessions it could hold to decide an expungement request.[466] No commenter supported or objected to these proposed changes.

This is an appropriate approach. Permitting parties to hold a recorded hearing session by video conference enhances party participation by making it more convenient and allowing others to read facial expressions of those testifying. In addition, by not limiting the number of hearing sessions a panel could schedule to hear an expungement request, the proposed rule change would help ensure that parties would not be limited in presenting their arguments.[467]

2. Appearance by Associated Person or Party Requesting Expungement

The proposed rule change would require the associated person whose information in the CRD system is the subject of the expungement request to appear in person or by video conference at the expungement hearing.[468] Likewise, a party requesting expungement on behalf of an unnamed person or the party's representative would also be required to appear in person or by video conference at the hearing.[469] The panel would determine the method of appearance.[470] FINRA stated that it believes the associated person should be required to appear in person or by video conference at the expungement hearing and be available to respond to questions. Requiring the associated person's appearance to be in person or by video conference would help the panel assess the associated person's credibility, which may be particularly important if the request is unopposed.[471]

No commenter supported or objected to these proposed changes. One commenter stated that ''FINRA should be mindful that not all persons have the same kind of access to technology and bandwidth. As such, the panel should also have discretion to decide the appropriateness of the manner and form of the requesting . . . [associated person's] participation given the circumstances.''[472] FINRA responded that the proposed rule change provides the panel with that discretion. However, FINRA stated that the method of appearance would be required to be in person or by video conference because FINRA believes the panel may be better able to assess the associated person's credibility through these methods of appearance.[473]

Given the importance of protecting the integrity of the information in the CRD system, FINRA reasonably determined to require that a party requesting expungement appear at the expungement hearing either in person or by video conference. Such a requirement will allow the panel to better assess the testimony of such persons, but also provides flexibility to accommodate instances in which it may not be reasonable or necessary to require an in-person hearing. Leaving the manner of appearance within the panel's discretion is appropriate, as the panel will be free to require an in-person appearance where, from the panel's perspective, the record requires or will be improved by such an appearance.

3. Customer's Attendance and Participation During the Expungement Hearing

The proposed rule change would codify certain provisions of the Guidance to: (1) allow the customer and their representative to appear at the expungement hearing;[474] (2) allow the customer to testify (telephonically, in person, or by other method) at the expungement hearing;[475] (3) allow the representative for the customer or a pro se customer to introduce documents and evidence at the expungement hearing;[476] (4) allow the representative for the customer or a pro se customer to cross-examine the associated person or other witnesses called by the party seeking expungement;[477] and (5) allow the representative for the customer or a pro se customer to present opening and closing arguments if the panel allows any party to present such arguments.[478]

FINRA stated that it believes that customer participation during an expungement hearing provides the panel with important information and perspective that it might not otherwise receive. Through the proposed rule change, FINRA seeks to make it easier for customers to participate and, thereby, to encourage them to do so.[479] FINRA further stated that the proposed rule change strikes the right balance

[463] *See* Section II.D., ''Procedural Requirements Relating to All Expungement Hearings.''

[464] *See* Section II.C.3, ''Director's Authority to Deny the Forum.''

[465] *See* FINRA Rules 12805(a) and 13805(a).

[466] *See* proposed Rules 12805(c)(1) and 13805(c)(1).

[467] Arbitrators would remain in control of the number of hearings needed to decide an expungement request. *See* FINRA Rule 12500 (Initial Prehearing Conference) (requiring the Director to schedule an Initial Prehearing Conference during which the panel will, among other things, schedule any subsequent hearing sessions during which a request would be heard).

[468] *See* proposed Rules 12805(c)(2) and 13805(c)(2).

[469] *See id.; see also* FINRA April 3 Letter at 7.

[470] *See id.*

[471] *See* Notice at 50182.

[472] Del Toro.

[473] *See* FINRA April 3 Letter at 7.

[474] *See* proposed Rules 12805(c)(3)–(4) and 13805(c)(3)–(4).

[475] *See* proposed Rules 12805(c)(3)(B) and 13805(c)(3)(B).

[476] *See* proposed Rules 12805(c)(5)(A) and 13805(c)(5)(A).

[477] *See* proposed Rules 12805(c)(5)(C) and 13805(c)(5)(C).

[478] *See* proposed Rules 12805(c)(5)(D) and 13805(c)(5)(D).

[479] *See* Notice at 50183.

between allowing the customer to participate fully in the hearing and, on the other hand, giving the requesting party the opportunity to substantiate arguments in support of the expungement request.[480] This opportunity includes the ability of the requesting party to cross-examine a customer who chooses to testify and to object to evidence introduced by a customer.[481]

Commenters both supporting and opposing the proposed rule change recommended modifications to these provisions.[482] One commenter who opposed the proposed rule change objected to the participation of non-parties (such as customers in a straight-in proceeding) without such parties submitting to FINRA jurisdiction because non-parties who commit perjury cannot be sanctioned or reprimanded.[483] Another commenter supported the proposed rule change but recommended that the proposed rule change be amended to make clear that customers would have the opportunity and ability to participate ''in all aspects'' of the hearing, such that customers could attend the entire hearing, introduce arguments, and make their points at any time they deem appropriate.[484]

In response to the first commenter, FINRA stated that arbitrators on the Special Arbitrator Roster would have the experience necessary to assess the credibility of those attending and participating in the hearing, as well as any documentary information. In addition, FINRA pointed out that the proposed rule change would give an associated person requesting expungement the opportunity to cross-examine a non-party customer if the person chooses to testify or any witness called by the customer or authorized representative.[485] FINRA believes these mechanisms should be sufficient to ensure that a non-party's testimony or documentary information presented is appropriately scrutinized.[486]

FINRA responded to the other comment by making one of the proposed modifications in Amendment No. 1 to provide that customers would have the opportunity and ability to participate in all aspects of the hearing.[487] Three commenters supported this amendment, stating that the amendment would enable arbitration panels to have a more detailed and balanced view of the relevant facts and events underlying the expungement request.[488] Another commenter recommended limiting a customer's ability to participate in a hearing, stating that while allowing customer participation ''can provide value,'' for logistics reasons, the customer should not be able to request discovery.[489]

In response, FINRA stated that customer attendance and participation in expungement hearings helps the panel fully develop a record on which to decide the expungement request.[490] FINRA further responded that as a non-party to the straight-in request, the customer would not be permitted under the proposed rule change to seek discovery from the parties through the DRS arbitration forum, so the proposed rule change is consistent with the commenter's view in this regard.[491]

Customer participation during an expungement hearing should provide a panel with important information and perspective that it might not otherwise receive. The Commission also understands that customers may have little personal interest in participating in a hearing once their claim has been resolved. The proposed rule changes would implement enhancements to facilitate customer participation in those cases where customers wish to participate. The Commission further believes that the procedural safeguards will appropriately balance the ability of a customer to participate in a hearing and provide relevant information with the interest of an associated person in testing any such information through objection or cross-examination. This ability to object or cross-examine should also help address concerns that non-parties are not themselves subject to FINRA's jurisdiction.

4. Panel Requests for Additional Documents or Evidence

The proposed rule change would codify the ability of the panel to request from the associated person, the party requesting expungement on behalf of an unnamed person, and the member firm at which the person was associated at the time the customer dispute arose, as applicable, any documentary, testimonial, or other evidence that the panel deems relevant to the expungement request.[492] FINRA stated that in deciding an expungement request, particularly in cases that settle before an evidentiary hearing or in cases where the customer does not attend or participate in the expungement hearing, the panel's role as fact finder is critical.[493] FINRA further stated that, given this significant role, the panel must ensure that it has all of the information necessary to make a fully informed decision on the expungement request on the basis of a complete factual record.[494]

One commenter expressed support for the proposed rule change and suggested that FINRA amend the proposed rule change to consider the failure to produce requested documents to be grounds for denial of the expungement request with prejudice.[495] FINRA declined to amend the proposed rule change in response to this comment.[496] FINRA stated that its rules already provide arbitrators with authority to determine whether sanctions should be imposed for failure to comply with any provision of the Code, or any order of a panel or single arbitrator authorized to act on behalf of the panel.[497] FINRA specifically pointed out that: (1) a panel may assess monetary penalties payable to one or more parties; preclude a party from presenting evidence; make an adverse inference against a party; assess postponement and forum fees; and assess attorneys' fees, costs and expenses; [498] (2) a panel may dismiss a claim, defense, or arbitration with prejudice as a sanction for material and intentional failure to comply with an order of the panel if prior warnings or sanctions have proven ineffective; [499] (3) a member or an associated person could be subject to disciplinary action for failure to produce requested documents; [500] and (4) such failure may

[480] *See id.*

[481] *See id.*

[482] *See* AdvisorLaw at 3; NASAA September 6 Letter at 4.

