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Presidential Documents

Title 3—

The President

Proclamation 10570 of May 3, 2023

National Day of Prayer, 2023

By the President of the United States of America

A Proclamation

In periods of peace and prosperity and in times of struggle and strife, countless Americans turn to prayer to seek guidance, bolster our faith, and brace our spirits when we need it most. Prayer is both a personal and communal act—composed of our most intimate thoughts and a practice observed by multitudes across our diverse Nation in every language, culture, religion, and belief system. On this National Day of Prayer, we recognize the profound power of prayer, grounded in deep humility and hope.

The right to pray is enshrined in our Constitution and stamped firmly in the American tradition. The belief that prayer can move mountains is, at its core, a belief in making the impossible possible. There is nothing more American than believing in the endless possibilities of what we can do when we do it together.

Throughout our history, prayer has empowered moral movements and fueled efforts to strengthen our democracy. It was deeply rooted in the fight to abolish slavery and the expansion of voting rights and voter access. And it continues to compel us to uphold our founding creed that all of us are created equal, are made in the image of God, and deserve to be treated with dignity and equality throughout our lives.

We will never fully know how prayer has quietly influenced every aspect of American life—bringing comfort to service members on the battlefield, grounding the spirits of astronauts in space, guiding the healing hands of medical professionals tending to our loved ones, and fortifying the faiths of millions of worshippers in every corner of our Nation. There is hardly an aspect of American life that is not touched by the silent supplications of prayer to fulfill our hopes and our aspirations.

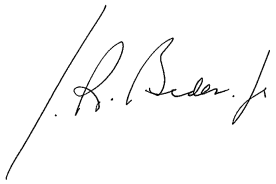
Earlier this year, I was honored to speak at a Sunday service at the Reverend Dr. Martin Luther King, Jr.'s Ebenezer Baptist Church in Atlanta, now pastored by Senator Raphael Warnock. In that sacred place, praying and contemplating Dr. King's moral vision of a ''Beloved Community,'' we were reminded that so much more unites us than divides us. We are all bound together by our love of country and our belief in democracy. Today, I pray that we can see each other as we should: not as enemies but as neighbors, and not as adversaries but as fellow Americans and human beings. Only when we see ourselves in each other will justice, as scripture tells us, ''roll down like waters,'' righteousness become ''a mighty stream,'' and America fulfill its true promise as a land of liberty and justice for all.

The Congress, by Public Law 100–307, as amended, has called on the President to issue each year a proclamation designating the first Thursday in May as a ''National Day of Prayer.''

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 May 4, 2023, as a National Day of Prayer. I call upon the citizens of our Nation to give thanks, in accordance with their own faith and conscience, for our many

freedoms and blessings, and I invite all people of faith to join me in asking for God's continued guidance, mercy, and protection.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of May, 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.



[FR Doc. 2023–09867
Filed 5–5–23; 8:45 am]
Billing code 3395–F3–P

Rules and Regulations

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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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0823; Airspace Docket No. 23–ANE–04]

RIN 2120–AA66

Amendment of Class E Airspace; Hyannis, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace for Cape Cod Gateway Airport, Hyannis, MA, by updating the airport name and geographic coordinates to coincide with the FAA's database. This action also updates verbiage in the airport's description. This action does not change the airspace boundaries or operating requirements.

DATES: Effective 0901 UTC, August 10, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This update is administrative change and does not change the airspace boundaries or operating requirements.

Incorporation by Reference

Class D airspace designations are published in paragraph 5000 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, incorporated by reference in 14 CFR 71.1 annually. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 amends Class D airspace for Cape Cod Gateway Airport, Hyannis, MA, by updating the airport name (formerly Barnstable Municipal Airport-Boardman/Polando Field) and geographic coordinates to coincide with the FAA's database. In addition, this action makes the editorial changes replacing the term Notice to Airmen with Notice to Air Missions and replacing the term Airport/Facility Directory with Chart Supplement. This action is an administrative change and does not affect the airspace boundaries or operating requirements; therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANE ME D Hyannis, MA [Amended]

Cape Cod Gateway Airport, MA
(Lat. 41°40′10″ N, long. 70°16′49″ W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.2-mile radius of Cape Cod Gateway Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Issued in College Park, Georgia, on May 2, 2023

Lisa E. Burrows,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–09672 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0090; Airspace Docket No. 23–AEA–03]

RIN 2120–AA66

Amendment of Class D and Class E Airspace, and Establishment of Class E Airspace, Poughkeepsie, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace and Class E surface airspace and establishes Class E airspace designated as an extension to a Class D surface area for Hudson Valley Regional Airport, Poughkeepsie, NY.

DATES: Effective 0901 UTC, August 10, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours a day, 365 days a year.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it amends Class D airspace and Class E surface airspace and establishes Class E airspace designated as an extension to a Class D surface area for Hudson Valley Regional Airport, Poughkeepsie, NY, to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2023–0090 in the **Federal Register** (88 FR 14514; March 9, 2023), proposing to amend Class D and Class E surface airspace, as well as proposing to establish Class E airspace designated as an extension to a Class D surface area at Hudson Valley Regional Airport, Poughkeepsie, NY. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class D and Class E airspace designations are published in Paragraphs 5000, 6002, and 6004 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending Class D airspace and Class E surface airspace by increasing the radius to 4.4 miles (previously 4.0 miles). Also, this action establishes Class E airspace designated as an extension to a Class D surface area of 6.5 miles to the northeast and the southwest of Hudson Valley Regional Airport. An airspace evaluation determined this update is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a.

This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances warrant the preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA NY D Poughkeepsie, NY [Amended]

Hudson Valley Regional Airport, NY
(Lat. 41°37′36″ N, long. 73°53′03″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.4-mile radius of Hudson Valley Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6002 Class E Surface Airspace.

* * * * *

AEA NY E2 Poughkeepsie, NY [Amended]

Hudson Valley Regional Airport, NY
(Lat. 41°37′36″ N, long. 73°53′03″ W)

That airspace extending upward from the surface within a 4.4-mile radius of Hudson Valley Regional Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Is Designated as an Extension to Class D or Class E Surface Area.

* * * * *

AEA NY E4 Poughkeepsie, NY [Established]

Hudson Valley Regional Airport, NY
(Lat. 41°37′36″ N, long. 73°53′03″ W)

That airspace extending upward from the surface within 1.8-miles each side of the 051° bearing of Hudson Valley Regional Airport, extending from the 4.4-mile radius to 6.5 miles northeast of the airport, and within 1.0-miles each side of the 231° bearing of the airport, extending from the 4.4-mile radius to 6.5-miles southwest of the airport.

* * * * *

Issued in College Park, Georgia, on May 2, 2023.

Lisa E. Burrows,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–09669 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0926; FRL–10482–02–R9]

Clean Air Plans; 2015 8-Hour Ozone Nonattainment Area Requirements; Clean Fuels or Advanced Control Technology for Boilers; San Joaquin Valley and Los Angeles—South Coast Air Basin, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the California State Implementation Plan (SIP) concerning the provisions for clean fuels or advanced control technology for boilers for the 2015 ozone national ambient air quality standards (''2015 ozone NAAQS'') in the San Joaquin Valley and Los Angeles—South Coast Air Basin, California (''South Coast'') ozone nonattainment areas. The SIP revisions include the ''Certification that the San Joaquin Valley Unified Air Pollution Control District's Current Rules Address the Clean Air Act's Clean Fuels for Boilers Requirements for the 2015 8-hour Ozone Standard'' for San Joaquin Valley (''2021 San Joaquin Valley Certification'') and the ''Clean Fuels for Boilers Compliance Demonstration for the South Coast Air Basin'' for South Coast (''2021 South Coast Certification''), both submitted on August 3, 2021. We are approving these revisions under the Clean Air Act (CAA or ''the Act''), which establishes clean fuels or advanced control technology for boilers requirements for ''Extreme'' ozone nonattainment areas.

DATES: This rule is effective June 7, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2022–0926. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Khoi Nguyen, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. By phone: (415) 947–4120 or by email at *nguyen.khoi@epa.gov.*

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

Table of Contents

I. Proposed Action

On January 30, 2023, the EPA proposed to approve as a revision to the California SIP the provisions in the San Joaquin Valley and South Coast for clean fuels or advanced control technology for boilers as meeting the requirements of CAA section 182(e)(3) and 40 CFR 51.1302.[1] Our proposed approval was based on our evaluation of the 2021 San Joaquin Valley Certification and the 2021 South Coast Certification. In our proposed rulemaking, we provided background information on the 2015 ozone standards, area designations in California, and related clean fuels for boilers SIP revision requirements. Table 1 of this document lists the certifications addressed by our proposed action.

[1] 88 FR 5835 (January 30, 2023).

TABLE 1—CLEAN FUELS FOR BOILERS CERTIFICATIONS SUBMITTED AS REVISIONS TO THE CALIFORNIA SIP

District	Nonattainment area	Date adopted	Title
San Joaquin Valley Air Pollution Control District.	San Joaquin Valley	June 17, 2021	Certification that the San Joaquin Valley Unified Air Pollution Control District's Current Rules Address the Clean Air Act's Clean Fuels for Boilers Requirements for the 2015 8-Hour Ozone Standard.
South Coast Air Quality Management District.	South Coast Air Basin ...	June 4, 2021	Clean Fuels for Boilers Compliance Demonstration for the South Coast Air Basin.[a]

[a] The ''Clean Fuels for Boilers Compliance Demonstration for the South Coast Air Basin'' is part of the document titled ''Final Certification of Nonattainment New Source Review and Clean Fuels for Boilers Compliance Demonstration for 2015 8-hour Ozone Standard.'' The latter document consists of two demonstrations: (1) Nonattainment New Source Review (NSR) Compliance Demonstration for the South Coast Air Basin and the Coachella Valley and (2) Clean Fuels for Boilers Compliance Demonstration for the South Coast Air Basin. In the proposed action, we were evaluating and proposing action on the ''Clean Fuels for Boilers Compliance Demonstration for the South Coast Air Basin.''

In this rulemaking, we are taking final action to approve the 2021 San Joaquin Valley Certification and the 2021 South Coast Certification. Please refer to our proposed rule for more information concerning the background for this action and for a more detailed discussion of the rationale for approval.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, the EPA received one anonymous comment unrelated to the rulemaking. The EPA has determined that the comment fails to raise issues germane to our proposed finding that the two submitted certifications satisfy the requirements of CAA section 182(e)(3) and 40 CFR 51.1302. Therefore, we have determined that this comment does not necessitate a response, and the EPA will not provide a specific response to the comment in this document. The full text of the comment is available in the docket for this rulemaking.

III. EPA Action

No comments were submitted that change our assessment of the two certifications as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the CAA, the EPA is taking final action to approve as a revision to the California SIP the 2021 San Joaquin Valley Certification and the 2021 South Coast Certification, both submitted on August 3, 2021. Specifically, the elements we are approving are:

- Provisions in the San Joaquin Valley for clean fuels or advanced control technology for boilers as meeting the requirements of CAA section 182(e)(3) and 40 CFR 51.1302 based on the 2021 San Joaquin Valley Certification; and
- Provisions in the South Coast for clean fuels or advanced control technology for boilers as meeting the requirements of CAA section 182(e)(3) and 40 CFR 51.1302 based on the 2021 South Coast Certification.

IV. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive

impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 7, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 25, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by revising paragraph (c)(591) introductory text and adding paragraph (c)(591)(ii) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(591) The following rules and certifications were submitted on August 3, 2021, by the Governor's designee, as an attachment to a letter dated August 3, 2021.

* * * * *

(ii) *Additional materials.* (A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) ''Certification that the San Joaquin Valley Unified Air Pollution Control District's Current Rules Address the Clean Air Act's Clean Fuels for Boilers Requirements for the 2015 8-Hour Ozone Standard,'' adopted on June 17, 2021.

(*2*) [Reserved]

(B) South Coast Air Quality Management District.

(*1*) ''Final Certification of Nonattainment New Source Review and Clean Fuels for Boilers Compliance Demonstration for 2015 8-hour Ozone Standard,'' excluding the ''Nonattainment New Source Review Compliance Demonstration,'' adopted on June 4, 2021.

(*2*) [Reserved]

* * * * *

[FR Doc. 2023–09058 Filed 5–5–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2022–0940; FRL–10871–01–OCSPP]

Aspergillus Flavus Strain AF36; Amendment to an Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the existing tolerance exemption for residues of *Aspergillus flavus* strain AF36 by establishing an exemption for use on all food and feed commodities of cotton, corn, pistachio, almond, and fig when used in accordance with label directions and good agricultural practices. Interregional Research Project Number 4 (IR–4) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting to amend the existing tolerance exemption for *Aspergillus flavus* strain AF36. This regulation eliminates the need to establish a maximum permissible level for residues of *Aspergillus flavus* strain AF36 under FFDCA when used in accordance with the amended tolerance exemption.

DATES: This regulation is effective May 8, 2023. Objections and requests for hearings must be received on or before July 7, 2023 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0940, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and OPP Docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Frank Ellis, Biopesticides and Pollution Prevention Division (7511M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1400; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an

objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0940 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before July 7, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although EPA strongly encourages those interested in submitting objections or a hearing request to submit objections and hearing requests electronically. *See* Order Urging Electronic Service and Filing (April 10, 2020), *https://www.epa.gov/sites/default/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.* At this time, because of the COVID–19 pandemic, the judges and staff of the Office of Administrative Law Judges are working remotely and not able to accept filings or correspondence by courier, personal delivery, or commercial delivery, and the ability to receive filings or correspondence by U.S. Mail is similarly limited. When submitting documents to the U.S. EPA Office of Administrative Law Judges (OALJ), a person should utilize the OALJ e-filing system at *https://yosemite.epa.gov/oa/eab/eab-alj_upload.nsf.*

Although EPA's regulations require submission via U.S. Mail or hand delivery, EPA intends to treat submissions filed via electronic means as properly filed submissions during this time that the Agency continues to maximize telework due to the pandemic; therefore, EPA believes the preference for submission via electronic means will not be prejudicial. If it is impossible for a person to submit documents electronically or receive service electronically, *e.g.,* the person does not have any access to a computer, the person shall so advise OALJ by contacting the Hearing Clerk at (202) 564–6281. If a person is without access to a computer and must file documents by U.S. Mail, the person shall notify the Hearing Clerk every time it files a document in such a manner. The address for mailing documents is U.S. Environmental Protection Agency, Office of Administrative Law Judges, Mail Code 1900R, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2022–0940, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Background

In the **Federal Register** of January 3, 2023, (88 FR 38) (FRL–9410–08), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance exemption petition (PP 2E8988) by IR–4, North Carolina State University, 1730 Varsity Drive, Suite 210, Venture IV, Raleigh, NC 27606 on behalf of the Arizona Cotton Research and Protection Council, 3721 East Wier Avenue, Phoenix, AZ 85040. The petition requested that 40 CFR 180.1206 be amended to establish an amendment/expansion of the existing tolerance exemption for the microbial pesticide *Aspergillus flavus* strain AF36 to include use on all food and feed commodities of cotton, corn, pistachio, almond, and fig. That document referenced a summary of the petition prepared by the petitioner IR–4 and available in the docket via *https://www.regulations.gov.* EPA received no comments in response to the notice of filing.

EPA changed the active ingredient name in the amended tolerance exemption expression from ''*Aspergillus flavus* AF36'' to ''*Aspergillus flavus* strain AF36.'' In addition, EPA consolidated the crops into one paragraph; condensed the list of cotton crops by changing the expression from ''cotton, gin byproducts; cotton, hulls; cotton, meal; cotton, refined oil; cotton, undelinted seed'' to ''all food and feed commodities of cotton''; condensed the list of corn crops by changing the expression from ''corn, field, forage; corn, field, grain; corn, field, stover; corn, field, aspirated grain fractions; corn, sweet, kernel plus cob with husk removed; corn, sweet, forage; corn, sweet, stover; corn, pop, grain; and corn, pop, stover'' to ''[all food and feed commodities of] corn, field; corn, sweet; corn, pop''; and removed the stipulation ''when applied/used as an antifungal agent.'' EPA is also revoking the section 18 emergency exemption for residues of *Aspergillus flavus* strain AF36 in or on dried figs that expired on December 31, 2017. The reasons for these changes are explained in Unit III.C.

III. Final Rule

A. EPA's Safety Determination

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] . . . residues and other substances that have a common mechanism of toxicity.''

EPA evaluated the available toxicological and exposure data on *Aspergillus flavus* strain AF36 and considered their validity, completeness, and reliability, as well as the relationship of this information to

human risk. A full explanation of the data upon which EPA relied and its risk assessment based on those data can be found within the documents entitled ''Comprehensive Science Review: New Food Uses for a New End Use Product (EP) *Aspergillus flavus* AF36 Prime (71693–G) containing an unregistered source of the active ingredient *Aspergillus flavus* strain AF36 and a petition to amend an existing tolerance exemption (40 CFR 180.1206) to include all food and feed commodities of any included crops'' (Human Health Risk Assessment for New Food Use of *Aspergillus flavus* strain AF36) and ''Addendum to Comprehensive Science Review: New Food Uses for a New End Use Product (EP) *Aspergillus flavus* AF36 Prime (71693–G) containing an unregistered source of the active ingredient *Aspergillus flavus* strain AF36 and a petition to amend an existing tolerance exemption (40 CFR 180.1206) to include all food and feed commodities of any included crops.'' These documents, as well as other relevant information, are available in the docket for this action as described under **ADDRESSES**.

The toxicological profile of *Aspergillus flavus* strain AF36 was previously described in the ''Biopesticides Registration Action Document *Aspergillus flavus* AF36,'' available in docket EPA–HQ–OPP–2003–0323, and ''*Aspergillus flavus* Interim Registration Review Decision Case Number 6008,'' available in docket EPA–HQ–OPP–2015–0281. The toxicological profile remains unchanged, and the available data demonstrated that, with regard to humans, *Aspergillus flavus* strain AF36 is not toxic, pathogenic, or infective via the oral or inhalation routes. The data requirement for acute intravenous toxicity/pathogenicity was met with scientific rationale based on acute oral toxicity and acute pulmonary toxicity/pathogenicity data, which indicated that test animals' immune systems were intact and able to process and clear *Aspergillus flavus* strain AF36. Although there is potential for dietary and non-occupational exposure to residues of *Aspergillus flavus* strain AF36, there is not a concern due to the lack of potential for adverse effects. Because there are no threshold levels of concern with the toxicity, pathogenicity, or infectivity of *Aspergillus flavus* strain AF36, EPA determined that no additional margin of safety is necessary to protect infants and children as part of the qualitative assessment conducted.

Based upon its evaluation in the Human Health Risk Assessment for New Food Use of *Aspergillus flavus* strain AF36, which concludes that there are no risks of concern from aggregate exposure to *Aspergillus flavus* strain AF36, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Aspergillus flavus* strain AF36.

B. Analytical Enforcement Methodology

An analytical method is not required for *Aspergillus flavus* strain AF36 because EPA is amending an exemption from the requirement of a tolerance without any numerical limitation.

C. Revisions to the Requested Amendment to a Tolerance Exemption

Four non-substantive modifications were made to the requested tolerance exemption that do not impact the safety finding for *Aspergillus flavus* strain AF36. EPA changed the active ingredient name from ''*Aspergillus flavus* AF36'' to ''*Aspergillus flavus* strain AF36'' to align with current active ingredient naming conventions. EPA consolidated the crops into one paragraph that includes ''all food and feed commodities of almond; corn, field; corn, pop; corn, sweet; cotton; fig; and pistachio'' because the requested amendment to the tolerance exemption proposes to add ''all food and feed commodities'' for each crop in the tolerance exemption. The Agency's change creates a more concise list that covers all crops petitioned for by the petitioner and aligns with the Agency's food and feed commodity vocabulary. EPA removed the stipulation for the exemption from the requirement of a tolerance for residues of *Aspergillus flavus* strain AF36 ''when applied as an antifungal agent,'' as the specification ''when used in accordance with label directions and good agricultural practices'' adequately addresses the Agency's safety concerns with the application methods. As a housekeeping matter, EPA also removed the section 18 emergency exemption for residues of *Aspergillus flavus* strain AF36 in or on dried figs because it expired on December 31, 2017.

D. Conclusion

Therefore, the existing *Aspergillus flavus* strain AF36 tolerance exemption is amended by establishing a tolerance exemption for residues of the microbial pesticide *Aspergillus flavus* strain AF36 in or on all food and feed commodities of almond; corn, field; corn, pop; corn, sweet; cotton; fig; and pistachio when used in accordance with label directions and good agricultural practices.

IV. Statutory and Executive Order Reviews

This action amends a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are amended on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this action, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, EPA has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded

Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require EPA's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 272 note).

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA 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 prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: April 28, 2023.

Frank Ellis,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

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

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

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

■ 2. Revise § 180.1206 to read as follows:

§ 180.1206 *Aspergillus flavus* strain AF36; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the microbial pesticide *Aspergillus flavus* strain AF36 in or on all food and feed commodities of almond; corn, field; corn, pop; corn, sweet; cotton; fig; and pistachio when used in accordance with label directions and good agricultural practices.

[FR Doc. 2023–09732 Filed 5–5–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 20–270; FCC 22–94; FR ID 139226]

Schedule of Application Fees; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: On January 31, 2023, the Federal Communications Commission (Commission) revised the Commission's rules. That document had two clerical errors in the fee amounts for two types of Commercial AM Radio Stations applications: Minor Modification, Construction Permit and New License. This document is submitted to correct the final regulations.

DATES: Effective May 8, 2023.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director, at (202) 418–0444.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Erratum, FCC 22–94, published January 31, 2023 (88 FR 6169). This is the first set of corrections.

List of Subjects in 47 CFR Part 1

Administrative practices and procedures.

Accordingly, 47 CFR part 1 is corrected by making the following correcting amendments:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 2. In § 1.1104, revise Table 2, Commercial AM radio stations, to read as follows:

§ 1.1104 Schedule of charges for applications and other filings for media services.

* * * * *

TABLE 2 TO § 1.1104

Commercial AM radio stations		
Type of application	Payment type code	Fee amount
New or Major Change, Construction Permit	MUR	$4,440/application.
New or Major Change, Construction Permit	MVR	$5,085/application.
Minor Modification, Construction Permit	MVU	$1,815/application.
New License	MMR	$720/application.
AM Directional Antenna	MOR	$1,405/application.
License Renewal	MGR	$365/application.
License Assignment (2100 Schedule 314 & 159 (long form)	MPR	$1,120/station.
License Assignment (2100 Schedule 316 & 159 (short form)	MDR	$475/station.
Transfer of Control (2100 Schedule 315 & 159 (long form)	MPR	$1,120/station.
Transfer of Control (2100 Schedule 316 & 159 (short form)	MDR	$475/station.
Call Sign	MBR	$190/application.
Special Temporary Authority	MVV	$325/application.
Biennial Ownership Report	MAR	$95/station.

* * * * *

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–09372 Filed 5–5–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 230502–0118]

RIN 0648–BK09

Fisheries Off West Coast States; Highly Migratory Fisheries; Amendment 6 to the Fishery Management Plan for West Coast Fisheries for Highly Migratory Species; Authorization of Deep-Set Buoy Gear

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

ACTION: Final rule.

SUMMARY: This rule implements Amendment 6 to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP), which authorizes deep-set buoy gear (DSBG) as a legal gear type for targeting swordfish and catching other highly migratory species (HMS) off the U.S. West Coast. The rule establishes a limited entry (LE) permitting regime for use of DSBG in the Southern California Bight (SCB). DSBG fishing will be permitted on an open-access basis outside of the SCB, in Federal waters off of California and Oregon, for all vessels possessing a general HMS permit with a DSBG endorsement. DSBG fishing will not be permitted in Federal waters off of Washington. This final rule includes definitions for two configurations of DSBG—standard and linked—and specifies the LE management area, permitting process, and requirements for use of the gear.

DATES: This rule is effective June 7, 2023.

ADDRESSES: Copies of the Regulatory Impact Review (RIR) and other supporting documents are available via the Federal eRulemaking Portal: *https://www.regulations.gov,* docket NOAA–NMFS–2022–0141, or contact Highly Migratory Species Branch Staff, Karter Harmon, *Karter.Harmon@noaa.gov,* or *WCR.HMS@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Amber Rhodes, NMFS, (202) 936–6162, *Amber.Rhodes@noaa.gov,* or Karter Harmon, NMFS, (317) 517–7783, *Karter.Harmon@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 9, 2023, NMFS published a notice of availability of Amendment 6 to the Fishery Management Plan for West Coast Highly Migratory Species Fisheries (HMS FMP), which would authorize fishing using deep-set buoy gear (DSBG) in Federal waters offshore of California and Oregon (88 FR 1171). A proposed rule with implementing regulations was published in the **Federal Register** on February 6, 2023 (88 FR 7661). Public comment on the proposed rule closed on March 8, 2023. Public comment on the Amendment closed on March 10, 2023. On April 7th, 2023, NMFS approved the amendment.

Following on NMFS' approval of Amendment 6, this final rule contains the implementing regulations to authorize DSBG consistent with the permitting regimes described in the amendment and the management measures described in the proposed rule. Additional management measures contained in 50 CFR part 300, subpart C (applicable to eastern Pacific tuna fisheries), and 50 CFR part 660, subpart K (applicable to all HMS fisheries off the West Coast States, which apply to fishing under HMS permits more broadly (*i.e.,* annual catch limits on HMS and monitoring provisions)), may also apply to DSBG fishing under the final rule.

Following submission of the proposed rule for publication, Congress passed, and the President signed, the Driftnet Modernization and Bycatch Reduction Act. The law revises the definition of ''large-scale driftnet fishing'' to include the drift gillnet (DGN) gear currently permitted under the HMS FMP. The law directs the Secretary of Commerce to phase out DGN fishing in Federal waters within 5 years of enactment and to implement a transition program to facilitate that phase-out that includes permitting of alternative fishing practices and issuance of grant awards to eligible permit holders.

The legislated closure of the DGN fishery affects the overall U.S. West Coast-based swordfish fishery. As discussed in the proposed rule, swordfish supply to the U.S. West Coast is dominated by foreign imports and drift gillnet has been the primary commercial gear type used to catch swordfish in Federal waters off the West Coast. Though the majority of domestic swordfish landings to the West Coast come from the Hawaii-based longline fishery, that fishery operates outside of Federal waters off the West Coast due to existing restrictions on the use of longline gear inside Federal waters. This rule would authorize DSBG as an alternative commercial gear type under the FMP. However, the Council did not recommend that the drift gillnet fishery be phased-out or transitioned to alternative gear types prior to recommending authorization of DSBG. Therefore, the supporting analyses examine impacts of authorizing DSBG as an additional legal gear type for commercially harvesting swordfish from Federal waters off the U.S. West Coast; however, NOAA Fisheries does address the potential cumulative impacts of this action and the Federal legislation in a final Environmental Impact Statement (88 FR 13443, March 3, 2023).

Additional background information on DSBG, Council processes and recommendations, as well as detailed discussion of the regulations were provided in the preamble of the proposed rule and are not repeated here.

However, the points of contacts, included in the preamble of the proposed rule, for obtaining or addressing concerns with state and Federal records are updated as follows:

(1) NMFS—Karen Palmigiano (562–980–4043 or *wcr-permits@noaa.gov*) for WCR Observer Program, logbook, and EFP records.

(2) California—Elizabeth Hellmers (619–871–2231 or *Elizabeth.Hellmers@wildlife.ca.gov*) for California Department of Fish and Wildlife (CDFW) license, DGN buyback, and marine landing receipt records.

II. Final Regulations

This final rule authorizes DSBG as a legal gear type under the HMS FMP, and enables permitting of an open access fishery in Federal waters south of the Oregon-Washington border (46°16′ N latitude) outside of the SCB, and a LE fishery in the SCB.

The new regulations in this rule revise the current definition in § 660.702 of ''commercial fishing'' to make a minor grammatical change, and of ''commercial fishing gear,'' to include DSBG. Several new definitions are also applicable to the rule.

This rule updates prohibitions listed in § 660.705 to require possession of a valid general HMS permit in order to deploy DSBG or have DSBG aboard a vessel, along with prohibitions on the use of DSBG inside the SCB without possession of a valid LE DSBG permit, prohibitions on the use of DSBG north of the Oregon-Washington border (46°16′ N latitude), and other corresponding prohibitions.

This rule adds DSBG permitting procedures in § 660.707. These include LE DSBG permit possession, renewal, eligibility, and transferal requirements, and procedures related to ranking of LE DSBG applicants and issuance of permits to applicants. Applicants will be ranked in a one-time process along eight tiers, based on swordfish fishing experience as evidenced in state and Federal fisheries data. After the initial ranking and issuance of permits to qualifying applicants in these eight tiers, permits may be issued to additional qualifying applicants on a first-come, first-served basis.

Finally, this rule amends the section header and adds DSBG gear specifications and management measures in § 660.715. Specifications on the gear include standards for the buoy array of both standard and linked DSBG configurations, weights, hook size, and the number of individual pieces of gear used. Management measures include regulations on active tending, gear deployment and retrieval timing, use of multiple gears on a single trip, species retention, and fishery monitoring. Additional regulations include requirements for pre-trip notifications, protected species workshops, and a prohibition on linked DSBG operations shoreward of a line approximating the 400 meter depth contour (see § 660.715(d)(3)).

The preamble to the proposed rule (88 FR 7661) contains a more detailed explanation of the regulatory procedures for DSBG gear endorsements, the LE permitting process, gear specifications, management measures, and additional regulations. This information is not repeated here.

III. Public Comments and Responses

NMFS received three comments during the 30-day comment period on the proposed rule, which closed on March 8, 2023. One comment was from a DSBG Exempted Fishing Permit (EFP) fisherman, one was from an environmental non-governmental organization, and one was anonymous. All commenters were generally supportive of the action, though all raised suggestions and concerns with the proposed management measures. These issues and NMFS responses are described below.

Issue #1: A commenter raised a concern that some fishermen may cross over the Oregon/Washington border in order to fish in Washington State waters where DSBG is not authorized.

NMFS Response: NMFS included reference to 46°16′ North latitude in the final regulations as a seaward line from the Oregon/Washington border. This addresses the concern about DSBG fishing occurring in Washington waters by explicitly defining the line northward of which DSBG fishing may not occur.

Issue #2: A commenter raised a concern that the stipulation that DSBG ''will not be permitted to be deployed until local sunrise and will be required to be onboard the vessel no later than 3 hours after local sunset'' could result in fishermen being penalized for fighting a fish after the 3-hour cutoff time. Proposed solutions included requiring that any deployed gear be ''attached'' to the vessel after the 3-hour cutoff time but not necessarily ''retrieved,'' or to mandate that the gear must be retrieved unless there is a fish on the line.

NMFS Response: The requirement to retrieve DSBG gear after local sunset is consistent with Council recommendations. During Council deliberations, 3 hours was considered as a reasonable amount of flexibility for fighting fish after sunset. The large majority of data and analysis supporting this action comes from daytime DSBG fishing, and the intent of this action is to authorize a daytime fishery. This follows from the Council's intent as well as the terms and conditions of DSBG EFPs issued to date. NMFS has been issuing separate EFPs for testing night-set DSBG for future consideration, and is concerned that adjustments to the management measure could be perceived as allowing nighttime fishing under this action. DSBG fishing as authorized in this final rule is intended as a daytime fishery, and 3 hours after local sunset should provide adequate operational flexibility in the event that a fish is hooked but not yet landed at sunset. NMFS will continue to consider and evaluate information derived from EFPs engaged in night-setting.

Issue #3: A commenter suggested NMFS should consider edits or corrections to the Background section of the rule, including a broader discussion of swordfish gear types taking into account restrictions on longlining and recent legislation impacting the future use of DGN in Federal waters off the U.S. West Coast with respect to a reliance on imports and the need to balance fishing opportunity with bycatch mitigation, a revised description of DSBG from ''a hook and buoy system'' to ''a hook and line gear that utilizes a system of buoys,'' a different method of calculating average DSBG swordfish catch, and not using quotations to describe standard and linked gear configurations.

NMFS Response: Some discussion of these points is included in the Background section of this final rule. In particular, we address the passage of the Federal law to sunset the DGN fishery with respect to this action and the broader context of the U.S. West Coast swordfish fishery. ''Hook and buoy system'' is our preferred terminology for describing DSBG in the abstract, in part to avoid confusion with ''hook and line gear,'' which is currently defined in Federal regulations. Regarding the dataset used to calculate average swordfish catch, this calculation is based only on days when DSBG was fished and the average presented does not include inactive EFPs. Finally, the use of quotations or lack thereof to describe standard and linked configurations does not alter the meaning of these terms.

Issue #4: A commenter pointed out that in the section on vessel registration, a definition is provided for a 'family member' in the event of a one-time allowable transfer. The definition outlined is the same as that used for 'immediate family member' in the California Labor code. The commenter suggested NMFS may want to consider revising for consistency.

NMFS Response: The definition of ''family member'' introduced in the regulations includes a detailed description of the specific relations who qualify. The provided definition is unambiguous about who can or cannot be the recipient of a one-time transfer. Additionally, the definition established in the regulations only applies for the purposes of change in ownership of limited entry DSBG permits. Therefore, we find that no change is needed.

Issue #5: A commenter suggested NMFS should clarify language around its ability to charge fees for permits to ''fully or partially'' cover administrative costs (the current language simply says ''to cover administrative costs'').

NMFS Response: We find that the current language is already inclusive of fully or partially covering administrative costs through the permit fees.

Issue #6: A commenter stated that NMFS should make it clear that participants can fish a combination of standard and linked buoy gear on a single trip, and clarify the explanatory language on this point.

NMFS Response: We agree with the commenters' interpretation that a combination of standard and linked buoy gear can be fished so long as no more than 10 pieces total are fished. However, NMFS views the current regulations as not precluding a combination of standard and linked buoy gear, so we find no change to the regulations are needed.

Issue #7: A commenter encouraged NMFS to ensure that monitoring resources (*e.g.,* observers) are apportioned in accordance with the expected impact of various fisheries, and explore the use of electronic monitoring for the DSBG fleet.

NMFS Response: Observer coverage requirements are established under the general HMS permit, and this final rule does not create any new or additional observer coverage requirements for DSBG vessels. NMFS maintains discretion to place observers based on operational needs and available resources. Nothing in the regulations precludes testing of electronic monitoring aboard DSBG vessels.

NMFS also received three comments during the 45-day comment period on the draft Amendment language, which closed on March 10, 2023. One comment was from an albacore fisherman, and two were from environmental non-governmental organizations. All comments expressed support for the Amendment. One commenter expressed particular support for the open access component of the proposed DSBG permitting regime. No commenters on the Amendment requested changes to the rule.

IV. Changes From the Proposed Rule

The regulatory text of this final rule includes minor changes from the proposed rule. These changes, which are discussed below, are intended to make minor corrections and clarify the regulatory text; NMFS does not consider these substantive changes.

NMFS has elected to change the beginning date of the application period for LE DSBG permits from the publication date of the final rule to the effective date. In § 660.707(g)(11)(ii), the beginning date of the application period is now clarified as the effective date of the final rule. Also, in § 660.707(g)(11)(ii), (g)(11)(iii)(C) introductory text, and (g)(11)(v), the end date of the application period was changed from 60 days after final rule publication in the **Federal Register** to 60 days after the effective date of the final rule. This change allows an additional 30 days of preparation and data review before the one-time ranking of applicants occurs, and provides the fishermen with additional notice of the rule and application process before the application period begins. This will also change the date on which NMFS will ''freeze'' the databases used to rank LE DSBG permit applicants, which we describe in the preamble of the proposed rule. NMFS now intends to extract a dataset from NMFS and CDFW databases 60 days after the effective date of the final rule, and use that dataset for the Tier 1–8 qualification for LE DSBG permits. This change is also intended to allow sufficient time for stakeholders to access LE permit applications following on the effectiveness of record keeping and reporting requirements pursuant to the Paperwork Reduction Act.

NMFS added clarification in the regulatory text that ''a line extending seaward of the Oregon/Washington border'' is at 46°16′ N latitude. NMFS also added clarification to the regulatory text at § 660.715(b)(1)(ii) regarding gear marking requirements.

Additionally, the table describing the points used to define a generalized boundary for a 400 meter depth contour in § 660.715(d), shoreward of which fishing with linked buoy gear (LBG) is prohibited, has been updated with a column to denote the sequence of points. Some of the points were listed out of sequence in the proposed rule and have been corrected in this final rule. Shapefiles will be made available on the NMFS website at: *https://www.fisheries.noaa.gov/action/regulations-authorize-deep-set-buoy-gear-under-fishery-management-plan-us-west-coast.* NMFS also added clarification in the regulatory text that the southern boundary of the 400 meter depth contour is a line extending seaward at 34°16′8.331″ N latitude.

V. Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the NMFS Assistant Administrator has determined that this final rule is consistent with the HMS FMP, Amendment 6 to the HMS FMP, the MSA, and other applicable laws. In making the final determination, NMFS considered the data, views, and comments received during the public comment period on the proposed rule.

NMFS prepared a Final Environmental Impact Statement (FEIS) for this action, which addresses the requirements of the National Environmental Policy Act. The FEIS, which describes the full suite of alternatives analyzed by the Council and NMFS, can be found on the NMFS website at: *https://www.fisheries.noaa.gov/bulletin/final-eis-available-public-review-proposed-amendment-6-fishery-management-plan-west.*

This rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that, for purposes of the Regulatory Flexibility Act, this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No information received during the public comment period on the proposed rule changes the action from the proposed rule, nor does it change NMFS' analysis of the action described in the proposed rule. Therefore, the initial certification published with the proposed rule—that this rule is not expected to have a significant economic impact on a substantial number of small entities—remains unchanged. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This final rule revises the existing requirements for three collections of information associated with the following OMB Control Numbers: (1) 0648–0204, (2) 0648–0223, and (3) 0648–0498. Collection of information 0648–0204 is being revised to include the addition of a DSBG endorsement to the Open Access HMS Permit, as well the addition of a separate and entirely new LE DSBG permit for the commercial fishery, which will increase the number of respondents for this collection. Public reporting burden for the Open Access HMS permit is not anticipated to increase. Public reporting burden for the initial Federal LE DSBG application is estimated to average 30 minutes per respondent. There is a requirement to report Ownership Interest Information for applicants seeking a permit as an entity, business, or corporation, which is estimated to average 10 minutes per respondent. Federal LE DSBG renewals are also estimated to average 10 minutes per respondent, and transfers are estimated to average 30 minutes per respondent. Collection of information 0648–0223 is being revised to add a Federal LE DSBG logbook for the commercial fishery. This change is not anticipated to impact the number of respondents nor the costs of this collection. Collection of information 0648–0498 is being revised to add a pre-trip notification for vessels fishing with DSBG when requested by NMFS, increasing the total number of anticipated respondents. Public reporting burden for pre-trip notifications is estimated to average 5 minutes per respondent. The estimated

total number of respondents for this collection is 95; the estimated total annual burden hours are 191 hours; and the estimated total annual cost to the public for recordkeeping and reporting costs is $105,808.

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 50 CFR Part 660

Fisheries, Fishing, Indians—lands, Recreation and recreation areas, Reporting and record keeping requirements, Treaties.

Dated: May 2, 2023.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

Subpart K—Highly Migratory Species Fisheries

■ 2. In § 660.702:
■ a. Add the definition for ''Change in ownership'' in alphabetical order;
■ b. Revise the definitions for ''Commercial fishing'' and ''Commercial fishing gear''; and
■ c. Add the definitions for ''Family member'', ''Force majeure'', ''Initial administrative determination (IAD)'', ''Ownership interest'', and ''Totally lost'' in alphabetical order.

The additions and revisions read as follows:

§ 660.702 Definitions.