[483] *See* AdvisorLaw at 3. The Commission notes that, with respect to customer participation for purposes of FINRA Rules 13512 (Subpoenas), 13513 (Authority of Panel to Direct Appearances of Associated Person Witnesses and Production of Documents Without Subpoenas), 13602 (Attendance at Hearings), and 13903 (Hearing Session Fees, and Other Costs and Expenses), the customer would be a non-party only to the extent that an expungement request was made as a straight-in request under the Industry Code.

[484] *See* NASAA September 6 Letter at 4.

[485] *See* FINRA November 10 Letter at 9.

[486] *See id.* at 10.

[487] *See* Amendment No. 1; *see also supra* note 11.

[488] *See* PIABA Foundation December 7 Letter at 2; PIABA December 7 Letter at 2; NASAA December 7 Letter at 2.

[489] *See* Grebenik.

[490] *See* FINRA April 3 Letter at 12.

[491] *See id.* 11–12; *see also* Notice at 50186 n.182.

[492] *See* proposed Rules 12805(c)(6) and 13805(c)(7).

[493] *See* Notice at 50183.

[494] *See id.*

[495] *See* NASAA September 6 Letter at 5.

[496] *See* FINRA November 10 Letter at 30–31.

[497] *See id.*

[498] *See id.* at 30 (citing FINRA Rules 12212(a) and 13212(a)).

[499] *See id.* at 30–31 (citing FINRA IM–12000(c), FINRA Rule 12212(c), FINRA IM–13000(c), and FINRA Rule 13212(c)).

[500] *See id.* at 31 (citing FINRA Rules 12212(b) and 13212(b)).

be deemed conduct inconsistent with just and equitable principles of trade and a violation of FINRA Rule 2010.[501]

The proposed rule change should help ensure that a panel receives the documents or information that it requests, and further that a panel is already empowered to dismiss a claim with prejudice for failure to comply with an order of the panel. Further, the arbitrator's critical role as fact-finder in deciding expungement requests requires that arbitrators have the ability to request evidence relevant to their decisions. By providing arbitrators with this power, the proposed rule change will help panels establish more fully developed records upon which to base awards.

5. Review of Settlement Documents

The proposed rule change would retain current FINRA Rules 12805(b)'s and 13805(b)'s requirement for a panel considering an expungement request to review any related settlement documents and consider the amount of payments made to any party, and any other terms and conditions of the settlement.[502] In addition, in cases in which a customer does not participate in the expungement hearing, or a requesting party states that a customer has indicated that they will not oppose the expungement request, the proposed rule change would codify the suggestion, currently in the Guidance, that the panel should inquire and fully consider whether a party impermissibly conditioned a settlement of the arbitration upon the customer's agreement not to oppose the request for expungement.[503] No commenter supported or objected to these proposed changes. The proposed rule change should provide arbitrator oversight of past settlement agreements which should help ensure (through deterrence) that future settlements are not impermissibly conditioned on a customer's agreement not to oppose the request for expungement.

6. Unanimous Decision To Issue an Award Containing Expungement Relief

Under current FINRA rules, consistent with arbitration cases generally, a panel may award expungement based on a majority decision of the arbitrators.[504] The proposed rule change would require that the arbitrators agree unanimously to issue an award containing expungement relief.[505] FINRA stated that, although the vast majority of expungement decisions are already unanimous,[506] this change would help protect the integrity of the information in the CRD system and help ensure that the expungement process operates as intended—as a remedy that is appropriate only in limited circumstances in accordance with the narrow standards in FINRA rules.[507]

Five commenters supported the proposed unanimity requirement.[508] Two of these commenters reasoned that the unanimity requirement would further safeguard the integrity of the information in the CRD system.[509] Three commenters also supported the unanimity requirement as ensuring that expungement is an ''extraordinary'' [510] or ''exceptional'' [511] remedy.

Six commenters, on the other hand, opposed the unanimity requirement.[512] One of these commenters argued that the requirement of the written rationale would encourage unanimity of the decision without mandating it and would further ensure the remedy is extraordinary, thus maintaining the necessary balance between investor protection and regulatory value with fairness to advisors.[513] Two of these commenters argued that no single arbitrator should hold veto power over an expungement decision because it would lead to more inaccurate and misleading data in the CRD system,[514] while a fourth argued that requiring unanimous agreement does not value the opinions of all arbitrators.[515]

FINRA declined to amend the proposed rule change and responded that requiring a unanimous decision of the arbitrators would help protect the integrity of the information in the CRD system and help ensure that the expungement process operates as intended.[516]

Requiring a unanimous decision will help enhance the integrity of the information in the CRD system by helping ensure expungement will only be awarded when there is no disagreement among the arbitrators that the factual record supports it. The importance of the CRD system extends to all aspects of regulation of broker-dealers and registered representatives. Among other things, the information about firms and registered representatives available on CRD facilitates regulators, such as FINRA and the other SROs, state regulators, as well as the Commission, in meeting their regulatory obligations. In addition, certain information in the CRD system is available to the public through BrokerCheck; this information helps investors make better-informed choices about the registered representatives and broker-dealer firms with whom they may conduct business. For these reasons, the importance of the integrity of information in the CRD system militates against awarding expungement in circumstances where there may be disagreement about the merits of a claim.

One commenter recommended that the panel's unanimous decisions to expunge records should only be reached when the evidence presented in support of expungement meets a clear and convincing standard of proof.[517] This commenter reasoned that such an evidentiary standard would be consistent with the extraordinary nature of expungement.[518]

FINRA declined to amend the proposed rule change in response to this recommendation. FINRA stated that to further clarify the limited circumstances under which arbitrators must decide expungement requests, the proposed rule change would expressly list in the Codes the narrow grounds in FINRA Rule 2080(b)(1) for deciding these requests.[519] FINRA stated that it believes that the explicit incorporation of these grounds into the Codes and the requirement for a unanimous decision by arbitrators from the Special Arbitrator Roster would achieve the goal of balancing the competing interests in the expungement process of providing a fair process and protecting the integrity of the information in the CRD system.[520]

[501] *See id.* (citing FINRA IM–12000(c) and FINRA IM–13000(c)).

[502] *See* proposed Rules 12805(c)(7) and 13805(c)(8); *see also* Notice at 50183–84.

[503] *See id.*

[504] *See* FINRA Rules 12410 and 13414.

[505] *See* proposed Rules 12805(c)(8)(A) and 13805(c)(9)(A).

[506] In the Notice, FINRA stated that during the sample period of January 2016 to December 2021, in arbitrations decided by a three-person arbitration panel and involving an expungement request, the panel decision was unanimous in 98 percent and not unanimous in 2 percent of arbitrations. *See* Notice at 50184 n.157; *see also id.* at 50173 n.28 (defining the length of the sample period).

[507] *See id.* at 50184.

[508] *See* Cornell at 4; NASAA September 6 Letter at 3; Edwards at 1; St. John's at 3; PIABA September 6 Letter at 2.

[509] *See* Cornell at 4 and St. John's at 3.

[510] *See* St. John's at 3; PIABA September 6 Letter at 2.

[511] *See* Cornell at 4.

[512] *See* letter from Victoria Staudinger, to the Commission, dated August 16, 2022; SIFMA September 2 Letter at 7; FSI at 5; Grebenik; Beckner; Del Toro.

[513] *See* FSI at 5.

[514] *See* SIFMA September 2 Letter at 7; *see also* Del Toro.

[515] *See* Grebenik.

[516] *See* FINRA November 10 Letter at 11; *see also* FINRA April 3 Letter at 4–5.

[517] *See* NASAA September 6 Letter at 3.

[518] *See id.*

[519] *See* FINRA November 10 Letter at 17; *see also* proposed Rules 12805(c)(8)(A)(i) and 13805(c)(9)(A)(i).

[520] *See* FINRA November 10 Letter at 17.

Finally, FINRA stated it will continue to evaluate whether there are other ways to further strengthen the expungement process, including whether to require that a panel find that the evidence presented in support of an expungement request meets a clear and convincing standard of proof in order to issue an award containing expungement relief.[521]

The importance of the integrity of information in the CRD system militates against awarding expungement in circumstances where there may be disagreement about the merits of a claim. Thus, as stated above, requiring a unanimous decision will enhance the integrity of the information in the CRD system by helping ensure expungement will only be awarded when there is no disagreement among the arbitrators that the factual record supports it. Furthermore, by requiring a three-person panel of specially trained, specially qualified arbitrators to unanimously decide an expungement request based on three specified grounds [522] (in addition to the proposed reforms to the process for selecting arbitrators and the enhanced training and qualification), the proposed rule change is reasonably designed to help ensure that arbitrators only award expungement when there is evidentiary support of their decisions. Therefore, FINRA's decision regarding the evidentiary standard is reasonable in light of the implementation of a unanimous decision requirement, and other proposed safeguards.

7. Awards

Current FINRA Rules 12805(c) and 13805(c) require that the panel provide a ''brief'' written explanation of the reasons for its finding that one or more of the grounds for expungement applies to the facts of the case. The proposed rule change would retain the requirements of current Rules 12805(c) and 13805(c) but would remove the word ''brief.'' As a result, the panel would be required to provide enough detail in the award to explain its rationale for awarding expungement relief.[523] In addition, the proposed rule change would incorporate language from the Guidance by requiring that the panel's explanation identify any specific documentary, testimonial or other evidence on which the panel relied in awarding expungement relief.[524]

One commenter suggested that FINRA ''strengthen'' this aspect of the proposed rule change by requiring arbitrators to provide a thorough explanation of how a request meets expungement's extraordinary standard, including an explanation of how the arbitrators determined that the requesting party's uncontested assertions accurately reflected the truth of the matter.[525]

FINRA declined to amend the proposed rule change and responded that the panel's explanation would be required to not be solely a recitation of one of the grounds for awarding expungement relief or language provided in the expungement request and that the proposed rule change would require the panel to identify any specific documentary, testimonial, or other evidence on which the panel relied in awarding expungement relief.[526] In addition, FINRA stated that it would specify in its enhanced expungement training for arbitrators the importance of explaining their rationale for awarding expungement relief.[527]

Requiring a written rationale that specifically identifies the basis for an expungement award and the documents or other evidence that supports such an award should be sufficient both to help ensure that a panel has considered the available evidence and its bearing on the available bases for an expungement award and should help ensure that a panel has correctly identified a permissible ground for expungement. Further, the written rationale requirement should provide interested parties with enough information to understand the reasons for an expungement award.

8. Grounds for Recommending Expungement

As stated above, both currently and under the proposed rule change, an associated person may seek expungement of customer dispute information by obtaining a court expungement order by either: (1) going through the arbitration process and obtaining an award recommending expungement (and then obtaining a court order confirming the arbitration award); or (2) going directly to court (without first going through arbitration). Regardless of whether expungement of customer dispute information is sought directly through a court or by first going through arbitration, FINRA Rule 2080 requires an associated person seeking expungement to obtain a court order directing such expungement or confirming an award containing such expungement.[528] Moreover, under FINRA Rule 2080(b) members or associated persons petitioning a court for expungement relief, or seeking judicial confirmation of an arbitration award containing expungement relief, must name FINRA as an additional party and serve FINRA with all appropriate documents unless this requirement is waived by FINRA pursuant to either Rule 2080(b)(1) or 2080(b)(2). Specifically, FINRA Rule 2080(b)(1) provides that FINRA may waive the requirement to name FINRA as a party in situations where ''expungement relief is based on affirmative judicial or arbitral findings'' of factual impossibility, mistake, or falsity.[529]

In addition to FINRA's ability to waive the obligation to name FINRA as a party under FINRA Rule 2080(b)(1), FINRA may also waive the requirement to name FINRA as a party to a court proceeding seeking confirmation of an arbitration award pursuant to FINRA Rule 2080(b)(2).[530] FINRA Rule 2080(b)(2) provides that FINRA may waive this requirement in situations in which ''the expungement relief is based on judicial or arbitral findings other than those described above''—that is, situations in which an arbitrator has not found factual impossibility, mistake, or falsity but, nevertheless, has recommended expungement based on findings not named in Rule 2080. In such situations, ''FINRA, in its sole discretion and under extraordinary circumstances, also may waive the obligation to name FINRA as a party if [FINRA] determines that: (A) the expungement relief and accompanying findings on which it is based are meritorious; and (B) the expungement would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.'' [531] In other words, if an arbitrator recommends expungement on grounds other than factual impossibility, mistake, or falsity, FINRA may, in ''extraordinary circumstances'' nevertheless decide to waive the obligation to name FINRA as a party if FINRA finds: (1) that the alternative grounds supplied by the arbitrator and the arbitrator's recommendation are

[521] *See* FINRA April 3 Letter at 18–19.

[522] *See* Section III.D.8., ''Grounds for Recommending Expungement.''

[523] *See* proposed Rules 12805(c)(8)(B) and 13805(c)(9)(B); *see also* Notice at 50184.

[524] *See* proposed Rules 12805(c)(8)(B) and 13805(c)(9)(B).

[525] *See* NASAA September 6 Letter at 5.

[526] *See* FINRA November 10 Letter at 18.

[527] *See id.*

[528] *See supra* notes 25–30 and accompanying text.

[529] *See* FINRA Rule 2080(b)(1). FINRA Rule 2080 is not part of the Codes. FINRA stated that it is not proposing amendments to FINRA Rule 2080 at this time but is considering whether enhancements to the current expungement process through changes to FINRA Rule 2080 may be warranted. *See* Notice at 50184 n.162.

[530] *See supra* note 29 and accompanying text.

[531] *See* FINRA Rule 2080(b)(2).

meritorious and (2) that the expungement would have no material adverse effect on investor protection, the integrity of the information in the CRD system, or regulatory requirements.[532]

It is FINRA's view that, currently, in order to issue an award containing expungement relief, a panel must affirmatively find that one of the three grounds contained in FINRA Rule 2080(b)(1) has been met.[533] More specifically, current FINRA Rules 12805 and 13805 require that, in order to issue an award containing expungement of customer dispute information, a panel must indicate in the arbitration award which of the FINRA Rule 2080 grounds for expungement serves as the basis for its expungement order. In other words, according to FINRA, to include expungement relief in an award, FINRA Rules 12805 and 13805 currently require a panel to find that: (1) the claim, allegation, or information is factually impossible or clearly erroneous; (2) the associated person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; or (3) the claim, allegation, or information is false.[534]

The proposed rule change would replace FINRA Rules 12805's and 13805's reference to FINRA Rule 2080 with an enumeration of the specific grounds identified in FINRA Rule 2080(b)(1) (*i.e.,* factual impossibility, mistake, or falsity). FINRA stated that the proposed rule change thus would codify, in the Codes, the grounds identified in FINRA Rule 2080(b)(1) as the exclusive grounds upon which an arbitration panel may issue an award containing expungement of customer dispute information from the CRD system.[535]

In FINRA's view, both FINRA and the Commission historically have treated the grounds in Rule 2080(b)(1) as the exclusive grounds upon which expungement may be awarded.[536] Consistent with this view, the proposed rule change, in addition to codifying the FINRA Rule 2080(b)(1) grounds as the exclusive grounds upon which a panel may base an expungement award, would also state that a panel shall not issue, and the Director shall not serve, an award containing expungement relief based on grounds other than those in proposed Rules 12805(c)(8)(A)(i) and 13805(c)(9)(A)(i).[537] Three commenters supported these proposed changes to FINRA Rules 12805 and 13805.[538] Two of these commenters stated that the required grounds for issuing an expungement award would help ensure that expungement is an extraordinary remedy.[539] The third commenter reasoned that the proposed rule change should drive outcomes that are more consistent with the limited circumstances under which expungement can be granted and favors consistency in the expungement process.[540]