* * * * *

Change in ownership means the addition of a new shareholder or partner to the membership of the corporation, partnership, or other entity. A change in ownership is not considered to have occurred if a member dies or becomes legally incapacitated and a trustee is appointed to act on their behalf, nor if the ownership of shares among existing members changes, nor if a member leaves the corporation or partnership or other entity and is not replaced. A change in ownership is not considered to have occurred if only the name of the entity changes.

* * * * *

Commercial fishing means:

(1) Fishing by a person who possesses a commercial fishing license or is required by law to possess such license issued by one of the states or the Federal Government as a prerequisite to taking, retaining, possessing, landing and/or selling of fish; or

(2) Fishing that results in or can be reasonably expected to result in sale, barter, trade, or other disposition of fish for other than personal consumption.

Commercial fishing gear includes the following types of gear and equipment used in the highly migratory species fisheries:

(1) *Deep-set buoy gear.* Line fishing gear which consists of vertical mainlines suspended from a buoy array, with gangions with hooks attached to either a vertical line or a horizontal line connected to the terminal ends of two vertical lines. All configurations must be set at or below a minimum depth and actively tended;

(2) *Drift gillnet.* A panel of netting, 14 inch (35.5 cm) stretched mesh or greater, suspended vertically in the water by floats along the top and weights along the bottom. A drift gillnet is not stationary or anchored to the bottom;

(3) *Harpoon.* Gear consisting of a pointed dart or iron attached to the end of a pole or stick that is propelled only by hand and not by mechanical means;

(4) *Pelagic longline.* A main line that is suspended horizontally in the water column and not stationary or anchored, and from which dropper lines with hooks (gangions) are attached. Legal longline gear also includes basket-style longline gear;

(5) *Purse seine.* An encircling net that may be closed by a purse line threaded through the bottom of the net. Purse seine gear includes ring net, drum purse seine, and lampara nets; and

(6) *Surface hook-and-line.* Fishing gear, other than longline gear, with one or more hooks attached to one or more lines (includes troll, rod and reel, handline, albacore jig, live bait, and bait boat). Surface hook and line is always attached to the vessel.

* * * * *

Family member for the purposes of change in ownership of limited entry deep-set buoy gear permits means spouse, domestic partner, cohabitant, child, stepchild, grandchild, parent, stepparent, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, great-grandparent, brother, sister, half-brother, half-sister, stepsibling, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin.

* * * * *

Force majeure means an event of extraordinary circumstances including the death of a vessel owner or operator, or when a designated vessel at sea (except while transiting between ports on a trip during which no fishing operations occur) is disabled by mechanical or structure failure, fire, or explosion, or the designated vessel is totally lost.

* * * * *

Initial administrative determination (IAD) means a formal, written determination made by National Marine Fisheries Service (NMFS) on an application or permit request that is subject to an appeal within NMFS.

* * * * *

Ownership interest means participation in ownership of a corporation, partnership, or other entity that owns a limited entry deep-set buoy gear permit.

* * * * *

Totally lost means the vessel being replaced no longer exists in specie, or is absolutely and irretrievably sunk, or the costs of repair (including recovery) will exceed the value of the vessel after repairs.

* * * * *

■ 3. In § 660.705, add paragraphs (vv) through (bbb) to read as follows:

§ 660.705 Prohibitions.

* * * * *

(vv) Deploy or have onboard a vessel, deep-set buoy gear (DSBG) in contravention of gear configuration specifications described at § 660.715(a) and (b).

(ww) Own or operate a vessel used to fish with DSBG in contravention of operational requirements specified at § 660.715(c)(1) and (2).

(xx) When required under § 660.715(c)(3), fail to notify NMFS or the NMFS-designated observer provider at least 48 hours prior to departure on a fishing trip during which DSBG is deployed.

(yy) Own or operate a vessel that is engaged in DSBG fishing without record of the operator's participation in a protected species workshop as required under § 660.715(c)(4).

(zz) Own or operate a vessel used to fish with DSBG in Federal waters north of a line extending seaward of the Oregon/Washington border at 46°16′ N latitude.

(aaa) Own or operate a vessel used to fish with DSBG in the Southern California Bight (as defined at

§ 660.715(d)(2)) while not in possession of a valid DSBG limited entry permit.

(bbb) Own or operate a vessel used to fish a linked configuration of DSBG shoreward of a line approximating the 400 meter depth contour (according to coordinates specified at § 660.715(d)(3)) in waters between a line extending seaward at 34°16′8.331″ N latitude and a line extending seaward from the Oregon/Washington border at 46°16′ N latitude.

■ 4. In § 660.707, revise paragraph (b)(3)(i) and add paragraph (g) to read as follows:

§ 660.707 Permits.

* * * * *

(b) * * *

(3) * * *

(i) A West Coast Region Federal Fisheries application form may be obtained from the West Coast Region Fisheries Permits Office or downloaded from the West Coast Region website to apply for a permit under this section. A completed application is one that contains all the necessary information, and required fees, documentation, and signatures.

* * * * *

(g) *Limited entry deep-set buoy gear (DSBG) permit*—(1) *General.* This paragraph (g) applies to persons (as defined at § 660.702) owning a limited entry permit to fish with DSBG (as defined at § 660.702) inside the Southern California Bight (as defined at § 660.715(d)(2)) and to vessels registered to such permits. For a vessel to be used to fish with DSBG in the Southern California Bight, that vessel must be registered for use with a limited entry DSBG permit.

(2) *Basic requirements.* Limited entry DSBG permits are issued to a person, and a vessel must be specified on the permit.

(i) *Persons.* Any ''person'' as defined at § 660.702 may own a limited entry DSBG permit, subject to the ownership requirements and limitations at paragraph (g)(3) of this section.

(ii) *Vessels.* A vessel registered to a limited entry DSBG permit must also be registered to a valid general HMS permit with a DSBG endorsement issued pursuant to paragraphs (a) and (b) of this section. The designated vessel need not be owned by the limited entry DSBG permit owner. The same vessel may be registered to multiple limited entry DSBG permits, but only one permit may be fished at a time.

(3) *Ownership requirements and limitations*—(i) *Limitation on permit ownership.* No person may own more than one limited entry DSBG permit, in whole or in part, including through ownership interest in a partnership, corporation, or other entity.

(ii) *DSBG identification of ownership interest form.* Any person that owns a limited entry DSBG permit and that is applying for or renewing a limited entry DSBG permit shall document those persons that have an ownership interest in the limited entry DSBG permit. This ownership interest must be documented with NMFS via the DSBG Identification of Ownership Interest Form.

(iii) *Transferability.* Limited entry DSBG permits are not transferable, except for a one-time transfer to a family member, as defined at § 660.702, upon the death or legal incapacitation of the individual or a member of the corporation, partnership, or other entity that owns the permit, following the procedures at paragraph (g)(7) of this section. The limited entry DSBG permit owner cannot change or add additional individuals or entities as owners of the permit, or otherwise change ownership of the permit as defined at § 660.702. A transfer may not occur if such a transfer will result in a person holding more than one limited entry DSBG permit as described in paragraph (g)(3)(i) of this section.

(iv) *Divestiture, surrender, and revocation.* If NMFS discovers that a person owns or has an ownership interest in more than one limited entry DSBG permit (including any person who has ownership interest in the entities listed as owners on the permit), NMFS will notify the permit owner that they have 90 days to divest of the excess ownership interest. During this 90-day period, the person may surrender permit(s) in excess of the permit ownership limit to NMFS by submitting a request in writing. After the 90-day divestiture period, NMFS will revoke all limited entry DSBG permits held by that person in excess of the permit ownership limit. Surrendered and revoked permits, with vessel status as ''unidentified,'' will be issued to the next eligible applicant following the procedures at paragraphs (g)(11) and (12) of this section.

(4) *Renewal.* Limited entry DSBG permits are valid for 1 year (May 1–April 30). Permits expire April 30 of each year and must be renewed between February 1 and March 31 of each year to remain in force the following permit year.

(i) *Renewal notices.* NMFS will send notices to renew limited entry DSBG permits to the permit owner's most recent email address on record with NMFS. The permit owner is responsible for notifying the Fisheries Permits Office of any email address change.

(ii) *Renewal packages.* A complete limited entry DSBG permit renewal package must be received by NMFS by March 31 of each year. If a complete renewal package is not received by March 31, NMFS will not renew the limited entry DSBG permit, except under the circumstances described in paragraph (g)(4)(iii) of this section. A complete renewal package consists of a completed renewal application form, a completed DSBG Identification of Ownership Interest Form as required under paragraph (g)(3)(ii) of this section, and payment of required fees. NMFS may require additional documentation as it deems necessary to make a determination on the application. The renewal package will be considered incomplete until the required information is submitted. NMFS will decline to act on an incomplete application.

(iii) *Forfeited permits.* A limited entry DSBG permit for which renewal is not requested will be considered expired unless the permit owner requests reissuance of the permit by June 30 (3 months after the renewal application deadline) and NMFS determines that failure to renew was proximately caused by illness, injury, or death of the permit owner. If a permit is allowed to expire, it will be forfeited and NMFS may reissue the permit to another qualified applicant following the procedures at paragraphs (g)(11) and (12) of this section.

(iv) *Renewal determinations.* Based on a complete application for renewal of a limited entry DSBG permit, if NMFS determines that the applicant has met the requirements of this section and is in compliance with any other applicable regulations, NMFS will approve the renewal and issue the permit. If the application is not approved, NMFS will issue an initial administrative decision (IAD) that will explain the denial in writing. The applicant may appeal NMFS' determination following the process at paragraph (b)(3)(iv) of this section.

(5) *Permit replacement.* Replacement permits may be issued without charge to replace lost or mutilated permits. Replacement permits may be obtained by submitting a complete permit replacement application to NMFS. An application for a replacement permit is not considered a new application. Any permit that has been altered, erased, or mutilated is invalid.

(6) *Change in vessel registration.* Limited entry DSBG permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, or replaced. A permit may not be used with any vessel

other than the vessel registered for use with that permit. If the permit will be used with a vessel other than the one registered for use with the permit, the permit owner must request a change in vessel registration in accordance with paragraphs (g)(6)(ii) through (iv) of this section.

(i) *Limits on changes in vessel registration.* The registered vessel may be changed no more than once per calendar year, except in cases of a *force majeure* event as defined at § 660.702. A permit owner may also designate the vessel registration for a permit as ''unidentified,'' meaning that no vessel has been identified as registered for use with that permit. Changing a permit's designated vessel to ''unidentified'' is not considered a change in vessel registration for purposes of this section, but the permit is not authorized for use until a subsequent change of registration out of ''unidentified'' status occurs. Any subsequent change in registration out of ''unidentified'' status to a vessel will be considered a change in vessel registration and subject to a once-per-calendar-year limit.

(ii) *Request for change in vessel registration.* To request a change in vessel registration, a permit owner must fill out a vessel transfer application online through the NOAA Fisheries Permits website with appropriate fields completed and must submit the application to the West Coast Region Fisheries Permits Office. A complete change in vessel registration package consists of a transfer application form with appropriate fields completed, a current copy of the United States Coast Guard Documentation Form or state registration form, and payment of required fees. NMFS may require additional documentation as it deems necessary to make a determination on the application. The change in vessel registration package will be considered incomplete until the required information is submitted. NMFS will decline to act on an incomplete application. A permit owner may designate the vessel registration for a permit as ''unidentified,'' meaning that no vessel has been identified as registered for use with that permit. No vessel is authorized to use a permit with the vessel registration designated as ''unidentified.''

(iii) *Agency determination on an application.* Based on a complete application for a change in vessel registration, if NMFS determines that the applicant has met the requirements of this section, NMFS will approve the change in vessel registration and issue the permit. Changes in vessel registration will take effect on the date that the change is approved by NMFS. If the application for a change in vessel registration is not approved, NMFS will issue an initial administrative determination that will explain the denial in writing. The applicant may appeal NMFS' determination following the process at paragraph (b)(3)(iv) of this section.

(7) *Permit ownership transfer*—(i) *Request for change in permit ownership.* A permit owner may request change in ownership of a permit, in compliance with the limits at paragraph (g)(3) of this section, by submitting a complete transfer application package with appropriate fields completed to NMFS. A complete transfer application package consists of all of the following:

(A) A transfer application form with appropriate fields completed;

(B) For a request to change a permit's ownership where the current permit owner is a corporation, partnership or other business entity, a corporate resolution that authorizes the conveyance of the permit to a new owner and authorizes the individual applicant to request the conveyance on behalf of the corporation, partnership, or other business entity;

(C) For a request to change a permit's ownership that is necessitated by the death of the permit owner(s), a death certificate of the permit owner(s) and appropriate legal documentation that either: Specifically registers the permit to a designated individual(s); or provides legal authority to the transferor to convey the permit ownership; and

(D) Payment of required fees.

(ii) *Incomplete application.* NMFS may require additional documentation as it deems necessary to make a determination on the application for change in ownership. The renewal package will be considered incomplete until the required information is submitted. NMFS will decline to act on an incomplete application.

(iii) *Agency determination on an application.* Based on a complete application for change in ownership, if NMFS determines that the applicant has met the requirements of this section, NMFS will approve the change in ownership and issue the permit. Changes in permit ownership will take effect on the date that the change is approved by NMFS. If the application is not approved, NMFS will issue an initial administrative decision (IAD) that will explain the denial in writing. The applicant may appeal NMFS' determination following the process at paragraph (b)(3)(iv) of this section.

(8) *Fees.* The Regional Administrator may charge fees to cover administrative expenses related to processing initial issuance, renewal, change in ownership, change in vessel registration, divestiture, and appeals of permits. The amount of the fee is determined in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs. A fee may not exceed administrative costs and is specified with each application form. The appropriate fee must accompany each application.

(9) *Sanctions.* NMFS may decline to act on an application for initial issuance, renewal, replacement, change in ownership, divestiture, or change in vessel registration, and will notify the applicant if the permit sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D, apply.

(10) *Appeals.* In cases where the applicant disagrees with NMFS' decision on a permit application for initial issuance, renewal, replacement, change in ownership, divestiture, or change in vessel registration, the applicant may file an appeal following the procedures described at paragraph (b)(3)(iv) of this section.

(11) *Initial issuance for Tiers 1 through 8.* This section describes the process for initial issuance of limited entry DSBG permits to applicants that qualify under Tiers 1 through 8 as defined at paragraphs (g)(11)(iii)(C)(*1*) through (*8*) of this section.

(i) *Exempted fishing permit (EFP) holder.* For purposes of paragraph (g)(11) of this section only, *exempted fishing permit (EFP) holder* means any individual with NMFS approval to captain a commercial vessel and use DSBG under the authority of a DSBG EFP or any individual who is identified by NMFS as having managed a DSBG EFP, including vessel owners whose vessel fished under the authority of a DSBG EFP.

(ii) *Initial applications.* Persons may apply for a limited entry DSBG permit by completing and submitting an initial issuance application package to NMFS, beginning on June 7, 2023. The completed application package must be submitted on the National Permit System website, or by another method approved by NMFS, no later than 11:59 p.m. on August 7, 2023. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive a limited entry DSBG permit under Tiers 1 through 8 and their permit will be issued to the next eligible applicant following the procedures at paragraphs (g)(11) and (12) of this section. A complete initial issuance application package consists of the following: a completed initial

issuance application form; a completed DSBG Identification of Ownership Interest Form, as required under paragraph (g)(3)(ii) of this section; a current copy of the United States Coast Guard Documentation Form or state registration form for the vessel that will be registered to the permit; and payment of required fees. NMFS may require additional documentation as it deems necessary to make a determination on the application. The initial issuance application package will be considered incomplete until the required information is submitted. NMFS will decline to act on an incomplete application.

(iii) *Eligibility criteria for Tiers 1 through 8.* To qualify for a permit under Tiers 1 through 8, as defined at paragraphs (g)(11)(iii)(C)(*1*) through (*8*) of this section, an applicant must meet all of the following criteria:

(A) The applicant is eligible to own a limited entry DSBG permit in accordance with paragraph (g)(2)(i) of this section;

(B) The applicant is in compliance with the ownership requirements and limitations of paragraph (g)(3) of this section. Applicants found to have qualified for more than one permit will be notified by NMFS in writing and will have 30 days to divest of the excess permit ownership interest and resubmit their application package; and

(C) The applicant meets the criteria of one of the qualification tiers in paragraphs (g)(11)(iii)(C)(*1*) through (*8*) of this section based on data as of August 7, 2023. Permits will be issued by ranking applicants according to the tiered criteria in paragraphs (g)(11)(iii)(C)(*1*) through (*8*) of this section, beginning with Tier 1 and ending with Tier 8. NMFS will qualify applicants that meet the criteria of multiple tiers based on their highest tier, with Tier 1 being the highest, Tier 2 the second highest, and so on.

(*1*) Tier 1 consists of EFP holders with at least 10 documented calendar days of DSBG fishing effort by December 31, 2018, based on NMFS West Coast Region Observer Program records indicating either that the EFP holder was the vessel captain for that fishing day or that fishing effort for that day was conducted on a vessel owned by or under the EFP managed by that individual.

(*2*) Tier 2 consists of California Limited Entry Drift Gill Net (DGN) Shark and Swordfish permit holders who made at least one large-mesh DGN swordfish landing between the 2013–2014 and 2017–2018 fishing seasons and surrendered their state or Federal limited entry DGN permit as part of a DGN permit trade-in or buy-back program, based on California Department of Fish and Wildlife (CDFW) marine landing receipt and buyback records and NMFS and CDFW permit information.

(*3*) Tier 3 consists of EFP holders approved by the Pacific Fishery Management Council prior to April 1, 2021, who conducted at least 10 calendar days of DSBG fishing effort or with 10 days of DSBG effort on their vessel or by vessels they manage under the EFP by June 7, 2023, based on a NMFS West Coast Regional Observer Program record or a properly submitted NMFS DSBG EFP logbook indicating either that the EFP holder was vessel captain for that fishing day or that the fishing effort for that day was conducted on a vessel owned by or under the EFP managed by that individual.

(*4*) Tier 4 consists of California Swordfish permit holders who possessed a permit during the 2018–2019 fishing season and made at least one swordfish landing using harpoon gear between the 2013–2014 or 2017–2018 fishing seasons, based on California Department of Fish and Wildlife (CDFW) permit and marine landing receipt records.

(*5*) Tier 5 consists of California Limited Entry Drift Gill Net (DGN) Shark and Swordfish permit holders who have made at least one large-mesh DGN swordfish landing between the 2013–2014 and 2017–2018 fishing seasons and who did not surrender their state or Federal limited entry DGN permit as part of a trade-in or buy-back program, based on California Department of Fish and Wildlife (CDFW) marine landing receipts and buyback records and NMFS and CDFW permit information.

(*6*) Tier 6 consists of California Limited Entry Drift Gill Net (DGN) Shark and Swordfish permit holders who have not made a swordfish landing with large-mesh DGN gear since March 31, 2013, and who surrendered their state or Federal limited entry DGN permit as part of a permit trade-in or buy-back program, based on California Department of Fish and Wildlife (CDFW) marine landing receipts and buyback records and NMFS and CDFW permit information.

(*7*) Tier 7 consists of state or Federal limited entry drift gillnet (DGN) permit holders who have not made a swordfish landing with DGN gear since March 31, 2013, and did not surrender their limited entry DGN permit as part of a state or Federal limited entry DGN permit trade-in or buy-back program, based on California Department of Fish and Wildlife (CDFW) marine landing receipts and buyback records and NMFS and CDFW permit information.

(*8*) Tier 8 consists of any individual with documented commercial swordfish fishing experience between January 1, 1986, and June 7, 2023, on a first come, first served basis, based on California Department of Fish and Wildlife (CDFW) permit records showing possession of a valid commercial fishing license on that date and one of the following:

(*i*) A valid CDFW marine landing receipt identifying the individual as the fisherman of record;

(*ii*) A valid state or Federal logbook where swordfish were taken and identifying the individual as captain or crew on that day; and

(*iii*) A signed affidavit from a vessel owner or captain identifying the individual as vessel captain or crew on the day that swordfish were taken.

(iv) *Agency determination on an application.* Based on a complete application for an initial permit under Tiers 1 through 8, as defined at paragraphs (g)(11)(iii)(C)(*1*) through (*8*) of this section, if NMFS determines that the applicant has met the requirements of this section, NMFS will issue an initial administrative determination (IAD). If the application is approved, the applicant will receive a permit according to the permit issuance procedures in paragraph (g)(11)(v) of this section. If the application is denied, the IAD will provide an explanation of the denial in writing. The applicant may appeal NMFS' determination following the process at paragraph (b)(3)(iv) of this section.

(v) *Permit issuance.* NMFS will issue permits to approved applicants in priority order according to the qualification tiers in paragraphs (g)(11)(iii)(C)(*1*) through (*8*) of this section, with qualified applicants in Tier 1 receiving permits first, then qualified applicants in Tier 2, and so on. Qualified applicants will be further ranked within a tier based on their total swordfish landings for the time period and gear type specified for that tier for Tiers 1 through 5, according to California Department of Fish and Wildlife (CDFW) marine landing receipts as of August 7, 2023, or by the date and time their application is received for Tiers 6 through 8. NMFS will issue up to 50 permits in 2023, and up to 25 permits each year after, up to a total of 300 valid permits. Permits issued to the next eligible applicant as a result of surrender, revocation, or expiration will not count toward the annual permit issuance limits. Permits will be mailed on or about April 1 for the upcoming May 1 permit year to the

address of record. Permit holders are responsible for keeping their contact information current with NMFS to receive their permit. If a permit is returned to NMFS as undeliverable, NMFS will make further attempts to contact the permit holder using the contact information on file. If NMFS is not able to contact the permit holder within 30 days, the permit will be revoked and issued to the next eligible applicant following the procedures at paragraphs (g)(11) and (12) of this section.

(12) *Initial issuance for Tier 9.* When the list of permit qualifiers from the initial issuance for Tiers 1 through 8, as defined at paragraphs (g)(11)(iii)(C)(*1*) through (*8*) of this section, is exhausted, NMFS will begin accepting applications for additional limited entry DSBG permits on a first come, first served basis. In January of the year NMFS anticipates accepting Tier 9 applications, NMFS will publish a notice in the **Federal Register** to notify the public of the application opportunity. NMFS will accept applications for initial issuance of limited entry DSBG permits under Tier 9 on an annual basis until a total of 300 limited entry DSBG permits are issued.

(i) *Initial applications.* Persons may apply for a limited entry DSBG permit under Tier 9 by completing and submitting an initial issuance application package to NMFS via the National Permit System website during the annual application period February 1–March 31. The completed application package must be submitted no later than 11:59 p.m. Pacific Daylight Time on March 31st of the relevant year. A complete initial issuance application package consists of the following: a completed initial issuance application form; a completed DSBG Identification of Ownership Interest Form, as required under paragraph (g)(3)(ii) of this section; a current copy of the United States Coast Guard Documentation Form or state registration form for the vessel that will be registered to the permit; and payment of required fees. NMFS may require additional documentation as it deems necessary to make a determination on the application. The initial issuance application package will be considered incomplete until the required information is submitted. NMFS will decline to act on an incomplete application.

(ii) *Eligibility criteria for Tier 9.* To qualify for a permit under Tier 9, an applicant must meet all of the following criteria:

(A) The applicant is eligible to own a limited entry DSBG permit in accordance with paragraph (g)(2)(i) of this section; and

(B) The applicant is in compliance with the ownership requirements and limitations of paragraph (g)(3) of this section.

(iii) *Agency determination on an application.* Based on a complete application, if NMFS determines that the applicant for an initial permit under Tier 9 has met the requirements of this section, NMFS will issue an initial administrative determination (IAD). If the application is approved, the IAD will say so and the applicant will receive a permit according to the permit issuance procedures in paragraph (g)(11)(iv) of this section. If the application is denied, the IAD will provide an explanation of the denial in writing. The applicant may appeal NMFS' determination following the process at paragraph (b)(3)(iv) of this section.

(iv) *Permit issuance.* NMFS will issue permits to approved applicants under Tier 9 on a first come, first served basis, according to the date and time that their application was submitted through the National Permit System. NMFS will issue up to 25 permits each year, up to a total of 300 valid permits. If NMFS approves more than 25 applications in a single year, the approved applicants above 25 will receive priority for permit issuance the following year according to the date and time that their complete applications were received. Permits issued to the next eligible applicant as a result of surrender, revocation, or expiration will not count toward the annual permit issuance limits.

■ 5. Revise § 660.715 to read as follows:

§ 660.715 Deep-set buoy gear fishery.

(a) *Gear configurations.* Deep-set buoy gear (DSBG) configurations must conform to the following specifications:

(1) *Standard buoy gear (SBG).* An individual piece of SBG must consist of a vertical monofilament mainline suspended from a buoy-array with a terminal weight. No more than three gangions with hooks may be attached to the mainline. No gangions with hooks may be attached at a depth shallower than 90 meters.

(2) *Linked buoy gear (LBG).* An individual piece (section) of LBG must consist of a monofilament mainline that extends vertically from a buoy-array (either directly or from a minimum 50-foot (15.24-meter) extender) to a weight; then horizontally to a second weight; then vertically to a minimum 50-foot (15.24-meter) extender attached to a second buoy-array. No more than three gangions with hooks may be connected to each horizontal section of the mainline. No gangions with hooks may be attached at a depth shallower than 90 meters. Individual pieces may be linked together by the mainline. The links between each piece of LBG must be serviceable.

(b) *Additional gear configuration specifications.* Use of SBG and LBG must conform with the following requirements:

(1) *Surface buoy flotation and strike detection array requirements.* The surface buoy flotation and strike detection array must include a minimum of three buoys (a minimum 45-pound (20.41 kilogram) buoyancy non-compressible hard ball, a minimum 6-pound (2.72 kilogram) buoyancy buoy, and a strike detection buoy), with no more than 6 feet (1.83 meters) of line between adjacent buoys, all connected in-line by a minimum of ⅜ inch (9.53 millimeter) diameter line.

(i) Buoys must be free of tether attachments (*e.g.,* non-streamlined gear with loops and/or dangling components).

(ii) SBG and terminal LBG buoy-arrays must include a locator flag, a radar reflector, and the buoy must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

(A) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(B) The vessel documentation number issued by the United States Coast Guard (USCG), or, for an undocumented vessel, the vessel registration number issued by the state.

(2) *Weight requirements.* Weights must be a minimum of 3.6 kilograms.

(3) *Circle hook requirements.* Circle hooks must be used that are a minimum size 16/0 with not more than 10 degrees offset.

(4) *Gear pieces and hook limitations.* No more than 10 pieces of SBG or LBG, in total, may be deployed at one time, with no more than three hooks per piece.

(c) *Operational requirements.* SBG and LBG must be fished in accordance with the following operational requirements.

(1) *Active tending.* All pieces of gear must remain within 5 nautical miles (9.26 kilometers) of the vessel at all times, and the vessel may be no more than 3 nautical miles (5.56 kilometers) from the nearest piece of gear.

(2) *Fishing multiple gear types.* Gear types other than DSBG may be used on the same trip when DSBG is used, as long as the requirement to actively tend DSBG (as described at paragraph (c)(1) of this section) is met. If multiple gear

types, including gear other than DSBG, are used on the same trip as DSBG, catch must be tagged or marked to identify the gear used, including differentiating whether caught with SBG or LBG.

(3) *Timing of gear deployment and retrieval.* Gear may not be deployed until local sunrise and must be onboard the vessel no later than 3 hours after local sunset.

(4) *Pre-trip notification.* When requested by NMFS, DSBG vessel owners or operators are required to notify NMFS or the NMFS-designated observer provider at least 48 hours prior to departing on each fishing trip during which DSBG will be fished. The vessel owner or operator must communicate to the observer provider: the owner's or operator's name, contact information, vessel name, port of departure, estimated date and time of departure, and a telephone number at which the owner or operator may be contacted during the business day (Monday through Friday between 8 a.m. to 4:30 p.m., Pacific Time) to indicate whether an observer will be required on the subject fishing trip. Contact information for the current observer provider can be obtained by calling the NMFS West Coast Region Sustainable Fisheries Division at (562) 980–4238.

(5) *Protected species workshops.* When requested by NMFS, the operator of a vessel either registered to a limited entry DSBG permit or planning to fish under a DSBG endorsement must attend a workshop conducted by NMFS on mitigation, handling, and release techniques for protected species.

(d) *Geographic area restrictions.* DSBG fishing is permitted throughout the management area defined in § 660.703 with the following area restrictions:

(1) *Federal waters offshore of California and Oregon only.* Fishing with DSBG may not occur in Federal waters north of a line extending seaward from the Oregon/Washington border at north of 46°16′ N latitude.

(2) *Limited entry-only area.* Except for vessels registered to a valid DSBG limited entry permit, fishing with DSBG may not occur in Federal waters within the Southern California Bight, which for this purpose is defined with a northern boundary of 34°26′54.96″ N latitude (*i.e.,* Point Conception), a southern boundary of the U.S.-Mexico maritime border, and a western boundary of 120°28′18″ W longitude.

(3) *Linked buoy gear area restriction.* Fishing with DSBG in a LBG configuration in waters north of the Northern Channel Islands to a line extending seaward from the Oregon/Washington border at 46°16′ N latitude may not occur shoreward of a line approximating the 400 meter depth contour, which is defined by straight lines connecting all of the following points in the order stated in the following table.

TABLE 1 TO PARAGRAPH (d)(3)

Point ID	Latitude	Longitude
1	46.274388	−124.410349
2	46.075505	−124.813587
3	45.968227	−124.739233
4	45.785378	−124.721611
5	45.731988	−124.755707
6	45.676058	−124.662448
7	45.635778	−124.733532
8	45.627501	−124.621223
9	45.421342	−124.428881
10	45.368012	−124.524815
11	45.219954	−124.426593
12	45.169315	−124.502340
13	45.192831	−124.640233
14	45.073777	−124.601143
15	45.122584	−124.728187
16	45.063305	−124.719824
17	45.012240	−124.512643
18	44.827950	−124.645508
19	44.789368	−124.722827
20	44.703649	−124.815421
21	44.529842	−124.804136
22	44.507522	−124.883072
23	44.415352	−124.858176
24	44.208665	−124.994868
25	43.942293	−124.974502
26	43.795680	−124.685260
27	43.579894	−124.645446
28	43.232513	−124.799284
29	43.226291	−124.883682
30	42.905163	−124.913752
31	42.753934	−124.866742
32	42.748993	−124.751655
33	42.520896	−124.747080
34	42.463017	−124.822607
35	41.824611	−124.517470
36	41.428980	−124.513482
37	41.156773	−124.396132
38	40.801184	−124.492790
39	40.681958	−124.550870
40	40.602740	−124.480125
41	40.622580	−124.645995
42	40.546989	−124.700835
43	40.400783	−124.585363
44	40.370014	−124.431174
45	40.344876	−124.507828
46	40.269847	−124.446270
47	40.279429	−124.657027
48	40.117493	−124.304705
49	40.041456	−124.285170
50	40.042494	−124.155198
51	39.965786	−124.231615
52	39.808303	−124.097017
53	39.540607	−123.943484
54	39.528835	−123.992885
55	38.911050	−123.982148
56	38.491136	−123.647679
57	38.256021	−123.526302
58	38.228410	−123.438852
59	38.073446	−123.533062
60	37.844809	−123.404954
61	37.740079	−123.192427
62	37.623812	−123.050253
63	37.394689	−122.920853
64	37.323790	−122.940568
65	37.189284	−122.863927
66	36.968232	−122.527184
67	37.005852	−122.408848
68	36.945123	−122.425076
69	36.781748	−122.055455
70	36.806676	−121.905280
71	36.680249	−122.025454
72	36.531101	−121.993385
73	36.371824	−122.014963
74	36.315554	−122.101240
75	36.166525	−121.760807
76	36.033982	−121.623149
77	35.584240	−121.366349
78	35.165706	−121.033163
79	34.865218	−120.993335
80	34.929599	−121.074138
81	34.693224	−120.962686
82	34.541665	−120.838291
83	34.315659	−120.541578
84	34.268981	−120.379230

§ 660.716 [Removed and Reserved]

■ 8. Remove and reserve § 660.716.

[FR Doc. 2023–09748 Filed 5–5–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 88
Monday, May 8, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2023–0938]

Proposed Policy Statement; Demonstration of Radio Altimeter Tolerant Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notification of availability; request for comments.

SUMMARY: This document announces the availability of a draft Policy Statement PS–AIR–600–39–01, Demonstration of Radio Altimeter Tolerant Aircraft. The FAA invites public comment on PS–AIR–600–39–01.

DATES: The FAA must receive comments on this document on or before June 7, 2023.

ADDRESSES: You may send comments identified by docket number FAA–2023–0938 using any of the following methods:

☐ *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the instructions for submitting comments electronically.

☐ *Mail:* U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

☐ *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

☐ *Fax:* (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Clark, Aviation Safety Specialist, Avionics and Electrical Systems Section, 800 Independence Ave. SW, DC 20591; telephone: 817–222–5390; email: *operationalsafety@faa.gov.*

SUPPLEMENTARY INFORMATION:

Privacy: The FAA will post all comments it receives, without change, to *www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *https://DocketsInfo.dot.gov.*

Comments Invited

The FAA invites interested parties to take part in the development of the proposed policy statement by sending written comments to an address listed under **ADDRESSES**. Include Docket No. FAA–2023–0938; Policy No. PS–AIR–600–39–01 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 proposed policy.

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. 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 notice. Submissions containing CBI should be sent to the individual listed under **FOR FURTHER INFORMATION CONTACT**. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this notice.

Background

The current performance standards for radio altimeters (also known as radar altimeters) are based on the presumption that no occupancy of an adjacent radio frequency spectrum would cause interference with radio altimeters. During 2021, the radio frequency operating environment surrounding radio altimeters substantially changed when wireless telecommunication service providers began offering 5G C-Band services near the 4.2–4.4 GHz band, which is reserved for aviation radio altimeters. The FAA subsequently determined that radio altimeters cannot be relied upon to perform their intended function if they experience interference from 5G wireless broadband operations in the C-Band.

Deployment of the new 5G C-Band services prompted the FAA to address the risks posed by radio frequency (RF) interference to radio altimeters. On December 7, 2021, the FAA issued AD 2021–23–12 [1] for transport and commuter category airplanes equipped with a radio altimeter and AD 2021–23–13 [2] for helicopters equipped with a radio altimeter. AD 2021–23–12 and AD 2021–23–12 prohibit certain flight operations requiring radio altimeter data when flying in the presence of 5G C-Band interference as identified by Notices to Air Missions (NOTAMs). In response to AD 2021–23–12, the aviation industry developed a method to show compatibility with 5G emissions

[1] Amendment 39–21810, 86 FR 69984, December 9, 2021.

[2] Amendment 39–21811, 86 FR 69992, December 9, 2021.

in the United States national airspace system for the initial 5G deployment, which was limited to 3.7–3.8 GHz, and the 5G spurious emissions in the radio altimeter band (4.2–4.4 GHz). The FAA accepted this method as support for proposals for alternative methods of compliance (AMOCs) with AD 2021–23–12 and AD 2021–23–13. These AMOCs used standardized assessment parameters, values, and methods to estimate an installed altimeter system protection radii or distance. Aircraft with an altimeter operating beyond this distance from all 5G base stations would not expect deleterious effects from RF incompatibility and indeed could depend upon the radio altimeter system to fully perform its intended function. These AMOCs were based on interference thresholds of specific individual radio altimeter transceivers. That is, each transceiver was tested to benchmark their performance in the presence of out-of-band and in-band C-Band signals. The thresholds were then modified and tailored to installation factors specific to the installed platform (*e.g.,* measured antenna gains and line losses). These values were then used to determine the necessary mitigations to protect the airport airspace most critical for the safety of operations. The mitigations included actions by wireless providers as well as flight limitations imposed by the FAA for the airspace areas identified by NOTAM, unless operating under an approved AMOC.

On January 6, 2023, the FAA issued a notice of proposed rulemaking (NPRM) proposing to supersede AD 2021–23–12.[3] On April 5, 2023, the FAA issued an NPRM proposing to supersede AD 2021–23–13.[4] The flight limitations in the new proposed ADs would depend on whether an aircraft has a radio altimeter that demonstrates certain tolerances using a method approved by the FAA.

Proposed Policy Statement

This proposed policy would provide guidance for operators and manufacturers to demonstrate an aircraft is a radio altimeter tolerant aircraft, under the proposed definition in the NPRMs.

You may review the proposed policy statement at *www.regulations.gov* in Docket No. FAA–2023–0938; or on the FAA's website at *www.faa.gov/aircraft/draft_docs/.*

[3] Docket No. FAA–2022–1647, 88 FR 1520 (January 11, 2023).

[4] Docket No. FAA–2023–0668, 88 FR 21931 (April 12, 2023).

Issued on May 2, 2023.

Michael Linegang,

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

[FR Doc. 2023–09622 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0934; Project Identifier AD–2022–01443–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company 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 all The Boeing Company Model 747–8F and 747–8 series airplanes. This proposed AD was prompted by a report of cracks in stringers, common to the end fittings, on the aft side of the bulkhead at station 2598. This proposed AD would require detailed inspections of the stringers, common to the end fittings, forward and aft of the bulkhead at a certain station for cracking and applicable on-condition actions. 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 22, 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–2023–0934; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2023–0934.

FOR FURTHER INFORMATION CONTACT: Stefanie Roesli, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3964; email: *stefanie.n.roesli@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–2023–0934; Project Identifier AD–2022–01443–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 this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *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 Stefanie Roesli, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3964; email: *stefanie.n.roesli@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report indicating the presence of cracks in stringers, common to the end fittings, at stringer location S–42L/R and S–46L/R on the aft side of the bulkhead at station (STA) 2598. The airplane had accumulated 5,517 total flight cycles and 32,468 total flight hours at time the cracks were found. In addition, during foreign object debris (FOD) inspections Boeing found five cracks in stringers, common to the end fittings, at stringer locations S–2L, S–6L, S–8L, and S–2R on the forward side and S–5L on the aft side of the bulkhead at STA 2598 on two airplanes. The FAA has also received reports of similar cracks found on additional airplanes. In all cases, the cracks were found in the side walls of the stringers and had grown in longitudinal and transverse directions, but there was no other damage or deformation in the surrounding area. An investigation by Boeing found that during airplane assembly, un-shimmed or incorrectly shimmed gaps that were larger than engineering requirements caused excessive and sustained internal tensile stresses and resulted in stress corrosion cracking in the stringers. This condition, if not addressed, could lead to a failure of the skin adjacent to the bulkhead at STA 2598, which could adversely affect the structural integrity of the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747–53A2911 RB, dated November 3, 2022. This service information specifies procedures for repetitive detailed inspections of the stringers, common to the end fittings, forward and aft of the bulkhead at STA 2598, for any crack, and applicable on-condition actions. On-condition actions include repair.

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 **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *regulations.gov* under Docket No. FAA–2023–0934.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 42 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed inspection	91 work-hours × $85 per hour = $7,735 per inspection cycle.	$0	$7,735 per inspection cycle.	$324,870 per inspection cycle.

The FAA estimates the following costs to do any necessary repairs that would be required based on the results of the proposed inspection. The agency has no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair	13 work-hours × $85 per hour = $1,105	$600	$1,705 (per stringer).