One commenter objected to this provision of the proposed rule change, positing that FINRA should not limit the grounds for when arbitrators can recommend expungement to those contained in current Rule 2080(b)(1), incorporated into proposed Rule 12805 and 13805, but should also allow arbitrators to recommend expungement on the grounds contained in Rule 2080(b)(2) by also incorporating those grounds into the proposed rule change.[541] The commenter stated that the current grounds for granting expungement under FINRA rules are not limited to the three grounds listed in Rule 2080(b)(1) (*i.e.,* factual impossibility, mistake, or falsity), but also include the grounds listed in Rule 2080(b)(2) (*i.e.,* (1) the expungement and accompanying findings on which it is based are meritorious and (2) expungement would have no material adverse effect on investor protection, the integrity of the information in the CRD system, or regulatory requirements).[542] Accordingly, and notwithstanding prior FINRA guidance purporting to limit the grounds upon which a panel may grant expungement to those contained Rule 2080(b)(1), in the commenter's view arbitrators may also award expungement based on Rule 2080(b)(2).[543] The commenter disagreed with FINRA's position that subsection (b)(2) only provides factors for FINRA to consider in deciding whether to waive the obligation to name FINRA as a party in a court petition for expungement relief. Instead, the commenter stated that Rules 2080(b)(1) and 2080(b)(2) operate in the same manner and that Rule 2080(b)(2) provides additional grounds on which a panel may base an expungement award.[544] In support of its recommendation, the commenter argued that failing to permit expungement on the grounds contained in Rule 2080(b)(2) would result in meritorious expungement requests being rejected, leading to inaccurate and misleading information remaining in the CRD system.[545] The commenter further stated that FINRA has not justified limiting the grounds upon which expungement may be awarded to those contained in the proposed rule change (*i.e.,* the grounds in Rule 2080(b)(1)).[546] The commenter added that the proposed rule change is inconsistent with the Exchange Act because FINRA: (1) circumvented the proper rulemaking process by failing to provide adequate notice that it was proposing a significant rule change to limit the expungement grounds to Rule 2080(b)(1) or an opportunity for comment; [547] and (2) failed to provide any cost-benefit analysis, or other justification, to support limiting the grounds for expungement to those under Rule 2080(b)(1).[548]

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[532] *See* Notice at 50184 n.162; *see also* FINRA November 10 Letter at 12 n.54.

[533] *See* Notice at 50173.

[534] *See id.* at 50173 n.31 and accompanying text; *see also id.* at 50184 n.162.

[535] *See id.* at 50184 n.162 and accompanying text.

[536] *See id.* at 50173 n.31 (citing, among other things, Exchange Act Release No. 58886 (Oct. 30, 2008), 73 FR 66086, 66087 (Nov. 6, 2008) (Order Approving File No. SR–FINRA–2008–010) (stating that new Rules 12805 and 13805 require the arbitration panel to indicate ''which of the grounds for expungement in Rule [2080](b)(1)(A)–(C) serves as the basis for the expungement'') and Regulatory Notice 08–79 (December 2008) (stating that ''[t]he arbitration panel must indicate which of the grounds for expungement under Rule [2080](b)(1)(A)–(C) serve as the basis for their expungement order'')). *Id. See also* FINRA November 10 Letter at 13–14 and 14 n.62; *see also* FINRA April 3 Letter at 16.

[537] *See* proposed Rules 12805(c)(8)(A)(ii) and 13805(c)(9)(A)(ii).

[538] *See* Cambridge at 2–3; Cornell at 4; St. John's at 3.

[539] *See* Cornell at 4; St. John's at 3.

[540] *See* Cambridge at 2.

[541] *See* SIFMA September 2 Letter at 4–6; *see also* letter from Kevin M. Carroll, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to the Commission, dated December 7, 2022 (''SIFMA December 7 Letter'') (expanding on its argument that the proposed rule change should permit arbitrators to recommend expungement if they find the grounds contained in Rule 2080(b)(2), in addition to Rule 2080(b)(1), in response to FINRA November 10 Letter); Del Toro (arguing that ''[e]xpungement awards based solely on Rule 2080(b)(2) are rare, but they are nevertheless allowed under the current rules'').

[542] *See* SIFMA September 2 Letter at 3–4 (quoting FINRA Rules 12805 and 13805); SIFMA December 7 Letter at 2.

[543] *See* SIFMA September 2 Letter at 2–4; SIFMA December 7 Letter at 2.

[544] *See* SIFMA September 2 Letter at 4; SIFMA December 7 Letter at 2.

[545] *See* SIFMA September 2 Letter at 5–6; SIFMA December 7 Letter at 3.

[546] *See* SIFMA September 2 Letter at 4–6; SIFMA December 7 Letter at 3; Del Toro (stating that ''FINRA Rule 2080 is a substantive rule and its modification requires a comprehensive rulemaking process through which FINRA must provide justification for making said change. FINRA has provided no such justification here,'' and ''[FINRA] provides no evidence or data suggesting that arbitrators are applying an incorrect standard in arbitration cases'').

[547] *See* SIFMA December 7 Letter at 2; *see also* SIFMA September 2 Letter at 4, 10; Del Toro (stating that ''some of the Proposal[']s changes result in the indirect abrogation of FINRA Rule 2080(b)(2) through a procedural rule change'').

[548] *See* SIFMA December 7 Letter at 3.

FINRA disagreed with the commenter, stating that Rules 12805 and 13805 and their rulemaking history and related guidance establish that arbitrators in the forum are currently limited to the grounds enumerated in FINRA Rule 2080(b)(1)(A)–(C) when awarding expungement.[549] According to FINRA, the plain language of current FINRA Rules 12805 and 13805 is consistent with FINRA's position that, currently, FINRA Rule 2080(b)(1) lists the exclusive grounds upon which a panel may award expungement.[550] Specifically, FINRA stated that current FINRA Rules 12805 and 13805 describe what ''the panel must'' do in order to grant expungement of customer dispute information, and only FINRA Rule 2080(b)(1) describes grounds upon which arbitrators may grant expungement in the forum.[551] By contrast, Rule 2080(b)(2) provides a general standard for FINRA to consider in making its own regulatory determination in extraordinary circumstances when the court or arbitrator makes findings ''other than those described in [2080](b)(1)].'' [552] According to FINRA, as a result, the language in current FINRA Rules 12805 and 13805 requiring the panel to ''[i]ndicate in the arbitration award which of the Rule 2080 grounds for expungement serve(s) as the basis for its expungement order'' is properly understood as referring only to the grounds listed in paragraph (b)(1), as those are the only specific grounds listed in FINRA Rule 2080 that a panel could affirmatively find in making an expungement determination.[553]

FINRA further stated that by approving FINRA Rule 2080 and FINRA Rules 12805 and 13805, the Commission demonstrated its expectation that a panel should indicate in the arbitration award which of the grounds for expungement in Rule 2080(b)(1)(A)–(C) serves as the basis for the expungement order.[554] According to FINRA, the Commission thus ''explicitly approved the FINRA Rule 2080(b)(1) limitation.'' [555]

FINRA also disagreed with the commenter that not permitting expungement on Rule 2080(b)(2) grounds would lead to inaccurate and misleading information in the CRD system.[556] On the contrary, FINRA stated that it believes that allowing arbitrators in the forum to issue awards containing expungement relief by applying an ''equitable'' standard would not sufficiently protect the integrity of the information in the CRD system, as, in FINRA's view, any removal of information from the CRD system should be based on specific, enumerated standards, such as those provided in FINRA Rule 2080(b)(1).[557] If FINRA were to change course and expand the grounds for expungement to allow for (b)(2) grounds, as advocated by the commenter, FINRA believes it would inappropriately broaden the grounds for expungement to allow for removal of dispute information beyond the extraordinary circumstances in which expungement is appropriate.[558] In particular, whereas (b)(1) identifies specific grounds for expungement, the (b)(2) grounds are entirely open ended, as they refer only to grounds ''other than those described'' in (b)(1).[559]

In response to the commenter's assertion that FINRA has not justified the proposed rule changes, FINRA reiterated its view, stated in the Notice, that the proposed rule changes would further protect the integrity of the information in the CRD system.[560] FINRA stated the proposed rule changes would reinforce that expungement is appropriate only in extraordinary circumstances by specifying in the Codes the narrow grounds that arbitrators must find in issuing an award containing expungement relief.[561] FINRA stated that amending Rules 12805 and 13805 to codify the three narrow grounds in Rule 2080(b)(1) as the only grounds on which arbitrators may determine to award expungement relief best aligns with FINRA's position that its expungement framework should allow for the removal of customer dispute information from the CRD system only in extraordinary circumstances in accordance with FINRA's rules.[562] These three narrow grounds, in FINRA's view, fairly address the circumstances in which an associated person would appropriately seek expungement of customer dispute information in the DRS arbitration forum.[563] In addition, FINRA stated that allowing expungement only in these extraordinary circumstances would continue to balance the competing interests of providing regulators with broad access to information about customer disputes to fulfill their regulatory obligations, providing a fair process that recognizes an associated person's interest in protecting their reputation, and ensuring investors have access to accurate information about associated persons with whom they may decide to do business.[564] Furthermore, FINRA stated that is has undertaken an economic impact assessment to analyze the regulatory need for the proposed rule change, its 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 best to meet FINRA's regulatory objectives.[565]

Finally, FINRA also disagreed with the commenter's assertion that FINRA has not provided adequate notice or opportunity for public comment of its intent to amend FINRA Rules 12805 and 13805 to codify the exclusive grounds upon which an arbitration panel may issue an award containing expungement of customer dispute information from the CRD system.[566] FINRA stated that by proposing the proposed rules it has solicited comment on the proposed rule change, which FINRA stated clearly articulates the amendment and the basis for it.[567] In addition, FINRA stated that it had also previously solicited comment in Regulatory Notice 17–42.[568] According to FINRA, adequate notice and opportunity for comment in this instance is demonstrated by publication of the proposed rules explaining the reasons for the proposed rule change, the commenter's comment letters in response to the proposed rules, and FINRA's consideration of and responses to comments.[569]

The Commission's order approving Rules 12805 and 13805 stated that ''in order to grant expungement of customer dispute information under Rule [2080], the panel must . . . indicate in the arbitration award which of the grounds

[549] *See* FINRA November 10 Letter at 12–15; *see also* FINRA April 3 Letter at 15–16.

[550] *See* FINRA November 10 Letter at 14.

[551] *See id.* at 14–15.

[552] *See id.* at 14.

[553] *See id.* at 15.

[554] *Id.* at 13–14 (citing Exchange Act Release No. 58886 (October 30, 2008), 73 FR 66086, 66087 (November 6, 2008) (Order Approving File No. SR–FINRA–2008–010)).

[555] *Id.* at 14 (citing Exchange Act Release No. 58886 (October 30, 2008), 73 FR 66086, 66087 (November 6, 2008) (Order Approving File No. SR–FINRA–2008–010)).

[556] *See id.* at 12–13.

[557] *See id.*

[558] *See* FINRA November 10 Letter at 12–17; *see also* FINRA April 3 Letter at 16–17.

[559] *See* FINRA November 10 Letter at 12–17; *see also* FINRA April 3 Letter at 16–17.

[560] *See* FINRA November 10 Letter at 12, 16; *see also* FINRA April 3 Letter at 17; *see also* Notice at 50186.

[561] *See* FINRA November 10 Letter at 12, 16; *see also* FINRA April 3 Letter at 16.

[562] *See* FINRA April 3 Letter at 16.

[563] *See id.* at 16–17.

[564] *See id.* at 17.

[565] *See id.* (citing Notice at 50189–50198).

[566] *See* FINRA November 10 Letter at 16; *see also* FINRA April 3 Letter at 17.

[567] *See* FINRA November 10 Letter at 16; *see also* FINRA April 3 Letter at 17.

[568] *See* FINRA November 10 Letter at 16.

[569] *See* FINRA April 3 Letter at 17.

for expungement in Rule [2080](b)(1)(A)–(C) serves as the basis for the expungement order.'' [570] The proposed rule change would codify FINRA's intended exclusive grounds for expungement. Codifying in FINRA Rules 12805 and 13805 the grounds enumerated in Rule 2080(b)(1) as the only grounds on which an arbitrator may recommend expungement would give arbitrators a clear mandate. It would resolve any potential uncertainty regarding the applicability of FINRA Rule 2080(b)(2) as an appropriate ground upon which arbitrators may issue awards containing expungement relief. Moreover, consistent with FINRA guidance, it would help ensure that arbitrators recommend expungement only as an extraordinary remedy in the extraordinary circumstances of factual impossibility, mistake, or falsity.

The proposed rule change would also help protect the integrity of information in the CRD system by helping ensure that expungement remains an extraordinary remedy limited to narrow, enumerated circumstances. The Commission also believes that FINRA's decision to limit the grounds for expungement to those enumerated in Rule 2080(b)(1) is appropriate. Because Rule 2080(b)(2) describes a general standard for FINRA to consider in determining whether or not to waive an associated person's obligation to name FINRA as a party when seeking judicial confirmation of an expungement award, including Rule 2080(b)(2)'s standard would make the type of information that could be expunged broader and less foreseeable and thus risk undermining the integrity of the information in the CRD system.[571]

Further, in contrast to the commenter's statement, FINRA provided justification to support limiting the grounds for awarding expungement to those under Rule 2080(b)(1). In its filing, FINRA details the economic impact analyzing ''the regulatory need for the proposed rule change, its 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 best to meet [its] regulatory objectives.'' [572] FINRA's analysis covers the potential economic impact of the entire proposed rule change, including proposed Rules 12805(c)(8)(A) and 13805(c)(9)(A).[573] Thus, FINRA's economic analysis addressed its codification, in the Codes, of the grounds identified in FINRA Rule 2080(b)(1) as the exclusive grounds upon which an arbitration panel may issue an award containing expungement of customer dispute information from the CRD system.

Furthermore, as stated above, BrokerCheck helps investors make more informed choices about the associated persons and broker-dealer firms with whom they may conduct business. Since the information on BrokerCheck is populated by information from CRD, the integrity of the information investors use to make their investment decisions is dependent on the integrity of the information in the CRD system. An expungement process limited to clear, enumerated standards helps ensure that factually impossible, mistaken, or false information can be removed from the CRD system, while also decreasing the likelihood that arbitrators award expungement on unforeseen or unsound grounds to the detriment of the quality of information in the CRD system. In light of this, the Commission believes that FINRA has appropriately balanced the investor protection benefits of the proposed rule change against the potential harm to associated persons, and that FINRA has reasonably considered the impacts of the proposed rule change as outlined in its economic impact analysis and its response to comments.

Finally, Section 19(b) of the Act,[574] and Rule 19b–4 thereunder,[575] set forth the requirements for notice and comment for an SRO proposed rule change. That process was followed for this proposed rule change. The Notice articulated FINRA's proposed rule change, as well as its bases for it. In response, the Commission received forty-five comment letters including from commenters expressing concern about the proposed codification of Rule 2080(b)(1)'s grounds for expungement. On November 10, 2022, FINRA responded to those commenters and filed Amendment No. 1, modifying the original proposed rule change. In the Order Instituting Proceedings, the Commission noticed Amendment No. 1 and requested comment on the proposed rule change, as modified. In response, the Commission received seven comment letters including from commenters expressing concern about the proposed codification of Rule 2080(b)(1)'s grounds for expungement.