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:

The Boeing Company: Docket No. FAA–2023–0934; Project Identifier AD–2022–01443–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by June 22, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 747–8F and 747–8 series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report of cracks in stringers, common to the end fittings, on the aft side of the bulkhead at station (STA) 2598. The FAA is issuing this AD to address stress corrosion cracking in the stringers. This condition, if not addressed, could lead to a failure of the skin adjacent to the bulkhead at STA 2598, which could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–53A2911 RB, dated November 3, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–53A2911 RB, dated November 3, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–53A2911, dated November 3, 2022, which is referred to in Boeing Alert Requirements Bulletin 747–53A2911 RB, dated November 3, 2022.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time column of the table in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–53A2911 RB, dated November 3, 2022, uses the phrase ''the original issue date of Requirements Bulletin 747–53A2911 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 747–53A2911 RB, dated November 3, 2022, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

For more information about this AD, contact Stefanie Roesli, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3964; email: *stefanie.n.roesli@faa.gov.*

(k) 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 the AD specifies otherwise.

(i) Boeing Alert Requirements Bulletin 747–53A2911 RB, dated November 3, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*

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

(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, *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. 2023–09641 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1004; Airspace Docket No. 23–ASO–18]

RIN 2120–AA66

Amendment of Class E Airspace; Greenville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E surface airspace and Class E airspace extending upward from 700 feet above the surface in Greenville, NC, as new instrument approach procedures have been designed for ECU Health Medical Center Heliport, Greenville, NC, and evaluations of existing Class E airspace determined modification were needed. The Class E airspaces for Pitt-Greenville Airport will have increases in the radii as well as establishing an extension to the

northeast. Also, this action would establish Class E airspace for ECU Health Medical Center Heliport. In addition, this action would make the editorial chance replacing the term Notice to Airmen with Notice to Air Missions in the legal description.

DATES: Comments must be received on or before June 22, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–1004 and Airspace Docket No. 23–ASO–18 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* anytime. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

FAA Order JO 7400.11G Airspace Designations and Reporting Points and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Goodson, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–5966.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend Class E airspace in Greenville, NC.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the proposal's overall regulatory, aeronautical, economic, environmental, and energy-related aspects. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only once if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file all comments it receives in the docket and a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking 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.*

Availability of NPRMs

An electronic copy of this document may be downloaded online at *www.regulations.gov.* Recently published rulemaking documents can be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except for Federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except for Federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Incorporation by Reference

Class E airspace designations are published in Paragraph 6002 and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 annually. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. These updates would subsequently be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 by Amending the Class E surface airspace for Pitt-Greenville Airport, Greenville, NC, by increasing the radius to 4.6 miles (previously 4.4 miles) and replacing the outdated Notice to Airmen with the Notice to Air Missions.

Amending the Class E airspace extending upward from 700 feet above the surface by increasing the radius of the Pitt-Greenville Airport to 7.1 miles (previously 6.4 miles) and establishing an extension of 1.1 miles on each side of the Pitt-Greenville Airport's 008° bearing extending from the airport's 7.1-mile radius to 13.4 miles northeast of the airport. In addition, this action would establish Class E airspace extending upward from 700 feet above the surface within a 6.2-mile radius of ECU Health Medical Center.

Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area. This action is necessary to support IFR operations in the area.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6002 Class E Surface Airspace.

* * * * *

ASO NC E2 Greenville, NC [Amended]

Pitt-Greenville Airport, NC
(Lat 35°38′09″ N, long 77°23′03″ W)

That airspace extending upward from the surface within a 4.6-mile radius of Pitt-Greenville Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Greenville, NC [Amended]

Pitt-Greenville Airport, NC
(Lat 35°38′09″ N, long 77°23′03″ W)
ECU Health Medical Center Heliport
(Lat 35°36′32″ N, long 77°24′19″ W)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Pitt-Greenville Airport and 1.1 miles on each side of the Pitt-Greenville Airport's 008° bearing extending from the airport's 7.1-mile radius to 13.4 miles northeast of the airport, and that airspace extending upward from 700 feet above the surface within a 6.2-mile radius of ECU Health Medical Center Heliport.

Issued in College Park, Georgia, on April 24, 2023.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–08950 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1020; Airspace Docket No. 21–AEA–31]

RIN 2120–AA66

Establishment of Area Navigation (RNAV) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend one and establish three low altitude Area Navigation (RNAV) routes (T-routes) in support of the Very High Frequency (VHF) Omnidirectional Range (VOR) Minimum Operational Network (MON) Program. The purpose is to enhance the efficiency of the National Airspace System (NAS) by transitioning from ground-based navigation aids to a satellite-based navigation system.

DATES: Comments must be received on or before June 22, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–1020 and Airspace Docket No. 21–AEA–31 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in the eastern United States and improve the efficient flow of air traffic within the NAS by lessening the dependency on ground-based navigation.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking 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.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, GA 30337.

Incorporation by Reference

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend one and establish three low altitude RNAV T-routes in the northeast United States to support the VOR MON Program, and the transition of the NAS from ground-based navigation aids to satellite-based navigation. The proposed route changes are described below.

T–299: T–299 is a proposed amended route that would extend from the OBEPE, VA, Fix to the Albany, NY (ALB), VOR with Tactical Air Navigational System (VORTAC). The route would overlay VOR Federal airway V–377 from the SCAPE, PA, Fix to the Harrisburg, PA (HAR), VORTAC; VOR Federal airway V–162 from the Harrisburg, PA (HAR), VORTAC to the Huguenot, NY (HUO), VOR/Distance Measuring Equipment (DME); VOR Federal airway V–489 from the Huguenot, NY (HOU), VOR/DME to the Albany, NY (ALB), VORTAC.

T–452: T–452 is a proposed new route that would extend from the VINSE, PA, waypoint (WP) to the REESY, PA, WP. The route is replacing VOR Federal airway V–469 from the St. Thomas, VA (THS), VORTAC to the JOANE, PA, Fix. The VINSE, PA, WP is being used to replace the St. Thomas, VA (THS), VORTAC.

T–456: T–456 is a proposed new route that would extend from the VINSE, PA, Fix to the Modena, PA (MXE), VORTAC. The route would overlay VOR Federal airway V–474 from the AMISH, PA, Fix to the Modena, PA (MXE), VORTAC.

T–477: T–477 is a proposed new route that would extend from the CPTAL, MD, WP to the Philipsburg, PA (PSB), VORTAC. The route would overlay VOR Federal Airway V–501 from the Hagerstown, MD (HGR), VOR to the Philipsburg, PA (PSB), VORTAC.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F: ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–299 OBEPE, VA TO ALBANY, NY (ALB) [AMEND]

OBEPE, VA	FIX	(Lat. 37°54′23.03″ N, long. 079°13′21.04″ W)
UCREK, VA	WP	(Lat. 38°01′33.17″ N, long. 079°02′56.23″ W)
KAIJE, VA	WP	(Lat. 38°44′34.79″ N, long. 078°42′48.47″ W)
BAMMY, WV	WP	(Lat. 39°24′33.13″ N, long. 078°25′45.64″ W)
REEES, PA	WP	(Lat. 39°47′51.75″ N, long. 077°45′56.31″ W)
SCAPE, PA	FIX	(Lat. 39°56′41.76″ N, long. 077°32′12.33″ W)
Harrisburg, PA (HAR)	VORTAC	(Lat. 40°18′08.06″ N, long. 077°04′10.41″ W)
BOBSS, PA	FIX	(Lat. 40°17′41.78″ N, long. 076°45′00.73″ W)
East Texas, PA (ETX)	VOR/DME	(Lat. 40°34′51.74″ N, long. 075°41′02.51″ W)
Allentown, PA (FJC)	VORTAC	(Lat. 40°43′36.07″ N, long. 075°27′17.08″ W)
Huguenot, NY (HUO)	VOR/DME	(Lat. 41°24′34.87″ N, long. 074°35′29.74″ W)
WEARD, NY	FIX	(Lat. 41°45′43.63″ N, long. 074°31′30.07″ W)
Albany, NY (ALB)	VORTAC	(Lat. 42°44′50.21″ N, long. 073°48′11.46″ W)

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T–452 VINSE, PA TO REESY, PA [NEW]

VINSE, PA	FIX	(Lat. 39°58′16.21″ N, long. 077°57′21.20″ W)
BADDI, PA	WP	(Lat. 40°09′26.26″ N, long. 077°25′07.81″ W)
Harrisburg, PA (HAR)	VORTAC	(Lat. 40°18′08.06″ N, long. 077°04′10.41″ W)
JOANE, PA	WP	(Lat. 40°02′38.48″ N, long. 076°27′21.40″ W)
GEERI, PA	WP	(Lat. 39°56′59.70″ N, long. 076°17′38.99″ W)
REESY, PA	WP	(Lat. 39°45′27.94″ N, long. 075°52′07.09″ W)

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T–456 VINSE, PA TO MODENA, PA (MXE) [NEW]

VINSE, PA	FIX	(Lat. 39°58′16.21″ N, long. 077°57′21.20″ W)
AMISH, PA	FIX	(Lat. 39°56′33.12″ N, long. 077°37′34.13″ W)
DELRO, PA	WP	(Lat. 39°57′55.71″ N, long. 076°37′31.24″ W)
Modena, PA (MXE)	VORTAC	(Lat. 39°55′04.98″ N, long. 075°40′14.96″ W)

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T–477 CPTAL, MD TO PHILIPSBURG, PA (PSB) [NEW]

CPTAL, MD	WP	(Lat. 39°32′16.02″ N, long. 077°41′55.65″ W)
Hagerstown, MD (HGR)	VOR	(Lat. 39°41′51.82″ N, long. 077°51′20.59″ W)
VINSE, PA	FIX	(Lat. 39°58′16.21″ N, long. 077°57′21.20″ W)
Philipsburg, PA (PSB)	VORTAC	(Lat. 40°54′58.53″ N, long. 077°59′33.78″ W)

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Issued in Washington, DC, on April 26, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–09261 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0837; Airspace Docket No. 23–ANE–05]

RIN 2120–AA66

Amendment of Class E Airspace; Carrabassett, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface for Sugarloaf Regional Airport, Carrabassett, ME, as an airspace evaluation determined a southern extension is necessary for this airport. This action would also remove the airport's existing extension and update the airport's geographic coordinates.

DATES: Comments must be received on or before June 22, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0837 and Airspace Docket No. 23–ANE–05 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* anytime. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. FAA Order JO 7400.11G Airspace Designations and Reporting Points and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend Class E airspace in Carrabassett, ME. An airspace evaluation determined that this update is necessary to support IFR operations in the area.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the proposal's overall regulatory, aeronautical, economic, environmental, and energy-related aspects. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives and a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking 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.*

Availability of NPRMs

An electronic copy of this document may be downloaded online at *www.regulations.gov.* Recently published rulemaking documents can be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except for Federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except for federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Incorporation by Reference

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. These updates would subsequently be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E airspace extending upward from 700 feet above the surface for Sugarloaf Regional Airport, Carrabassett, ME, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this airport. This action would amend the existing extension from the airport to the 166° bearing (previously 346°), as an airspace evaluation determined the existing extension was determined in error, as no instrument approaches exist for runway 17. The GPS–A approach for runway 35 requires the 166° bearing extension. This action would also update the airport's geographic coordinates to coincide with the FAA's database. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANE ME E5 Carrabassett, ME [Amended]

Sugarloaf Regional Airport, ME
(Lat. 45°05′07″ N, long. 70°12′59″ W)
Point in Space Coordinates
(Lat. 45°06′26″ N, long. 70°12′30″ W)

That airspace extending upward from 700 feet above the surface of the earth within a 6-mile radius of the Point in Space Coordinates (lat. 45°06′26″ N, long. 70°12′30″ W) serving the Sugarloaf Regional Airport, and within a 7-mile radius of the airport, and within 1 mile each side of the 166° bearing from the airport, extending from the 7-mile radius to 14.3-miles south of the airport.

Issued in College Park, Georgia, on April 10, 2023.

Lisa E. Burrows,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–09315 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1077; Airspace Docket No. 23–AGL–16]

RIN 2120–AA66

Amendment of Class E Airspace; Devils Lake, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Devils Lake, ND. The FAA is proposing this action as the result of an airspace review due to the decommissioning of the Devils Lake very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before June 22, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–1077 and Airspace Docket No. 23–AGL–16 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instruction for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the

agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E surface airspace and the Class E airspace extending upward from 700 feet above the surface Class E surface airspace at Devils Lake Regional Airport, Devils Lake, ND, to support instrument flight rule (IFR) operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or dely. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post 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–14FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing to amend 14 CFR part 71 by:

Modifying the Class E surface airspace to within a 4.3-mile (increased from a 4-mile) radius of Devils Lake Regional Airport, Devils Lake, ND; removing the Devils Lake VOR/DME and associated extensions from the airspace legal description; updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and replacing the outdated term ''Notice to Airmen'' with ''Notice to Air Missions'';

Modifying the Class E airspace extending upward from 700 feet above the surface to within a 6.8-mile (decreased from an 8.7-mile) radius of Devils Lake Regional Airport; removing the Devils Lake VOR/DME from the airspace legal description; removing the Class E airspace extending upward from 1,200 feet above the surface as it is now redundant with the Class E airspace extending upward from 1,200 feet above the surface over the State of North Dakota; and updating geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review due to the decommissioning of the Devils Lake VOR, which provided navigation information to this airport, as part of the VOR MON Program, and to support IFR operations at this airport.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area

* * * * *

AGL ND E2 Devils Lake, ND [Amended]

Devils Lake Regional Airport, ND
(Lat. 48°07′00″ N, long. 98°54′37″ W)

Within a 4.3-mile radius of Devils Lake Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL ND E5 Devils Lake, ND [Amended]

Devils Lake Regional Airport, ND
(Lat. 48°07′00″ N, long. 98°54′37″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Devils Lake Regional Airport.

Issued in Fort Worth, Texas, on April 27, 2023.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2023–09233 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0995; Airspace Docket No. 23–ASO–17]

RIN 2120–AA66

Amendment of Class E Airspace; Nashville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace designated as an extension to a Class C surface area and Class E airspace extending upward from 700 feet above the surface in Nashville, TN, as the result of a Class C Airspace modification and a biennial evaluation. This action would reduce the Class E airspace designated as an extension to the Nashville International Airport Class C airspace. This action would also extend the Class E airspace extending upward from 700 feet above the surface surrounding Music City Executive Airport, and reduce the Class E airspace extending upward from 700 feet above the surface surrounding Lebanon Municipal Airport, Murfreesboro Municipal Airport, and John C. Tune Airport.

DATES: Comments must be received on or before June 22, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0995 and Airspace Docket No. 23–ASO–17 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jennifer Ledford, Operations Support Group, Office of Policy, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–5946.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the proposal's overall regulatory, aeronautical, economic, environmental, and energy-related aspects. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only once if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives and a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without editing, 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.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of

operations). An informal docket may also be examined during regular business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Ave., College Park, GA 30337.

Incorporation by Reference

Class E airspace designations are published in paragraphs 6003 and 6005 of FAA Order JO 7400.11, incorporated by reference in 14 CFR 71.1 annually. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022 and effective September 15, 2022. These updates will be published in the next FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes to amend Class E airspace designated as an extension to the Class C surface area of Nashville International Airport by extending it from the 7-mile radius of the airport instead of the 5-mile radius, as a result of the new Class C structure. The FAA also proposes to amend the Class E airspace extending upward from 700 feet above the surface surrounding Music City Executive Airport by extending it from within a 7-mile radius to within a 7.5-mile radius of the airport, and by reducing the Class E airspace extending upward from 700 feet above the surface surrounding Lebanon Municipal Airport from within a 10-mile radius to within an 8-mile radius of the airport. The FAA also proposes to reduce the Class E airspace extending upward from 700 feet above the surface surrounding Murfreesboro Municipal Airport from within a 9-mile radius to within a 7.3-mile radius of the airport and 2.6 miles each side of the 182° bearing from the airport, extending from the 7.3-mile radius to 12 miles south of the airport. Additionally, the FAA proposes to reduce the airspace extending upward from 700 feet above the surface surrounding John C. Tune Airport from within an 8.6-mile radius to within an 8.1-mile radius of the airport.

The FAA proposes these changes to support IFR procedures as a result of a Class C Airspace modification and a biennial evaluation.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to a14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6003 Class E Airspace Area Designated as an Extension to a Class C Surface Area.

* * * * *

ASO TN E3 Nashville, TN

Nashville International Airport, TN
(Lat. 36°07′31″ N, long. 86°40′35″ W)
Nashville VORTAC
(Lat. 36°07′62″ N, long. 86°40′95″ W)

That airspace extending upward from the surface extending from the 7-mile radius of Nashville International Airport to an 11.7-mile radius southeast of the airport, from the Nashville VORTAC 161° radial clockwise to the 195° radial, and to an 8.9-mile radius southwest of the airport from the 195° radial of the VORTAC clockwise to the 231° radial of the VORTAC.

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO TN E5 Nashville, TN

Nashville International Airport, TN
(Lat 36°07′28″ N, long 86°40′41″ W)
Smyrna Airport
(Lat. 36°00′32″ N, long 86°31′12″ W)
Music City Executive Airport
(Lat 36°22′30″ N, long 86°24′30″ W)
Lebanon Municipal Airport
(Lat 36°11′25″ N, long 86°18′56″ W)
Murfreesboro Municipal Airport
(Lat 35°52′43″ N, long 86°22′39″ W)
John C. Tune Airport
(Lat 36°10′59″ N, long 86°53′11″ W)
Vanderbilt University Medical Center
Hospital Point In Space Coordinates
(Lat 36°08′30″ N, long 86°48′6″ W)

That airspace extending upward from 700 feet above the surface within a 15-mile radius of Nashville International Airport, and within an 11.5-mile radius of Smyrna Airport, and within a 7.5-mile radius of Music City Executive Airport, and within an 8-mile radius of Lebanon Municipal Airport, and within a 7.3-mile radius of Murfreesboro Municipal Airport, and within 2.6 miles each side of the 182° bearing from the airport extending from the 7.3-mile radius to 12 miles south of the airport, and within an 8.1-mile radius of John C. Tune Airport, and that airspace within a 6-mile radius of the Point In Space serving Vanderbilt University Medical Center Hospital.

Issued in College Park, GA, on April 20, 2023.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–08760 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1009; Airspace Docket No. 23–ACE–5]

RIN 2120–AA66

Amendment of Class E Airspace; Hartington, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Hartington, NE. The FAA is proposing

this action as the result of an airspace review due to the decommissioning of the Yankton very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The name and geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before June 22, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–1009 and Airspace Docket No. 23–ACE–5 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instruction for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Hartington Municipal Airport/Bud Becker Field, Hartington, NE, to support instrument flight rule (IFR) operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or dely. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post 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–14FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by modifying the Class E airspace extending upward from 700 feet above the surface to within a 6.9-mile (decreased from an 8.6-mile) radius of Hartington Municipal Airport/Bud Becker Field, Hartington, NE; and updating the name (previously Hartington Municipal Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review due to the decommissioning of the Yankton VOR, which provided navigation information to this airport, as part of the VOR MON Program, and to support IFR operations at this airport.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant

rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE NE E5 Hartington, NE [Amended]

Hartington Municipal Airport/Bud Becker Field, NE
(Lat 42°36′11″ N, long 97°15′13″ W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Hartington Municipal Airport/Bud Becker Field.

Issued in Fort Worth, Texas, on April 24, 2023.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2023–08935 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1010; Airspace Docket No. 23–AGL–15]

RIN 2120–AA66

Amendment of Class E Airspace; Yankton, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Yankton, SD. The FAA is proposing this action as the result of an airspace review due to the decommissioning of the Yankton very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program.

DATES: Comments must be received on or before June 22, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–1010 and Airspace Docket No. 23–AGL–15 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instruction for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E surface airspace and the Class E airspace extending upward from 700 feet above the surface Class E surface airspace at Chan Gurney Municipal Airport, Yankton, SD, to support instrument flight rule (IFR) operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring

expense or dely. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post 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–14FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraphs 6002 and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Modifying the Class E surface area to within a 5.1-mile (increased from a 4.1-mile) radius of Chan Gurney Municipal Airport, Yankton, SD; removing the Yankton VOR/DME and all associated extensions from the airspace legal description; and removing the city associated with the airport in the header of the airspace legal description to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters;

And modifying the Class E airspace extending upward from 700 feet above the surface to within a 7.6-mile (decreased from a 7.8-mile) radius of Chan Gurney Municipal Airport; and removing the city associated with the airport in the header of the airspace legal description to comply with changes to FAA Order JO 7400.2N.

This action is the result of an airspace review due to the decommissioning of the Yankton VOR, which provided navigation information to this airport, as part of the VOR MON Program, and to support IFR operations at this airport.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

AGL SD E2 Yankton, SD [Amended]

Chan Gurney Municipal Airport, SD
(Lat 42°55′00″ N, long 97°23′09″ W)

Within a 5.1-mile radius of the Chan Gurney Municipal Airport.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL SD E5 Yankton, SD [Amended]

Chan Gurney Municipal Airport, SD
(Lat 42°55′00″ N, long 97°23′09″ W)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Chan Gurney Municipal Airport.

Issued in Fort Worth, Texas, on April 24, 2023.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2023–08933 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0763; Airspace Docket No. 22–ANM–81]

RIN 2120–AA66

Modification of Class E Airspace; Burley Municipal Airport, Burley, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace designated as a surface area, modify the Class E airspace extending upward from 700 feet above the surface, and modify the Class E airspace extending upward from 1,200 feet above the surface at Burley Municipal Airport, Burley, ID. Additionally, this action proposes administrative amendments to update the airport's existing Class E airspace legal descriptions. These actions would

support the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before June 22, 2023.

ADDRESSES: Send comments identified by FAA Docket No. [FAA–2023–0763] and Airspace Docket No. [22–ANM–81] using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Keith T. Adams, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2428.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify Class E airspace to support IFR operations at Burley Municipal Airport, Burley, ID.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking 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.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198.

Incorporation by Reference

Class E2 and E5 airspace designations are published in paragraphs 6002 and 6005, respectively, of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to modify the Class E airspace designated as a surface area, modify the Class E airspace extending upward from 700 feet above the surface, and modify Class E airspace extending upward from 1,200 feet above the surface at Burley Municipal Airport, Burley, ID.

The current Class E airspace designated as a surface area is oversized for the purpose of containing instrument flight procedures. This area should be reduced to be within a 5-mile radius of the airport, with the southwest portion extending to the airport's 7-mile radius from the airport's 208° bearing clockwise to the 274° bearing to more appropriately contain IFR operations while between the surface and 1,000 feet above the surface and IFR departure operations while between the surface and the base of adjacent controlled airspace.

The existing Class E airspace extending upward from 700 feet above the surface should be modified to more appropriately contain arriving IFR operations below 1,500 feet above the surface and departing IFR operations until they reach 1,200 feet above the surface. The northern portion of the airspace should be reduced to be within a 6.5-mile radius of the airport, from the airport's 274° bearing clockwise to the 074° bearing. The southeast portion of the airspace should be reduced to be within a 5.6-mile radius of the airport,

from the airport's 074° bearing clockwise to the 208° bearing. Lastly, the southwest portion of the airspace should be reduced to be within a 7-mile radius of the airport, from the airport's 208° bearing clockwise to the 274° bearing.

The existing Class E airspace extending upward from 1,200 feet above the surface should be modified to better align with adjacent, similarly typed Class E airspace. A realignment would better accommodate arriving IFR operations at 1,500 feet and higher above the surface and departing IFR operations from the point they reach 1,200 feet above the surface until reaching overlying or adjacent controlled airspace.

Finally, the FAA proposes administrative modifications to the airport's associated legal descriptions. The navigational aid (NAVAID) referenced in legal descriptions is identified as a very high frequency omni-directional range/tactical air navigation (VORTAC) should be removed. It is incorrectly identified (it is actually a very high frequency omni-directional range/distance measuring equipment (VOR/DME)) and is not needed in the legal description.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Areas.

* * * * *

ANM ID E2 Burley, ID [Amended]

Burley Municipal Airport, ID
(Lat. 42°32′33″ N, long. 113°46′18″ W)

That airspace extending from the surface within a 5-mile radius of Burley Municipal Airport from the 274° bearing from the airport clockwise to the 208° bearing from the airport, and that airspace from the 208° bearing from the airport clockwise to the 274° bearing extending from the surface between a 5-mile radius to a 7-miles radius southwest of the airport.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM ID E5 Burley, ID [Amended]

Burley Municipal Airport, ID
(Lat. 42°32′33″ N, long. 113°46′18″ W)

That airspace extending upwards from 700 feet above the surface within a 6.5-mile radius of the Burley Municipal Airport, from the 274° bearing from the airport clockwise to the 074° bearing from the airport; and that airspace extending upward from 700 feet above the surface within a 5.6-mile radius of Burley Municipal Airport from the 074° bearing clockwise to the 208° from the airport; and that airspace extending upwards from 700 feet above the surface within a 7-mile radius of Burley Municipal Airport, from the 208° bearing from the airport clockwise to the 274° bearing from the airport; and that airspace extending upwards from 1,200 feet above the earth beginning at lat. 42°36′45 N, long. 114°14′48 W; to lat. 43°0′1, long. 114°2′9 W; to lat. 42°59′59 N, long. 112°59′57 W; to lat. 42°29′59 N. long. 113°0′0 W; to lat. 42°4′13, long. 114°30′42 W; lat. 42°36′20 N, long. 114°14′35; to lat. 42°36′27, long. 114°14′55 W; to lat. 42°36′46 N, long. 114°14′48 W; to the point of beginning.

* * * * *

Issued in Des Moines, Washington, on April 25, 2023.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2023–09144 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1078; Airspace Docket No. 23–AWP–30]

RIN 2120–AA66

Establishment of Class E Airspace; Whiteriver, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Whiteriver, AZ. The FAA is proposing this action to support new instrument procedures at this airport.

DATES: Comments must be received on or before June 22, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–1078 and Airspace Docket No. 23–AWP–30 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instruction for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington,

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, part A, subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace extending upward from 700 feet above the surface Class E surface airspace and Class E airspace extending upward from 1,200 feet above the surface at Whiteriver Airport, Whiteriver, AZ, to support instrument flight rule (IFR) operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post 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–14FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing to amend 14 CFR part 71 by:

Establishing Class E airspace extending upward from 700 feet above the surface within a 37.8-mile radius of Whiteriver Airport, Whiteriver, AZ;

And establishing Class E airspace extending upward from 1,200 feet above the surface to within a 78.3-mile radius of Whiteriver Airport.

This action is to support new instrument procedures and IFR operations at this airport.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AWP AZ E5 Whiteriver, AZ [Establish]

Whiteriver Airport, AZ
(Lat. 33°48′38″ N, long. 109°59′09″ W)

That airspace extending upward from 700 feet above the surface within a 37.8-mile radius of Whiteriver Airport; and that airspace extending upward from 1,200 feet above the surface within a 78.3-mile radius of Whiteriver Airport.

Issued in Fort Worth, Texas, on April 27, 2023.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2023–09234 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1026; Airspace Docket No. 23–AGL–7]

RIN 2120–AA66

Amendment of Multiple Air Traffic Service (ATS) Routes and Establishment of Area Navigation (RNAV) Route T–478 in the Vicinity of Danville, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Jet Route J–84, United States Area Navigation (RNAV) route Q–42, and Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airways V–171 and V–251, and establish RNAV route T–478. The FAA is proposing this action due to the planned decommissioning of the VOR portion of the Danville, IL (DNV), VOR/Tactical Air Navigation (VORTAC) navigational aid (NAVAID). The Danville VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before June 22, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–1026 and Airspace Docket No. 23–AGL–7 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION: Authority for This Rulemaking

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

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking 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.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX, 76177.

Incorporation by Reference

Jet Routes are published in paragraph 2004, United States RNAV Routes (Q-routes) are published in paragraph 2006, VOR Federal airways are published in paragraph 6010(a), and United States RNAV Routes (T-routes) are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning to decommission the VOR portion of the Danville, IL, VORTAC in January 2024. The Danville VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the Final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** on July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Danville VORTAC is planned for decommissioning, the co-located Tactical Air Navigation (TACAN) portion of the NAVAID is being retained. The TACAN would continue to provide navigational service for military operations and Distance Measuring Equipment (DME) service supporting current and future NextGen PBN flight procedure requirements.

The ATS routes affected by the planned decommissioning of the Danville VOR are J–84, Q–42, V–171, and V–251. With the planned decommissioning of the Danville VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected routes. As such, proposed modifications to J–84 and V–251 would result in the ATS routes being shortened; to V–171 would result in a second gap being added in the route; and to Q–42 would result in the route being amended to replace the Danville VORTAC route point, as well as the Kirksville, MO, VORTAC and the Muncie, IN, VOR/DME route points, with a waypoint (WP).

To address the affected ATS route proposed amendments, instrument flight rules (IFR) traffic could use adjacent Jet Routes J–73, J–80, and J–89 in the high-altitude stratum, VOR Federal airways V–55, V–274, or V–277 in the low-altitude stratum, or request air traffic control (ATC) radar vectors to fly around or through the affected area. Additionally, pilots equipped with RNAV capabilities could also navigate point to point using the existing fixes that would remain in place to support continued operations though the affected area. Visual flight rules (VFR) pilots who elect to navigate via the affected ATS routes could also take advantage of the adjacent routes or ATC services listed previously.

Additionally, the FAA proposes to establish RNAV route T–478 between the Champaign, IL, VORTAC and the Boiler, IN, VORTAC as a mitigation to the portion of V–251 affected by the planned Danville VOR decommissioning. The new T–478 would also provide non-radar routing between the RIVRS Fix located near the Bowling Green, MO, area and the Champaign VORTAC.

Prior to this NPRM, the FAA published a rule for Docket No. FAA–2022–1395 in the **Federal Register** (88 FR 18023; March 27, 2023) amending J–84 by removing the route segment overlying the Wolbach, NE, VORTAC between the Sidney, NE, VOR/DME and the Dubuque, IA, VORTAC. The J–84 route amendment is effective June 15, 2023 and is reflected in this action.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend Jet Route J–84, RNAV route Q–42, and VOR Federal airways V–171 and V–251, and to establish RNAV route T–478 due to the planned decommissioning of the VOR portion of the Danville, IL, VORTAC. The proposed ATS route actions are described below.

J–84: J–84 currently extends between the Oakland, CA, VOR/DME and the Sidney, NE, VOR/DME; and between the Dubuque, IA, VORTAC and the Danville, IL, VORTAC. The FAA proposes to remove the route segment between the Northbrook, IL, VOR/DME and the Danville, IL, VORTAC. As amended, the route would be changed to extend between the Oakland VOR/DME and the Sidney VOR/DME and between the Dubuque VORTAC and the Northbrook VOR/DME.

Q–42: Q–42 currently extends between the Kirksville, MO, VORTAC and the ZIMMZ, PA, Fix. The FAA proposes to replace the Kirksville VORTAC route point with the LEWRP, MO, WP; replace the Danville, IL, VORTAC route point with the LCOLN, IL, WP; and replace the Muncie, IN, VOR/DME route point with the SNKPT, IN, WP. Additionally, editorial corrections to the state abbreviation and the type of route point for the ZIMMZ Fix would be made to match the National Airspace System Resource (NASR) database information. As amended, the route would be changed to extend between the LEWRP, MO, WP and the ZIMMZ, PA, Fix.

V–171: V–171 currently extends between the Lexington, KY, VOR/DME and the Joliet, IL, VOR/DME; and between the Nodine, MN, VORTAC and the Roseau, MN, VOR/DME. The FAA proposes to remove the airway segment between the Terre Haute, IN, VORTAC and the Peotone, IL, VORTAC. As amended, the airway would be changed to extend between the Lexington VOR/DME and the Terre Haute VORTAC, between the Peotone VORTAC and the Joliet VOR/DME, and between the Nodine VORTAC and the Roseau VOR/DME. Additional amendments to the airway have been proposed in a separate rulemaking action.

V–251: V–251 currently extends between the Adders, IL, VORTAC and the Boiler, IN, VORTAC. The FAA proposes to remove the airway segment between the Champaign, IL, VORTAC and the Boiler, IN, VORTAC. As amended, the airway would be changed to extend between the Adders VORTAC and the Champaign VORTAC.

T–478: T–478 is a new RNAV route the FAA proposes to establish between the RIVRS, MO, Fix located northeast of the Bolling Green, MO, area and the BOLRR, IN, WP that is being established near the Boiler, IN, VORTAC. This proposed T-route would provide routing between the Champaign, IL, VORTAC and the Lafayette, IN, area to mitigate the proposed removal of the V–251 airway segment addressed above and provide non-radar routing between the RIVRS Fix and the Champaign VORTAC, when needed.

All NAVAID radials listed in the VOR Federal airway V–171 description below are unchanged and stated in degrees True north.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant

regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–84 [Amended]

From Oakland, CA; Linden, CA; Mina, NV; Delta, UT; Meeker, CO; to Sidney, NE. From Dubuque, IA; to Northbrook, IL.

* * * * *

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–42 LEWRP, MO to ZIMMZ, PA [Amended]

LEWRP, MO	WP	(Lat. 40°08′06.06″ N, long. 092°35′30.15″ W)
STRUK, IL	WP	(Lat. 40°14′03.66″ N, long. 090°18′21.50″ W)
LCOLN, IL	WP	(Lat. 40°17′37.55″ N, long. 087°33′25.36″ W)
SNKPT, IN	WP	(Lat. 40°14′13.96″ N, long. 085°23′39.21″ W)
HIDON, OH	WP	(Lat. 40°10′00.00″ N, long. 081°37′27.00″ W)
BUBAA, OH	WP	(Lat. 40°10′27.00″ N, long. 080°58′17.00″ W)
PSYKO, PA	WP	(Lat. 40°08′37.00″ N, long. 079°09′13.00″ W)
BRNAN, PA	WP	(Lat. 40°08′07.00″ N, long. 077°50′06.70″ W)
HOTEE, PA	WP	(Lat. 40°20′36.00″ N, long. 076°29′37.00″ W)
SPOTZ, PA	WP	(Lat. 40°45′55.00″ N, long. 075°22′59.00″ W)
ZIMMZ, PA	FIX	(Lat. 40°48′11.00″ N, long. 075°07′25.00″ W)

* * * * *

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–171 [Amended]

From Lexington, KY; INT Lexington 251° and Louisville, KY, 114° radials; Louisville; to Terre Haute, IN. From Peotone, IL; INT Peotone 281° and Joliet, IL, 173° radials; to Joliet. From Nodine, MN; INT Nodine 298° and Farmington, MN, 124° radials; Farmington; Darwin, MN; Alexandria, MN; INT Alexandria 321° and Grand Forks, ND, 152° radials; Grand Forks; to Roseau, MN.

* * * * *

V–251 [Amended]

From Adders, IL; to Champaign, IL.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–478 RIVRS, IL to BOLRR, IN [New]

RIVRS, IL	FIX	(Lat. 39°25′21.41″ N, long. 090°55′56.70″ W)
Spinner, IL (SPI)	VORTAC	(Lat. 39°50′23.04″ N, long. 089°40′39.85″ W)
Champaign, IL (CMI)	VORTAC	(Lat. 40°02′04.31″ N, long. 088°16′33.87″ W)
SLONI, IL	WP	(Lat. 40°11′06.39″ N, long. 087°55′15.88″ W)
LCOLN, IL	WP	(Lat. 40°17′37.55″ N, long. 087°33′25.36″ W)
BOLRR, IN	WP	(Lat. 40°33′22.03″ N, long. 087°04′09.55″ W)

* * * * *

Issued in Washington, DC, on April 21, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–08824 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1007; Airspace Docket No. 23–AGL–13]

RIN 2120–AA66

Amendment of Class D and E Airspace and Revocation of Class E Airspace; Kalamazoo, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class D and Class E airspace and remove Class E airspace at Kalamazoo, MI. The FAA is proposing this action as the result of an airspace review due to the decommissioning of the Kalamazoo very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The geographic coordinates of Kalamazoo/Battle Creek International Airport and the name of the Borgess Medical Center Helipad

would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before June 22, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–1007 and Airspace Docket No. 23–AGL–13 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instruction for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class D airspace and the Class E airspace extending upward from 700 feet above the surface Class E surface airspace, and remove the Class E airspace designated as an extension to Class D airspace at Kalamazoo/Battle Creek International Airport, Kalamazoo, MI, to support instrument flight rule (IFR) operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or dely. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post 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–14FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class D and E airspace are published in paragraphs 5000, 6004, and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing to amend 14 CFR part 71 by:

Modifying the Class D airspace to within a 4.2-mile (increased from a 4.1-mile) radius of Kalamazoo/Battle Creek International Airport, Kalamazoo, MI; replacing the outdated terms ''Notice to Airmen'' with ''Notice to Air Missions'' and ''Airport/Facility Directory'' with ''Chart Supplement''; and updating the geographic coordinates of Kalamazoo/Battle Creek International Airport to coincide with the FAAs aeronautical database;

Removing the Class E airspace designated as an extension to Class D airspace at Kalamazoo/Battle Creek International Airport as it is no longer required;

And modifying the Class E airspace extending upward from 700 feet above the surface to within a 6.7-mile (increased from a 6.6-mile) radius of Kalamazoo/Battle Creek International Airport; updating geographic coordinates of Kalamazoo/Battle Creek International Airport and the name of Borgess Medical Center Helipad (previously Burgess Hospital), Kalamazoo, MI, to coincide with the FAA's aeronautical database; and removing the cities associated with the airports in the header of the airspace

legal description to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters.

This action is the result of an airspace review due to the decommissioning of the Kalamazoo VOR, which provided navigation information to this airport, as part of the VOR MON Program, and to support IFR operations at this airport.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AGL MI D Kalamazoo, MI [Amended]

Kalamazoo/Battle Creek International Airport, MI
(Lat. 42°14′04″ N, long 85°33′06″ W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4.2-mile radius of the Kalamazoo/Battle Creek International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AGL MI E4 Kalamazoo, MI [Remove]

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL MI E5 Kalamazoo, MI [Amended]

Kalamazoo/Battle Creek International Airport, MI
(Lat. 42°14′04″ N, long 85°33′06″ W)
Borgess Medical Center Helipad, MI, Point in Space Coordinates
(Lat. 42°19′44″ N, long 85°34′47″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Kalamazoo/Battle Creek International Airport; and within a 6-mile radius of the Borgess Medical Center Helipad point in space coordinates.

Issued in Fort Worth, Texas, on April 24, 2023.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2023–08932 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1008; Airspace Docket No. 23–AGL–14]

RIN 2120–AA66

Amendment of Class E Airspace; Wabash, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Wabash, IN. The FAA is proposing this action as the result of an airspace review due to the decommissioning of the Kokomo very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before June 22, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–1008 and Airspace Docket No. 23–AGL–14 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instruction for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the

authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface Class E surface airspace at Wabash Municipal Airport, Wabash, IN, to support instrument flight rule (IFR) operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or dely. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post 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–14FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by modifying the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile (decreased from a 7-mile) radius of Wabash Municipal Airport, Wabash, IN; and updating geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review due to the decommissioning of the Kokomo VOR, which provided navigation information to this airport, as part of the VOR MON Program, and to support IFR operations at this airport.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL IN E5 Wabash, IN [Amended]

Wabash Municipal Airport, IN
(Lat. 40°45′43″ N, long 85°47′56″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Wabash Municipal Airport.

Issued in Fort Worth, Texas, on April 24, 2023.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2023–08934 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1082; Airspace Docket No. 23–ASO–21]

RIN 2120–AA66

Amendment of Class E Airspace; Covington, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface for Covington Municipal Airport, Covington, TN, as a new instrument approach procedure has been designed for this airport.