9. Evidentiary Weight of Decision of Customer or Authorized Representative Not To Attend or Participate

Originally, the proposed rule change would have included an instruction for arbitration panels that the decision of a customer or an authorized representative of state securities regulators not to attend or participate in the expungement hearing would not be material to the determination of whether expungement is appropriate.[576] One commenter suggested that FINRA amend the proposed rule change to state clearly that arbitrators must give no weight to such decisions.[577] FINRA agreed that a customer's or an authorized representative's decision not to attend or participate should not be given any evidentiary weight by the panel when making the expungement determination, and accordingly amended the proposed rule change to clarify this position.[578]

As amended, the proposed rule change states that a panel shall not give any evidentiary weight to a decision by a customer or an authorized representative not to attend or participate in an expungement hearing when making a determination of whether expungement is appropriate.[579] FINRA stated that it is aware that some panels have indicated in expungement awards that a customer did not appear at the expungement hearing.[580] But, FINRA stated that it believes that a customer or an authorized representative may not attend, participate in or appear at an expungement hearing for a variety of reasons that may be unrelated to the merits of the expungement request and thus it should not be considered by the panel when deciding a request for

[570] *Id.* The Commission's approval order also similarly describes FINRA's response to comments as stating ''that the proposal requires arbitrators to evaluate fully whether the party requesting expungement either in arbitration or in connection with a settlement agreement has met the criteria promulgated under Rule [2080](b)(1)(A)–(C).'' *Id.*

[571] Although FINRA Rule 2080(b)(2) states that FINRA ''in its sole discretion and in extraordinary circumstances'' may waive an associated person's obligation to name FINRA as a party when seeking judicial confirmation of an expungement award where FINRA ''determines that . . . the expungement relief and accompanying findings on which it is based are meritorious'' and ''would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements,'' these ''extraordinary circumstances'' are not further delineated by the rule and are at FINRA's discretion. By contrast, proposed Rules 12805 and 13805 would specifically identify the extraordinary circumstances in which a panel may award expungement—factual impossibility, mistake, or falsity.

[572] Notice at 50189–98.

[573] *See id.*

[574] 15 U.S.C. 78s(b)(1).

[575] 17 CFR 240.19b–4.

[576] *See* Notice at 50184.

[577] *See* NASAA September 6 Letter at 5.

[578] *See* FINRA November 10 Letter at 11 and Amendment No. 1.

[579] *See* proposed Rules 12805(c)(8)(C) and 13805(c)(9)(C).

[580] *See* Notice at 50184–85.

expungement.[581] Three commenters supported the amendment.[582] The Commission received no comment letters opposing the amendment.

The Commission agrees that customers or authorized representatives of a state securities regulator may decide not to appear for a variety of reasons unrelated to the merits of an expungement request and that FINRA reasonably determined that such a decision by a customer or an authorized representative should not be given weight by the panel assessing the request.

10. Forum Fees

The proposed rule change would retain the current requirement that the panel must assess against the parties requesting expungement all forum fees for each hearing in which the sole topic is the determination of the appropriateness of expungement.[583]

One commenter characterized the existing minimum member surcharge and process fees that would be assessed to firms if an associated person files a straight-in request, following an arbitration that closes other than by award or closes by award without a hearing, as ''duplicative'' and suggested that these fees be eliminated.[584] According to this commenter, in a customer arbitration that closes other than by award or by award without a hearing, the member firm would have already paid the member surcharge and processing fee for using the forum.[585] The member would then have to pay again if named in a subsequent straight-in request.[586] Another commenter stated similarly that where firms have already paid the fee in the original matter, associated persons should not then be required to pay another full fee for expungement requests.[587]

In response, FINRA stated that the member surcharge and process fees that a member firm would be assessed if an associated person files a straight-in request are not duplicate fees.[588] FINRA stated it is appropriate to assess these fees for straight-in requests because such requests initiate separate arbitrations seeking different relief—namely, expungement.[589] FINRA also stated that if the associated person, or the requesting party in the case of an on-behalf-of request, files a straight-in request after having previously paid the filing fee to request expungement of the same customer dispute information during a customer arbitration that settles or is dismissed, FINRA would not assess a second filing fee when the associated person files the straight-in request.[590] Moreover, FINRA explained that, in instances in which DRS's fees may be challenging to pay due to financial hardship, the Director has the authority to defer payment of all or part of an associated person's filing fee on a showing of financial hardship.[591]

FINRA may reasonably assess member surcharge and process fees for straight-in requests. Straight-in requests are separate arbitrations before a separate panel of specially trained arbitrators. Proceedings have costs and it is appropriate that FINRA would require the parties generating those costs to pay them.[592]

11. Director's Authority To Deny the Forum

The proposed rule change would require the Director to decline the use of the DRS arbitration forum if an associated person files an expungement request that the Director determines is ineligible for arbitration under proposed Rules 12805 and 13805.[593] The proposed rule change would also provide the Director with authority to decline the use of the DRS arbitration forum if the Director determines that the expungement request was not filed under, or considered in the DRS arbitration forum in accordance with, proposed Rules 12805 or 13805.[594] FINRA stated that the proposed rule change would help ensure additional safeguards around the expungement process by expanding the circumstances in which the Director is authorized to deny the DRS arbitration forum.[595]

No commenter supported or objected to these proposed changes. The Commission believes that providing the Director with the authority to deny the use of the DRS arbitration forum should enhance the integrity of the expungement process and the CRD system.

E. Notifications to Customers and States Regarding Expungement Requests

1. Associated Persons Notify Customers

The proposed rule change would codify a practice from the Guidance to require the associated person who files a straight-in request to serve all customers whose customer arbitrations, civil litigations, and customer complaints are a subject of the expungement request with a copy of the statement of claim requesting expungement and any answer.[596] The panel would be authorized to decide whether extraordinary circumstances exist that make service on the customers impracticable.[597] The proposed rule change would further require the associated person to file with the panel proof of service for the statement of claim and any answers, copies of all documents provided by the associated person to the customers, and copies of all communications sent by the associated person to the customers and any responses received from the customers.[598] FINRA stated that these proposed rule changes would help ensure that a customer knows about the expungement request and has an opportunity to attend and participate in the expungement hearing.[599]

Three commenters supported this aspect of the proposed rule change.[600] Two commenters reasoned that the notification requirement would

[581] *See id.; see also* FINRA November 10 Letter at 10–11.

[582] *See* PIABA Foundation December 7 Letter at 2; PIABA December 7 Letter at 2; NASAA December 7 Letter at 2.

[583] *See* proposed Rules 12805(c)(9) and 13805(c)(10); *see also* FINRA Rules 12805(d) and 13805(d).

[584] *See* SIFMA September 2 Letter at 9.

[585] *See id.*

[586] *See id.*

[587] *See* FSI at 6.

[588] *See* FINRA November 10 Letter at 31.

[589] *See id.*

[590] *See id.* at 32; *see also* Notice at 50179 n.95.

[591] *See* FINRA November 10 Letter at 6.

[592] Any such fee filings must be filed pursuant to Section 19(b) and Rule 19b–4, and must be consistent with all the relevant statutory and rule requirements.

[593] *See* proposed Rules 12203(b) and 13203(b). For example, FINRA stated that under the proposed rule change the Director would decline the use of the DRS arbitration forum if: (1) an expungement request is ineligible under the proposed time limitations; (2) a panel has previously considered the merits of, or a court has previously decided, an expungement request associated with the same customer dispute information; (3) an associated person was named as a respondent in a customer arbitration but did not request expungement; (4) an associated person requested expungement but withdrew or did not pursue the expungement request; or (5) a party to a customer arbitration requested expungement on behalf of an unnamed person but the party withdrew or did not pursue an expungement request on behalf of the unnamed person. *See* Notice at 50182.

[594] *See* proposed Rules 12203(c) and 13203(c). For example, FINRA stated that the Director may decline the use of the DRS arbitration forum if the Director determines that: (1) a panel is proposing to issue an award containing expungement of customer dispute information other than pursuant to proposed Rules 12805, 12800(d) and (e) or 13805, as applicable; or (2) an associated person seeks expungement of customer dispute information other than pursuant to proposed Rules 12805, 12800(d) and (e) or 13805, as applicable. *See* Notice at 50182.

[595] *See* Notice at 50182.

[596] *See* proposed Rule 13805(b)(1)(A)(i) and (ii). Proposed Rule 13805(b)(1)(A)(ii) would require the associated person to serve a copy of the statement of claim and a copy of any answer within 10 days of filing.

[597] *See* proposed Rule 13805(b)(1)(A)(i).

[598] *See* proposed Rule 13805(b)(1)(A)(iv).

[599] *See* Notice at 50185.

[600] *See* Cornell at 3; NASAA September 6 Letter at 4; St. John's at 3.

encourage customer participation and reduce unopposed expungement hearings.[601] For the same reasons, one of these commenters further supported the requirement that the associated person file proof of service and copies of all communications with the panel.[602]

The proposed customer notification provision will help ensure that customers are aware of expungement requests and have an opportunity to participate. Further, requiring filing of proof of service and any communications will help ensure that customers are notified in accordance with the proposed rule change and that customers are not inappropriately dissuaded from participating in an expungement proceeding. Under these proposed rule changes, customers should be more likely to participate in a hearing to decide an expungement request, which helps ensure that the panel has a more fully formed set of evidence upon which to base its decision. With this additional information, the panel should be more likely to award expungement only when appropriate, thereby helping protect the integrity of the information in the CRD system.

2. Director Notifies Customers

To facilitate customer notification of an expungement request, proposed Rule 13805(b)(1)(B)(i) would require an associated person to include in any request to expunge customer dispute information a current address for the relevant customer.[603] To help ensure an associated person complies with this proposed obligation, proposed Rule 13307(a)(7) would provide that an expungement request that does not include such address is ''deficient,'' and the Director may not serve any expungement request that does not include such address, the effect being that such request would not move forward.[604]

Proposed Rule 13805(b)(1)(B)(i) would require the Director to notify all customers whose customer arbitrations, civil litigations, or customer complaints are the subject of an expungement request of the time, date, and place of any prehearing conferences and the expungement hearing. FINRA stated that this proposed notification requirement would facilitate customer participation in the expungement process by providing the customer the time to plan and prepare for the hearing.[605] The proposed rule change would also require the Director to: (1) include language in the notice encouraging the customer to attend and participate; and (2) provide the notified customers with access to all documents on the Portal relevant to the expungement request that are filed in: (a) the arbitration requesting expungement relief and (b) a customer-initiated arbitration brought by the customer under the Customer Code that is a subject of the expungement request.[606]

Three commenters recommended amendments to these provisions.[607] One of these commenters argued that for logistics reasons, customers should only be notified once for the pre-hearing conference and should not be notified again for the expungement hearing.[608] Another commenter recommended that the proposed rule change be amended to provide that FINRA ''will 'deliver' the relevant documents to customers upon request,'' rather than providing customers with ''access.'' [609] The third commenter recommended that FINRA amend the rule to allow firms to provide the customer's last known address instead of the current address, stating that an error in the listed current address in the petition for expungement, after the appropriate diligence and attempts to correct the error, should not preclude the filing and granting of the expungement request.[610]

With respect to the notification requirements, FINRA stated that customer attendance and participation in expungement hearings helps the panel fully develop a record on which to decide the expungement request.[611] FINRA further stated that the associated person seeking expungement should provide the customer's current address, so that the Director will have the most recent contact information to timely notify the customer of the expungement request, prehearing conferences, and expungement hearings.[612] FINRA accordingly declined to amend the proposed rule change in response to these comments.[613]

FINRA likewise declined to amend the proposed rule change in response to one commenter's suggestion that FINRA ''will deliver'' materials on request, rather than providing access.[614] FINRA responded that these changes were unnecessary because the Portal currently helps ensure that customers receive necessary notifications regarding their arbitration and mediation cases.[615] FINRA stated that it provides case participants with access to documents through the Portal. FINRA explained that once registered on the Portal, a customer may, among other things, view documents and submit documents to FINRA and, for those customers who are unable to access the Portal, DRS would provide paper documents upon request.[616]

The proposed rule change related to customer notification would help ensure that customers are notified of expungement requests and able to access related necessary documents. The requirement that an associated person include a current address for the relevant customer would help ensure that customers are notified of expungement requests in a timely manner. Moreover, DRS will provide paper documents to customers that may not have the ability to access the Portal upon request. Notified customers would be more likely to participate in a hearing to decide an expungement request, which would help ensure that the panel has a more fully formed set of evidence upon which to base its decision. With this additional information, the panel is more likely to appropriately decide whether to award expungement, thereby helping protect the integrity of the information in the CRD system.

3. FINRA Notifies State Securities Regulators

The proposed rule change would require FINRA to notify state securities regulators, in the manner to be determined by the Director in collaboration with state securities regulators, of an expungement request within 15 days of receiving an expungement request.[617] FINRA stated that the proposed notification requirement would help ensure that

[601] *See* Cornell at 3; St. John's at 3.

[602] *See* Cornell at 3.

[603] *See* proposed Rule 13805(b)(1)(B)(i).

[604] Specifically, under proposed Rule 13307(a)(7), a request for expungement that does not include a current address for the customer would be considered deficient. Pursuant to FINRA Rule 13307(a), the Director will not serve a deficient claim, effectively halting the expungement request until the deficiency is corrected. *See also* FINRA Rule 13302.

[605] *See* Notice at 50185.

[606] *See* proposed Rule 13805(b)(1)(B)(ii); *see also* Notice at 50185; *see also supra* notes 86 and 184 and accompanying text (discussing the Portal).

[607] *See* Grebenik; NASAA September 6 Letter at 4; Del Toro.

[608] *See* Grebenik.

[609] *See* NASAA September 6 Letter at 4.

[610] *See* Del Toro.

[611] *See* FINRA April 3 Letter at 12.

[612] *See id.* at 7.

[613] *See id.* at 8, 12–13.

[614] *See id.* at 12–13; *see also supra* notes 86 and 184 and accompanying text (discussing the Portal).

[615] *See* FINRA November 10 Letter at 10.

[616] *See id.*

[617] *See* proposed Rules 12800(f)(1), 12805(b) and 13805(b)(2)(A). FINRA stated that it would make this notification in connection with expungement requests under the Customer and Industry Codes. *See* Notice at 50185 n.176.

state securities regulators are timely notified of expungement requests.[618]

No commenter supported or objected to these proposed changes. Two commenters, however, recommended that FINRA take further action.[619] One commenter suggested that FINRA consider notifying state securities regulators about separate, expungement-only hearings following a simplified arbitration.[620] The other commenter suggested that FINRA provide notification to state securities regulators regarding expungement requests ''at the time when they have the ability to become involved—at the state court confirmation level.'' [621]

In response, FINRA stated that FINRA Rule 2080 requires an associated person seeking to confirm an arbitration award containing expungement relief to name FINRA as an additional party unless this requirement is waived by FINRA.[622] In addition, it is FINRA's practice to notify state regulators when it receives a complaint naming FINRA, or a request for a waiver.[623] Furthermore, FINRA stated that it is not necessary for state securities regulators to participate in separate expungement-only hearings in simplified arbitrations because the panel already would have sufficient information upon which to develop a complete factual record in order to make a fully-informed decision on the expungement request.[624] For example, expungement-only hearings in simplified arbitrations would occur after the arbitrator has heard the merits of the customer's case in an adversarial process.[625] Similarly, FINRA stated that it expects an expungement-only hearing to be scheduled shortly after the customer's dispute is decided or closes, increasing the likelihood of customer attendance and participation.[626] Accordingly, FINRA did not amend the proposed rule change in response to these comments.[627]

The Commission believes that notification to state securities regulators within 15 days of receiving an expungement request should provide adequate notice and, for straight-in requests, allow the state securities regulator to determine whether to participate in the expungement proceeding. As stated above, permitting attendance and participation by state securities regulators in straight-in expungement proceedings should enhance the straight-in expungement process. Specifically, inclusion of state securities regulators provides them the opportunity to fulfill their own regulatory obligations, while at the same time increasing the likelihood that the panel in an expungement proceeding that may not involve a customer will hear evidence from multiple viewpoints. With this additional information, the panel is more likely to award expungement only when appropriate, thereby helping protect the integrity of the information in the CRD system. The Commission also believes that panels deciding separate expungement-only hearings in simplified arbitrations should have sufficient information from the underlying claim to develop a complete factual record in order to make a fully-informed decision on the expungement request. In this way, the rule as proposed would help protect the integrity of the information in the CRD system. Finally, FINRA has stated that it will continue to monitor the expungement process to evaluate whether additional rule changes may be necessary to further strengthen the expungement process, including whether to allow state securities regulators to attend and participate in separate expungement-only hearings in simplified arbitrations.[628]

IV. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 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–2022–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2022–024. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2022–024 and should be submitted on or before May 10, 2023.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendments Nos. 1 and 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendments Nos. 1 and 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the **Federal Register**.[629] In Amendment No. 2, FINRA modified the proposed rule change to provide that an associated person would be precluded from filing a straight-in request if the customer dispute information involves the same conduct that was the basis of a final regulatory action taken by a securities regulator or SRO. The basis for extending this prohibition is the same as the basis for the original proposed rule change prohibiting an associated person from filing a straight-in request if the customer dispute information is associated with a finding of liability in an arbitration or civil litigation—permitting an expungement claim in these circumstances would constitute a collateral attack on the results of the underlying resolved dispute.