DATES: Comments must be received on or before June 22, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–1082 and Airspace Docket No. 23–ASO–21 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* anytime. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

FAA Order JO 7400.11G Airspace Designations and Reporting Points and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend Class E airspace in Covington, TN. This action is necessary to support IFR operations in the area.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the proposal's overall regulatory, aeronautical, economic, environmental, and energy-related aspects. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only once if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives and a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking 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.*

Availability of NPRMs

An electronic copy of this document may be downloaded online at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except for Federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except on Federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Incorporation by Reference

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, incorporated by reference in 14 CFR 71.1 annually. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. These updates would subsequently be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E airspace extending upward from 700 feet above the surface for Covington Municipal Airport, Covington, TN, to accommodate area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving this airport. This amendment supports a new instrument approach at this airport. The existing radius would be increased to 10.2 miles (previously 7 miles). Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO TN E5 Covington, TN [Amended]

Covington Municipal Airport, TN
(Lat. 35°35′00″ N, long 89°35′14″ W)

That airspace extending upward from 700 feet above the surface within a 10.2-mile radius of Covington Municipal Airport.

Issued in College Park, Georgia, on April 28, 2023.

Lisa E. Burrows,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–09416 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1014; Airspace Docket No. 23–ACE–2]

RIN 2120–AA66

Amendment of VOR Federal Airways V–14 and V–67, and Area Navigation Route T–272; Vandalia, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airways V–14 and V–67, and United States Area Navigation (RNAV) route T–272. The FAA is proposing this action due to the planned decommissioning of the VOR portion of the Vandalia, IL (VLA), VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Vandalia VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before June 22, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–1014 and Airspace Docket No. 23–ACE–2 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed

electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking 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.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

VOR Federal airways are published in paragraph 6010(a) and United States Area Navigation Routes (T-routes) are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning to decommission the VOR portion of the Vandalia, IL, VOR/DME in January 2024. The Vandalia VOR is one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the Final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** on July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Vandalia VOR/DME is planned for decommissioning, the co-located DME portion of the NAVAID is being retained to support current and future NextGen PBN flight procedure requirements.

The Air Traffic Service (ATS) routes affected by the planned decommissioning of the VOR portion of the Vandalia VOR/DME are VOR Federal airways V–14 and V–67, and RNAV route T–272. With the planned decommissioning of the Vandalia VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected ATS routes. As such, proposed modifications to V–14 would result in an additional gap in the airway between St. Louis, MO, and Terre Haute, IN, and to V–67 would result in the airway being shortened to begin in the Springfield, IL, area. Additionally, proposed modification to T–272 would result in retaining the route by changing the Vandalia VOR/DME route point with the TYMME waypoint (WP).

To address the affected ATS route proposed amendments, instrument flight rules (IFR) traffic could use portions of adjacent VOR Federal airways V–4, V–12, V–50, V–52, and V–69 for conventional navigation or RNAV routes T–272, T–301, and T–305 for GPS equipped aircraft. Additionally, pilots equipped with RNAV capabilities could also navigate point to point using the existing NAVAIDs, fixes, and WPs that would remain in place to support continued operations through the affected area. IFR aircraft may also receive air traffic control (ATC) radar vectors to fly around or through the affected area, upon request. Visual flight rules (VFR) pilots who elect to navigate via the affected VOR Federal airways could also take advantage of the adjacent airways or ATC services listed previously.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend VOR Federal airways V–14 and V–67, and RNAV route T–272 due to the planned decommissioning of the VOR portion of the Vandalia, IL, VOR/DME. The proposed airway actions are described below.

V–14: V–14 currently extends between the Chisum, NM, VOR/Tactical Air Navigation (VORTAC) and the Tulsa, OK, VORTAC; and between the Springfield, MO, VORTAC and the Flag City, OH, VORTAC. The FAA proposes to remove the airway segment between the St. Louis, MO, VORTAC and the Terre Haute, IN, VORTAC. As amended, the airway would be changed to extend between the Chisum VORTAC and the Tulsa VORTAC, between the Springfield VORTAC and the St. Louis VORTAC, and between the Terre Haute VORTAC and the Flag City VORTAC.

V–67: V–67 currently extends between the intersection of the Centralia, IL, VORTAC 010° and Vandalia, IL, VOR/DME 162° radials (CORKI Fix) and the Rochester, MN, VOR/DME. The FAA proposes to remove the airway segment between the intersection of the Centralia VORTAC 010° and Vandalia VOR/DME 162° radials (CORKI Fix) and the Spinner, IL, VORTAC. As amended, the airway would be changed to extend between the Spinner VORTAC and the Rochester VOR/DME.

T–272: T–272 currently extends between the Hallsville, MO, VORTAC and the Vandalia, IL, VOR/DME. The FAA proposes to change the Vandalia, IL (VLA), VOR/DME route point to the TYMME, IL, WP which is located approximately 60 feet northeast of the Vandalia VOR/DME. As amended, the route would be changed to extend between the Hallsville VORTAC and the TYMME WP. Additionally, the Hallsville, MO, ''HLV'' identifier would be added to the first line of the route description and the geographic coordinates of each route point would be updated to be expressed in degrees, minutes, seconds, and hundredths of a second.

The NAVAID radials listed in the V–14 description below are unchanged and stated in degrees True north.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to

keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–14 [Amended]

From Chisum, NM; Lubbock, TX; Childress, TX; Hobart, OK; Will Rogers, OK; INT Will Rogers 052° and Tulsa, OK, 246° radials; to Tulsa. From Springfield, MO; Vichy, MO; INT Vichy 067° and St. Louis, MO, 225° radials; to St. Louis. From Terre Haute, IN; Brickyard, IN; Muncie, IN; to Flag City, OH.

* * * * *

V–67 [Amended]

From Spinner, IL; Burlington, IA; Iowa City, IA; Cedar Rapids, IA; Waterloo, IA; to Rochester, MN.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–272 Hallsville, MO (HLV) to TYMME, IL [Amended]

Hallsville, MO (HLV)	VORTAC	(Lat. 39°06′48.75″ N, long. 092°07′41.64″ W)
TYMME, IL	WP	(Lat. 39°05′38.35″ N, long. 089°09′43.71″ W)

* * * * *

Issued in Washington, DC, on April 20, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–08802 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1632

[Docket No. CPSC–2017–0008]

Standard for the Flammability of Mattresses and Mattress Pads; Notice of Meeting and Request for Comments

AGENCY: Consumer Product Safety Commission.

ACTION: Announcement of public meeting and request for comments.

SUMMARY: The Consumer Product Safety Commission will be holding a meeting on the Standard for the Flammability of Mattresses and Mattress Pads at the CPSC's laboratory in Rockville, MD, on June 14, 2023. We invite interested parties to participate in or attend the meeting. A remote viewing option will be available for registrants. We also invite interested parties to submit written comments related to the possible changes to the Standard that are discussed in this notice.

DATES: The meeting will be held from 1 to 4 p.m. on June 14, 2023. Individuals interested in serving on panels or presenting information at the meeting should register by May 22, 2023; all other individuals who wish to attend the meeting in person or view it remotely should register by June 7, 2023. Written comments must be received by July 5, 2023.

ADDRESSES: The meeting will be held at the CPSC's National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850. Persons interested in serving on a panel or presenting information at the meeting in person should register by sending an email with their contact information and proposed presentation topic to *LSEMeetings@cpsc.gov,* no later than May 22, 2023. All other individuals who wish to attend the meeting in person or remotely should register by email to *LSEMeetings@cpsc.gov* by June 7, 2023.

You can submit written comments, identified by Docket No. CPSC–2017–0008, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *www.regulations.gov.* Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC does not accept comments submitted by email, except as described below.

Mail/Hand Delivery/Courier/ Confidential Written Submissions: CPSC encourages you to submit comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *www.regulations.gov.* If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov*.

Docket: For access to the docket to read background documents or comments received, go to: *www.regulations.gov,* and insert the docket number, CPSC–2017–0008, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Lisa L. Scott, Directorate for Laboratory Sciences, 5 Research Place, Rockville,

MD 20850, telephone 301–987–2064, email *LSEMeetings@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 23, 2005, the Commission published an advance notice of proposed rulemaking (ANPR) regarding the possible revocation or amendment of 16 CFR part 1632, Standard for the Flammability of Mattress and Mattress Pads (Cigarette Ignition). 70 FR 36357.

Since publication of the ANPR, CPSC staff has conducted testing of full-scale mattress prototypes, evaluated fire incident data, and evaluated both the existing and alternate ticking substitution tests for the substitution of components under 16 CFR part 1632. *See* 16 CFR 1632.6.

On February 1, 2017, the Commission published a Request for Information (RFI) Regarding Mattress Materials. 82 FR 8923. The Commission requested information on the materials, components, and methods of assembly currently used to comply with part 1632, Standard for the Flammability of Mattresses and Mattress Pads, and part 1633, Standard for the Flammability (Open Flame) of Mattress Sets. Six public comments were submitted. The commenters represented several segments of the mattress industry, but the small number of comments submitted gave CPSC a limited understanding of industry practices.

II. Topics for the Meeting

Below we identify the topics for the June 14, 2023, meeting.[1] As described in Section IV of this notice, we also are seeking written comments on these topics and related matters. We have identified the following specific topics we would like panelists to address at the meeting:

1. Ticking substitution
   - Experience with the test procedure in 16 CFR part 1632.6
   - Assessment and availability of standard materials
   - Factors affecting selection of materials
   - Consideration of the effect of substituted ticking materials on open flame testing performance (16 CFR part 1633)
   - Consideration of the effect of substituted ticking materials on consumer safety
2. Compliance with 16 CFR part 1632 and 16 CFR part 1633
   - Methods and materials that affect flammability test performance for compliance with both standards
   - Prototype data trends related to compliance with both standards for mattresses in development and/or introduced to commerce

CPSC will determine the presenters and order of the presentations once we confirm the number of panelists available for each topic area. We may combine, expand, or eliminate panel sessions, depending upon the level of interest. The final schedule will be announced on our website before the meeting.

III. Details Regarding the Public Meeting

A. When and where will the meeting be held?

The meeting will be held from 1 to 4 p.m. on June 14, 2023, at the CPSC's National Product Testing and Evaluation Center (NPTEC), 5 Research Place, Rockville, MD 20850.

B. How can I register for the meeting?

If you would like to be a panelist or present information for a specific session of the meeting, you should register by May 22, 2023. (See the **ADDRESSES** section of this document for instructions on how to register.) We also ask that you submit a brief (less than 200 word) abstract of your topic and area of expertise. Staff will select panelists based on a variety of considerations, including: Whether the information to be presented has been received in previous open comment periods; the individual's familiarity or expertise with the topic to be discussed; the practical utility in the information to be presented; and the topic's relevance to the identified theme and topic area. Although an effort will be made to accommodate all persons who wish to be panelists, we expect to limit each panel session to no more than approximately five panelists. Therefore, the final number of panelists may be limited. We recommend that individuals and organizations with common interests consolidate or coordinate their panelist requests. To assist in making final panelist selections, staff may ask potential panelists to submit planned presentations in addition to the initial abstract. We plan to notify panelists of their selection by May 26, 2023.

If you wish to attend and participate in the meeting, but you do not wish to be a panelist, you should register by June 7, 2023, and identify your affiliation. Every effort will be made to accommodate each person's request; however, we may need to limit registration to meet the occupant capacity of our meeting rooms. If you have registered, but are unable to attend the meeting in person, there will be a remote video conferencing link available to watch the meeting live, but you will not be able to interact with the panels and presenters. You may be able to submit written questions in real time for the presenters to answer. You will need to register by email as described in the **ADDRESSES** section of this document to receive a conferencing link for the meeting.

If you wish to submit written comments, you may do so before or after the meeting, as described in the **ADDRESSES** section of this notice. These comments should be received by July 5, 2023. Comments should focus on new information not submitted previously that is related to the topic areas listed above.

C. What will be the format of the meeting?

The meeting will open with a plenary session that includes a brief overview of the staff's activities since the publication of the 2005 ANPR. Following the plenary session, there will be a series of presentations covering topics listed above. We expect potential presenters to speak for approximately 10–20 minutes each about their topic area. At the conclusion of the presentations, there will be a question, answer, and discussion session among the presenters and the audience, limited to the topics discussed by the panelists.

D. How can I receive updates about the meeting?

If we decide to cancel or change the meeting, an email will be sent to each registered participant who provides a valid email address when registering as described in the **ADDRESSES** section of this document.

IV. Request for Comments

We request comments related to the possible revocation or amendment of 16 CFR part 1632 and other topics as noted below related to both flammability standards. Staff are interested in receiving written comments either before the public meeting or by July 5, 2023, on the following questions:

1. What types of procedures or alternative test protocols are available to be used for evaluating or substituting tickings? Are there alternative test protocols that may result in different ticking classifications? Please provide information about the benefits of these alternatives, their impact on safety, and whether and why the different ticking classification results are more or less accurate for the different methods.

[1] The Commission voted 4–0 to approve publication of this notice.

2. If the test described in 16 CFR 1632.6(e) Test Procedure is performed, who is likely to perform the test (*e.g.,* the mattress manufacturer, the ticking supplier, or another party), and why? Is the ticking classification verified by a lab report or some other documentation?

3. If a ticking is to be substituted on a qualified mattress prototype, how are candidate tickings for a substitution evaluated and selected? Other than ticking classification, what factors or features are important when selecting a ticking material? Please explain the benefits and/or concerns and impact on safety related to structure (*e.g.,* knit, woven, nonwoven), fiber content, or other factors that may affect the decision. Is the effect on compliance with the Open Flame Standard a consideration in the selection process?

4. CPSC staff anticipate that recordkeeping requirements may be updated if the Commission opts to amend 16 CFR part 1632. These changes may be made to be consistent with the requirements in 16 CFR part 1633 (for mattresses) and/or separately updated for mattress pads. What recordkeeping changes should be considered for mattresses and/or mattress pads?

5. Are there emerging topics that should be considered in any proposed changes to either 16 CFR part 1632 or 16 CFR part 1633? Examples could include sustainability, accessibility of components, scope of products covered by either standard, and custom products.

Pamela J. Stone,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2023–09744 Filed 5–5–23; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2023–0185]
RIN 1625–AA09

Drawbridge Operation Regulation; Sandusky Bay, Sandusky, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating regulations and signaling requirements that govern the Norfolk Southern Railroad Bridge, mile 3.5, over the Sandusky Bay. Further, the Coast Guard also proposes adding information to clarify when and how wind blockers may be used on the Norfolk Southern Railroad Bridge, mile 3.5. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before July 7, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0185 using Federal Decision-Making Portal at *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
IGLD International Great Lakes Datum of 1985
LWD Low Water Datum based on IGLD85
MPH Miles Per Hour
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

Located on the south shore of Lake Erie, Sandusky Bay extends west from its entrance between Cedar Point and Bay Point for about 15 miles to Muddy Creek Bay. The Sandusky River flows into the south side of Muddy Creek Bay. Recreational and commercial small craft can navigate through Sandusky Bay, Muddy Creek Bay, and upstream in the Sandusky River for about 15 miles to the Norfolk Southern Railroad Bridge at the town of Fremont, Ohio. The only movable bridge over the Sandusky Bay is the Norfolk Southern Railroad Bridge, mile 3.5.

Sandusky Bay is one of the principal waterways in northern Ohio and its shoreline covers three counties. International commerce is heavy enough in the area that the U.S. Customs and Border Protection opened a Sandusky Bay Station in 2012. The south shore of Sandusky Bay boasts one of the largest rail-to-ship coal loading facilities in the Great Lakes and is home to over 35 recreational vessel marinas and boat ramps. Commercial fishing vessels, uninspected charter vessels, power boat rental agencies, sailing vessels, and water-skiers pass through the draw of the Norfolk Southern Railroad Bridge, mile 3.5 daily in the summertime.

Cedar Point amusement park and marina, near the mouth of Sandusky Bay, hosts 21,232 visitors each day, except for holidays and special events when visitor numbers average 60,000 people a day.

The Norfolk Southern Railroad Bridge, mile 3.5, is a single leaf bascule bridge in the center of a long causeway that provides a horizontal clearance of 64-feet and a vertical clearance of 9-feet in the closed position and an unlimited clearance in the open clearance based on LWD. The bridge is remotely operated by the Norfolk Southern Railroad Bridge, mile 5.76, at Toledo and is regulated by 33 CFR 117.853. The bridge is required to open on signal, except from November through April the bridge is required to open if a 24-hour advance notice is provided.

In 2009, the Coast Guard posted in the **Federal Register** (74 FR 63612) a final rule adding the authority for the bridge to operate remotely, but the Coast Guard did not update or modernize the rest of the regulation. Much of the current regulation remains the same as it was listed in the **Federal Register** in 1984 (49 FR 17452).

In addition to modernizing the regulation, the Coast Guard also hopes the proposed rule will address two specific concerns the Coast Guard has noted as it relates to the operation of the Norfolk Southern Railroad Bridge, mile 3.5: the responsiveness of drawtenders to marine traffic and improved processes as it relates to the use of wind blockers. The Coast Guard has received several complaints, mostly informal, on the operations of the bridge, specifically complaints that the remote drawtender are, at times, non-responsive to telephone and radio calls from mariners. The Coast Guard is proposing new requirements to address these complaints. As it relates to wind blockers, when the winds exceed 40 mph there is a danger that lightweight railcars could be blown off the causeway. These half-floating railcars are a potential hazard to motorists and marine traffic. During wind events, the railroad routinely sets upwind blockers composed of heavy railcars on the parallel track to block the wind. The heavier railcars protect the lighter cars from the effects of the wind as said lighter cars transit the bridge. When in place, the heavy wind blocking trains prevent the bridge from opening. Accordingly, the railroad must coordinate with the local Coast Guard Sector office before posting wind

blockers, as the wind blockers may disrupt a bridge's posted operating schedule. Often, there is confusion on how long the wind blocker can be posted and when it needs to be moved to allow vessels to pass through the bridge. The Coast Guard is proposing new language that will specify when a wind blocker is appropriate and stipulate how it will be used by the railroad.

The winter hours allowing for a 24-hour advance notice was popular when the U.S. Army Corps of Engineers regulated bridges before the 1966 Transportation Act transferred those duties to the U.S. Coast Guard.

III. Discussion of Proposed Rule

To enhance communications and insist that the remote drawtender answer the telephone, we propose to require the remote drawtender operate and maintain a telephone so boaters can call. We intend to continue the requirement of maintaining a VHF–FM Marine Radio Telephone.

The remote bridge operator for Norfolk Southern Railroad Bridge, mile 3.5, the subject of this regulation, is physically located at Norfolk Southern Railroad Bridge, mile 5.76, in Toledo. Currently, the winter advance notice requirements for the two bridges are different; which can be confusing to the drawtender. We propose to match the requirements of the Norfolk Southern Railroad Bridge, mile 5.76, with Norfolk Southern Railroad Bridge, mile 3.5.

Over the past few years, the Norfolk Southern Railroad Bridge, mile 3.5, has been programed to automatically open after a train clears the block. This has greatly reduced complaints and improved the flow of traffic in the waterway. We are proposing to include this as a requirement in the new regulation to ensure that said operations, which greatly benefit marine traffic, are not interrupted by personnel changes at the Railroad.

Norfolk Southern Railroad historically has placed a wind blocker on the bridge when the predicted winds will exceed 40 mph. As discussed earlier, a wind blocker is a heavy train that, when posted on a bridge, shields lighter trains from the effects of wind. Normally the Norfolk Southern Railroad Bridge, mile 5.76, at Toledo, drawtender will call USCG Sector Detroit and request to place the wind blocker. However, at times, drawtenders don't provide sufficient information to the Sector, making it difficult for Sector to effectively act on said requests. Still at other times, wind blockers can be found on bridges well before or after a wind event, delaying or otherwise frustrating the opening of the bridge for vessels. We are proposing a clause to remedy these issues.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1,

associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has 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 proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0185 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted, or a final rule is published of any posting or updates to the docket.

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

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 00170.1, Revision 01.3.

■ 2. Revise § 117.853 to read as follows:

§ 117.853 Sandusky Bay.

The draw of the Norfolk Southern Railroad Bridge, mile 3.5, is remotely operated, and is required, in addition to the other signals, to operate a radiotelephone and telephone. It will remain open, except for the passage of trains, from April 1 through October 31. If the winds are predicted to be over 40 MPH, a wind blocker is authorized, and the bridge will open with a 2-hour advance notice of a vessel's time of intended passage through the draw until the end of the wind event. The drawtender will request the cognizant USCG Sector to issue a broadcast notice to mariners to alert vessels of the wind blocker and the 2-hour advance notice requirement. At all other times, the bridge will open if provided at least a 12-hour advance notice.

M.J. Johnston,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2023–09049 Filed 5–5–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2023–0189]

RIN 1625–AA09

Drawbridge Operation Regulation; Ashtabula River, Ashtabula, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Fifth Street Bridge, mile 0.15, and the Norfolk Southern Railroad Bridge, mile 1.5, both over the Ashtabula River. The Coast Guard also proposes signaling and signage changes for the Norfolk Southern Railroad Bridge, mile 1.5. The Coast Guard is modifying these rules in response to complaints received concerning the operations of one or more bridges in this waterway and a desire to improve safety, remove barriers to interstate commerce, improve communications, and standardize winter operations associated with these bridges. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before July 7, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0189 using Federal Decision-Making Portal at *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR **Federal Register**
IGLD International Great Lakes Datum of 1985
LWD Low Water Datum based on IGLD85
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Ashtabula River flows into Lake Erie at the City of Ashtabula, Ohio. The Ashtabula River is 40 miles in length but only the first 2 miles of the river is navigable. Large commercial vessels, passenger vessels, and recreational vessels use the waterway. There are three bridges crossing the Ashtabula River. The Norfolk Southern Railroad, mile 0.5, is a fixed overhead conveyor with a horizontal clearance of over 50 feet and a vertical clearance of 100 feet above LWD. The Fifth Street Bridge, mile 1.4, is a single leaf bascule bridge with a reported horizontal clearance of 50 feet and a vertical clearance of 11 feet above LWD in the closed position and an unlimited clearance in the open position. The Norfolk Southern Railroad Bridge, mile 1.5, is a single leaf bascule bridge with a horizontal clearance of 112 feet and a vertical clearance of 11 feet above LWD in the closed position and an unlimited clearance in the open position. There is no alternative route for vessels traveling the Ashtabula River beyond mile 0.5 to prevent them from passing under or through one or all these bridges. Commercial vessels over 600 feet utilize moorings just outside of the river's mouth. Several of the vessels in the Ashtabula River are small passenger vessels and other small craft over 21-feet.

The two bascule bridges across the Ashtabula River are regulated by 33 CFR 117.847. The draw of the Fifth Street Bridge, mile 1.4, is required to open on signal for the passage of commercial and emergency vessels and on the hour and half for all other vessels. The Norfolk Southern Railroad Bridge, mile 1.5, is authorized to operate remotely, and is required to open on signal from April 1 through November 30 from 7 a.m. to 11 p.m. and requires a 24-hour advance notice outside of this time.

III. Discussion of Proposed Rule

The Fifth Street Bridge, mile 1.4, does not have winter hours identified in the regulations. The Ashtabula County Engineers submitted a written request for winter hours every year from mid-December to the end of March; in past years, a 12-hour advance notice for openings has been awarded.

The Norfolk Southern Railroad Bridge, mile 1.5, has winter hours identified in the regulations; said hours begin on the last day of November and end on the first day in April, where a 24-hour advance notice is required.

The Coast Guard proposes to modify the regulation for both bridges to operate with a 12-hour advance notice from October 10 to May 1 when ice and other winter weather factors often restrict vessels from operating in the river and to provide clarity and consistency to the mariners.

The Fifth Street Bridge, mile 1.4, has operated without complaint for the last four years and we do not see a reason to change the signage; however, the owner will need to add the winter hours and contact information to the currant signage in accordance with 33 CFR 117.55.

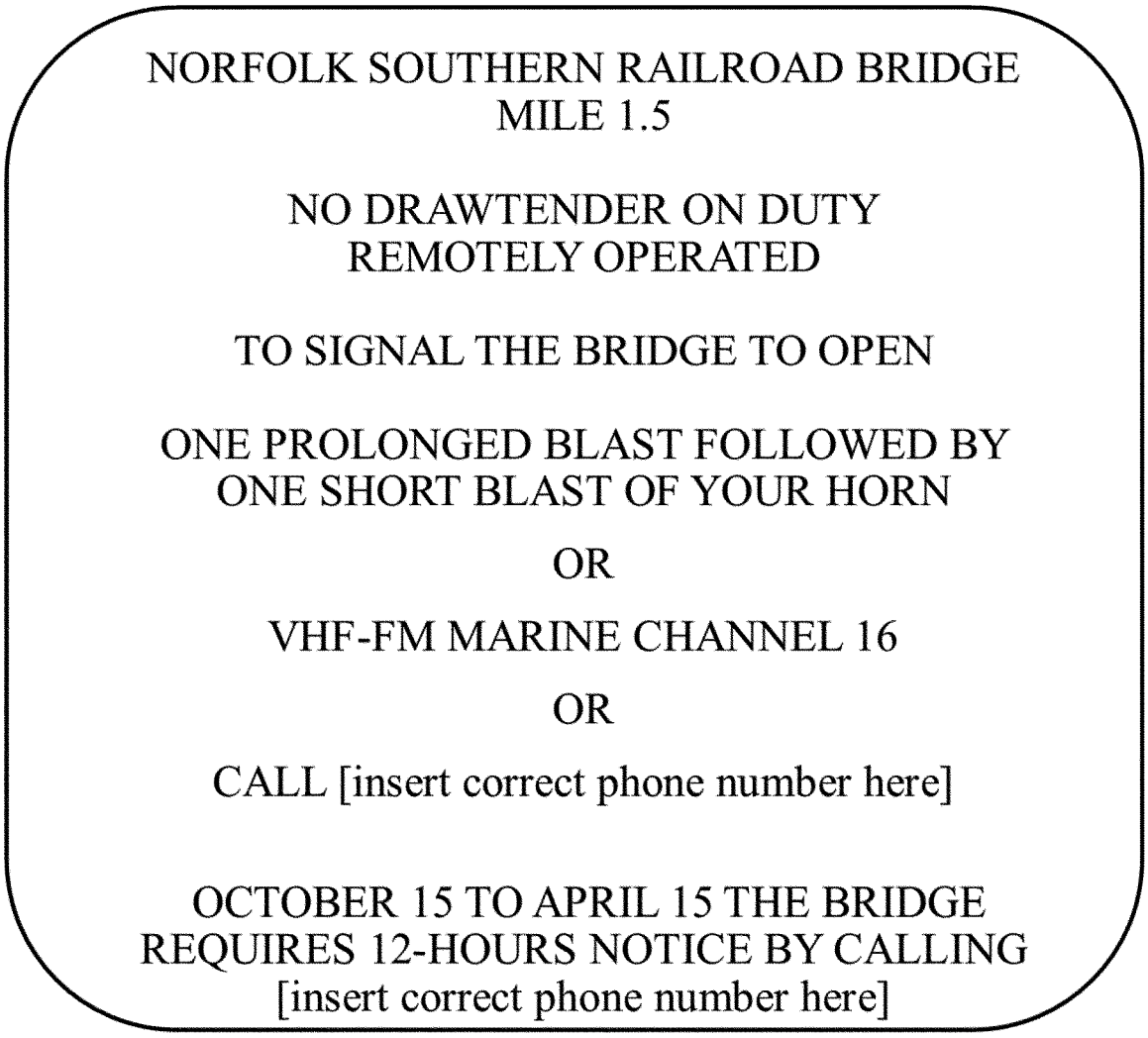
The Coast Guard proposes more significant changes to the regulation as it relates to the Norfolk Southern Railroad Bridge, mile 1.5. The Coast Guard proposes these changes in an attempt to resolve issues related to timely bridge openings and clear signage. The Coast Guard receives several informal complaints annually from mariners related to the Norfolk Southern Railroad Bridge, mile 1.5. One series of complaints relates to concerns that Norfolk Southern has unreasonably hindered or delayed interstate commerce by prioritizing land transportation needs over the marine transportation needs. Several vessels have reported that they were delayed over twelve hours, which placed an additional burden on the mariners to obtain temporary dockage, transportation, or hotel rooms because the bridge would not open, preventing them from returning to their dock. Typically, the railroad states that the remote drawtender forgot to reopen the bridge after a train crossed or that it was too windy to open the bridge for vessels.

Another concern related to the Norfolk Southern Railroad Bridge, mile 1.5 is that mariners do not understand how the bridge is supposed to operate. The current signs do not inform the mariners that the bridge is remotely operated; the signs also fail to list the sound signal to request a bridge opening. The current sign instructs mariners to call the bridge on VHF–FM marine Channel 13, the ship-to-ship navigation and collision prevention channel and not channel 16 the international hailing channel.

The Coast Guard and Norfolk Southern have been able to resolve some of the delay issues, but not all. The crossing has continued to be problematic, requiring the Coast Guard to propose a change in the regulation to ensure that marine traffic can use the waterway in manner contemplated by law and regulation.

Communications between the mariners and the bridge owners have been identified as the leading contributing factor in almost every delay of bridge operations and previous signs at the Norfolk Southern Railroad Bridge, mile 1.5, have voluntarily provided phone numbers for the mariners to call, but the numbers on the sign have often been outdated or have gone unanswered by the remote drawtender. 33 CFR 117.55 requires signage that summarizes how the bridge shall operate under the requirements of 33 CFR 117–part B and this has proven challenging to the railroad and mariners alike. The most recent signs do not include all communication methods available between the railroad drawtender and the vessel operators. As shown below:

We propose to standardize this signage for the remotely operated railroad bridges and propose the example below to be the signage used. The size, type, and spacing of characters must conform to the standard alphabets for highway signs and be visible to vessels approaching the bridge from upriver or down river of the bridge and be readable at a minimum distance of 500 feet.



To improve communications the District Commander is requiring the Norfolk Southern Railroad Bridge, mile 1.5, in addition to monitoring the signals listed in 33 CFR 117.15, to operate and maintain a Radio Telephone as required under 33 CFR 117.23 and operate and maintain a telephone whose number will be maintained on the appropriate signs at the bridge.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB). This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice and the requirement for signage has been in effect since April 24, 1984 (49 FR 17452) without any complaint to the burden of cost to the bridge owner.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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

compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has 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 proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0189 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted, or a final rule is published of any posting or updates to the docket.

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

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Revise § 117.847 to read as follows:

§ 117.847 Ashtabula River.

(a) The draw of the Fifth Street Bridge, mile 1.4, over the Ashtabula River will open on signal for the passage of vessels on the hour and half hour, except from October 10 through May 1 when no drawtender is required to be in attendance and the bridge will open on signal with a 12-hour advance notice from vessels.

(b) The draw of the Norfolk Southern Railroad Bridge, mile 1.5, over the Ashtabula River will open on signal and may be remotely operated. From October 10 through May 1 the bridge will open on signal with a 12-hour advance notice from vessels.

(1) The bridge owner will maintain and monitor a 2-way public address system, VHF–FM Marine Radio, and telephone.

(2) The bridge will display a sign readable by vessels approaching the bridge from upriver and down river and readable for 500 feet that states:

(i) The name of the bridge;

(ii) The river mile;

(iii) That the bridge is remotely operated;

(iv) That mariners may signal the bridge to open by sounding one prolonged blast followed by one short blast of the horn, calling via VHF–FM Marine Radio Channel 16, or by calling the number posted by the owner; and.

(v) Information notifying mariners that from October 10 through May 1 the bridge requires a 12-hour advance notice for openings by calling the number posted by the owner.

M.J. Johnston,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2023–08958 Filed 5–5–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0851; FRL–10929–01–R4]

Air Plan Approval; Florida; Amendments to Stationary Sources—Emission Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a portion of a State Implementation Plan (SIP) revision submitted by the State of Florida through the Florida Department of Environmental Protection (Department or FL DEP) on April 1, 2022. The portion of the SIP revision proposed for approval seeks to modify a stationary source emission standard applicable to certain fossil fuel steam generators by making several changes to provisions that regulate emissions of sulfur dioxide (SO_2), nitrogen oxides (NO_X), and visible emissions, and by removing certain emission limits that are either obsolete or otherwise regulated by more stringent federally enforceable conditions elsewhere. The portion of the SIP revision also seeks to modify requirements for major stationary sources of volatile organic compounds (VOC) and NO_X by removing unnecessary language and certain emission limits that are obsolete. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before June 7, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2022–0851 at *regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Pearlene Williams-Miles, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, GA 30303–8960. The telephone number is (404) 562–9144. Ms. Williams-Miles can also be reached via electronic mail at *WilliamsMiles.Pearlene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

EPA is proposing to approve changes submitted by Florida on April 1, 2022,[1] seeking to revise Rule 62–296.405, Florida Administrative Code (F.A.C.), *Fossil Fuel Steam Generators with More Than 250 million Btu Per Hour Heat Input* and 62–296.570 F.A.C., *Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO_X-Emitting Facilities.* Florida's April 1, 2022, SIP revision includes technical support materials to demonstrate that the changes and deletions to the rule will not interfere with the attainment or maintenance of any National Ambient Air Quality Standards (NAAQS), or with any other applicable requirement of the CAA. EPA's analysis of these changes in Florida's April 1, 2022, SIP revision below provides EPA's rationale for proposing approval of the changes to Rules 62–296.405 and 62–296.570.[2]

[1] The April 1, 2022, submittal transmits several changes to other Florida SIP-approved rules. These changes are not addressed in this document and will be considered by EPA in a separate rulemaking.

[2] On March 30, 2023, Florida submitted a letter to EPA withdrawing the changes to Rule 62–296.405(1)(c)1.g. and 62–296.405 (1)(d)2., from EPA's consideration. For this reason, EPA is not proposing to act on the changes to (1)(c)1.g. and (1)(d)2. The letter may be found in the docket for this proposed action.

II. Analysis of Florida's April 1, 2022, SIP Revision

A. Rule 62–296.405

Florida's April 1, 2022, SIP revision contains changes to Florida's SIP-approved rules under Chapter 62–296, *Stationary Source—Emission Standards,* and provides a non-interference demonstration to support these changes. The non-interference demonstration explains why the proposed changes to the SIP would not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the Act (*i.e.,* how the proposed revision satisfies CAA section 110(l)). This section of the notice of proposed rulemaking will address the portion of the SIP revision that contains changes to Rule 62–296.405, *Fossil Fuel Steam Generators with More Than 250-million Btu Per Hour Heat Input.*

Specifically, the April 1, 2022, submission contains amendments to provisions 62–296.405(1)(a); 62–296.405(1)(c)1.; 62–296.405(1)(c)1.b. through e.; 62–296.405(1)(c)1.h. through i.; 62–296.405(1)(c)2.a., b., and d.; 62–296.405(1)(c)3.; 62–296.405(1)(d)3..; 62–296.405(1)(e); and 62–296.405(2). These provisions regulate emissions of SO_2, NO_X, and visible emissions from certain fossil fuel-fired steam generators with more than 250 million British Thermal Units (MMBtu) per hour heat input. As described below, the changes to these provisions revise a visible emissions limitation and clarify to whom the results of visible emissions testing must be submitted. The changes also remove outdated language, including emission limits for sources that have shut down or have more stringent federally enforceable limits, add specific citations for EPA test methods, and make minor wording edits. These changes do not allow for any pollutant emission increases because they only remove certain SIP rules that are either obsolete or less stringent than other applicable regulations, and revise other rules in a way that does not lessen stringency.

i. Analysis of Amendments to Visible Emissions Provisions at Rule 62–296.405(1)(a)

Subparagraph 296.405(1)(a) requires subject sources to comply with a visible emissions limit of 20 percent opacity. However, the rule also allows sources two options for exceeding 20 percent opacity: one six-minute period per hour during which opacity cannot exceed 27 percent, or one two-minute period per hour during which opacity cannot

exceed 40 percent. The rule requires that the option selected by the source be specified in the source's construction and operation permits. The option allowing opacity of no more than 40 percent over a two-minute average stems from, and was consistent with, Florida DEP Method 9, which measured opacity on a two-minute average; however, Florida removed this method from its state rules on July 10, 2014. The option allowing one exceedance per hour of an opacity up to 27 percent over a six-minute average stems from, and is consistent with, EPA Method 9, which measures opacity on a two-minute average. The two options are approximately equivalent on a six-minute average, as affirmed by the State.[3] The SIP revision removes the option that provides an exception of no more than 40 percent opacity over a two-minute period per hour. EPA is proposing to approve this change because Florida has removed DEP Method 9 from the state rules, and because the exception is approximately equivalent to the 27 percent exception that remains in the rule.

Subparagraph 296.405(1)(a) is also revised to remove the word ''compliance'' from the phrases ''test for particulate emissions compliance annually'' and ''test for particulate matter emissions compliance quarterly'' in the context of required periodic testing requirements. These revisions alter neither the SIP requirements for periodic particulate matter testing nor the availability of such testing results for compliance determination purposes.

Subparagraph 62–296.405(1)(a) is also revised to add that the results of required visible emissions tests must be submitted to ''the local program'' instead of the Department if submission to the local program is specified in the facility's permit. EPA believes this addition is appropriate because Florida's eight local air programs take lead responsibility for air compliance and enforcement activities in their counties, and it ensures consistency with the relevant permit requirements.

ii. Analysis of Amendments to SO_2 Provisions at Rule 62–296.405(1)(c)

Subparagraph 62–296.405(1)(c) contains SO_2 emission limit requirements for the existing emissions units covered by the rule. Subparagraph (1)(c)1., which provides emission limits for sources that burn liquid fuel, is being revised to remove the extraneous text ''Stations—2.5 pounds per million Btu heat input.'' This phrase is not linked to any specific emissions units, but rather, as explained in Florida's April 1, 2022, SIP submittal, was inadvertently retained when the rest of a former version of provision 62–296.405(1)(c)1.a., F.A.C. was deleted from the State's rules. The text intended for deletion from the State's rules reads, ''Duval County north of Heckscher Drive excluding Jacksonville Electric Authority Northside Generating Stations—2.5 pounds per mission Btu heat input.'' However, the words ''Stations—2.5 pounds per million Btu heat input'' were unintentionally submitted to EPA and approved into the SIP. Because this text is detached from the units it once applied to, EPA is proposing to approve its removal.

In addition to this change, FL DEP requests the removal of several subparagraphs from Rule 62–296.405 because they contain SO_2 limits for emissions units that no longer exist or that have more stringent federally enforceable requirements.

The first subparagraph FL DEP requests the removal of is subparagraph (1)(c)1.b. Subparagraph (1)(c)1.b. regulates emission units in Duval County burning liquid fuel with a nameplate generating capacity of less than 160 megawatts (MW), and which commenced operation prior to October 1, 1964. The provision limits SO_2 emissions from these units to 1.10 pounds per million Btu heat input (lbs/MMBtu). This subparagraph is proposed for removal from the Florida SIP because it is applicable only to Jacksonville Electric Authority (JEA) Southside Units 4 and 5, which were permanently shut down on October 31, 2001, and JEA Kennedy Units 7, 8, and 9, which were permanently shut down on October 30, 2000. Since these units are shut down and there are no existing emissions units potentially subject to subparagraph (1)(c)1.b., its removal will not increase SO_2 emissions. Therefore, EPA is proposing to remove this subparagraph.

The second subparagraph FL DEP requests the removal of is subparagraph (1)(c)1.c. Subparagraph (1)(c)1.c. limits SO_2 emissions from all existing subject units burning liquid fuel in Duval County other than those covered by subparagraphs (1)(c)1.a. or (1)(c)1.b. to 1.65 lbs/MMBtu. However, there are no longer any existing emissions units[4] in Duval County that subparagraph (1)(c)1.c. would apply to. Since there are no longer any existing emissions units subject to or potentially subject to subparagraph (1)(c)1.c., its removal will not increase SO_2 emissions. Therefore, EPA is proposing to remove this subparagraph.

The third subparagraph FL DEP requests the removal of is subparagraph (1)(c)1.d. Subparagraph (1)(c)1.d. limits SO_2 emissions from Hillsborough County units south of State Highway 60 burning liquid fuel with a nameplate generating capacity of less than 100 MW, and which commenced operation prior to June 1, 1955, to 1.1 lbs/MMBtu. This subparagraph is applicable only to Tampa Electric Company (TECO) Gannon and Hooker's Point emission units which have shut down. The dates of the various TECO emission units' permanent shutdowns are shown in Table 1, below.

TABLE 1—SHUTDOWN DATES OF TECO GANNON AND HOOKER'S POINT UNITS

Emissions unit (EU)	Permanent shut down date
TECO Gannon EU 1	4/16/2003
TECO Gannon EU 2	4/15/2003
TECO Gannon EU 3	11/1/2003
TECO Gannon EU 4	10/12/2003
TECO Hooker's Point EUs 1–6	1/1/2003

Since these units have shut down and there are no existing emissions units potentially subject to subparagraph (1)(c)1.d., its removal will not increase SO_2 emissions. Therefore, EPA is proposing to remove this subparagraph.

The fourth subparagraph FL DEP requests the removal of is subparagraph (1)(c)1.e. Subparagraph (1)(c)1.e. limits SO_2 emissions from Escambia County's units north of Interstate 10 burning liquid fuel with a nameplate generating capacity of less than 50 MW, and which commenced operation prior to October 1, 1952, to 1.98 lbs/MMBtu. This subparagraph is applicable only to the Gulf Power Crist Units 1–3, which were permanently shut down on December 31, 2005. Since these units have shut down and there are no emissions units potentially subject to subparagraph (1)(c)1.e., its removal will not increase SO_2 emissions. Therefore, EPA is proposing to remove this subparagraph.

[3] *See* the March 17, 2023, EPA memorandum to the file and docket re: FL–167–1, April 1, 2022; DEP Method 9. This memorandum memorializes a conversation between EPA and FL DEP during which Florida confirmed that the difference between the two options is negligible since the data points are measured by a human observer in five percent increments.

[4] In SIP-approved Rule 62–210.200, *Definitions,* ''Existing Emissions Unit'' means an emission unit which was in existence, in operation, or under construction, or had received a permit to begin construction prior to January 18, 1972. *See* 62–210.200(134). An emission unit is not subject to this rule if the unit was modified or reconstructed on or after January 18, 1972.

The fifth subparagraph FL DEP requests the removal of is subparagraph (1)(c)1.h. Subparagraph (1)(c)1.h. limits SO_2 emissions from the units in Leon and Wakulla Counties burning liquid fuel with a nameplate generating capacity of less than 260 MW, and for which a valid Department operating permit was issued prior to November 1, 1977, to 1.87 lbs/MMBtu. This subparagraph is applicable only to City of Tallahassee Hopkins and Purdom units which were permanently shut down. The dates of the various City of Tallahassee Hopkins and Purdom emission units' permanent shutdowns are shown in Table 2, below.

TABLE 2—SHUTDOWN DATES OF CITY OF TALLAHASSEE HOPKINS AND PURDOM UNITS

Emission unit (EU)	Permanent shut down date
COT Hopkins EU 1	11/17/2018
COT Hopkins EU 3	6/1/2017
COT Hopkins EU 4	2/9/2008
COT Purdom EU 5 and 6	8/4/2000
COT Purdom EU 7	12/31/2013

Since these units have shut down and there are no existing emissions units potentially subject to subparagraph (1)(c)1.h., its removal will not increase SO_2 emissions. Therefore, EPA is proposing to remove this subparagraph.

The sixth subparagraph FL DEP requests the removal of is subparagraph (1)(c)1.i. Subparagraph (1)(c)1.i. limits SO_2 emissions from the units in Dade, Broward, and Palm Counties burning liquid fuel with a nameplate generating capacity of less than 170 MW, and which commenced operation prior to May 1, 1958, to 1.1 lbs/MMBtu (except in the event of a fuel or energy crisis declared by the Governor of Florida or the President of the United States, in which case the limit is 2.75 lbs/MMBtu). This subparagraph is applicable only to Florida Power and Light (FP&L) Cutler, Lauderdale, and Riviera Beach units, the last of which was permanently shut down on May 21, 2013. The dates of the various FP&L Cutler, Lauderdale, and Riviera Beach emission units' permanent shutdowns are shown in Table 3, below.

TABLE 3—SHUTDOWN DATES OF FP&L CUTLER, LAUDERDALE, AND RIVIERA BEACH UNITS

Emission unit (EU)	Permanent shut down date
FP&L Cutler Unit EU 1	6/29/1982
FP&L Cutler Unit EU 3 and 4	5/21/2013
FP&L Lauderdale Unit EU 1	10/7/1991
FP&L Lauderdale Unit EU 2	10/14/1991
FP&L Riviera Beach EU 1	9/1/1995
FP&L Riviera Beach EU 2	8/5/1996

Since these units have shut down and there are no existing emissions units potentially subject to subparagraph (1)(c)1.i., its removal will not increase SO_2 emissions. Therefore, EPA is proposing to remove this subparagraph.

The seventh subparagraph FL DEP requests the removal of is subparagraph (1)(c)2.a. Subparagraph (1)(c)2.a. limits SO_2 emissions from Hillsborough County's units burning solid fuel with a nameplate generating capacity of greater than 120 MW and which commenced operation prior to November 1, 1967, to 2.4 lbs/MMBtu on a weekly average. The provision also limits any group of such emissions units located on one or more contiguous or adjacent properties (*i.e.,* collectively) to 10.6 tons of SO_2 per hour on a weekly average. This subparagraph is applicable only to TECO Gannon units which were permanently shut down. The dates of the various TECO Gannon units' permanent shutdowns are shown in Table 4, below.

TABLE 4—SHUTDOWN DATES OF TECO GANNON UNITS

Emission unit (EU)	Permanent shut down date
TECO Gannon EU 1	4/16/2003
TECO Gannon EU 2	4/15/2003
TECO Gannon EU 3	11/1/2003
TECO Gannon EU 4	10/12/2003
TECO Gannon EU 5	1/30/2003
TECO Gannon EU 6	9/30/2003

Since these units have shut down and there are no existing emissions units potentially subject to subparagraph (1)(c)2.a., its removal will not increase SO_2 emissions. Therefore, EPA proposes to remove this subparagraph.

The eighth subparagraph FL DEP requests the removal of is subparagraph (1)(c)2.b. Subparagraph (1)(c)2.b. limits SO_2 emissions from units in Hillsborough County burning solid fuel with a nameplate generating capacity of greater than 400 MW, and which commenced operation after November 1, 1967, and prior to June 1, 1976, to 6.5 lbs/MMBtu over a two-hour average.[5] This subparagraph is applicable only to TECO Big Bend Units 1, 2, and 3. However, Unit 1 was permanently shut down on June 1, 2020, and Unit 2 was permanently shut down on November 30, 2021. For TECO Big Bend Unit 3, subparagraph (1)(c)2.b. yields an allowable SO_2 emission rate of 26,747.5 pounds per hour (lbs/hr) based on the limit of 6.5 lbs/MMBtu and a unit heat input capacity of 4,115 MMBtu/hr.[6] The TECO Big Bend facility is also subject to a source-specific SO_2 emissions cap of 2,156 lbs/hr for all of the TECO Big Bend units combined, which was approved into the SIP as a source-specific SIP revision in 2019.[7] [8] This emissions cap, even though averaged over a 30-day period, is significantly more stringent than the subparagraph (1)(c)2.b. emission limit. For example, under subparagraph (1)(c)2.b., a unit is allowed to emit 963 tons of SO_2 in just three days, which is more than the total allowed in 30 days under the source-specific SO_2 emissions cap, 776 tons. Therefore, because the TECO Big Bend units are either permanently shut down or are subject to another more stringent SO_2 limit in the SIP, EPA is proposing to remove this subparagraph.

The ninth subparagraph FL DEP requests the removal of is subparagraph (1)(c)2.d. Subparagraph (1)(c)2.d. limits SO_2 emissions from units burning solid fuel in all other areas of the State to 6.17 lbs/MMBtu. This subparagraph is only applicable to Gulf Power Scholz Units 1 and 2, which were permanently shut down on April 16, 2015. Since these units have shut down and there are no existing emissions units potentially subject to subparagraph (1)(c)2.d., its removal will not increase SO_2 emissions. Therefore, EPA is proposing to remove this subparagraph.

Finally, subparagraph (1)(c)3. requires owners of fossil fuel steam generators to monitor their emissions and the effects

[5] The provision also limits SO_2 emissions from a group of units located on one or more contiguous or adjacent properties and which are under common control (*i.e.,* collectively) to 31.5 tons per hour (tons/hr) over a 3-hour average and 25 tons/hr over a 24-hour average. However, considering that Units 1 and 2 have been permanently shut down, these caps are less stringent than the single unit limit of 13.4 tons/hr (26,747.5 lbs/hr).

[6] The heat capacity at Unit 3 is included in Permit No. 0570039–120–AC, which may be found at *https://fldep.dep.state.fl.us/air/emission/apds/default.asp.*

[7] *See* 84 FR 60927 (November 12, 2019).

[8] Florida's submission also references Permit No. 0570039–129–AC, which is currently pending incorporation into Florida's Regional Haze SIP. However, since this permit is not yet incorporated into the SIP, EPA is relying on the 2019 source-specific and SIP-approved emissions cap, as described.

of the emissions on ambient concentrations of SO_2 in a particular manner and frequency, and at locations approved and deemed reasonably necessary and ordered by the Department. FL DEP notes that the monitoring of stack emissions is regulated by SIP-approved Chapter 62–297, F.A.C., *Stationary Sources—Emissions Monitoring,* and views subparagraph (1)(c)3. as a discretionary ambient SO_2 monitoring provision that is no longer needed in the SIP. FL DEP explains that the State has the authority and capability of setting up ambient air quality monitoring stations as needed. In addition, Rule 62–212.400(7) F.A.C., requires that the owner or operator of a major stationary source or major modification under the prevention of significant deterioration program provide any required monitoring and analysis as required in 40 CFR 52.21(m). EPA agrees that Florida operates an approved plan for monitoring compliance with the SO_2 NAAQS and may require owners of fossil fuel steam generators to conduct ambient monitoring as needed when constructing or modifying emissions units. For these reasons, EPA is proposing to approve removal of this subparagraph from the SIP.

iii. Analysis of Amendments to NO_X Provisions at Rule 62–296.405(1)(d)

FL DEP's April 1, 2022, submission requests the removal of subparagraph (1)(d)3. Subparagraph (1)(d)3. limits NO_X emissions from unit in Leon County with a nameplate generating capacity of greater than 200 MW, and for which a valid Department operating permit was issued prior to November 1, 1977, to 0.30 lbs/MMBtu. This subparagraph applies only to the City of Tallahassee's Hopkins Boiler 2, which was permanently shut down on February 9, 2008. Since this unit has shut down and there are no emissions units potentially subject to subparagraph (1)(d)3., its removal will not increase NO_X emissions. Therefore, EPA is proposing to remove this subparagraph.

iv. Analysis of Amendments to Test Methods and Procedures Provisions at Rule 62–296.405(1)(e)

Florida's SIP revision seeks to revise subparagraph 62–296.405(1)(e) by adding specific citations for EPA test methods and removing outdated language. This will not result in increased emissions or change any existing requirements; therefore, EPA is proposing to approve the changes to this subparagraph. These revisions are summarized as follows:

(1) The changes replace the reference to repealed FL DEP Method 9 with EPA Method 9, as described at 40 CFR part 60, appendix A–4, and adopted by reference at Rule 62–204.800,[9] as the test method for visible emissions. The changes also add that the State has adopted and incorporated by reference 40 CFR part 75 at Rule 62–204.800.

(2) The changes remove a redundant and unnecessary statement that an owner or operator may use EPA Method 5 to demonstrate compliance. The changes also specify where the applicable test methods are found in the Federal rules as follows: Methods 3 and 3A are described at 40 CFR part 60, appendix A–2; Methods 5, 5B, and 5F are described at 40 CFR part 60, appendix A–3; Method 17 is described at 40 CFR part 60, appendix A–6; and Method 19 is described at 40 CFR part 60, appendix A–7. In addition, the changes update the rule by stating that the State has adopted and incorporated these methods by reference at Rule 62–204.800, F.A.C., rather than Chapter 62–297, F.A.C., due to the repeal of Rule 62–297.401, *Compliance Test Methods,* which EPA previously removed from the SIP. *See* 83 FR 13875 (April 2, 2018).

(3) The changes specify that the SO_2 test methods—EPA Methods 6, 6A, 6B and 6C—are ''as described at 40 CFR part 60, Appendix A–4'' and that these methods are adopted and incorporated by reference at Rule 62–204.800, F.A.C., rather than Chapter 62–297, F.A.C.

(4) The changes specify that the NO_X test methods—EPA Methods 7, 7A, or 7E—are ''as described at 40 CFR part 60, Appendix A–4, adopted and incorporated by reference at Rule 62–204.800, F.A.C.'' This phrase replaces the reference to Chapter 62–297. The changes also add that the State has adopted and incorporated by reference 40 CFR parts 60, 75, and 76 at Rule 62–204.800.

v. Analysis of Amendments to New Emission Units Provisions at Rule 62–296.405(2)

FL DEP is requesting the removal of subsection 62–296.405(2), which reads as follows: 62–296.405(2) New Emissions Units.

(a) Visible Emissions—(See subsection 62–204.800(7), F.A.C., and 40 CFR 60.42 and 60.42a).

(b) Particulate Matter—(See subsection 62–204.800(7), F.A.C., and 40 CFR 60.42 and 60.42a).

(c) Sulfur Dioxide—(See subsection 62–204.800(7), F.A.C., and 40 CFR 60.43 and 60.43a).

(d) Nitrogen Oxides—(See subsection 62–204.800(7), F.A.C., and 40 CFR 60.44 and 60.44a).

This subparagraph lists visible emissions and three air pollutants, particulate matter, SO_2, and NO_X, and the federal new source performance standards (NSPS), adopted and incorporated by reference by Florida in Rule 62–204.800, that regulate these pollutants for certain electric utility steam generating units.[10] This subparagraph merely identifies the federal NSPS that are applicable to certain fossil fuel steam generators and the Florida rule that incorporates the relevant federal NSPS by reference. This subparagraph does not need to be in the Florida SIP because the NSPS requirements are independently applicable and federally enforceable. Sources that are subject to these Federal requirements must comply with them regardless of whether this subparagraph is in the SIP. Thus, EPA proposes to remove subsection 62–296.405(2) from the SIP.

EPA has evaluated the State's non-interference demonstration and is proposing to find that the changes to Rule 62–296.405 would not interfere with any requirement concerning attainment and RFP, or any other applicable requirement of the CAA for the reasons discussed above.

B. Rule 62–296.570

The April 1, 2022, submission removes obsolete provisions in Rule 62–296–570, *Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO_X-Emitting Facilities* and makes changes to clarify the intent of the Rule and update certain cross-references. FL DEP developed Rule 62–296.570 to implement VOC and NO_X RACT for existing major sources of VOC and NO_X in its then moderate ozone nonattainment area—the South Florida Area (consisting of Broward, Dade, and Palm Beach Counties)—as required by CAA section 182.[11] After EPA

[9] Rule 62–204.800 adopts and incorporates by reference Federal rules cited throughout FL DEP's air pollution rules.

[10] Rule 62–296.405(2) lists the NSPS at 40 CFR 60.42, 60.42a, 60.43, 60.43a. 60.44, and 60.44a. EPA amended and renumbered 60.42a, 60.43a, and 60.44a as 60.42Da, 60.43Da, and 60.44Da on June 13, 2007 (72 FR 32710).

[11] *See* 60 FR 2688, 2689 (January 11, 1995) (approving Florida's January 8, 1993, SIP revision and noting that Florida's RACT rule ''applies to the 1990 Clean Air Act Amendment requirement for RACT for existing major sources of VOCs and NO_X in Florida's moderate non-attainment area.''). The fact that Rule 62–296.570 applies solely to existing units is further evidenced by language in Florida's January 8, 1993 SIP revision (available in the docket for this proposed action), the May 31, 1995, compliance date in Rule 62–296.570(4)(a)1, and the

redesignated the South Florida Area to attainment, Florida revised its RACT rules such that Rule 62–296.570 now applies to the South Florida maintenance area.[12]

Subparagraph 62–296.570(1)(b) is revised to clarify the intent of the rule. Chapter 62–296.570 establishes requirements for major VOC- and NO_X-emitting facilities. The following text is added to subparagraph (1)(b) to clarify that the rule requirements do not apply to activities considered insignificant for title V permitting purposes: ''or that would otherwise be considered insignificant pursuant to Rule 62–213.300(2)(a)1., F.A.C., or Rule 62–213.430(6)(b), F.A.C[,],''. Insignificant activities are not considered major emitting activities for the purposes of a title V permitting, so this text is clarifying that the rule does not apply to insignificant activities.

Paragraph 62–296.570(3) is proposed for removal from the SIP. Currently, subparagraph 62–296.570(3)(a) requires an owner or operator of any emission unit subject to the Rule to apply for a new or revised permit to operate in accordance with 62–296.570 by March 1, 1993, unless a later filing date is specified by FL DEP in writing. Subparagraph (3)(b) extends the expiration date of existing operation permits for any emission unit subject to the requirements of this rule if the existing permit would expire between the effective date of the section and March 1, 1993, or any later filing date specified by the Department, unless a permit is revoked or suspended. All affected facilities already have operating permits and the date for compliance with this rule has passed; therefore, these rules are no longer needed in the SIP.

Subparagraphs 62–296.570(4)(a)1. and 2. are also proposed for removal from the SIP. Currently, subparagraph 62–296.570(4)(a)1. requires applicants for a new or revised operation permit for an emissions unit subject to the rule to propose a schedule implementing RACT emission limiting standards no later than May 31, 1995. Further, the emissions unit must demonstrate compliance with the RACT emission limiting standards in accordance with the schedule specified in its air operation permit. Subparagraph (4)(a)2. requires that fuel specific NO_X and VOC emission limits established under Rule 62–296.570 are incorporated into the new or revised operation permit for each emissions unit and become effective in accordance with the terms of the permit. All affected facilities were those outlined in paragraphs 62–296.570(3)(a) and (b). The requirements in subparagraphs (4)(a)1. and (4)(a)2 have already been met for those operating permits and the date for compliance with the subparagraphs has passed; therefore, these rules are no longer needed in the SIP and their removal will not alter current regulatory requirements.

Subparagraph 62–296.570(4)(b)1. is proposed for removal from the SIP. Currently, subparagraph 62–296.570(4)(b)1. requires that emissions of NO_X from any rear wall-fired, forced circulation, 16-burner, compact furnace shall not exceed 0.20 lb/MMBtu while firing natural gas, and 0.36 lb/MMBtu while firing oil. However, the emission units subject to the provision, FP&L Port Everglades Units 1 and 2, were permanently shut down. Further, as discussed above, since the Rule only applies to existing emission units, this subparagraph does not apply to any future units. Additionally, any future major units would undergo major new source review under Chapter 62–212. For these reasons, this subparagraph is no longer needed in the SIP.

Subparagraph 62–296.570(4)(b)2. is proposed for removal from the SIP. Currently, subparagraph 62–296.570(4)(b)2. requires that NO_X emissions from any front wall fired, natural circulation, 18-burner, compact furnace shall not exceed 0.40 lb/MMBtu while firing natural gas and 0.53 lb/MMBtu while firing oil. However, the emission units subject to this provision, FP&L Port Everglades Units 3 and 4, and Turkey Point Units 1 and 2, were permanently shut down. Further, since the Rule only applies to existing emission units, this subparagraph does not apply to any future units. Additionally, any future major units would undergo major new source review under Chapter 62–212. For these reasons, this rule subparagraph is no longer needed in the SIP.

Subparagraph 62–296.570(4)(b)3. is proposed for removal from the SIP. Currently, subparagraph 62–296.570(4)(b)3. requires that NO_X emissions from any front wall fired, natural circulation, 24-burner, compact furnace shall not exceed 0.50 lb/MMBtu while firing natural gas and 0.62 lb/MMBtu while firing oil. However, the emission units subject to this provision, FP&L Riviera Beach Units 3 and 4, were permanently shut down. Further, since the Rule only applies to existing emission units, this subparagraph does not apply to any future units. Additionally, any future major units would undergo major new source review under Chapter 62–212. For these reasons, this rule subparagraph is no longer needed in the SIP.

Subparagraph 62–296.570(4)(b)4. is proposed for removal from the SIP. Currently, subparagraph 62–296.570(4)(b)4. requires that NO_X emissions from any tangentially fired, low heat release, large furnace shall not exceed 0.20 lb/MMBtu while firing natural gas. However, the emission units subject to this provision, FP&L Cutler Units 3 and 4, were permanently shut down. Further, since the Rule only applies to existing emission units, this subparagraph does not apply to any future units. Additionally, any future major units would undergo major new source review under chapter 62–212. For these reasons, this rule subparagraph is no longer needed in the SIP.[13]

Subparagraph 62–296.570(4) is further revised to update cross-references and to clarify that not all testing is for determining compliance. The first language change replaces the word ''Compliance'' in the phrase ''Compliance Dates and Monitoring'' in (4)(a) to ''Emissions Testing.'' Another language change removes the phrase ''compliance with the emission limits established in this rule shall be demonstrated by'' as unnecessarily descriptive text in subparagraph (4)(a)3. A reference update in the revision removes the cross-reference to Rule 62–297.401, *Compliance Test Methods,* which as noted previously, EPA has removed from the SIP.[14] This cross-reference described the applicable EPA reference methods used to conduct annual emissions testing for emission units not equipped with continuous emission monitoring systems for NO_X or VOCs. Florida replaces this cross-reference with the phrase ''as described in 40 CFR part 60, Appendices A–1 through A–8, adopted and incorporated by reference at Rule 62–204.800''. Florida makes these same cross-reference changes to paragraph (4)(b)9.

EPA has evaluated the State's non-interference demonstration and is proposing to find that the changes to Rule 62–296.570 would not interfere with any requirement concerning attainment and RFP, or any other

exclusion of new and modified major VOC- and NO_X emitting facilities subject to major new source review through Rule 62–296.570(1)(a) (referencing Rule 62–296.500(1)(b)).

[12] *See* 60 FR 10325 (February 24, 1995) (redesignating the South Florida Area to attainment); 64 FR 32346 (June 16, 1999).

[13] EPA is not proposing to approve the change to subparagraph 62–296.570(4)(b)9. transmitted in the April 1, 2022, submittal in this document, and will address this change in a separate action.

[14] *See* 83 FR 13875 (April 2, 2018).

applicable requirement of the CAA for the reasons discussed above.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, as discussed in sections I and II of the preamble, EPA is proposing to incorporate by reference: Florida Rule 62–296.405, *Fossil Fuel Steam Generators with More than 250 million Btu per Hour Heat Input,* which modifies stationary source emission standards for fossil fuel-fired steam generators in the Florida SIP, state-effective July 10, 2014, and Florida Rule 62–296.570, *Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO_X-Emitting Facilities,* which modifies stationary source emission standards for major VOC and NO_X facilities in the Florida SIP, state effective July 10, 2014, except for subparagraph 62–296.570(4)(b)9.[15] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

IV. Proposed Action

For the reasons discussed above, EPA is proposing to approve the portion of Florida's April 1, 2022, SIP revision seeking to amend Rules 62–296.405 and 62–296.570.

V. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The air agency did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed here, this proposed action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

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

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

Dated: April 27, 2023.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2023–09328 Filed 5–5–23; 8:45 am]

BILLING CODE 6560–50–P

[15] Subparagraph 62–296.570(4)(b)9. will remain in the SIP with a state effective date of November 23, 1994.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2023–0214; FRL–10875–01–R7]

Air Plan Approval; State of Missouri; Confidential Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Missouri State Implementation Plan (SIP) received on September 20, 2022, to the existing rule, Confidential Information. The revisions include structural, formatting, and other text changes that are administrative in nature and do not impact the stringency of the SIP or air quality. The EPA's proposed approval of this rule revision is in accordance with the requirements of the Clean Air Act (CAA).

DATES: Comments must be received on or before June 7, 2023.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–

OAR–2023–0214 to *www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Steven Brown, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7718; email address: *brown.steven@epa.gov.*

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

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2023–0214, at *www.regulations.gov.* Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

II. What is being addressed in this document?

The EPA is proposing to approve a SIP revision submitted by the State of Missouri on September 20, 2022. Missouri requests the EPA to approve revisions to 10 Code of State Regulations (CSR) 10–6.210 in the Missouri SIP. Other revisions to this rule include structural, formatting and text changes to correct typographical errors. After review and analysis of the revisions, the EPA concludes that these changes meet the requirements of the Clean Air Act and do not adversely affect air quality. The full text of these changes can be found in the State's submission, which is included in the docket for this action. The EPA's analysis of the revisions can be found in the technical support document (TSD), also included in the docket.

III. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from 02/15/2022 to 4/07/2022 and received no comments.

In addition, as explained above and in more detail in the technical support document, which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations. The revision includes structural, formatting, and other text changes that are administrative in nature and do not impact the stringency of the SIP or air quality. As such, in accordance with Section 110(l) of the CAA, this proposed revision does not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA.

IV. What action is the EPA taking?

The EPA is proposing to amend the Missouri SIP by approving the State's request to revise 10 CSR 10–6.210 ''Confidential Information''. We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to finalize the incorporation by reference of the Missouri rule 10 CSR 10–6.210 discussed in section II of this preamble and as set forth below in the proposed amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this rulemaking does not involve technical standards;

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have

tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

MoDNR did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Confidential information, Emissions data, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 21, 2023.

Meghan A. McCollister,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry ''10–6.210'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.210	Confidential Information.	9/30/2022	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	
*	*	*	*	*

* * * * *

[FR Doc. 2023–08931 Filed 5–5–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0892; FRL–10928–01–R4]

Air Plan Approval; Florida; Revision of Excess Emissions Provisions and Emission Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Florida on November 22, 2016, and supplemented on September 30, 2022, through the Florida Department of Environmental Protection (FDEP). The November 22, 2016, SIP revision is in response to EPA's SIP call published on June 12, 2015, concerning excess emissions during startup, shutdown, and malfunction (SSM) events. The September 30, 2022, supplemental SIP revision addresses additional SSM-related rule amendments identified by the State and the addition of source specific sulfur dioxide (SO_2) and nitrogen oxide (NO_X) emission limits. EPA proposes to find that Florida's SIP revisions provided November 22, 2016, and September 30, 2022, correct the deficiencies identified in EPA's 2015 SIP call, and thus is proposing to approve these SIP revisions.

DATES: Comments must be received on or before June 7, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2022–0892 at *regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Joel Huey, Manager, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9104. Mr. Huey can also be reached via electronic mail at *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

On February 22, 2013, EPA issued a notice of proposed rulemaking outlining EPA's policy at the time with respect to SIP provisions related to periods of SSM. EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the Clean Air Act (CAA or Act) with regards to excess emission events. For each SIP provision that EPA determined to be inconsistent with the CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5). On September 17, 2014, EPA issued a document supplementing and revising what the Agency had previously proposed on February 22, 2013, in light of a United States Court of Appeals for the District of Columbia Circuit decision that determined the CAA precludes authority of EPA to create affirmative defense provisions applicable to private civil suits. EPA outlined its updated policy that affirmative defense SIP provisions are not consistent with CAA requirements. EPA proposed in the supplemental proposal document to apply its revised interpretation of the CAA to specific affirmative defense SIP provisions and proposed SIP calls for those provisions where appropriate. *See* 79 FR 55920 (September 17, 2014).

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' hereinafter referred to as the ''2015 SSM SIP Action.'' *See* 80 FR 33840 (June 12, 2015). The 2015 SSM SIP Action clarified, restated, and updated EPA's interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states, including Florida, were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

EPA issued a memorandum in October 2020 (2020 Memorandum), which stated that certain provisions governing SSM periods in SIPs could be viewed as consistent with CAA requirements.[1] Importantly, the 2020 Memorandum stated that it ''did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act.'' Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued to Florida in 2015. The 2020 Memorandum did, however, indicate EPA's intent at the time to review SIP calls that were issued in the 2015 SSM SIP Action to determine whether EPA should maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, EPA's Deputy Administrator withdrew the 2020 Memorandum and announced EPA's return to the policy articulated in the 2015 SSM SIP Action (2021 Memorandum).[2] As articulated in the 2021 Memorandum, SIP provisions that contain exemptions or affirmative defense provisions are not consistent with CAA requirements and, therefore, generally are not approvable if contained in a SIP submission. This policy approach is intended to ensure that all communities and populations, including minority, low-income and indigenous populations overburdened by air pollution, receive the full health and environmental protections provided by the CAA.[3] The 2021 Memorandum also retracted the prior statement from the 2020 Memorandum regarding EPA's plans to review and potentially modify or withdraw particular SIP calls. That statement no longer reflects EPA's intent. EPA intends to implement the principles laid out in the 2015 SSM SIP Action as the Agency acts on SIP submissions, including the November 22, 2016, SIP submittal provided by FDEP in response to the 2015 SIP call.

In the 2015 SSM SIP Action, EPA determined that Florida Administrative Code Rules (hereinafter referred to as ''Rules'') 62–210.700(1), 62–210.700(2), 62–210.700(3), and 62–210.700(4) are

[1] October 9, 2020, memorandum ''Inclusion of Provisions Governing Periods of Startup, Shutdown and Malfunctions in State Implementation Plans.''

[2] September 30, 2021, memorandum ''Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy.''

[3] *See* 80 FR 33839, 33985.

substantially inadequate to meet CAA requirements. *See* 80 FR 33839, 33962 (June 12, 2015). In the existing Florida SIP, Rule 62–210.700(1) provides that excess emissions resulting from SSM modes of operation for any emissions unit ''shall be permitted'' if the best operational practices to minimize those emissions is employed and the duration of the excess emissions does not exceed two hours in a 24-hour period. Rules 62–210.700(2) and .700(3) provide specifically that excess emissions from fossil fuel steam generators resulting from startup or shutdown or from boiler cleaning (soot blowing) and load change, respectively, ''shall be permitted'' if the best operational practices to minimize the emissions and duration of excess emissions are employed. Finally, SIP-called Rule 62–210.700(4) provides that excess emissions which are caused entirely or in part by ''poor maintenance, poor operation, or any other equipment or process failure which may reasonably be prevented'' during SSM ''shall be prohibited.'' The rationale underlying EPA's determination that Rules 62–210.700(1), (2), (3) and (4) were substantially inadequate to meet CAA requirements, and therefore should be included in the 2015 SSM SIP Action to remedy the deficiencies, is detailed in the 2015 SSM SIP Action and accompanying proposals.

On November 22, 2016, FDEP submitted a revision to the Florida SIP (hereinafter referred to as Florida's ''Excess Emissions Rule SIP Revision'') in response to the 2015 SSM SIP Action. In that revision, FDEP requests EPA approval of the following changes to the Florida SIP: (1) removal of Rule 62–210.700(4) with the addition of equivalent language to Rules 62–210.700(1) and (2); (2) amendment of Rule 62–210.700(3) to amend the particulate matter (PM) limits applicable during boiler cleaning (soot blowing) and load changes by removing the statement that excess emissions during these periods ''shall be permitted,'' removing the exemption for pollutants other than PM and visible emissions, and removing a specific allowance for visible emissions which exceed 60 percent opacity for up to four six-minute periods during the 3-hour period of excess emissions allowed for soot blowing or load change; (3) addition of Rule 62–210.700(6) which states that Rules 62–210.700(1) and (2) shall not apply after May 22, 2018, to either category-specific or unit-specific limits that have been incorporated into Florida's SIP; and (4) addition of Rule 62–210.700(7), which states that after the effective date of the rule change (October 23, 2016), Rules 62–210.700(1) and (2) shall not apply to new permit-specific emission limits established pursuant to Florida's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) regulations (Rules 62–212.400 and 62–210.500).

On September 30, 2022, FDEP submitted a supplemental revision (hereinafter referred to as Florida's ''Supplemental SSM SIP Revision'') to the State's November 22, 2016, Excess Emissions Rule SIP Revision. In the Supplemental SSM SIP Revision, FDEP includes ''alternative SIP emission limits for those SIP emission limits that [FL] DEP identified as problematic'' if applied continuously and several changes to language throughout Chapter 62–296. The State requests EPA approval of the following changes: (1) amendment of existing Rule 62–296.405, ''Fossil Fuel Steam Generators with More Than 250 Million Btu Per Hour Heat Input'' and Rule 62–296.570, ''Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO_X-Emitting Facilities'' to clarify how emissions are calculated, including during periods of startup, shutdown, and malfunction; (2) addition of emissions-unit-specific SO_2 and NO_X emission limits for certain sulfuric acid plants (SAPs) and nitric acid plants (NAPs) in Florida; (3) removal of SO_2 emission limits in Rule 62–296.402, ''Sulfuric Acid Plants''; and (4) removal of NO_X emission limits in Rule 62–296.408, ''Nitric Acid Plants.''

II. Analysis of the Florida Submittals

A. EPA's Analysis of Florida's Excess Emissions Rule SIP Revision Submitted November 22, 2016

The SIP-called provisions of Rules 62–210.700(1), (2), and (3) provide that excess emissions ''shall be permitted'' under certain circumstances and thus provide that such excess emissions will not be violations, which is inconsistent with CAA sections 110(a)(2)(A), 110(a)(2)(C), and 302(k). The SIP-called provision of Rule 62–210.700(4) provides that excess emissions caused entirely or in part by poor maintenance, poor operation, or any other equipment or process failure that may reasonably be prevented during periods of SSM are prohibited. As EPA has previously noted, such a provision ''does not negate the underlying problem of providing exemptions for the excess emissions in the first instance.'' *See* 78 FR 12459, 12503 (February 22, 2013).

Florida's Excess Emissions Rule SIP Revision makes changes to Rule 62–210.700 to address the specific deficiencies identified in the 2015 SSM SIP Action. Florida has added new Rule 62–210.700(6),[4] which provides that paragraphs .700(1) and .700(2) shall no longer apply for purposes of the SIP after May 22, 2018. Specifically, Rule 62–210.700(6) provides that these paragraphs will not apply to limits in Chapter 62–296 that are incorporated or will be incorporated into the SIP, nor will they apply to unit-specific emission limits which have been or will be incorporated into the SIP. This covers all SIP emission limits, since FDEP establishes its applicable limits in Chapter 62–296 and otherwise would submit to EPA unit-specific emission limits via source-specific SIP revisions for incorporation into the SIP at 40 CFR 52.520(d). Because May 22, 2018, has passed, EPA's proposed approval of Florida's Excess Emissions Rule SIP Revision, if finalized, would effectively remove Rules 62–210.700(1) and .700(2) from the SIP. The only changes made to Rule 62–210.700(1) and .700(2) are to remove the word ''operational'' in describing the requirement that sources adhere to best practices during periods of SSM and the addition of the prohibitory provision from existing Rule 62–210.700(4) (which is being deleted, as discussed below). EPA proposes to find that the addition of new Rule 62–210.700(6) addresses the deficiencies in .700(1) and .700(2) that EPA identified in the 2015 SSM SIP Action.

The SIP-called version of Rule 62–210.700(3) allows excess emissions ''from existing fossil fuel steam generators resulting from boiler cleaning (soot blowing) and load change.'' As explained in the 2015 SSM SIP Action, such exemptions are inconsistent with CAA requirements. The changes to Rule 62–210.700(3) transmitted in Florida's Excess Emissions Rule SIP Revision include: replacement of the term ''Excess'' with ''Visible''; deletion of the term ''shall be permitted''; deletion of the exemption for visible emissions above 60 percent opacity during up to 24 total minutes over a 3-hour period for periods of soot blowing or load change; linguistic changes to the opacity and PM limits applicable during ''boiler cleaning (soot blowing) and load change''; and exclusion of startup and shutdown from, plus non-substantive changes to, the definition of load change. The effect of deleting the statement that excess emissions ''shall be permitted'' during soot blowing or load change is the removal of the

[4] The removal of 62–210.700(4) causes the renumbering of existing paragraphs 62–210.700(5) and .700(6) to .700(4) and .700(5), respectively.

exemption for such excess emissions. So, rather than permitting excess emissions during such periods and specifically allowing for visible emissions above 60 percent opacity during up to 24 total minutes over a 3-hour period for periods of soot blowing or load change, the revised rule only retains the existing requirement that opacity during these periods may not exceed 60 percent opacity for the 6-minute averaging time for up to 3 hours in any 24-hour period. Additionally, the corresponding PM limit is also retained. Thus, the revised version of Rule 62–210.700(3) no longer allows for exempt periods during which no standard applies to the affected facilities and makes it more stringent than the current SIP-approved version of the rule.

As noted above, Rule 62–210.700(4) is removed, but the same language from that provision is added at Rules .700(1) and .700(2). This is not a specific change to the treatment of excess emissions under these provisions but given the addition of Rule 62–210.700(6), covered in more detail below, these provisions do not apply after May 22, 2018, and thus will have no effect in the SIP.

Rule 62–210.700(6) is a new provision which terminates the applicability of Rules 62–210.700(1) and .700(2) after May 22, 2018, for emission limits or unit-specific emission limits that have been incorporated into Florida's SIP. According to Florida's Supplemental SSM SIP Revision, the purpose of this provision was to provide ''time to develop and submit alternative SIP emission limits for those limits that would be problematic if they applied at all times.''

Rule 62–210.700(7) is a new provision which terminates the applicability of paragraphs 62–210.700(1) and .700(2) on October 23, 2016, for new permit-specific emission limits established pursuant to Florida's PSD and NNSR regulations (Rules 62–212.400 and 62–210.500). With the addition of this rule, Florida establishes that emission limits incorporated into Florida's permits via the State's SIP-approved major new source review program apply at all times.

EPA proposes to find that with the addition of paragraph 62–210.700(6) and the removal of other exemptions for transient modes of operation in 62–210.700(3), emission limits incorporated into Florida's SIP apply at all times, including periods of SSM. Moreover, EPA is proposing to find that the addition of 62–210.700(7) ensures that emission limits incorporated into Florida construction permits will not allow excess emissions during periods of SSM. Therefore, based on Florida's changes to Rule 62–210.700 and the State's request to incorporate the revised language in the Florida SIP, EPA proposes to find that Florida's Excess Emissions Rule SIP Revision is consistent with CAA requirements and adequately addresses the specific deficiencies that EPA identified in the 2015 SSM SIP Action with respect to Rule 62–210.700 in the Florida SIP.

B. EPA's Analysis of Florida's Supplemental SSM SIP Revision Submitted September 30, 2022

Florida's Supplemental SSM SIP Revision requests that EPA approve multiple changes to Florida's SIP as discussed in the following sections. The changes include SSM-related amendments to Rule 62–296.402, ''Sulfuric Acid Plants,'' Rule 62–296.405, ''Fossil Fuel Steam Generators with More Than 250 Million Btu Per Hour Heat Input,'' Rule 62–296.408, ''Nitric Acid Plants,'' and Rule 62–296.570, ''Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO_X-Emitting Facilities,'' and the addition of emissions-unit-specific SO_2 and NO_X emission limits for certain SAPs and NAPs located within the State of Florida.