After consideration of the comments FINRA received on the proposed rule change, the Commission believes that Amendment No. 2 represents a

[618] *See* Notice at 50185.
[619] *See* Miami at 7; Hennion at 6.
[620] *See* Miami at 7.
[621] Hennion at 6.
[622] *See* FINRA November 10 Letter at 8 n.33.
[623] *See id.; see also* FINRA Rule 2080.
[624] *See* FINRA November 10 Letter at 22.
[625] *See id.*
[626] *See id.*
[627] *See id.* at 22 and 8 n.33.
[628] *See* FINRA April 3 Letter at 18–19.
[629] *See* 15 U.S.C. 78s(b)(2)(C)(iii).

reasonable extension of, and is substantially similar to, the original prohibition of an associated person filing a straight-in request where the customer dispute information formed the basis for a past finding of liability and is appropriate and responsive to commenter's concerns. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[630] to approve the proposed rule change, as modified by Amendments Nos. 1 and 2, on an accelerated basis.

VI. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change, as modified by Amendments Nos. 1 and 2, is consistent with the provisions of Exchange Act Section 15A(b)(6),[631] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 15A(b)(5) of the Exchange Act,[632] 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.

It is therefore ordered pursuant to Section 19(b)(2) of the Exchange Act[633] that the proposed rule change (SR–FINRA–2022–024), as modified by Amendments Nos. 1 and 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[634]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08147 Filed 4–18–23; 8:45 am]

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[630] 15 U.S.C. 78s(b)(2).

[631] 15 U.S.C. 78*o*–3(b)(6).

[632] 15 U.S.C. 78o–3(b)(5).

[633] 15 U.S.C. 78s(b)(2).

[634] 17 CFR 200.30–3(a)(12).

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Part III

The President

Federal Register
Vol. 88, No. 75
Wednesday, April 19, 2023

Presidential Documents

Title 3—

The President

Proclamation 10552 of April 14, 2023

Days of Remembrance of Victims of the Holocaust, 2023

By the President of the United States of America

A Proclamation

During *Yom HaShoah* and throughout these days of remembrance, we mourn the six million Jews who were murdered during the horror of the Holocaust—as well as the millions of Roma and Sinti, Slavs, disabled persons, LGBTQI+ individuals, and political dissidents who were murdered at the hands of the Nazis and their collaborators. Together with courageous survivors, descendants of victims, and people around the world, we renew our solemn vow: ''never again.''

Last year, I returned to Yad Vashem, the World Holocaust Remembrance Center, to pay tribute to the lives that were stolen during this dark chapter of our history and to honor their memory. I will never forget meeting with two survivors on that sacred ground and hearing their stories. The horrors of the Holocaust are painful to recount—the savage murder of innocent families and the systemic dehumanization of entire populations. We remember the cries for help that went unanswered and the bright futures cut short. We must never look away from the truth of what happened. The rite of remembrance becomes more urgent with each passing year, as fewer survivors remain to share their stories and open our eyes to the harms of unchecked hatred.

Unfortunately, hatred never truly goes away. It only hides—lurking until it is given the oxygen to emerge again. We have seen this hard truth across our country, from swastikas on cars and antisemitic banners on bridges to attacks against Jewish people at schools and synagogues and outright Holocaust denialism. The venom and violence of antisemitism goes against all the values we stand for as Americans. And it is a stark reminder—as my dear friend Elie Wiesel once said—that ''Indifference is always the friend of the enemy.'' And as my father taught me, ''silence is complicity.''

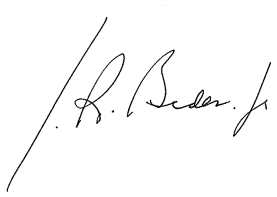
My Administration has not and will not be indifferent. That is why I appointed Deborah Lipstadt, a historian of the Holocaust, as the first Ambassador-level Special Envoy to Monitor and Combat Antisemitism. We are developing a national strategy to counter antisemitism—mobilizing the full weight of the Federal Government to fight this scourge of hate in America—and we have co-sponsored a United Nations resolution to combat Holocaust denial through education. We secured the largest increase in funding ever for the physical security of nonprofits, including synagogues, Jewish Community Centers, Jewish day schools, and other houses of worship. And I convened the first-ever White House summit on combating hate-fueled violence because nobody should fear going to a religious service, wearing a symbol of their faith, or simply being who they are.

Hate must have no safe harbor in America or anywhere else. Today and always, we make our message clear: Evil will not win. Hate will not prevail. And the violence of antisemitism will not be the story of our time. Together, we can ensure that ''never again'' is a promise we keep.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 16 through April 23, 2023, as a week of observance of the Days of Remembrance

of Victims of the Holocaust, and I call upon the people of the United States to observe this week and pause to remember victims and survivors of the Holocaust.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of April, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-seventh.



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Presidential Documents

Proclamation 10553 of April 14, 2023

National Volunteer Week, 2023

By the President of the United States of America

A Proclamation

This week, we honor the selfless spirit of Americans who volunteer, and we sound the call for more Americans to seize opportunities to serve their communities.

Every day across America, volunteers are performing extraordinary acts of service. They are repairing and rebuilding homes, educating our youth, and connecting people to jobs. They are supporting veterans and military families, helping to run our elections, and combating climate change. In the aftermath of natural disasters, neighbors volunteer to restore communities and cook hot meals. And amid a pandemic, volunteers have stepped forward to help administer vaccines and provide lifesaving resources to people in need.

Volunteering defines America. Our Nation is a place where light triumphs over darkness, where we seek to lift everyone up, and where we lead not by the example of our power but by the power of our example. As those who volunteer know firsthand, service also benefits the volunteer. It can teach important skills, help build professional networks, and provide an empowering sense of purpose. Volunteering brings people together, uniting us around our common belief in the dignity and equality of every person and giving us a chance to learn from others we might otherwise never meet.

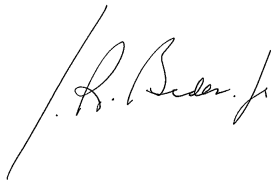
This year marks the 30th anniversary of AmeriCorps. In the decades since President Clinton created this Federal agency, more than a million Americans have fanned out to communities across our country to serve neighbors, respond and rebuild after natural disasters, educate students in need, and provide critical support in the face of public health challenges like the opioid crisis and COVID–19. Every year, AmeriCorps matches over 140,000 AmeriCorps Seniors volunteers with service opportunities. AmeriCorps embodies our Nation's commitment to service, and I was proud to strengthen it with a historic $1 billion investment through our American Rescue Plan. My new Budget calls on the Congress to raise the living allowance provided to AmeriCorps members, making national service more accessible to Americans of all backgrounds. It also calls for the largest-ever request in funding for the Peace Corps in order to expand opportunities for Americans to volunteer overseas. For over 60 years, Peace Corps volunteers have worked in dozens of countries on projects related to agriculture, community development, education, environmental protection, health, and improving opportunities for youth.

Additionally, my Administration hosted the United We Stand Summit, convening civic, faith, philanthropic, and business leaders to address the hate-fueled violence that threatens our democracy. Responding to this call to action, leading community organizations announced a new partnership, A Nation of Bridgebuilders, to train tens of thousands of Americans in techniques that build bridges across diverse identities and backgrounds—including storytelling, finding shared values, and volunteering together in common purpose. This initiative will host over 1,000 service events in more than 300 communities, improving lives and bringing Americans closer together.

This week, I encourage all Americans to seek volunteer opportunities near you and to visit AmeriCorps.gov and peacecorps.gov/volunteer to learn more about getting involved. Large and small acts of service can mean so much—lifting spirits, opening up new doors of opportunity, and cementing our identity as a great country full of good people.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 16 through April 22, 2023, as National Volunteer Week. I call upon all Americans to observe this week by volunteering in service projects across the country and pledging to make service a part of their daily lives.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of April, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-seventh.



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Federal Register

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CUSTOMER SERVICE AND INFORMATION

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