1. Rule Section 62–296.402, Sulfuric Acid Plants (SAPs)

In the Supplemental SSM SIP Revision, FDEP proposes several amendments to Rule 62–296.402, ''Sulfuric Acid Plants.'' Specifically, FDEP proposes deletion of the production-based SO_2 emission limits in renumbered Rules 62–296.402(2)(a)2., 62–296.402(2)(b)2., and 62–296.402(3)(b) from the SIP. Those production-based SO_2 emission limits were written in units of pounds per ton of 100 percent acid produced (pounds per ton (lbs/ton)) and, when adopted decades ago into Florida's first SIP, were not intended to be applicable during periods of SSM because (1) the methodology to calculate compliance with a rolling three-hour production-based limit is skewed by the lack of production during hours of startup and shutdown, and (2) the corresponding New Source Performance Standard (NSPS) at 40 CFR part 60, subpart H, on which the Florida emission limit for new units is based, exempted periods of SSM via performance testing requirements in subpart A to part 60 in the original promulgation of part 60 and as subsequently clarified.[5]

The SIP-called version of Rule 62–210.700 allows excess emissions during periods of SSM. Eleven SAPs that are otherwise subject to Rule 62–296.402 are already subject to SIP-approved pound-per-hour SO_2 emission limits which apply at all times, including during SSM, imposed to attain and maintain the 2010 SO_2 NAAQS.[6] To replace the deleted production-based SO_2 emission limits, FDEP is proposing to incorporate new SO_2 emission limits in units of pounds per hour (lbs/hr) based on a longer-term averaging period (specifically, either 6-hour or 24-hour averages, as opposed to the 3-hour average limit in Rule 62–296.402) for the remaining SAPs in Florida. The remaining SAPs are Emissions Units 066 and 067 at the White Springs Agricultural Chemicals, Inc., Suwannee River/Swift Creek Complex (Nutrien White Springs); Emissions Units 004 and 005 at the Mosaic Fertilizer, South Pierce Facility (Mosaic South Pierce); and Emissions Unit 004 at the TECO Polk Power Station (TECO-Polk).

The proposed SO_2 emission limits for these facilities apply at all times, including periods of SSM, and are at least as stringent as the current SO_2 limits in Florida's SIP in Rule 62–296.402. Construction permits containing the proposed SO_2 emission limits for these emissions units have been issued by FDEP, and relevant portions of those permits are included in the Supplemental SSM SIP Revision for incorporation into the SIP. Sections II.B.5.iii–v of this notice of proposed rulemaking (NPRM) provide a detailed discussion of the emissions-unit-specific SO_2 emission limits, the methodology used for developing the new emission limits, and the technical demonstration showing that these limits are at least as stringent as the existing emission limits at Rule 62–296.402 proposed for deletion.

Additionally, FDEP has renumbered existing provisions in Rule 62–296.402 with the addition of paragraph .402(1). This new paragraph provides that the SO_2 emission limits do not apply to SAPs which are subject to the applicable NSPS at 40 CFR part 60, subpart H. Instead of revising the rule applicability for SIP purposes with new paragraph .402(1), FDEP has elected to remove the SO_2 emission limits directly from the SIP and replace them with new, source-specific emission limits. Thus, FDEP has not requested that EPA incorporate Rule 62–296.402(1), 62–296.402(2)(a)2., 62–296.402(2)(b)2., or

[5] *See* 36 FR 24876 (December 23, 1971), 42 FR 57125 (November 1, 1977).

[6] *See* 82 FR 30749 (July 3, 2017), 85 FR 9666 (February 20, 2020).

62–296.402(3)(b), as renumbered, into the SIP.

Finally, FDEP is revising Rule 62–296.402(6), as renumbered from .402(5), to change the excess emissions reporting requirement from quarterly to semi-annual. This revision to the frequency of reporting is consistent with EPA regulations at 40 CFR part 51, appendix P, as revised August 14, 2020. *See* 85 FR 49596. Paragraph .402(5), as renumbered from .402(4), requires that facilities producing more than 300 tons per day (tpd) of sulfuric acid must install and operate continuous emissions monitoring systems (CEMS). Paragraph .402(6), as renumbered from .402(5), requires the SAPs which install and operate CEMS to make semi-annual reports of excess emissions, including the nature and cause of the excess emissions. In the original promulgation of Appendix P to 40 CFR part 51[7] and the promulgation of early revisions to the NSPS the same day,[8] EPA required quarterly reporting of such excess emissions. When FDEP promulgated requirements for SAPs at Rule 62–296.402, it regulated sources subject to both Appendix P of part 51 and the NSPS, and the quarterly reporting requirement aligned with federal minimum requirements. Since that time, EPA has revised both the NSPS and Appendix P to allow for less frequent (namely, semi-annual) reporting of excess emissions.[9] [10] Additionally, EPA's title V major source operating permit program regulations, promulgated in 1992, require semi-annual reporting.[11]

Section 110(l) of the CAA provides that EPA shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. The proposed revision to the frequency of the excess emissions reporting requirement in the Florida SIP for Rule 62–296.402 will not override any more stringent reporting requirements,[12] will not cause any changes in allowable pollutant emissions, and will not otherwise interfere with the State's ability to attain and maintain the national ambient air quality standards (NAAQS) or interfere with any other applicable CAA requirement. Furthermore, this change makes Florida's reporting requirements consistent with the federal requirements in Appendix P to part 51, the NSPS, and other major source reporting required for title V major sources.

EPA is also proposing to approve the portion of Florida's Supplemental SSM SIP Revision that removes the existing SO_2 limit from Rule 62–296.402 and incorporate the source-specific permit limits into the SIP because the source-specific emission limits submitted to EPA, or previously approved by EPA for some sources, are continuous and at least as stringent as the existing SIP-approved limit in this rule. See sections II.B.5.i, iii–vi of this NPRM for a detailed analysis of EPA's proposal to remove the existing SO_2 limit from Rule 62–296.402.

2. Rule 62–296.405, Existing Fossil Fuel Steam Generators With Greater Than or Equal to 250 Million Btu Per Hour Heat Input

Florida's Supplemental SSM SIP Revision transmits several changes to Rule 62–296.405. First, the title is revised from ''Fossil Fuel Steam Generators with More Than 250 Million Btu Per Hour Heat Input'' to ''Existing Fossil Fuel Steam Generators with Greater than or Equal to 250 Million Btu Per Hour Heat Input.'' The revised title clarifies that this section is only applicable to existing units with a heat input rate equal to or greater than 250 million Btu per hour. Next, a similar clarifying change is made to add a new paragraph 62–296.405(1), which specifies applicability. This new paragraph defines an ''existing'' fossil fuel steam generator as one in existence, in operation, under construction, or which had received a permit to begin construction prior to January 18, 1972. EPA is proposing to find that this provision aligns with the definition of ''existing emission unit'' already SIP-approved at Rule 62–210.200 and clarifies that only existing emission units are subject to Rule 62–296.405. The existing SIP-approved rule specifies SIP emission limits for existing emission units and contains a paragraph addressing new emissions units that simply refers to applicable NSPS. A SIP revision submitted on April 1, 2022, seeks to remove the paragraph covering ''new emission units'' which would allow for the changes described above. EPA is proposing to act on the April 1, 2022, SIP revision in a separate rulemaking. EPA will not finalize the changes described above unless EPA finalizes the removal of the paragraph covering ''new emission units.''

Next, the Supplemental SSM SIP Revision renumbers Rule 62–296.405(1)(a) to Rule 62–296.405(2), and renumbers Rule 62–296.405(1)(b) to Rule 62–296.405(3). Paragraph .405(3), as renumbered, is revised to require stack testing to demonstrate compliance unless a PM CEMS is used, specify the manner of demonstrating compliance when a PM CEMS is used, and add a definition for the term ''operating day.'' Under the existing SIP rule, the PM emission limit applicable to existing sources only requires compliance to be determined via ''applicable compliance methods.'' In the Supplemental SSM SIP Revision, FDEP notes that, pursuant to existing Rule 62–296.405(1)(e)2, the applicable compliance methods would be either stack testing or PM CEMS. Where PM CEMS are required, such as for sources subject to Appendix P of 40 CFR part 51 or subject to the NSPS, the definition of ''operating day'' utilized in this provision is consistent with the definition of ''boiler operating day'' defined in the NSPS at 40 CFR part 60, subpart D.[13] FDEP specifies the averaging period applicable to the PM emission limit as a 30-operating day limit. Prior to this change, no averaging time was specified for this emission limit, and the SIP did not require compliance with the emission limit during periods of SSM. EPA is proposing to find that these changes clarify the existing emission limit, specify appropriate methods for determining compliance, and ensure that periods of non-compliance during periods of SSM can be evaluated, consistent with the removal of exemptions from applicable SIP emission limits in the Excess Emissions Rule SIP Revision.

[7] *See* 40 FR 46240 (October 6, 1975).

[8] *See* 40 FR 46250 (October 6, 1975).

[9] *See* 61 FR 47840 (September 11, 1996).

[10] *See* 85 FR 49596 (August 14, 2020).

[11] *See* 57 FR 32250 (July 21, 1992) and 40 CFR 70.6(a)(3)(iii)(A).

[12] To the extent any sources are required by other CAA requirements to submit continuous opacity monitoring reports more frequently, those requirements will continue to apply and will not be impacted by these proposed revisions.

[13] The definition is also consistent with: ''boiler operating day'' at 40 CFR part 60, subpart Da for units constructed, reconstructed, or modified after February 28, 2005; ''steam generating unit operating day'' at 40 CFR part 60, subpart Db; and ''steam generating unit operating day'' at 40 CFR part 60, subpart Dc.

Florida's Supplemental SSM SIP Revision then renumbers Rule 62–296.405(1)(c) to Rule 62–296.405(4), renumbers provisions 62–296.405(1)(c)1 through (1)(c)2.c to 62–296.405(4)(a) through (4)(b)3,[14] [15] adds language requiring demonstration of compliance by fuel sampling unless a SO_2 CEMS is used, and specifies the manner of demonstrating compliance when a SO_2 CEMS is used. Under the existing SIP rule, the SO_2 emission limits applicable to existing sources only require compliance to be determined via ''applicable compliance methods.'' In Florida's Supplemental SSM SIP Revision, FDEP notes that the applicable compliance methods at existing Rule 62–296.405(1)(e)3 would be either fuel sampling or SO_2 CEMS. Where SO_2 CEMS are required, such as for sources subject to Appendix P of 40 CFR part 51 or subject to the NSPS, FDEP specifies the averaging period applicable to the SO_2 emission limit as a 24-hour block average limit. Prior to this change, no averaging time was specified for certain applicable emission limits, and the SIP did not require compliance with the emission limits during periods of SSM. EPA is proposing to find that these changes clarify the existing emission limits, specify appropriate methods for determining compliance, and ensure that instances of non-compliance during periods of SSM can be evaluated, consistent with the removal of exemptions from applicable SIP emission limits in the Excess Emissions Rule SIP Revision.

Florida's Supplemental SSM SIP Revision also renumbers Rule 62–296.405(1)(d) to Rule 62–296.405(5); renumbers provisions 62–296.405(1)(d)1 through (1)(d)4 to 62–296.405(5)(a) through (5)(d), respectively; adds language requiring demonstration of compliance by stack testing unless a NO_X CEMS is used; and specifies the manner of demonstrating compliance when a NO_X CEMS is used.[16] Under the existing SIP rule, the NO_X emission limits applicable to existing sources only requires compliance to be determined via ''applicable compliance methods.'' In this SIP revision, FDEP notes that the applicable compliance methods at existing Rule 62–296.405(1)(e)4. would be either stack testing or NO_X CEMS. Where NO_X CEMS are required, such as for sources subject to Appendix P of 40 CFR part 51 or subject to the NSPS, FDEP specifies the averaging period applicable to the NO_X emission limit as a 30-operating day average limit. Prior to this change, the applicable emission limits did not specify any averaging times, and the SIP did not require compliance with the emission limits during periods of SSM. EPA is proposing to find that these changes clarify the existing emission limits, specify appropriate methods for determining compliance, and ensure that periods of non-compliance during periods of SSM can be evaluated, consistent with the removal of exemptions from applicable SIP emission limits in the Excess Emissions Rule SIP revision.

Next, Florida's Supplemental SSM SIP Revision renumbers Rule 62–296.405(1)(e) to Rule 62–296.405(6); renumbers Rules 62–296.405(1)(e)1 and 2 to Rules 62–296.405(6)(a) and (6)(b), respectively; adds language specifying that a PM CEMS may be used for demonstrating compliance with the PM limit in Rule 62–296.405(3) in lieu of EPA Methods 17, 5, 5B or 5F (*i.e.,* in lieu of stack testing); and requires that any such PM CEMS must comply with EPA's Performance Specification 11 of 40 CFR part 60, Appendix B, as adopted and incorporated by reference into Rule 62–204.800.[17] The Supplemental SSM SIP Revision then renumbers Rules 62–296.405(1)(e)3 and (e)4 to Rules 62–296.405(6)(c) and (6)(d), respectively, and further amends Rule 62–296.405(6)(d) to exclusively require a NO_X CEMS for determining compliance, removing the references to stack testing for NO_X. This change means that the remaining existing emissions units subject to Rule 62–296.405(5) are required to install and operate CEMS for NO_X emissions. This provision continues to require CEMS to meet the requirements of 40 CFR part 75, as adopted and incorporated by reference in Rule 62–204.800. Additionally, Rule 62–296.405(1)(e)5 is renumbered to Rule 62–296.405(6)(e), and Rule 62–296.405(1)(f) through (1)(f)2 are renumbered to Rule 62–296.405(7) through (7)(b), respectively.

Finally, Florida's Supplemental SSM SIP Revision renumbers Rules 62–296.405(1)(g) and .405(3) to Rules 62–296.405(8) and .405(9), respectively, and makes additional changes to 62–296.405(8). Specifically, the revisions to Rule 62–296.405(8) change the frequency at which excess emissions reports are required to be submitted from quarterly to semi-annual, define the period covered by each semi-annual report, and define the submittal deadline for each report. The change in reporting frequency is consistent with the minimum reporting requirements of Appendix P to 40 CFR part 51. As discussed in section II.B.1, revising the frequency of reports of excess emissions to align with the federal minimum requirements and with other overlapping requirements, such as title V reporting, will not override any more stringent reporting requirements, will not cause any changes in allowable pollutant emissions, and will not otherwise interfere with the State's ability to attain and maintain the NAAQS or interfere with any other applicable CAA requirement, and as such, is consistent with CAA section 110(l). Therefore, because the changes to Rule 62–296.405 are generally clarifying in nature and consistent with federal requirements, EPA is proposing to approve these changes submitted in Florida's Supplemental SSM SIP Revision.

3. Rule Section 62–296.408 Nitric Acid Plants

In Florida's Supplemental SSM SIP Revision, FDEP proposes several changes to Rule 62–296.408, ''Nitric Acid Plants.'' Specifically, Florida's Supplemental SSM SIP Revision deletes the production-based short-term 3-hour average NO_X emission limit of 3.0 lbs/ton of 100 percent acid produced in Rule 62–296.408(2) and deletes the NO_X test methods listed in Rule 62–296.408(3)(b) (which prescribe stack testing), and it marks both deleted provisions as ''[Reserved].'' The existing Rule 62–296.408(2) production-based NO_X emission limit of 3.0 lbs/ton of 100 percent acid produced was not originally intended to be applicable during periods of SSM because (1) the methodology to calculate compliance with a rolling three-hour production-

[14] On March 30, 2023, Florida provided a partial withdrawal and clarification letter related to the April 1, 2022, and September 30, 2022, SIP revisions. In this letter, FDEP withdraws the removal of requirements at 62–296.405(1)(c)1.g. and 62–296.405(1)(d)2. as transmitted in the April 1, 2022, SIP revision, from EPA consideration. The letter further clarifies that with the retention of these requirements for Florida Power and Light's Manatee Power Plant in the April 1, 2022, SIP revision, the State is amending its request for what will be part of the SIP with the approval of the September 30, 2022, SIP revision. FDEP requests that EPA recodify these provisions along with other relevant renumbering to 62–296.405(3)(a)7. and 62–296.405(5)(b), respectively. This letter is in the docket for this proposed action.

[15] The September 30, 2022, SIP revision shows that Rule 62–296.405(1)(c)2.d is proposed to be renumbered to 62–296.405(4)(b)4; however, EPA notes that the April 1, 2022, SIP revision proposes to remove this specific provision from the SIP and includes a noninterference demonstration pursuant to CAA section 110(l). As noted previously in this NPRM, EPA is addressing the April 1, 2022, changes in Rule 62–296.405 in a separate rulemaking. EPA believes the September 30, 2022, SIP revision does not intend to reintroduce this provision for approval into the SIP.

[16] *See supra* note 14.

[17] Rule 62–204.800 adopts and incorporates by reference Federal rules cited throughout FDEP's air pollution rules.

based limit is skewed by the lack of production during hours of startup and shutdown, and (2) the corresponding NSPS at 40 CFR part 60, subpart G, on which the Florida emission limit for new units is based, exempted periods of SSM via performance testing requirements in subpart A to part 60 in the original promulgation of part 60 and as subsequently clarified.[18] The current SIP-approved version of Rule 62–210.700 provided that excess emissions during periods of SSM were allowed.

There are currently two NAPs in Florida subject to this Rule, Ascend Pensacola and Trademark Nitrogen. To replace the deleted production-based limits, FDEP is proposing to incorporate into the SIP a NO_X emission limit of 2.6 lbs/ton of 100 percent nitric acid produced based on a longer-term (720-hour) averaging period for Emissions Unit 042 at Ascend Pensacola and a NO_X emission limit of 2.6 lbs/ton of nitric acid produced based on a longer-term (30-day) averaging period for Emissions Unit 001 at Trademark Nitrogen. Although 720 hours is equivalent to 30 days, these two different rolling averages result in slightly different recordkeeping: Ascend Pensacola demonstrates compliance on an hourly rolling average, whereas Trademark Nitrogen demonstrates compliance on a daily rolling average. Both proposed longer-term NO_X emission limits, which apply at all times, including periods of SSM, are comparably stringent to the current NO_X emission limit of 3.0 lbs/ton of 100 percent acid produced in Rule 62–296.408. For both Ascend Pensacola and Trademark Nitrogen, FDEP is also proposing to incorporate into the SIP shorter-term 3-hour average emission limits of 3.0 lbs/ton of 100 percent nitric acid produced, which do not apply during periods of SSM. Thus, for steady-state operation, the NO_X emission limit in existing Rule 62–296.408 will be carried forward as source-specific emission limits for both facilities.

FDEP has issued construction permits containing the proposed longer-term NO_X emission limits as well as the short-term NO_X emission limit of 3.0 lbs/ton of 100 percent acid produced, which is proposed for deletion from the SIP but will continue to exist in the permits. Therefore, Ascend Pensacola and Trademark Nitrogen will be subject to both the same 3-hour average NO_X emission limit of 3.0 lbs/ton of 100 percent acid produced, which specifically excludes periods of SSM, as well as the continuous 30-day (or, for Ascend Pensacola, 720-hour) average NO_X emission limit of 2.6 lbs/ton of 100 percent acid produced. Thus, these facilities are subject to two limits, one which is continuous, *i.e.,* applies at all times, and therefore provides a limit that covers periods of SSM.

EPA is proposing to approve Florida's Supplemental SSM SIP Revision to remove the existing NO_X limit from Rule 62–296.408 and incorporate the source-specific permit limits because the source-specific emission limits submitted to EPA are continuous and at least as stringent as the existing SIP-approved limit. Refer to sections II.B.5.i, vii and viii of this NPRM for further discussion on the emissions-unit-specific NO_X emission limits, the methodology used for developing those emission limits, and the rationale for the substitution of these limits for the existing SIP-approved emission limits included at 62–296.408, which support EPA's proposed action.

4. Rule Section 62–296.570, Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO_X-Emitting Facilities

In Florida's Supplemental SSM SIP Revision, FDEP proposes to revise Rule Section 62–296.570, ''Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO_X-Emitting Facilities.'' Specifically, FDEP amends Rule 62–296.570(4)(c) by deleting the term ''Exception'' from the prefatory text and ''at all times except'' as a limitation on the applicability of the emission limits in the Rule. The proposed amendment removes an exception for periods of SSM, ensuring that RACT emission limits in Rule 62–296.570 apply at all times and during all modes of operation, consistent with revised Rule 62–210.700. Therefore, EPA is proposing to approve this change to Rule 62–296.570 because this language, as revised, is consistent with the 2015 SSM Policy.

5. Florida's Source-Specific SO_2 and NO_X Emission Limits

On June 2, 2010, the EPA Administrator signed a final rule setting a new SO_2 NAAQS as a 1-hour standard of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. *See* 75 FR 35520 (June 22, 2010). That action also revoked the 1971 annual and 24-hour SO_2 NAAQS, subject to certain conditions. Whenever a NAAQS is revised, the CAA requires EPA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. *See* 75 FR 35520. EPA completed four ''rounds'' of designations for the 2010 1-hour SO_2 NAAQS.[19] In two of these rounds of air quality designations, three areas in Florida were designated nonattainment.[20]

To assist states in demonstrating attainment with the primary 2010 1-hour SO_2 NAAQS, EPA issued a guidance document titled ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions'' (SO_2 Nonattainment Guidance) on April 23, 2014.[21] The SO_2 Nonattainment Guidance provides EPA's recommended procedures for demonstrating that a nonattainment area will attain the 2010 1-hour SO_2 NAAQS. Among other things, it provides guidance for using a statistical analysis to determine NAAQS-protective longer-term emission limits for sources with variable emissions. This procedure involves compiling a representative distribution, or sample set, of actual emissions data on a 1-hour average, using these data to compute a corresponding distribution of longer-term emission averages, and then calculating the ratio of the 99th percentile of the longer-term values to the 99th percentile of the hourly values. The calculation of this ''equivalency ratio'' of 99th percentile emissions results in the relative ''smoothing'' of emissions values recorded in the shorter-term averaging period by reducing the variability in the data assessed and can be used to scale down the value of a longer-term average emission limit to make it comparably stringent to a shorter-term average emission limit.

In accordance with the SO_2 Nonattainment Guidance, an analysis for determining a NAAQS-protective longer-term average emission limit requires determination of a ''critical emission value'' (CEV), that is, the maximum 1-hour emissions rate that provides for attainment as indicated by modeling. Once determined through modeling, the CEV is adjusted downward by the equivalency ratio to obtain a lower emission rate of comparable stringency to the modeled 1-hour average emission rate. The longer the averaging period, the smaller the equivalency ratio will be. Comparison of the modeled 1-hour limit to longer-term

[18] *See supra* note 5.

[19] *See* Sulfur Dioxide Designations—Regulatory Actions, *https://epa.gov/sulfur-dioxide-designations/sulfur-dioxide-designations-regulatory-actions.*

[20] *See* 78 FR 47191 (August 5, 2013), 83 FR 1098 (January 9, 2018).

[21] *See* SO_2 Nonattainment Guidance, *https://www.epa.gov/so2-pollution/guidance-1-hour-sulfur-dioxide-so2-nonattainment-area-state-implementation-plans-sip.*

(*e.g.,* 6-hour, 24-hour, 720-hour) average limits, in particular an assessment of whether the longer-term average limit may be of comparable stringency to the 1-hour CEV, is critical for demonstrating that any longer-term average limit in the SIP will ensure that the SIP will provide for attainment and maintenance of the 1-hour NAAQS. Florida employed this approach to develop limits for several SAPs in its nonattainment areas and in one unclassifiable area, as designated at the time of the SIP revisions containing those limits. All SO_2 nonattainment and unclassifiable areas in Florida have since been redesignated to attainment or attainment/unclassifiable.[22]

The Supplemental SSM SIP Revision contains longer-term average emission limits which are comparably stringent to a shorter-term average limit as it seeks to replace SIP emission limits for SAPs and NAPs that are based on a 3-hour average and only applicable to steady-state operation with continuous emission limits that also apply during periods of SSM. The use of longer-term averaging periods could help to help account for the additional variability in emissions introduced when considering all modes of operation. More detail is provided with respect to the NAPs and the remaining SAPs in the State in the following sections.

i. Methodology for Developing Continuous SO_2 Emission Limits

In the Supplemental SSM SIP Revision, Florida proposes use of a similar approach for developing longer-term average SO_2 emission limits which are of comparable stringency to the current shorter-term (3-hour) SO_2 emission limits in Florida's SIP. Currently, SO_2 emissions for new SAPs are limited by Rule 62–296.402(2) to 4.0 lbs/ton of acid produced, averaged over a 3-hour period. Comparable longer-term (24-hour) emission limits were calculated by substitution of the Rule 62–296.402(2) emission limit of 4.0 lbs/ton of acid produced in place of a CEV. Using this approach, FDEP proposes source-specific permit limits that are comparably stringent to the current SIP-approved emission limits, but which allow for emissions variability (*e.g.,* during periods of startup).

Making use of available CEMS data, FDEP compared the 99th percentile 3-hour average emission values to the 99th percentile 24-hour average emission values to develop the source-specific equivalency ratios. To be additionally conservative, FDEP also compared the 99th percentile 1-hour average emission values, which would include more data variability than the 3-hour values, to the 99th percentile 24-hour average emission values to develop alternative equivalency ratios. As Florida sought to establish a mass-based (hourly) emission limit, the State multiplied the capacity of the SAPs by the Rule 62–296.402 production-based limit to determine the maximum hourly emissions permitted for steady-state periods. An appropriate longer-term emission limit was then calculated as the product of the hourly representation of the Rule 62–296.402(2) emission limit and the equivalency ratio at the selected longer-term averaging period. FDEP then worked with the sources to develop continuous longer-term average emission limits in construction permits and submit those permit conditions for incorporation into the SIP. In each case, the SAPs were permitted with emission limits at least as stringent as the methodology for determining a comparably stringent longer-term average emission limit and either equivalency ratio would produce. Table 1 shows equivalency ratios over different averaging times for the Nutrien White Springs and Mosaic South Pierce SAPs. The TECO Polk SAP is not included in Table 1, because this unit is not equipped with CEMS data, which is discussed in further detail in section II.B.5.v of this NPRM. The other 11 SAPs subject to Rule 62–296.402 at Mosaic Fertilizer's Riverview facility (Mosaic Riverview), Mosaic Fertilizer's Bartow facility (Mosaic Bartow), and Mosaic Fertilizer's New Wales facility (Mosaic New Wales) are not included in Table 1, because these SAPs already have continuous limits approved into the SIP, which is discussed in further detail in section II.B.5.vi of this NPRM.

TABLE 1—CALCULATED EQUIVALENCY RATIOS FOR SO_2 EMISSIONS

Facility	Emissions unit	Equivalency ratio (6-hr:1-hr)	Equivalency ratio (24-hr:1-hr)	Equivalency ratio (24-hr:3-hr)
Nutrien White Springs	066–SAP E	0.976	0.940	0.950
	067–SAP F	0.963	0.899	0.914
Mosaic South Pierce	004–#10 SAP	0.991	0.986	0.991
	005–#11 SAP	0.986	0.969	0.976

Scaling the hourly emissions by an equivalency ratio in Table 1 provides a comparably stringent mass-based limit. As an example, the calculation for Mosaic South Pierce would be as follows. The #10 and #11 SAPs each have a capacity of 3,000 tons of sulfuric acid produced per day, so the equivalent mass-based emissions (lbs/hr) are determined by:

$$\frac{4.0\ \text{lbs}\ SO_2}{\text{ton sulfuric acid produced}} \cdot \frac{3{,}000\ \text{tons sulfuric acid produced}}{\text{day}} \cdot \frac{1\ \text{day}}{24\ \text{hr}} = 500 \frac{\text{lbs}\ SO_2}{\text{hr}}.$$

The collective emissions across both SAPs is then 1,000 lbs/hr SO_2. The average of the two 24-hr:1-hr equivalency ratios for these units would be 0.978. The adjustment to the longer-term average comparably stringent emission cap across both units would be:

[22] *See* 84 FR 17085 (April 24, 2019), 84 FR 60927 (November 12, 2019), and 85 FR 9666 (February 20, 2020).

$$1{,}000\frac{\text{lbs } SO_2}{\text{hr}} \cdot 0.978 = 978\frac{\text{lbs } SO_2}{\text{hr}}.$$

For comparison purposes, the equivalent maximum production-based emissions would be:

$$\frac{978 \text{ lbs } SO_2}{\text{hr}} \cdot \frac{24 \text{ hr}}{\text{day}} \cdot \frac{1 \text{ day}}{6{,}000 \text{ tons sulfuric acid produced}} = \frac{3.91 \text{ lbs } SO_2}{\text{ton sulfuric acid produced}}.$$

The final selected ratio is 0.750, as agreed upon by FDEP and Mosaic South Pierce, and is described in further detail in section B.5.iv of this NPRM. At the final selected ratio of 0.750, the selected longer-term average comparably stringent emission limit would be:

$$1{,}000\frac{\text{lbs } SO_2}{\text{hr}} \cdot 0.750 = 750\frac{\text{lbs } SO_2}{\text{hr}} < 978\frac{\text{lbs } SO_2}{\text{hr}}.$$

The final equivalent mass rate for comparison purposes would be:

$$\frac{750 \text{ lbs } SO_2}{\text{hr}} \cdot \frac{24 \text{ hr}}{\text{day}} \cdot \frac{\text{day}}{6{,}000 \text{ tons sulfuric acid produced}} = \frac{3.00 \text{ lbs } SO_2}{\text{ton sulfuric acid produced}}$$

$$< \frac{3.91 \text{ lbs } SO_2}{\text{ton sulfuric acid produced}}.$$

ii. Methodology for Developing Continuous NO_X Emission Limits

On January 22, 2010, EPA strengthened the health-based standard for nitrogen dioxide (NO_2) by setting a new 1-hour standard of 100 ppb. In addition to establishing an averaging time and level, the EPA Administrator also set a new form for the standard. The form for the 1-hour NO_2 standard is the 3-year average of the 98th percentile of the annual distribution of daily maximum 1-hour average concentrations. The rule also retained, with no change, the current annual average NO_2 standard of 53 ppb. *See* 75 FR 6474 (February 9, 2010). No areas in Florida were designated nonattainment for the 2010 NO_2 NAAQS.[23]

Florida uses an approach similar to the methodology employed to develop its proposed longer-term average SO_2 emission limits for developing proposed longer-term average NO_X emission limits which are of comparable stringency to the shorter-term NO_X emission limit currently in Florida's SIP. Currently, NO_X emissions for new and existing NAPs are limited by Rule 62–296.408(2) to 3.0 lbs/ton of 100 percent nitric acid produced. Comparable longer-term (720-hour and 30-day) NO_X emission limits were calculated by applying the comparably stringent concept utilized in the SO_2 Guidance to the Rule 62–296.408(2) emission limit of 3.0 lbs/ton of 100 percent acid produced. In other words, FDEP used the current SIP-approved NO_X emission limit to develop the new longer-term average continuous emission limit.

The production-based ratio of lb NO_X/ton of nitric acid produced is skewed during periods where nitric acid production is significantly decreased, such as startup or shutdown. Accordingly, the variability in those periods may not reflect the variability in NO_X emissions coming out of the stack, as the ratio of emissions/production can be altered by either component. To evaluate the actual variability in emissions, FDEP analyzed the CEMS data in lbs/hr to determine the equivalency ratios rather than the change in emission-to-production ratios over time. Specifically, FDEP compared the 98th percentile 1-hour and 3-hour average emission values in lbs/hr to the 98th percentile 30-day average emission values to develop the source-specific equivalency ratios.[24] The continuous, source-specific emission limit was then calculated as the product of the Rule 62–296.408(2) emission limit and the equivalency ratio at the selected longer-term averaging period.

The State subsequently worked with the sources to develop continuous longer-term average emission limits in construction permits and submit those permit conditions for incorporation into the SIP. The NAPs were permitted with emission limits at least as stringent as the methodology for determining a comparably stringent longer-term average emission limit and either equivalency ratio would produce. Table 2 shows equivalency ratios over different averaging times for the Ascend Pensacola NAP. The Trademark Nitrogen NAP is not included in Table 2 because, although this unit is equipped with CEMS, that source's data is not digitized and readily available for this type of analysis. The Ascend Pensacola data was utilized for both NAPs subject to Rule 62–296.408. This

[23] *See* 77 FR 9532 (February 17, 2012).

[24] While the 2010 NO_2 NAAQS, like the 2010 SO_2 NAAQS, utilizes a 1-hour averaging period, the form of the NO_2 NAAQS is the 98th percentile rather than the 99th percentile.

is discussed in further detail in section II.B.5.viii of this NPRM.

TABLE 2—CALCULATED EQUIVALENCY RATIOS FOR NO_X EMISSIONS

Facility	Emissions unit	Equivalency ratio (720-hr:1-hr)	Equivalency ratio (720-hr:3-hr)
Ascend Pensacola	042—NAP	0.950	0.958

Scaling the existing steady-state SIP limit by an equivalency ratio in Table 2 provides a comparably stringent longer-term average emission limit. Scaling the production-based limit by the equivalency ratio is the same as scaling the maximum hourly emissions and subsequently converting it to the equivalent ratio of pounds per ton (lbs/ton) of nitric acid produced at the maximum throughput. The Ascend Pensacola NAP has a capacity of 1,500 tons of nitric acid produced per day, so the equivalent mass-based emissions (lbs/hr) are determined by:

$$\frac{3.0\ \text{lbs NOx}}{\text{ton nitric acid produced}} \cdot \frac{1{,}500\ \text{tons nitric acid produced}}{\text{day}} \cdot \frac{1\ \text{day}}{24\ \text{hr}} = 187.5 \frac{\text{lbs NOx}}{\text{hr}}.$$

The adjustment to the longer-term average comparably stringent emission cap with use of the 720-hr:1-hr equivalency ratio of 0.950 would be:

$$187.5 \frac{\text{lbs NOx}}{\text{hr}} \cdot 0.950 = 178.1 \frac{\text{lbs NOx}}{\text{hr}}.$$

$$\frac{178.1\ \text{lbs NOx}}{\text{hr}} \cdot \frac{24\ \text{hr}}{\text{day}} \cdot \frac{1\ \text{day}}{1{,}500\ \text{tons nitric acid produced}} = \frac{2.85\ \text{lbs NOx}}{\text{ton nitric acid produced}};$$

or

$$\frac{3.0\ \text{lbs NOx}}{\text{ton nitric acid produced}} \cdot 0.950 = \frac{2.85\ \text{lbs NOx}}{\text{ton nitric acid produced}}$$

The final selected ratio is 0.867, as agreed upon by FDEP and Ascend Pensacola, and is described in further detail in section B.5.vii of this NPRM. At the final selected ratio of 0.867, the selected longer-term average comparably stringent emission limit would be:

$$\frac{3.0\ \text{lbs NOx}}{\text{ton nitric acid produced}} \cdot 0.867 = \frac{2.6\ \text{lbs NOx}}{\text{ton nitric acid produced}} < \frac{2.85\ \text{lbs NOx}}{\text{ton nitric acid produced}};$$

or

$$187.5 \frac{\text{lbs NOx}}{\text{hr}} \cdot 0.867 = 162.6 \frac{\text{lbs NOx}}{\text{hr}} < 178.1\ \frac{\text{lbs NOx}}{\text{hr}}.$$

While a final longer-term average mass-based emission limit in lbs/hr is more straightforward, the State can set the final longer-term average limit as a production-based limit in units of lbs/ton of nitric acid produced. A source is more vulnerable to periods of low production of nitric acid with the emission limit in the lbs/ton of nitric acid form because such periods of low production can skew the ratio high, even if NO_X emissions from the source have not significantly increased. However, with the 720-hour and 30-day rolling averaging times, these periods of low production will not be as likely to result in noncompliance as the 3-hour averaging time for the Rule 62–296.408 limit would be. Generally, in periods with decreased production of nitric acid, the source is still motivated to compensate with decreased emissions to bring the ratio of lbs/ton of nitric acid produced downward. In the alternative, should the source emit at significantly higher lbs/hr rates, the source would be unable to compensate by increasing the production of nitric acid beyond what the unit is rated for. Therefore, the lbs/ton of nitric acid produced form of the emission limit is not less stringent than a mass-based (lbs/hr) emission limit would be.

Based on the modified methodology (*i.e.,* substituting SO_2 and NO_X emission limits from Rules 62–296.402(2) and 62–296.408(2) for the modeled CEV in the SO_2 Guidance), FDEP proposes that emissions-unit-specific emission limits be incorporated into the SIP as comparably stringent longer-term emission limits, thereby providing continuous emission limits for these facilities upon approval of Florida's Supplemental SSM SIP Revision. These emission limits would be applicable at all times and during all modes of

operation, including periods of SSM. Each emission limit was included in construction permits issued recently by FDEP. Using this approach, any emission limit established for a source with an averaging time longer than one hour would be set at a level that is sufficiently lower to provide a comparable degree of stringency as the existing 3-hour SIP emission limit. The adjusted longer-term limit would allow occasional emission spikes above the limit during shorter averaging periods, but this adjusted limit would also require emissions to be lower for most of the averaging period than they would be required to be with a 3-hour emission limit. Thus, the longer-term average emission limit, when adjusted for comparable stringency, will result in reduced overall allowable emissions at the longer-term averaging time and beyond, and will require the source to minimize any excursions above the previous 3-hour averaging period. The development of these emission limits for each facility, and assessment of the impacts to the SIP, are discussed in greater detail in sections II.B.5.iii–viii below.

iii. Nutrien White Springs, Emissions Units 066 and 067 (SAPs E and F)

Permit 0470002–132–AC, issued to Nutrien White Springs on September 22, 2022, imposes a combined longer-term SO_2 emissions cap of 840 lbs/hr, based on a 24-hour block averaging period (0600 hours to 0600 hours) for SAPs E and F, requires that initial and ongoing compliance demonstrations be based on SO_2 CEMS data, and specifies recordkeeping requirements applicable to the combination of Emissions Unit 066 (SAP E) and Emissions Unit 067 (SAP F). By permit, these conditions became effective January 1, 2023. SAPs E and F are both subject to this SO_2 emissions cap during all times of operation, including periods of SSM; however, the 24-hour block average must omit data generated during any hours when both SAPs are not operating. Florida's Supplemental SSM SIP Revision requests that EPA incorporate this emissions limit and associated monitoring, recordkeeping, and reporting requirements into the SIP.

The longer-term SO_2 emission cap is in addition to an existing 3-hour rolling average SO_2 emission limit of 2.6 lbs/ton of sulfuric acid produced, which does not include periods of SSM, and a 365-day rolling average SO_2 emission limit of 2.3 lbs/ton of sulfuric acid produced on a 365-day rolling average that does include SSM. Florida also submitted the 3-hour rolling average and 365-day rolling average limits to EPA for incorporation into the SIP via an October 8, 2021, SIP revision, which EPA will address in a separate action.

The longer-term 24-hour SO_2 emission limit was calculated based on an equivalency ratio of 0.916, which FDEP and Nutrien White Springs agreed upon as a conservative equivalency ratio. The agreed-upon equivalency ratio corresponds with the lower end of the calculated 24-hour to 3-hour equivalency ratios for SAPs E and F listed in Table 1 and is less than the average of the two equivalency ratios calculated for these emissions units and, therefore, results in a more stringent emission limit across the two SAPs. The proposed SO_2 emission limit of 840 lbs/hr (24-hour average) is based on concurrent operation of SAPs E and F at the maximum permitted hourly throughput rate for each unit. Table 3 compares the existing Rule limit to the proposed source-specific SIP limit.

TABLE 3—NUTRIEN WHITE SPRINGS, COMPARISON OF EXISTING RULE AND PROPOSED SOURCE-SPECIFIC EMISSION LIMITS

Emission unit	Sulfuric acid capacity (tpd)	Current production-based SIP limit [a]			Proposed source-specific SIP limit [b]		
		SO_2 limit (lbs/ton acid produced) [3-hr avg]	Combined calculated SO_2 hourly emissions (lbs/hr) [3-hr avg]	Combined maximum annual SO_2 emissions (tpy) [c]	Combined calculated SO_2 production emission (lbs/ton) [24-hr avg]	Combined hourly SO_2 limit (lbs/hr) [24-hr avg]	Combined maximum annual SO_2 emissions (tpy)
066 (SAP E)	2,750	4	917	4,015	3.67	840	3,679
067 (SAP F)	2,750	4					

[a] Rule 62–296.402(2).
[b] Permit No. 0470002–132–AC. Based on an equivalency ratio of 0.916 agreed upon by FDEP and Nutrien.
[c] tpy = tons per year.

Regarding the two SAPs at Nutrien White Springs, EPA has evaluated the incorporation of the new hourly emission limit against removal of the historical production-based limits in Rule 62–296.402 from the SIP considering the requirements of CAA section 110(l), which provides that EPA shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. In its submission, FDEP provides an analysis utilizing a methodology similar to the approach outlined in the SO_2 Nonattainment Guidance for developing a long term, 24-hr block averaging period (0600 hours to 0600 hours) SO_2 emission limit, applicable at all times during operation, for the combination of Emissions Units 006 (SAP E) and 067 (SAP F) at the Nutrien White Springs facility that is comparably stringent to the Rule 62–296.402(2) SO_2 emission limit in Florida's SIP.

Given that the proposed source-specific hourly limit applies at all times, it is more stringent for periods of SSM than the existing Rule 62–296.402 limit, which does not apply during these periods. Furthermore, EPA is proposing to find that the source-specific emission limit is consistent with the 2015 SSM Policy and helps FDEP achieve consistency with the 2015 SSM SIP Action across its SIP by eliminating an emission limit that does not apply at all times and including an emission limit that applies at all times. Table 3 shows that the new source-specific limit is comparably stringent to the existing Rule 62–296.402 3-hour emission limit for non-SSM periods of operation. Additionally, Florida selected a 24-hour average source-specific emission limit that is more stringent than one calculated using the equivalency ratios in Table 1 (840 lbs/hr versus 844 lbs/hr). Therefore, EPA does not expect emissions to increase as a result of removing the existing Rule 62–296.402 production-based emission limit. Additionally, EPA notes that these units remain subject to the equivalent 3-hour average emission limit covering steady-

state operation pursuant to 40 CFR part 60, subpart H. Thus, the 3-hour average allowable emissions applicable to steady-state (non-SSM) operation will not be relaxed, even with the removal of the Rule 62–296.402 3-hour emission limit.

The proposed 24-hour SO_2 emission limit for SAPs E and F at Nutrien White Springs is of comparable stringency to the emission limit in Rule 62–296.402. Because the facility will have a permanent and federally enforceable SIP-approved emission limit that is comparably stringent to the existing Rule limit and that applies at all times, EPA proposes to remove the emission limit at Rule 62–296.402(2)(b) from the SIP.

iv. Mosaic Fertilizer, South Pierce Facility, Emissions Units 004 and 005 (SAPs 10 and 11)

Permit 1050055–037–AC, issued to Mosaic South Pierce on September 22, 2022, imposes a combined longer-term SO_2 emissions cap of 750 lbs/hr based on a 24-hour block averaging period (0600 hours to 0600 hours) for SAP #10 and #11, specifies initial and ongoing compliance demonstrations be based on SO_2 CEMS data, and specifies recordkeeping requirements applicable to the combination of Emissions Unit 004 (SAP #10) and Emissions Unit 005 (SAP #11). By permit, the conditions became effective April 1, 2023. SAP #10 and #11 are collectively subject to a longer-term SO_2 emissions cap during all times of operation, including periods of SSM. The 24-hour block average does not include any hours during which both SAPs are not operating. Florida's Supplemental SSM SIP Revision requests that EPA incorporate these emissions limits and associated monitoring, recordkeeping, and reporting requirements into the SIP.

The longer-term 24-hour SO_2 emissions cap was calculated based on an equivalency ratio of 0.750, which FDEP and Mosaic agreed upon as a conservative ratio. This factor is far less than the calculated 24-hour to 3-hour equivalency ratios for SAPs #10 and #11, as shown in Table 1, and results in proposed source-specific SIP emission limits that are more conservative than called for by the comparable stringency approach. The proposed SO_2 emission limit of 750 lbs/hr (24-hour average) is based on concurrent operation of SAP 10 and SAP 11 at the maximum permitted hourly throughput rate for each unit. Table 4 compares the existing Rule limit to the proposed source-specific SIP limit.

TABLE 4—MOSAIC FERTILIZER, SOUTH PIERCE, COMPARISON OF EXISTING RULE AND PROPOSED SOURCE-SPECIFIC EMISSION LIMITS

Emission unit	Sulfuric acid capacity (tpd)	Current production-based SIP limit [a]			Proposed source-specific SIP limit [b]		
		SO_2 limit (lbs/ton acid produced) [3-hr avg]	Combined calculated SO_2 hourly emissions (lbs/hr) [3-hr avg]	Combined maximum annual SO_2 emissions (tpy)	Calculated SO_2 production emissions (lbs/ton) [24-hr avg]	Combined hourly SO_2 limit (lbs/hr) [24-hr avg]	Combined maximum annual SO_2 emissions (tpy)
4 (#10 SAP)	3,000	4	1,000	4,380	3	750	3,285
5 (#11 SAP)	3,000	4					

[a] Rule 62–296.402(2).
[b] Permit No. 1050046–083–AC. Based on an equivalency ratio of 0.750 agreed upon by FDEP and Mosaic.

Regarding the two SAPs at Mosaic South Pierce, EPA has evaluated incorporation of the new hourly emission limit against the removal of the historical production-based limits in Rule 62–296.402 from the SIP considering the requirements of CAA section 110(l). In its submission, FDEP provides an analysis utilizing a methodology similar to the approach outlined in the SO_2 Nonattainment Guidance for developing a long term, 24-hr block averaging period (0600 hours to 0600 hours), SO_2 emission limit, applicable at all times during operation, for the combination of Emissions Units 004 and 005 at Mosaic South Pierce that is comparably stringent to the Rule 62–296.402(2) SO_2 emission limit in Florida's SIP.

Given that the proposed source-specific hourly limit applies at all times, it is more stringent for periods of SSM than the Rule limit, which does not apply during these periods. Furthermore, EPA is proposing to find that the source-specific emission limit is consistent with the 2015 SSM Policy and helps FDEP achieve consistency with the 2015 SSM SIP Action across its SIP. Table 4 shows that the new source-specific limit is comparably stringent to the existing Rule 62–296.402 3-hour emission limit for non-SSM periods of operation. Florida selected a 24-hour average source-specific emission limit that is more stringent than one calculated using the equivalency ratios in Table 1 (750 lbs/hr versus 978 lbs/hr). Therefore, EPA does not expect emissions to increase as a result of removing the existing Rule 62–296.402 production-based emission limit. Additionally, EPA notes that these units remain subject to the equivalent 3-hour average emission limit covering steady-state operation pursuant to 40 CFR part 60, subpart H. Thus, the 3-hour average allowable emissions applicable to steady-state (non-SSM) operation will not be relaxed, even with the removal of the Rule 62–296.402 3-hour emission limit.

The 24-hour SO_2 emission limit for SAPs 10 and 11 at the Mosaic South Pierce is of comparable stringency to the emission limits in Rule 62–296.402. Because the facility will have a permanent and federally enforceable SIP-approved emission limit that is as stringent as the Rule limit and that applies at all times, EPA proposes to remove the emission limit at Rule 62–296.402(2)(b) from the SIP.

v. TECO-Polk Power Station, Emissions Unit 004, SAP

Permit 1050233–050–AC, issued to TECO-Polk on September 21, 2022, imposes a longer-term SO_2 emission limit of 48.0 lbs/hr, based on a 6-hour average, specified SO_2 emissions testing by stack test (EPA Method 6C), and adds recordkeeping and recording requirements applicable to the facility's SAP. By permit, these conditions became effective January 1, 2023. Florida's Supplemental SSM SIP Revision requests that EPA incorporate this emissions limit and associated

monitoring, recordkeeping, and reporting requirements into the SIP.

TECO-Polk is not equipped with a SO_2 CEMS, as the facility has never been subject to the NSPS at 40 CFR part 60, subpart H, and is not subject to Appendix P of 40 CFR part 51. Thus, Florida chose to select a longer-term average emission limit that would still allow for stack testing to determine compliance. The State determined that six 1-hour stack test runs could be utilized for a slightly longer-term, 6-hour average emission limit, and that this averaging timeframe would help to account for additional variability in the emissions when applying the limit to all modes of operation. The selected 6-hour emission limit was adjusted downward from the hourly expression of the production-based 3-hour average SIP emission limit, from 49.8 lbs/hr to 48.0 lbs/hr, to account for possible excursions above the limit during shorter averaging periods. The State checked this new emission limit against 6-hour:3-hour and 6-hour:1-hour equivalency ratios for Nutrien White Springs and Mosaic South Pierce SAPs which are equipped with CEMS. Calculated equivalency ratios for these sulfuric acid plants are listed in Table 1. The selected limit is consistent with the smallest fractional 6-hour:1-hour equivalency ratio of 0.963 across these SAPs, calculated for SAP F at the Nutrien White Springs. The 6-hour average emission limit is applicable at all times during operation, including periods of SSM. The proposed SO_2 emission limit of 48.0 lbs/hr (6-hour average) is based on operation of the SAP at TECO-Polk at the maximum permitted hourly throughput rate. Table 5 compares the existing Rule limit to the proposed source-specific emission limit.

TABLE 5—TECO POLK POWER STATION, COMPARISON OF EXISTING RULE AND PROPOSED SOURCE-SPECIFIC EMISSION LIMITS

Emission unit	Sulfuric acid capacity (tpd)	Current production-based SIP limit [a]			Proposed source-specific SIP limit [b]		
		SO_2 limit (lbs/ton acid produced) [3-hr avg]	Calculated SO_2 hourly emissions (lbs/hr) [3-hr avg]	Maximum annual SO_2 emissions (tpy)	Calculated SO_2 production emissions (lbs/ton) [6-hr avg]	Hourly SO_2 limit (lbs/hr) [6-hr avg]	Maximum annual SO_2 emissions (tpy)
004	299	4	49.8	218.3	3.85	48.0	214.6

[a] Rule 62–296.402(2).
[b] Permit No. 1050233–050–AC.

As noted previously, the TECO-Polk SAP is not equipped with a SO_2 CEMS. EPA also notes that annual SO_2 potential emissions from the TECO-Polk SAP, at 214.6 tpy, are an order of magnitude less than the Nutrien White Springs SAPs (3,678 tpy) and Mosaic South Pierce SAPs (3,285 tpy), as can be seen in Tables 3, 4, and 5.[25] Therefore, EPA believes this separate approach to determining a slightly longer-term average emission limit, in the absence of other information, is appropriate.

Regarding the SAP at TECO-Polk, EPA has evaluated incorporation of the new hourly emission limit against the removal of the historical production-based limit in Rule 62–296.402 from the SIP considering the requirements of CAA section 110(l). In its submission, FDEP's methodology for developing a longer-term 6-hour SO_2 emission limit, applicable at all times during operation, for the TECO-Polk Power Station SAP (Emissions Unit 004), was reasonable in the absence of other data, such as CEMS data, and given that the averaging time was only increasing slightly. The State checked that the equivalency ratio for other SAPs equipped with CEMS would result in a similar adjustment downward in moving from a 3-hour average to a 6-hour average emission limit. The resultant longer-term average emission limit is at least as stringent as the current 3-hour SO_2 emission limit at Rule 62–296.402(2) of the Florida SIP and, at the averaging time of 6-hours and beyond, reduces the PTE.

Given that the proposed source-specific hourly limit applies at all times, it is more stringent for periods of SSM than the Rule limit which does not apply during these periods. Furthermore, EPA is proposing to find that the source-specific emission limit is consistent with the 2015 SSM Policy and helps FDEP achieve consistency with the 2015 SSM SIP Action across its SIP. Table 5 shows that the new source-specific limit is as stringent as the existing Rule 62–296.402 3-hour emission limit for non-SSM periods of operation. The selected emission limit would be in line with the most conservative equivalency ratio that SO_2 CEMS data available for SAP E and SAP F at the Nutrien White Springs facility and SAP 10 and SAP 11 at Mosaic South Pierce would determine. Therefore, EPA does not expect emissions to increase as a result of removing the existing Rule 62–296.402 production-based emission limit.

The 6-hour SO_2 emission limit for the SAP at TECO-Polk is at least as stringent as the emission limits in Rule 62–296.402. Because the facility will have a permanent and federally enforceable SIP-approved emission limit that is as stringent as the Rule limit and is applicable at all times, EPA proposes to approve removal of the emission limit at Rule 62–296.402(2)(b) from the SIP.

vi. SAPs With Previously Approved Source-Specific Emissions

Removing the emission limits at Rule 62–296.402 from the SIP would also remove applicable emission limits for several other SAPs in Florida for which EPA has already approved source-specific continuous emission limits that are significantly more stringent than the limits being removed. In addition to the production-based limit of 4.0 lbs/ton of sulfuric acid produced, FDEP is removing the higher emission limit of 10.0 lbs/ton of sulfuric acid produced at Rule 62–296.402(1)(a)2 and 29.0 lbs/ton of sulfuric acid produced at 62–296.402(1)(b)2.

Only ''existing emission units'' in the State (*i.e.,* those which, in accordance with the definitions at Rule 62–210.200 were in existence, in operation, or under construction, or which had received a permit to begin construction prior to January 18, 1972) would have been subject to the less stringent 10.0 lbs/ton of sulfuric acid produced SO_2 emission limit at 62–296.402(1)(b)2, approved in Florida's original SIP submittal. *See* 37 FR 10842 (May 31, 1972). On July 3, 2017, EPA approved SIP revisions

[25] EPA also notes as a practical matter that EU004 at TECO Polk has not operated in recent years due to the facility's combustion of natural gas in lieu of generating syngas from coal and petroleum coke, which would then be treated by the SAP for sulfur removal ahead of combustion.

requiring updated continuous SO_2 emission limits for three SAPs at Mosaic Fertilizer's Riverview facility (Mosaic Riverview): EU 004 (#7 SAP), EU 005 (#8 SAP), and EU 006 (#9 SAP). *See* 82 FR 30749 (July 3, 2017). Two of the SAPs, EU 004 (#7 SAP) and EU 005 (#8 SAP), began operation before January 18, 1972, and are therefore defined in Florida's SIP as ''existing emission units'' even though they have been reconstructed such that the NSPS at 40 CFR part 60, subpart H applies. Consequently, these SAPs at Mosaic Riverview are still subject to the less stringent SO_2 emission limit of 10.0 lbs/ton of sulfuric acid produced at 62–296.402(1)(b)2 as well as the NSPS limit of 4.0 lbs/ton of sulfuric acid produced, which is equivalent to the SIP emission limit in Rule 62–296.402(2)(b). The limit across all three SAPs, transmitted to EPA in an April 3, 2015, SIP revision and approved in the July 3, 2017, final action is significantly more stringent than the 10.0 lbs/ton of sulfuric acid produced limit. Table 8 provides additional information on how the updated 2017-approved emission limits are as stringent as the existing SIP limit proposed for removal. The updated 2017-approved source-specific emission limits for EU 004 and EU 005 are also continuous, applying during periods of SSM, and were also shown to provide for attainment of the 1-hour SO_2 NAAQS.

The less stringent limit of 29.0 lbs/ton of sulfuric acid produced at former 62–296.402(1)(a)2 has only applied to one source, Occidental Chemical Company, which is now Nutrien White Springs.[26] *See* 40 FR 49328 (October 22, 1975). However, the only active SAPs at this facility are EU 066 (SAP E) and EU 067 (SAP F), which are not ''existing emissions units'' under Florida's definition at 62–210.200, and the State notes that they are subject to the emission limit of 4.0 lbs/ton of sulfuric acid produced in the SIP. Therefore, this higher SO_2 emission limit is not applicable to any emission units in the State, and there are no emissions impacts from removing it.

The remaining SAPs—EU6 at the Mosaic Riverview, the three units at Mosaic Fertilizer, Bartow facility (Mosaic Bartow), and the five units at Mosaic Fertilizer, New Wales facility (Mosaic New Wales)—are all subject to the emission limit at 62–296.402(2)(b) of 4.0 lbs/ton of sulfuric acid produced. FDEP notes in its September 20, 2022, submittal that the source-specific longer-term average emission limits for the 11 SAPs across three facilities were more stringent than the SIP emission limits in Rule 62–296.402 because they provided for attainment of the 1-hour SO_2 NAAQS. Additionally, Tables 6 through 8 compare the source-specific SIP emission limits approved by EPA into the SIP in previous actions to the Rule 62–296.402 emission limits. Across all facilities, the total annual emissions allowed under the source-specific SIP emission limits are significantly less than what is allowed under Rule 62–296.402. Additionally, the hourly and production-based emission limits compare favorably, and Table 9 shows that the source-specific emission limits are lower than the production-based limits would be if expressed as hourly limits, and lower than the equivalency ratios in Table 1 used for determining limits that are comparably stringent to the Rule 62–296.402(2)(b) limit. Finally, the hourly limits are continuous, whereas the existing Rule limits proposed for removal only apply during steady-state operation, exempting periods of SSM.

TABLE 6—MOSAIC BARTOW COMPARISON OF EXISTING RULE AND SOURCE-SPECIFIC EMISSION LIMITS

Emission unit	Sulfuric acid capacity (tpd)	Current production-based SIP limit [a]			Approved source-specific SIP limit [b]		
		SO_2 limit (lbs/ton acid produced) [3-hr avg]	Combined calculated SO_2 hourly emissions (lbs/hr) [3-hr avg]	Combined maximum annual SO_2 emissions (tpy)	Combined calculated SO_2 production emissions (lbs/ton) [24-hr avg]	Combined hourly SO_2 limit (lbs/hr) [24-hr avg]	Combined maximum SO_2 emissions (tpy)
012 (No. 4 SAP)	2,600	4	1,300	5,694	3.38	1,100	4,818
032 (No. 5 SAP)	2,600	4					
033 (No. 6 SAP)	2,600	4					

[a] Rule 62–296.402(2)(b).
[b] Permit No. 1050046–050–AC. *See* 85 FR 9666 (February 2, 2017).

TABLE 7—MOSAIC NEW WALES COMPARISON OF EXISTING RULE AND SOURCE-SPECIFIC EMISSION LIMITS

Emission unit	Sulfuric acid capacity (tpd)	Current production-based SIP limit [a]			Approved source-specific SIP limit [b]		
		SO_2 limit (lbs/ton acid produced) [3-hr avg]	Combined calculated SO_2 hourly emissions (lbs/hr) [3-hr avg]	Combined maximum annual SO_2 emissions (tpy)	Combined calculated SO_2 production emissions (lbs/ton) [24-hr avg]	Combined hourly SO_2 limit (lbs/hr) [24-hr avg]	Combined maximum annual SO_2 emissions (tpy)
002 (No. 1 SAP)	3,400	4	2,667	11,680	1.63	1,090	4,774
003 (No. 2 SAP)	3,400	4					
004 (No. 3 SAP)	3,400	4					
042 (No. 4 SAP)	2,900	4					
043 (No. 5 SAP)	2,900	4					

[a] Rule 62–296.402(2)(b).
[b] Permit No. 1050059–106–AC. *See* 85 FR 9666 (February 2, 2020).

[26] *See* additional source historical information at *https://frs-public.epa.gov/ords/frs_public2/fii_query_dtl.disp_program_facility?p_registry_id=110000588640.*

TABLE 8—MOSAIC RIVERVIEW COMPARISON OF EXISTING RULE AND SOURCE-SPECIFIC EMISSION LIMITS

Emission unit	Sulfuric acid capacity (tpd)	Current production-based SIP limit			Approved source-specific SIP limit [a]		
		SO_2 limit (lbs/ton acid produced) [3-hr avg]	Combined calculated SO_2 hourly emissions (lbs/hr) [3-hr avg]	Combined maximum annual SO_2 emissions (tpy)	Combined calculated SO_2 production emissions (lbs/ton) [24-hr avg]	Combined hourly SO_2 limit (lbs/hr) [24-hr avg]	Combined maximum annual SO_2 emissions (tpy)
4 (No. 7 SAP)	3,200	[b] 10	3,025	13,250	1.48	575	2,518
5 (No. 8 SAP)	2,700	[b] 10					
6 (No. 6 SAP)	3,400	[c] 4					

[a] Permit No. 0570008–080–AC. *See* 82 FR 30749 (July 3, 2017).
[b] Rule 62–296.402(1)(b)2.
[c] Rule 62–296.402(2)(b).

TABLE 9—RATIO OF EXISTING SOURCE-SPECIFIC AND PRODUCTION-BASED EMISSION LIMITS FOR MOSAIC BARTOW, NEW WALES, AND RIVERVIEW FACILITIES

Facility	Calculated ratio of facility-wide source-specific limits to rule limits
Mosaic Bartow	0.846
Mosaic New Wales	0.409
Mosaic Riverview Units EU4–EU5	0.148
Mosaic Riverview Unit EU6	0.371

Regarding these 11 SAPs, EPA has already approved continuous hourly emission limits for these facilities into the SIP. EPA is not reopening those underlying actions to approve the source-specific, continuous emission limits into the SIP. EPA instead has evaluated the removal of the historical production-based limits in Rule 62–296.402 from the SIP considering the requirements of CAA section 110(l). Given the SIP-approved hourly limits apply at all times, the limits are more stringent for periods of SSM than the Rule limits which do not apply during these periods. Furthermore, EPA is proposing to find that these source-specific emission limits are consistent with the 2015 SSM Policy and help FDEP achieve consistency with the 2015 SSM SIP Action across its SIP.

The comparison of hourly and production-based emission limits shows that the source-specific limits are more stringent. Additionally, the actual ratios of the 24-hour average source-specific emission limits to the respective 3-hour average emission limits under Rule 62–296.402 presented in Table 9 are much lower than any equivalency ratios determined for similar sources via Florida's methodology to determine appropriate equivalency ratios presented in Table 1. This means that the 24-hour limits established to be comparably stringent to modeled CEVs are more stringent than would be calculated to determine longer-term average limits that are comparably stringent to the Rule 62–296.402 limits. Therefore, emissions are not expected to increase as a result of removing the existing Rule production-based emission limits. Additionally, EPA notes that these units remain subject to the 3-hour average emission limit of 4.0 lbs/ton of sulfuric acid produced covering steady-state operation pursuant to 40 CFR part 60, subpart H. Thus, the 3-hour average allowable emissions applicable to steady-state (non-SSM) operation will not be relaxed, even with the removal of the Rule 62–296.402 3-hour emission limits.

As explained in this section, the previously SIP-approved 24-hour SO_2 emission limits for SAPs at Mosaic Bartow, Mosaic New Wales, and Mosaic Riverview are more stringent than the emission limits in Rule 62–296.402. Because these facilities have existing SIP-approved emission limits that are more stringent than the Rule 62–296.402 limits, EPA proposes to remove the emission limits in Rule 62–296.402 from the SIP.

vii. Ascend Pensacola, Emissions Unit 042, NAP

Construction Permit 0330040–076–AC, issued to Ascend Pensacola on September 20, 2022, imposes a new longer-term NO_X emission limit, expressed as NO_2, of 2.6 lbs/ton of nitric acid produced, based on a rolling 720-hour average. The permit also specifies NO_X emissions testing and monitoring requirements, emissions calculation methods, recordkeeping, and recording requirements applicable to the Nitric Acid Plant (EU 042) at Ascend Pensacola. By permit, the conditions became effective January 1, 2023. Florida's Supplemental SSM SIP Revision requests that EPA incorporate this emissions limit and associated monitoring, recordkeeping, and reporting requirements into the SIP.

The new longer-term NO_X emission limit is in addition to the NSPS, Subpart G, NO_X emission limit, expressed as NO_2, of 3.0 lbs/ton of 100 percent nitric acid produced, based on a 3-hour average excluding periods of SSM, and a maximum allowable annual NO_X emission limit of 285 tons of NO_X per year based on a 365-day rolling total as determined by CEMS data and stack gas flow rate. Florida's Supplemental SSM SIP Revision requests that EPA incorporate into the SIP the 3.0 lbs/ton of 100 percent nitric acid produced limit that excludes periods of SSM. Florida did not request incorporation of the annual limit of 285 tons NO_X per year. This would mean that the only change to what applies during non-SSM periods of operation is that there is now an additional limit that applies over a longer-term averaging period.

The NAP at this facility is equipped with a NO_X CEMS. Data from the facility's NO_X CEMS were used to develop both a 30-day:1-hour equivalency ratio of 0.950 and a 30-day:3-hour equivalency ratio of 0.958. However, the State used an equivalency

ratio of 0.867, which FDEP and Ascend Pensacola agreed upon, in developing the new longer-term NO_X production-based limit of 2.6 lbs/ton (720-hour average) to provide ''reasonable assurance that the [longer-term NO_X] emission limit reflected a highly controlled emission limiting process operating continuously.'' As another point of comparison, equivalent hourly emissions were determined by multiplying the capacity of the NAPs by the Rule 62–296.408 and source-specific production-based limits to determine the maximum hourly emissions permitted. Comparison of emission limits based on the Rule 62–296.408 NO_X emission limit and the proposed new longer-term NO_X emission limit are shown in Table 10.

TABLE 10—ASCEND PENSACOLA, COMPARISON OF EXISTING RULE AND PROPOSED SOURCE-SPECIFIC EMISSION LIMITS

Emission unit	Nitric acid capacity (tpd)	Current SIP limit [a]			Proposed source-specific SIP limit [b]		
		NO_X limit (lbs/ton acid produced) [3-hr avg]	Calculated hourly NO_X emissions (lbs/hr) [3-hr avg]	Maximum annual NO_X emissions (tpy)	NO_X limit (lbs/ton acid produced) [720-hr]	Calculated hourly NO_X emissions (lbs/hr) [720-hr avg]	Maximum annual NO_X emissions (tpy)
042	1,500	3	187.5	821	2.60	162.6	712

[a] Rule 62–296.408(2).
[b] Permit No. 0330040–076–AC. Based on an equivalency ratio of 0.867 agreed upon by FDEP and Ascend. Permit 0330040–076–AC specifies the averaging period of 720 hours which is equivalent to 30 days.

Regarding the NAP at Ascend Pensacola, EPA has evaluated the incorporation of the steady-state source-specific limit and the new longer-term average continuous limit against removal of the historical limit in Rule 62–296.408(2) from the SIP considering the requirements of CAA section 110(l).

In its submission, FDEP completed a reasonable analysis, utilizing a methodology similar to the methodology outlined in the SO_2 Nonattainment Guidance, for developing a longer-term production-based NO_X emission limit, applicable at all times during operation, for the Ascend Pensacola NAP, that is comparable in stringency to the Rule 62–296.408(2) NO_X emission limit in Florida's SIP. The methodology used to calculate the equivalency ratios is similar to the SO_2 Nonattainment Guidance; however, in addition to the substituting the Rule 62–296.408(2) NO_X emission limits for the CEV, calculation of these equivalency ratios further differ from the SO_2 Nonattainment Guidance as the equivalency ratios were calculated as the quotient of the 98th percentile of the longer-term average emissions and the 98th percentile of the short-term average emissions instead of the 99th percentiles, to better align with the form of the 2010 1-hour NO_2 NAAQS.[27] The modified methodology is not a significant change since the equivalency ratio of 0.867 that FDEP and Ascend agreed upon is more conservative than both the 30-day:1-hour equivalency ratio of 0.950 and the 30-day:3-hour equivalency ratio of 0.958. Therefore, the proposed longer-term NO_X emission limit, expressed as NO_2, of 2.6 lbs/ton nitric acid produced on a 720-hour average (*i.e.,* 30-day average) is also more stringent than emission limits that would result from the application of the 30-day:1-hour or the 30-day:3-hour equivalency ratios. Additionally, the proposed longer-term NO_X emission limit applies at all times during operation, including periods of SSM.

Given the proposed source-specific hourly limit applies at all times, it is more stringent for periods of SSM than the Rule limit which does not apply during these periods. Furthermore, EPA is proposing to find that the source-specific emission limit is consistent with the 2015 SSM Policy and helps FDEP achieve consistency with the 2015 SSM SIP Action across its SIP. Table 10 shows that the new longer-term average source-specific limit is comparably stringent to the existing Rule emission limit. Florida selected a 720-hour average source-specific emission limit that is more stringent than one calculated using the ratios in Table 2 (162.6 lbs/hr versus 179.1 lbs/hr).[28] Additionally, emissions will not increase as a result of removing the existing Rule 62–296.408 production-based emission limit for non-SSM periods of operation because EPA is also proposing to approve the equivalent 3-hour average source-specific emission limit into the SIP.

As explained in this section, the proposed 720-hour (30-day) average NO_X emission limit for the NAP at Ascend Pensacola is at least as stringent as the emission limit in Rule 62–296.408(2), and EPA is also approving a 3-hour average limit applicable to steady-state periods that is equivalent to the limit in Rule 62–296.408(2). Because the facility will have permanent and federally enforceable SIP-approved emission limits that together are more stringent than the Rule 62–296.408 limit alone and will now have a limit that applies at all times, EPA proposes to remove the emission limit at Rule 62–296.408(2) from the SIP.

viii. Trademark Nitrogen, Emissions Unit 001, NAP

Construction Permit 0570025–016–AC, issued to the Trademark Nitrogen facility (Trademark Nitrogen) on September 20, 2022, imposes a longer-term NO_X emission limit, expressed as NO_2, of 2.6 lbs/ton of nitric acid produced, based on a rolling 30-day average. The permit also specifies NO_X emissions testing and monitoring requirements, emissions calculation methods, and recordkeeping and recording requirements applicable to the nitric acid plant (EU 001) at Trademark Nitrogen. By permit, the new conditions became effective January 1, 2023. The new longer-term 30-day NO_X emission limit is in addition to the applicable NSPS Subpart G NO_X emission limit of, expressed as NO_2, of 3.0 lbs/ton of 100 percent nitric acid produced, based on a 3-hour average excluding excludes periods of SSM. Florida's Supplemental SSM SIP Revision requests that EPA incorporate this emissions limit and associated monitoring, recordkeeping, and reporting requirements into the SIP. Florida also submits the 3.0 lbs/ton of 100 percent nitric acid produced limit that excludes periods of SSM and associated monitoring, recordkeeping, and reporting requirements for incorporation into the SIP. This would mean that the only change to what applies during non-SSM periods of operation is that there is now an

[27] *https://www.epa.gov/no2-pollution/timeline-nitrogen-dioxide-no2-national-ambient-air-quality-standards-naaqs.*

[28] Or 2.6 lbs/ton of nitric acid produced versus 2.85 lbs/ton of nitric acid produced.

additional limit that applies over a longer-term averaging period.

The Trademark Nitrogen NAP is equipped with a NO_X CEMS, however, the CEMS utilizes a circular chart for recording NO_X emissions data and, therefore, hourly data is not available for determining site-specific equivalency ratios for the Trademark Nitrogen NAP. However, the NAP at this facility and the NAP located at Ascend Pensacola use a closely related chemical process whereby ammonia is oxidized in the presence of a catalyst to form NO_X which is then converted to nitric acid by reaction with water and controlled via process conditions and selective catalytic reduction (SCR).[29] Due to the similar NO_X control processes and the unavailability of hourly data for the Trademark Nitrogen NAP, the new longer-term NO_X emission limit was calculated utilizing the equivalency ratio of 0.867 set for the Ascend Pensacola facility, as discussed in the previous section II.B.5.vii. Comparison of the current SIP NO_X emission limit and the proposed source-specific NO_X emission limit is shown in Table 11.

TABLE 11—TRADEMARK NITROGEN, COMPARISON OF EXISTING RULE AND PROPOSED SOURCE-SPECIFIC EMISSION LIMITS

Emission unit	Nitric acid capacity (tpd)	Current SIP limit[a]			Proposed source-specific SIP limit[b]		
		NO_X limit (lbs/ton acid produced) [3-hr avg]	Calculated NO_X hourly emissions (lbs/hr) [3-hr avg]	Maximum annual NO_X emissions (tpy)	NO_X limit (lbs/ton acid produced) [30-d avg]	Calculated NO_X hourly emissions (lbs/hr) [30-d avg]	Maximum annual NO_X emissions (tpy)
001	150	3	18.8	82.1	2.60	16.3	71.2

[a] Rule 62–296.408(2).
[b] Permit No. 0570025–016–AC. Based on an equivalency ratio of 0.867.

Regarding the NAP at Trademark Nitrogen, EPA has evaluated the incorporation of the steady-state source-specific limit and the new longer-term average continuous limit against removal of the historical limit in Rule 62–296.408(2) from the SIP considering the requirements of CAA section 110(l).

In its submission, FDEP completed a reasonable analysis, utilizing a methodology similar to the methodology outlined in the SO_2 Nonattainment Guidance, for developing a longer-term 30-day NO_X emission limit, applicable at all times during operation, for the Ascend Pensacola NAP, which was then applied to the Trademark Nitrogen facility as a similar source. As noted previously, the Trademark Nitrogen NAP does not have readily available digitized CEMS data. EPA also notes that annual NO_X potential emissions from the Trademark Nitrogen NAP, at 71 tpy, are an order of magnitude less than the Ascend Pensacola NAP, at 712 tpy, as can be seen in Tables 10 and 11. Therefore, EPA believes this approach to utilizing the CEMS data of a similar source to establish a longer-term average emission limit, in the absence of other information, is appropriate.

EPA is proposing to find that the resultant emission limit is comparable in stringency to the Rule 62–296.408(2) NO_X emission limit in Florida's SIP. The methodology used to calculate the equivalency ratios, and selection of the equivalency ratio, are detailed in sections II.B.5.ii and II.B.5.vii of this NPRM. Additionally, the proposed longer-term NO_X emission limit is based on operation of the nitric acid plant at Trademark Nitrogen at the maximum permitted hourly throughput rate and is applicable at all times during operation, including periods of SSM.

Given that the proposed source-specific hourly limit applies at all times, it is more stringent for periods of SSM than the Rule limit, which does not apply during these periods. Furthermore, the source-specific emission limit is consistent with the 2015 SSM Policy and helps FDEP achieve consistency with the 2015 SSM SIP Action across its SIP. Table 11 shows that the new source-specific limit is comparably stringent to the existing Rule emission limit. Florida selected a 30-day average source-specific emission limit that is more stringent than one calculated using the ratios in Table 2 (16.3 lbs/hr versus 17.9 lbs/hr).[30] Additionally, emissions will not increase as a result of removing the existing Rule 62–296.408 emission limit for non-SSM periods of operation because EPA is also proposing to approve the equivalent 3-hour average source-specific emission limit into the SIP.

As explained above, the proposed 30-day average NO_X emission limit for the NAP at Trademark Nitrogen is at least as stringent as the emission limits in Rule 62–296.408(2). Because the facility will have a permanent and federally enforceable SIP-approved emission limit that is comparably stringent to the Rule limit and applies at all times, EPA proposes to remove the emission limit at Rule 62–296.408(2) from the SIP.

III. Proposed Actions

EPA is proposing to approve Florida's Excess Emissions Rule SIP Revision consisting of revisions to Rule Section 62–210.700, F.A.C.—Excess Emissions. The revisions include (1) deletion of Rule 62–210.700(4), F.A.C., with the addition of equivalent language to Rules 62–210.700(1) and (2), F.A.C.; (2) amendment of Rule 62–210.700(3), F.A.C., to clarify and restate the visible emissions and PM limits applicable during boiler cleaning (soot blowing) and load changes; (3) addition of Rule 62–210.700(6), which states that Rules 62–210.700(1) and (2) shall not apply after May 22, 2018, to either emission limits or unit-specific emission limits that have been incorporated into Florida's SIP; and (4) addition of Rule 62–210.700(7), which states that after October 23, 2016, Rules 62–210.700(1) and (2), F.A.C., shall not apply to new permit-specific emission limits established pursuant to Florida's PSD and NNSR regulations (Rule 62–212.400 and 62–210.500, F.A.C.). EPA proposes to find that Florida's Excess Emissions Rule SIP Revision is consistent with CAA requirements and adequately addresses the specific deficiencies that EPA identified in the 2015 SSM SIP Action with respect to the Florida SIP.

Additionally, EPA is proposing to approve Florida's Supplemental SSM SIP Revision consisting of SSM-related revisions to Rule 62–296.405, F.A.C.,

[29] EPA notes that the operating permits for Ascend Pensacola and Trademark Nitrogen, while not part of the SIP submission, each contain conditions that require operation of the SCR while the NAP is operating. *See* Permit No. 0330040–077–AV for Ascend, condition M.3, and Permit No. 0570025–015–AO, condition A.3, both available in the docket for this proposed action.

[30] Or 2.6 lbs/ton of nitric acid produced versus 2.85 lbs/ton of nitric acid produced.

Fossil Fuel Steam Generators with More than 250 Million Btu Per Hour Heat Input, and Rule 62–296.570, F.A.C., *Reasonably Available Control Technology [RACT]—Requirements for Major VOC- and NO_X-Emitting Facilities;* removal of the sulfur dioxide emission limit in Rule 62–296.402, F.A.C. *Sulfuric Acid Plants;* and removal of the nitrogen oxides emission limit in Rule 62–296.408, F.A.C., *Nitric Acid Plants.* EPA is also proposing to approve into Florida's SIP source-specific SO_2 and NO_X emission limits and construction permit conditions for five SO_2 emissions units and two NO_X emissions units. EPA proposes to find that Florida's Supplemental SSM SIP Revision is consistent with CAA requirements and adequately addresses the additional regulations identified by the State as problematic. EPA is not reopening the 2015 SIP call and is taking comments only on whether the SIP revisions are consistent with CAA requirements and whether they address the substantial inadequacy in the specific Florida SIP provisions identified in the 2015 SIP call.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in sections I through III of this preamble, EPA is proposing to incorporate by reference Florida Rule 62–210.700, F.A.C., entitled ''Excess Emissions,'' state effective October 23, 2016, which set a schedule by which the exemptions from applicable emission limits for startups, shutdowns, and malfunctions would be removed. EPA is also proposing to incorporate by reference the following Florida Rules: 62–296.402, F.A.C., ''Sulfuric Acid Plants,'' removing specific emission limits from the Florida SIP, state effective June 23, 2022, except for 62–296.402(1), 62–926.402(2)(a)2., 62–296.402(2)(b)2., and 62–296.402(3)(b); 62–296.405, F.A.C., ''Fossil Fuel Steam Generators with More Than 250 Million Btu Per Hour Heat Input,'' revising monitoring requirements and clarifying applicability, state effective June 23, 2022; 62–296.408, F.A.C., ''Nitric Acid Plants,'' removing specific emission limits, state effective November 23, 1994, except for 62–296.408(2); and 62–296.570, F.A.C., ''Reasonably Available Control Technology [RACT]—Requirements for Major VOC- and NO_X-Emitting Facilities,'' removing an exemption from RACT requirements during startups, shutdowns, and malfunctions, state effective June 23, 2022. Additionally, EPA is proposing to incorporate by reference into Florida's SIP the specified new operating parameters, SO_2 emission caps, compliance monitoring, recordkeeping and reporting requirements for emission units EU 066 (SAP E) and EU 067 (SAP F) at Nutrien White Springs (Permit No. 0470002–132–AC),[31] EU 004 (SAP 10) and EU 005 (SAP 11) at Mosaic South Pierce (Permit No. 1050055–037–AC),[32] and EU 004 at TECO-Polk (Permit No. 1050233–050–AC).[33] The SO_2 emission standards specified in each permit are the basis for the removal of other SO_2 emission limits in the SIP. Finally, EPA is proposing to incorporate by reference into Florida's SIP the specified, new operating parameters, NO_X emission caps, compliance monitoring, recordkeeping and reporting requirements for emission units EU 042 at Ascend Pensacola (Permit No. 0330040–076–AC),[34] and EU 001 at Trademark Nitrogen (Permit No. 0570025–016–AC).[35] The NO_X emission standards specified in each permit are the basis for the removal of other NO_X emission limits in the SIP. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, these actions do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations

[31] Specifically, EPA is proposing to incorporate by reference into Florida's SIP Specific Conditions 3 through 6 from Permit No. 0470002–132–AC issued to White Springs Agricultural Chemicals, Inc., Suwanee River/Swift Creek Complex by FDEP, state effective September 22, 2022.

[32] Specifically, EPA is proposing to incorporate by reference into Florida's SIP Specific Conditions 4 through 7 from Permit No. 1050055–037–AC issued to Mosaic Fertilizer, LLC, South Pierce Facility by FDEP, state effective September 22, 2022.

[33] Specifically, EPA is proposing to incorporate by reference into Florida's SIP Specific Conditions 1 through 4 from Permit No. 1050233–050–AC issued to Tampa Electric Company Polk Power Station by FDEP, state effective September 21, 2022.

[34] Specifically, EPA is proposing to incorporate by reference into Florida's SIP Specific Conditions 1 through 6 from Permit No. 0330040–076–AC issued to Ascend Performance Materials Operations LLC Pensacola Plant by FDEP, state effective September 20, 2022. EPA notes that the condition numbers are misidentified on pages 43–44 of the Supplemental SSM SIP Revision as 1 and 5 through 9; in the permit, those conditions are numbered 1 through 6, as shown on pages 98–99 of the Supplemental SSM SIP Revision.

[35] Specifically, EPA is proposing to incorporate by reference into Florida's SIP Specific Conditions 1 and 5 through 9 from Permit No. 0570025–016–AC issued to Trademark Nitrogen, Inc., by FDEP, state effective September 20, 2022.

and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

FDEP did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in these proposed actions. Due to the nature of the actions being proposed here, these proposed actions are expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of these proposed actions, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: April 25, 2023.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2023–09106 Filed 5–5–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2022–0656; FRL–10083–01–R3]

Air Plan Approval; West Virginia; 2022 Amendments to West Virginia's Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of West Virginia. This revision updates West Virginia's incorporation by reference (IBR) of EPA's national ambient air quality standards (NAAQS) and the associated monitoring reference and equivalent methods. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 7, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2022–0656 at *www.regulations.gov*, or via email to *Gordon.Mike@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Om P. Devkota, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2172. Mr. Devkota can also be reached via electronic mail at *Devkota.om@epa.gov*.

SUPPLEMENTARY INFORMATION: On July 1, 2022, the West Virginia Department of Environmental Protection (WVDEP) submitted a revision to its SIP pertaining to the amendments of Legislative Rule, 45 Code of State Rule (CSR) Ambient Air Quality Standards. The SIP submittal updates West Virginia's IBR of the NAAQS promulgated by EPA and found at 40 Code of Federal Regulations (CFR) part 50 and ambient air monitoring reference methods and equivalent methods promulgated by EPA and found at 40 CFR part 53 into West Virginia's legislative rules.

I. Summary of SIP Revision and EPA Analysis

WVDEP has historically chosen to incorporate by reference the NAAQS, found at 40 CFR part 50, and the associated Federal ambient air monitoring reference methods and equivalent methods for these NAAQS found at 40 CFR part 53. When incorporating by reference these Federal regulations, WVDEP has specified that it is incorporating by reference these regulations as they existed on a certain date. The IBR of the NAAQS that is currently approved in the West Virginia SIP incorporates by reference 40 CFR parts 50 and 53 as they existed on June 1, 2020. West Virginia's July 1, 2022, SIP revision updates the State's IBR of the primary and secondary NAAQS and the ambient air monitoring reference and equivalent methods, found in 40 CFR parts 50 and 53, respectively, as of June 1, 2021. Primary NAAQS establish air quality standards which the administrator of EPA determines are necessary, with an adequate margin of safety, to protect the public health. Secondary NAAQS establish air quality standards which the administrator of EPA determines necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. This revision also incorporates by reference the ambient air monitoring reference methods and equivalent methods promulgated by EPA under 40 CFR part 53.

Since the last West Virginia IBR of June 1, 2020, EPA: (1) updated method 201A of Appendix M of Part 51; (2) completed the review of the NAAQS for particulate matter; (3) completed the review of the NAAQS for ozone; and (4) designated one new reference method for measuring concentrations of sulfur dioxide and one new equivalent method for measuring concentrations of particulate matter (PM_{10}) in ambient air. See 85 FR 63394 (October 7, 2020—corrected in 86 FR 9470 (February 16, 2021)), 85 FR 82684 (December 18, 2020), 85 FR 87256 (December 31, 2020), and 86 FR 12682 (March 4, 2021).

The amendments to the legislative rule include changes to section 45–8–1 (General) and 45–8–3 (Adoption of Standards). The amendments alphabetize the criteria pollutants list in

the scope (1.1), update the filing and effective dates (1.3, 1.4) and update West Virginia's IBR of the primary and secondary NAAQS and the ambient air monitoring reference and equivalent methods from June 1, 2020 to June 1, 2021 (1.6, 3.1, 3.2). West Virginia is incorporating the Federal rules in 40 CFR parts 50 and 53 as they existed on June 1, 2021, into sections 45–8–1 and 45–8–3.

II. Proposed Action

EPA is proposing to approve the West Virginia SIP revision of July 1, 2022 updating the IBR of EPA's NAAQS and associated ambient air monitoring reference methods and equivalent methods. EPA is soliciting public comments on the update to West Virginia's IBR. Please note that EPA is not seeking public comment on the level of the NAAQS which West Virginia incorporated by reference into its regulations. An opportunity for public comment on the level of each individual NAAQS was given when EPA proposed each such NAAQS. Relevant comments will be considered before taking final action.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes IBR. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference 45CSR8, as effective on April 1, 2022, as discussed in Sections I and II of this document. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

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

In addition, this proposed rulemaking, proposing to approve the West Virginia SIP revision updating its IBR of EPA's NAAQS and associated ambient air monitoring reference methods and equivalent methods, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

WVDEP did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2023–09296 Filed 5–5–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–BM08

Atlantic Highly Migratory Species; Amendment 16 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan

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

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS); request for comments.

SUMMARY: NMFS announces the availability of the scoping document for Amendment 16 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) (Amendment 16) and its intent to prepare an EIS under the National Environmental Policy Act (NEPA). Based on the mechanism used in establishing shark quotas and related management measures from

Amendment 14 to the 2006 Consolidated HMS FMP (Amendment 14), Amendment 16 would modify the acceptable biological catch (ABC) and annual catch limits (ACLs) for Atlantic sharks and the process used to account for carryover of underharvests of quotas. In the scoping document, NMFS considers changes to commercial and recreational shark management measures related to commercial and recreational quotas, management groups, retention limits, and size limits. NMFS expects to consider the comments received on the scoping document when developing Amendment 16.

DATES: Written comments must be received by August 18, 2023. Three in-person scoping meetings and two virtual scoping meetings will be held from May through August 2023. See **SUPPLEMENTARY INFORMATION** for all meeting dates and times.

ADDRESSES: Electronic copies of the final document for Amendment 14 to the 2006 Consolidated HMS FMP (*https://www.fisheries.noaa.gov/action/amendment-14-2006-consolidated-hms-fishery-management-plan-shark-quota-management*) and the scoping document for Amendment 16 to the 2006 Consolidated HMS FMP (*https://www.fisheries.noaa.gov/action/scoping-amendment-16-2006-consolidated-atlantic-highly-migratory-species-fishery-management*) may be obtained on the internet.

You may submit comments on this document, identified by NOAA–NMFS–2023–0010, via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov,* enter NOAA–NMFS–2023–0010 into the search box, click the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Scoping meetings will be held virtually and in person. See **SUPPLEMENTARY INFORMATION** for more information on the locations.

FOR FURTHER INFORMATION CONTACT: Guy DuBeck (*Guy.DuBeck@noaa.gov*), Karyl Brewster-Geisz (*Karyl.Brewster-Geisz@noaa.gov*), Carrie Soltanoff (*Carrie.Soltanoff@noaa.gov*), or Ann Williamson (*Ann.Williamson@noaa.gov*) by email, or by phone at (301) 427–8503 for information on the scoping document for Amendment 16.

SUPPLEMENTARY INFORMATION:

Background

Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). The 2006 Consolidated HMS FMP and its amendments are implemented by regulations at 50 CFR part 635.

Under the Magnuson-Stevens Act, conservation and management measures must prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery (16 U.S.C. 1851(a)(1)). Where a fishery is determined to be in or approaching an overfished condition, NMFS must adopt conservation and management measures to prevent or end overfishing and rebuild the fishery (16 U.S.C. 1853(a)(10) and 1854(e)). In addition, NMFS must, among other things, comply with the Magnuson-Stevens Act's 10 National Standards, including a requirement to use the best scientific information available as well as to consider potential impacts on residents of different States, efficiency, costs, fishing communities, bycatch, and safety at sea (16 U.S.C. 1851(a)(1–10)). Internationally, the International Commission for the Conservation of Atlantic Tunas (ICCAT) has issued recommendations for the conservation of shark species caught in association with ICCAT fisheries, while the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) has passed measures that place requirements or restrictions on the trade of some shark species and shark fins.

In Amendment 14 (88 FR 4157, January 24, 2023), NMFS sets forth a revised framework for establishing quotas and related management measures for Atlantic shark fisheries. This amendment incorporated, for potential use, several optional fishery management tools that were adopted in the revised guidelines for implementing National Standard 1 (NS1) of the Magnuson-Stevens Act (81 FR 71858, October 18, 2016). Amendment 14 modified the general procedures that are followed in establishing the ABC and ACLs, and the process used to account for carryover or underharvest of quotas. It also allows the option to phase-in ABC control rules and to adopt multi-year overfishing status determination criteria (SDC) in certain circumstances.

In addition to Amendment 14, NMFS recently developed the Atlantic shark fishery review (SHARE) document (88 FR 16944, March 21, 2023). This document analyzed trends within the commercial and recreational shark fisheries to identify main areas of success and concerns with conservation and management measures and to find ways to improve management of the shark fishery. Overall, the review found that NMFS is sustainably managing shark stocks; however, the commercial shark fishery is in decline in terms of use of available quota and the number of participants. This decline is happening despite fishermen having available quotas for many species, and, in most regions, an open season year-round. The review also identified a need in the recreational fishery to improve angler education so that improved species identification could improve shark fishery data, thus improving management overall. The final report can be found here: *https://www.fisheries.noaa.gov/action/atlantic-shark-fishery-review-share.*

Additionally, some recent national and international regulations are likely to have direct and indirect impacts on the commercial shark fishery. On December 23, 2022, President Biden signed into law the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (NDAA), Public Law 117–263. Section 5946(b) of the NDAA, which is also known as the Shark Fin Sales Elimination Act, makes it illegal, with certain exceptions, to possess, buy, sell, or transport shark fins or any product containing shark fins, with an exemption for smooth or spiny dogfish fins. The Agency is currently considering a separate rule to implement the Shark Fin Sales Elimination Act. Internationally, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) has passed measures to list all *Carcharhinidae* species (requiem sharks) under Appendix II, with a 12-month implementation delay. This listing means that as of November 2023, all of the authorized shark species, except for smoothhound sharks, in our fishery management unit will require CITES permits before any trade can occur. At this time, the impacts of the Shark Fin Sales Elimination Act and CITES listing are unknown. However, in the scoping document, we consider several management options that could

add flexibility to the fishery in order to be reactive to these additional factors affecting the Atlantic shark fisheries.

Through the scoping document, NMFS is beginning the process under the revised framework for establishing quotas and related management measures for Atlantic shark fisheries, as established in Amendment 14. Additionally, the scoping document provides examples of how NMFS could potentially implement the ABC control rule finalized in Amendment 14, while also considering options on the potential process. These potential changes also lead NMFS to consider options to potentially revise commercial shark management groups and quotas, since shark ACLs would be revised and some of the management groups might not be suitable. Since external factors (markets, different state and international regulations, *etc.*) have impacted participation in the shark fishery, NMFS is considering options to update the commercial retention limits to ensure the fishery stays viable in the future. In the recreational shark fishery, the number of trips targeting or catching coastal sharks has stayed fairly consistent, while target effort levels for pelagic sharks have decreased significantly since the prohibition on shortfin mako sharks. In response to these changes, NMFS is reviewing the current recreational shark fishery regulations. This includes considering options for the authorized species list, minimum size limits, and bag limits. The current list of authorized species for recreational fishermen has been in place since 2008 when NMFS revised the list based on the sandbar shark stock assessment. Minimum size limits and bag limits for sharks are the main accountability measures NMFS can implement to control or adjust recreational shark harvest rates during the fishing year.

Given the substantial amount of existing relevant information (*e.g.,* Amendment 14, SHARE, and various state and international actions), the scoping document for this FMP amendment outlines some potential management measures for Atlantic shark fisheries. The list of management measures should not be considered an exhaustive list. The management options are intended to facilitate discussion of the merits of each range of topics under consideration. Interested members of the public are encouraged to provide specific suggestions and recommendations on the options or other options that NMFS should consider.

Request for Comments

NMFS anticipates large overall changes to shark management through Amendment 16. In the scoping document, NMFS details a wide range of potential management options based on the framework action in Amendment 14 and the findings from the SHARE document. The scoping document along with the public hearing presentation is available online at the HMS website: *https://www.fisheries.noaa.gov/action/scoping-amendment-16-2006-consolidated-atlantic-highly-migratory-species-fishery-management.* Three in-person scoping meetings and two virtual scoping meetings will be held to provide the opportunity for public comment on these potential management options (Table 1). Any comments received on the scoping document will be used to assist in the development of options to be considered in Amendment 16.

TABLE 1—DATES, TIMES, AND LOCATIONS OF UPCOMING PUBLIC HEARINGS AND CONFERENCE CALLS

Venue	Date/time	Street address/webinar information
Conference call/Webinar	May 25, 2023, 2 p.m. to 4 p.m	*https://www.fisheries.noaa.gov/action/scoping-amendment-16-2006-consolidated-atlantic-highly-migratory-species-fishery-management.*
Public Hearing	June 13, 2023, 5 p.m. to 8 p.m	Belle Chasse Auditorium, 8398 LA–23, Belle Chasse, LA 70037.
Public Hearing	June 21, 2023, 5 p.m. to 8 p.m	Cocoa Beach Public Library, 550 North Brevard Ave., Cocoa Beach, FL 32931.
Public Hearing	July 25, 2023, 5:30 p.m. to 8:30 p.m.	Dare County Library—Manteo, 700 Highway 64/264, Manteo, NC 27954.
Conference call/Webinar	August 7, 2023, 2 p.m. to 4 p.m	*https://www.fisheries.noaa.gov/action/scoping-amendment-16-2006-consolidated-atlantic-highly-migratory-species-fishery-management.*

The public is reminded that NMFS expects participants at in-person and virtual scoping meetings to conduct themselves appropriately. At the beginning of each meeting, a representative of NMFS will explain the ground rules (*e.g.,* all comments are to be directed to the Agency; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The in-person meeting locations will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Guy DuBeck at 301–427–8503, at least 7 days prior to the meeting. A NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment if they so choose, regardless of the controversial nature of the subject matter. If attendees do not respect the ground rules they will be asked to leave the scoping meeting. For the virtual scoping meetings, participants are strongly encouraged to log/dial in 15 minutes prior to the meeting. NMFS will show the presentations via webinar and allow public comment during identified times on the agenda.

In addition to the scoping meetings, NMFS will discuss the topics of this NOI at the HMS Advisory Panel meeting, May 9–11, 2023. The HMS Advisory Panel meeting will be accessible via conference call and webinar. Conference call and webinar access information are available at: *https://www.fisheries.noaa.gov/action/scoping-amendment-16-2006-consolidated-atlantic-highly-migratory-species-fishery-management.* NMFS has requested to present the scoping document to the five Atlantic Regional Fishery Management Councils (the New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils) and the Atlantic and Gulf States Marine Fisheries Commissions during the public comment period. Please see the Councils' and Commissions' meeting notices for times and locations. NMFS anticipates that a proposed rule and draft environment impact statement (DEIS) will be available in 2024 and the Final Amendment 16 and its related documents will be available in 2025.

Dated: May 2, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–09663 Filed 5–5–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 88, No. 88
Monday, May 8, 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

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by June 7, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Advanced Meat Recovery Systems.

OMB Control Number: 0583–0130.

Summary of Collection: The Food Safety and Inspection Service (FSIS) requires that official establishments that produce meat from Advanced Meat Recovery (AMR) systems ensure that bones used for AMR systems do not contain brain, trigeminal ganglia, or spinal cord; to test for calcium (at a different level than previously required), iron, spinal cord, and dorsal root ganglia (DRG); to document their testing protocols, to assess the age of cattle product used in the AMR system, and to document their procedures for handling product in a manner that does not cause product to be misbranded or adulterated; and to maintain records of their documentation and test results (9 CFR 318.24). FSIS has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) This statute mandate that FSIS protect the public by ensuring that meat products are safe, wholesome, and properly labeled and packaged.

Need and Use of the Information: FSIS will collect information from establishments to verify that the meat product produced by the use of AMR systems is free from Bovine Spongiform Encephalopathy (BSE).

Description of Respondents: Business or other for-profit.

Number of Respondents: 47.

Frequency of Responses: Recordkeeping; Reporting: on occasion.

Total Burden Hours: 21,159.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–09720 Filed 5–5–23; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by June 7, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Healthy Meals Incentives Recognition Awards Application for School Food Authorities.

OMB Control Number: 0584–NEW.

Summary of Collection: This collection of information is necessary for the application of the Healthy Meals Incentives (HMI) Recognition Awards by School Food Authorities (SFAs). The Recognition Awards will recognize SFAs that have made significant improvements to the nutritional quality of their school meals by exceeding the transitional school meal pattern requirements, engaging students, and implementing innovative practices.

Need and Use of the Information: The Food and Nutrition Services (FNS) will collect applications from SFAs for the

HMI Recognition Awards. The HMI Recognition Awards will spotlight innovative practices, student and community engagement strategies, and strategies schools have used to provide meals that are consistent with the 2020–2025 Dietary Guidelines for Americans. SFAs meeting Healthy Meals Incentives Recognition Award criteria will receive nonmonetary recognition and stipends to attend and participate in the Healthy Meals Summits.

FNS will highlight and share these diverse best practices nationwide through training and technical assistance resources and Healthy Meals Summits.

Description of Respondents: School Food Authorities (SFAs) that participate in the National School Lunch Program (NSLP) and State agencies that administer the NSLP and/or SBP, and have agreements with the SFAs.

Number of Respondents: 2,054.

Frequency of Responses: Reporting: On occasion, annually.

Total Burden Hours: 38,003.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–09696 Filed 5–5–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Generic Clearance for Stakeholder Feedback and Surveys as Part of FNS Planning: Regulatory Actions, Semi-Annual Regulatory Agenda, Program Changes, Research Studies, Outreach, Training and/or Development of Guidance

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. The purpose of this new collection is to collect qualitative and quantitative stakeholder feedback through meetings, focus groups, interviews, other stakeholder interactions and surveys, as well as requests for administrative data, as part of the planning process for FNS regulatory actions, the semi-annual Regulatory Agenda, research studies, outreach, training and the development of guidance.

DATES: Written comments must be received on or before July 7, 2023.

ADDRESSES: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the proposed information collection burden, 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 use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Jamia Franklin, Information Collection Clearance Officer, and Maureen Lydon, Chief of the Planning and Regulatory Affairs Office, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, 5th floor, Alexandria, VA 22314. Comments may also be sent via email to *Jamia.Franklin@usda.gov* and *Maureen.Lydon@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *https://www.regulations.gov* and follow the online instructions for submitting comments electronically.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Jamia Franklin at (703) 305–2403 or via email at *Jamia.Franklin@usda.gov.* You may also reach to Maureen Lydon at *Maureen.Lydon@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title:

Generic Clearance for Stakeholder Feedback and Surveys as Part of FNS Planning: Regulatory Actions, Semi-annual Regulatory Agenda, Program Changes, Research Studies, Outreach, Training and/or Development of Guidance.

OMB Number: 0584–New.

Expiration Date: Not yet determined. Expiration dates are normally three years from OMB approval of new information collection.

Type of Request: New collection.

Abstract: The proposed information collection provides a means to garner qualitative and quantitative stakeholder feedback, feedback from state, local and/or Tribal agencies and implementers, feedback from program participants, and existing administrative data, in an efficient and timely manner.

This new FNS-wide generic information collection request currently does not exist and would focus on the following:

- Discussion groups, focus groups, stakeholder meetings, interviews and surveys that involve other than routine customer feedback and may involve use of standardized questions such as focus group discussion guides or surveys. These focus groups, meetings, other stakeholder interactions, and surveys would involve stakeholders, program participants, and state, local and/or Tribal agencies who would potentially provide valuable input necessary for planning: (a) research studies, including program evaluations such as impact or process evaluations; (b) regulatory actions; (c) program changes; (d) outreach, promotion activities and/or training for stakeholders and program participants; (e) guidance, technical assistance documents, questions and answers, to be issued by FNS; and/or (f) other necessary program or policy analyses. The surveys would include both regular surveys and pulse-type surveys. The pulse-type surveys differ in that they would provide a real-time and reoccurring snapshot on key issues and give FNS an immediate stream of data to understand current program needs.
- This generic ICR would also encompass the ad-hoc collection of extant, administrative data from state, local and/or Tribal agencies that administer the various FNS programs and/or demonstration projects (including but not limited to the Food Distribution Program on Indian Reservation demonstration projects). These would be data that FNS knows are in existence and that state, local and/or Tribal agencies regularly collect but do not necessarily report to the Federal level. FNS is referring to data that are readily available for a state, local and/or Tribal agency to provide, but that FNS wouldn't collect on a regular basis.
- Information gathered could potentially yield qualitative and/or quantitative information and, when appropriate, may be shared outside the Agency (along with the context and parameters for the subject information collection, and excluding personally identifiable information).
- Data gathered through this collection will be combined with information from many other sources

and other inputs to inform program and policy decision-making.

This collection allows for ongoing, two-way collaborative and actionable communications between the Agency and its state, local and/or Tribal partners, program participants, and stakeholders. It also allows feedback to contribute directly to the improvement and planning of research studies, program changes, regulatory activities, guidance, outreach and/or training activities. As individual collections occur under this generic umbrella, consideration will be given to the appropriate data sharing, equity issues and transparency per collection.

Most but not all generic clearances may meet the following conditions:

- The collections are often voluntary;
- The collections are often low burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent);
- Any collection other than administrative data may be targeted to the solicitation of opinions from respondents who have experience with the program or similar programs, or may be impacted by a program in the future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained; and
- Information gathered will yield qualitative and/or quantitative information.

As a general matter, information collections do not result in any new system of records containing privacy information and does not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

A variety of instruments and platforms are used to collect information from respondents. This includes but is not limited to surveys, including pulse surveys not covered elsewhere, interviews, stakeholder meetings, focus groups, discussion groups, and collection of existing data from state, local and/or Tribal agencies via electronic or other means. The information to be collected could focus on a variety of Food and Nutrition Service (FNS) programs, or portions thereof, including but not limited to the National School Lunch Program (NSLP), School Breakfast Program (SBP), Fresh Fruit and Vegetable Program (FFVP), Summer Food Service Program (SFSP), Child and Adult Care Food Program (CACFP), Food Distribution Program on Indian Reservations (FDPIR), Commodity Supplemental Food Program (CSFP), and The Emergency Food Assistance Program (TEFAP), other child nutrition and food distribution activities, the Farm to School program, the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the WIC Farmers Market Nutrition Program (FMNP), the Senior Farmers Market Nutrition Program (SFMNP), nutrition and policy promotion, and any associated challenges in implementing programs or subsets of programs. The annual burden hours requested of 43,360 are based on the number of collections we expect to conduct annually over the requested period for this clearance.

Type of collection	Number of annual respondents	Total annual responses	Total annual burden hours
Surveys/Pulse surveys	37,180	93,425	27,110
Focus Groups/Discussion Groups/Stakeholder Meetings/Interviews	2,500	4,500	5,000
Administrative data collection and associated requests	895	2,430	11,250
Total	40,575	100,355	43,360

Annual Reporting Burden Estimates

Affected Public: Individuals and households, businesses and organizations, State, local or Tribal government.

Estimated Number of Annual Respondents: 40,575.

Estimated Number of Annual Responses per Respondent: Ranges from 1 response to 10 responses depending on category of respondent.

Estimated Annual responses: 100,355.

Estimated time per response: Ranges from 10 minutes per response to 10 hours per response depending on type of collection (that is, survey, discussion group, or administrative data collection) and the nature of the request.

Estimated Annual Burden hours: 43,360.

In summary, the total estimated annual burden is 43,360 hours and 100,355 responses. Thus, we are requesting 130,080 hours for our three year burden estimate and 301,065 total responses for the three year approval period. Current estimates are based on both historical numbers of respondents from past projects as well as estimates for projects to be conducted in the next three years.

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2023–09709 Filed 5–5–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Determining Eligibility for Free and Reduced Price Meals and Free Milk

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a revision of a currently approved collection for determining eligibility for free and reduced price meals and free milk as stated in FNS regulations. These Federal requirements affect eligibility under the National School Lunch Program, School Breakfast Program, and the Special Milk Program and are also applicable to the Child and Adult Care Food Program and the Summer Food Service Program when individual eligibility must be established.

DATES: Written comments must be received on or before July 7, 2023.

ADDRESSES: Comments may be sent to: Tina Namian, Director, School Meals Policy Division—4th floor, Child Nutrition Programs, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget

approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Wesley Gaddie at 703–457–7718.

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

Title: Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools—7 CFR part 245.

Form Number: This collection does not contain any forms. However, FNS–742 and FNS–874, which are approved under OMB Control Number 0584–0594 Food Programs Reporting System (FPRS) (expiration date July 31, 2023), are used in conjunction with this collection.

OMB Number: 0584–0026.

Expiration Date: July 31, 2023.

Type of Request: Revision of a currently approved collection.

Abstract: The Food and Nutrition Service administers the National School Lunch Program, the School Breakfast Program, and the Special Milk Program as mandated by the Richard B. Russell National School Lunch Act (NSLA), as amended (42 U.S.C. 1751, *et seq.*), and the Child Nutrition Act of 1966, as amended (42 U.S.C. 1771, *et seq.*). The proposed collection reports the eligibility burden of the National School Lunch Program; the School Breakfast Program; and the Special Milk Program. The eligibility burden of the Child and Adult Care Food Program and the Summer Food Service Program is reported in information collections under OMB Control Numbers 0584–0055 and 0584–0280, respectfully.

Per 7 CFR part 245, schools participating in these meal and milk programs must make free and reduced-price meals and free milk available to eligible children. This information collection obtains eligibility information for free and reduced-price meals and free milk and also incorporates verification procedures as required to confirm eligibility. The Programs are administered at the State and local levels and operations include direct certification, the submission of household size and income applications for school meal/milk benefits, record maintenance, and public notification of eligibility determinations, documentation, and other data. The information collection burden associated with this revision is summarized in the chart below. Since the last renewal of this collection, school meal programs have been operating under waivers that allowed meals to be served under the Summer Food Service Program and the Seamless Summer Option, which do not require eligibility determinations to be made. As a result, USDA does not have updated data for most requirements covered under this information collection. There are two updates based on new programmatic data. USDA has updated data on the number of state agencies required to maintain direct certification improvement plans. Additionally, since the last renewal the U.S. Virgin Islands have adopted the Community Eligibility Provision (CEP), leading to an increase in the number of State agencies required to meet requirements related to CEP. USDA has also adjusted the previous estimates for hours per response in order for the estimates to be written in whole minutes. This is a revision of the currently approved information collection.

Affected Public: State, local, and Tribal government and individual/households: Respondent groups identified include State agencies, school food authorities/local educational agencies, and individuals/households.

Estimated Number of Respondents: 3,571,312 (55 SAs, 19,371 SFAs/LEAs, and 3,551,886 households).

Estimated Number of Responses per Respondent: 3.514.

Estimated Total Annual Responses: 12,550,211.

Estimated Hours per Response: 0.0527.

Estimated Total Annual Reporting Burden: 651,084.

Estimated Total Annual Recordkeeping Burden: 2,965.

Estimated Total Annual Public Disclosure Burden: 6,754.

Estimated Total Annual Burden: 660,803.

Current OMB Inventory for Part 245: 664,726.

Difference (Burden Revisions Requested with this renewal): −3,923.

Refer to the following table for estimated annual burden per each type of respondent:

Affected public	Estimated number respondents	Estimated number responses per respondent	Estimated total annual responses	Estimated hours per response	Estimated total annual burden hours
(a)	(b)	(c)	(d) = (b × c)	(e)	(f) = (d × e)
Reporting					
State Agencies	55	163.56	8,996	0.0646	581
School Food Authorities/Local Educational Agencies	19,371	455.953	8,832,491	0.0209	184,972
Individuals/Households	3,551,886	1.03	3,653,373	0.1274	465,531
Total Reporting Burden	3,571,312	3.50	12,494,860	0.0521	651,084
Recordkeeping					
State Agencies	55	12.00	660	0.1797	119
School Food Authorities/Local Educational Agencies	15,786	1.03	16,286	0.1748	2,847
Total Recordkeeping Burden	15,841	1.07	16,946	0.1750	2,965

Affected public	Estimated number respondents	Estimated number responses per respondent	Estimated total annual responses	Estimated hours per response	Estimated total annual burden hours
(a)	(b)	(c)	(d) = (b × c)	(e)	(f) = (d × e)
Public Notification					
State Agencies	55	1.98	109	0.1339	15
School Food Authorities	19,371	1.98	38,296	0.1760	6,740
Total Public Notification Burden	19,426	1.98	38,405	0.1759	6,754
Total Reporting, Recordkeeping and Public Disclosure					
Reporting	3,571,312	3.50	12,494,860	0.0521	651,084
Recordkeeping	15,841	1.07	16,946	0.1750	2,965
Public Notification	19,426	1.98	38,405	0.1759	6,754
Total Reporting, Recordkeeping, and Public Disclosure Burden	3,571,312	3.514	12,550,211	0.0527	660,803

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2023–09707 Filed 5–5–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Operational Challenges in Child Nutrition Programs (OCCNP) Surveys

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection.

This is a new collection focusing on Operational Challenges in Child Nutrition Programs and will utilize survey instruments for school years (SY) 2023–2024, SY 2024–2025, and SY 2025–2026. The studies encompassed under this information collection will collect data from institutions administering and operating Child Nutrition Programs such as State agencies, School Food Authorities (SFAs) and Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP) Sponsors, including information on emerging and ongoing operational challenges facing Child Nutrition Program operators.

DATES: Written comments must be received on or before July 7, 2023.

ADDRESSES: Comments may be sent to: Sarah Reinhardt, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Pl., 5th floor, Alexandria, VA 22314. Comments may also be submitted via email to *Sarah.Reinhardt@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Sarah Reinhardt at *Sarah.Reinhardt@usda.gov,* 703–305–2532.

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

Title: Operational Challenges in Child Nutrition Programs (OCCNP) Surveys.

Form Number: N/A.

OMB Number: 0584–NEW.

Expiration Date: Not yet determined.

Type of Request: New collection.

Abstract: FNS administers the Child Nutrition (CN) Programs in partnership with States, local SFAs, other program sponsors, and local program operators. Section 28(a) of the Richard B. Russell National School Lunch Act authorizes the U.S. Department of Agriculture Secretary to conduct annual national performance assessments of the school meal programs and requires States and local entities participating in the programs to cooperate with program research and evaluations. FNS plans to collect periodic data to obtain information on operational challenges facing institutions who operate or administer child nutrition programs, including State agencies, SFAs and Summer Food Service Program (SFSP) Sponsors. The Operational Challenges in Child Nutrition Programs (OCCNP) Surveys, are designed to collect timely data on emerging school food service operational challenges, including but not limited to supply chain disruptions, food costs, and labor shortages, and/or related issues in SY 2023–2024, 2024–2025, and SY 2025–2026. Access to a timely and reliable source of data on these topics has become particularly important following the COVID–19 pandemic. In addition to changing the ways that school meal programs operated, the pandemic has contributed to lasting supply chain issues and substantial changes in the cost and availability of food and labor. The ability to collect this data will allow FNS to provide the best possible support to States and program sponsors and operators facing continued food service operations challenges and enable FNS to respond more quickly and effectively to potential disruptions in the future.

To administer the survey(s), FNS may first contact State agencies administering child nutrition programs to obtain current lists of the respondent population(s) of interest (*e.g.,* SFAs, SFSP Sponsors, or CACFP Sponsors). In the case of SFAs and SFSP Sponsors, the list will be used to conduct a census; in the case of CACFP Sponsors, the list will be used to generate a representative sample of respondents. After identifying the appropriate respondent population(s), FNS with provide State agencies with a template survey support email to be distributed to the respondent population(s) in their respective States to provide information regarding the survey and express support for the data collection. If State agencies administering child nutrition programs and/or food distribution for these programs will also be considered survey respondents, these agencies will receive additional communications from FNS regarding their participation in the survey. FNS will then email the survey to respondent population(s) via the Qualtrics Survey Software platform or a similar software. The survey instrument will include content tailored to each respondent population, and will take approximately 20 minutes to complete.

Survey administration will be similar to the methods used for the SFA Survey II on School Food Supply Chain Disruption and Student Participation, which obtained emergency clearance for data collection in SY 2022–2023 and was cleared by the Office of Management and Budget on November 15, 2022 (SFA Survey II on School Food Supply Chain Disruption and Student Participation, OMB control number 0584–0677, expiration date 05/31/2023); however, this proposed data collection is different in that it is broader in scope than the previous emergency clearance, encompasses a broader potential audience, and focuses on different timeframes for collection in the future. Under the emergency information collection, data collection methods consisted of a web survey of all SFAs nationwide operating child nutrition programs in schools during SY 2022–2023, and was distributed to 18,843 SFAs based on contact information collected from the 56 CN agencies that administer CN Programs at the state level in the 50 States, District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

Affected Public: State, Local, and Tribal Governments: Respondent groups identified may include: (1) State agencies administering child nutrition programs or food distribution for these programs, (2) SFA Directors, (3) SFSP Sponsors (government and private, not-for-profit), and (4) CACFP Sponsors (private, not-for-profit) from all 50 States, 5 territories and the District of Columbia.

Estimated Number of Respondents: The total estimated number of respondents per year is 21,511. This includes (1) 70 State Agency Directors (56 administering programs and 14 food distribution only); (2) 18,843 SFA Directors; (3) 1,663 SFSP Sponsors (government and non-profit private Sponsors, not including SFAs); and (4) 935 CACFP Sponsors (based on a representative sample of Sponsors, not including SFAs). Consistent with past approaches, each survey will engage nine pretest participants representative of the respondent population(s). For the purpose of estimating respondent burden, it is assumed that the pretest reflects participation on behalf of State Child Nutrition Directors; SFA Directors (government and private, not-for-profit business); SFSP Sponsors (government and private, not-for-profit business); and CACFP Sponsors (private, not-for-profit business). Pretest participants will be adjusted accordingly based on the needs and content of each survey and SFAs operating multiple child nutrition programs may be prioritized.

Estimated Number of Responses per Respondent: State Agency Director respondents will be asked to provide a current list of SFAs and/or Sponsors operating child nutrition programs, as needed, and distribute a survey support email to these respondent groups annually (three times total, in SY 2023–2024, SY 2024–2025, and SY 2024–2025). The selected respondent group(s) will be asked to complete the web survey once per year, though respondents operating more than one child nutrition program (*e.g.,* SFAs that also serve as SFSP Sponsors) will be required to respond to survey questions for each program. To estimate the associated burden, we included separate lines in the burden estimate table to account for additional time SFAs may spend on surveys for SFSP or CACFP programs, respectively. There are 2,851 SFAs that also act as SFSP Sponsors; in the case of CACFP Sponsors, it is assumed that half of the representative sample of CACFP Sponsors (935 of 1,869 total) are also SFAs.

In the event of non-response, survey respondents will receive follow-up email correspondence and will be provided contact information for FNS survey support as needed. Similarly, State Agencies who do not provide contact information for SFAs/Sponsors upon request may receive email reminders until current lists have been obtained from all regions. FNS estimates that respondents will average 5.17 responses (111,123 responses/21,497 respondents) annually, for a total of 15.51 responses per respondent over the three year period.

Estimated Total Annual Responses: 111,123.

Estimated Time per Response: The estimated time per response ranges from 2 minutes (0.03 hours) to 20 minutes (.33 hours) depending on the instrument, as shown in the table below, with an average estimated time for all participants of 6 minutes (0.10 hours) per response.

Estimated Total Annual Burden on Respondents: 11,220.39 hours. See the table below for estimated total annual burden for each type of respondent.

TABLE 1—ANNUAL BURDEN ESTIMATE

Respondent category	Type of respondents (optional)	Instruments	Number of respondents	Frequency of response	Total annual responses	Hours per response	Annual burden (hours)	3 Year burden (hours)
State Government.	State Child Nutrition Directors.	OCCNP Survey Support Email.	56	1	56	0.17	9.34	28.01
		Pretest	1	1	1	0.83	0.83	2.50
		OCCNP Survey	56	1	56	0.33	18.48	55.44
	State Food Distribution Agency.	OCCNP Survey	14	1	14	0.33	4.62	13.86
Local Government.	SFA Directors	Pretest	4	1	4	0.83	3.33	10.00
		OCCNP Survey Support Email.	15,260	1	15,260	0.03	508.16	1,524.47
		OCCNP Survey (SFAs)	15,260	1	15,260	0.33	5,035.80	15,107.40

TABLE 1—ANNUAL BURDEN ESTIMATE—Continued

Respondent category	Type of respondents (optional)	Instruments	Number of respondents	Frequency of response	Total annual responses	Hours per response	Annual burden (hours)	3 Year burden (hours)
Government	SFSP Sponsors	OCCNP Survey (SFSP)	2,851	1	2,851	0.33	940.83	2,822.49
		OCCNP Survey (CACFP).	935	1	935	0.33	308.39	925.16
		Reminder Email	15,260	2	30,520	0.03	1,016.32	3,048.95
		Thank You Email	15,260	1	15,260	0.03	508.16	1,524.47
		Pretest	1	1	1	0.83	0.83	2.50
		OCCNP Survey Support Email.	255	1	255	0.03	8.49	25.47
		OCCNP Survey	255	1	255	0.33	84.15	252.45
		Reminder Email	255	2	510	0.03	16.98	50.95
		Thank You Email	255	1	255	0.03	8.49	25.47
State and Local Government Subtotal.			15,571	5.23	81,493	0.10	8,473.20	25,419.59
Private, Not-For-Profit Businesses.	SFA Directors ..	Pretest	1	1	1	0.83	0.83	2.50
		OCCNP Survey Support Email.	3,583	1	3,583	0.03	119.31	357.94
		OCCNP Survey	3,583	1	3,583	0.33	1,182.39	3,547.17
		Reminder Email	3,583	2	7,166	0.03	238.63	715.88
		Thank You Email	3,583	1	3,583	0.03	119.31	357.94
Private, Not-For-Profit Businesses.	SFSP Sponsors	Pretest	1	1	1	0.83	0.83	2.50
		OCCNP Survey Support Email.	1,408	1	1,408	0.03	46.89	140.66
		OCCNP Survey	1,408	1	1,408	0.33	464.64	1,393.92
		Reminder Email	1,408	2	2,816	0.03	93.77	281.32
		Thank You Email	1,408	1	1,408	0.03	46.89	140.66
Private, Not-For-Profit Businesses.	CACFP Sponsors.	Pretest	1	1	1	0.83	0.83	2.50
		OCCNP Survey Support Email.	935	1	935	0.03	31.12	93.36
		OCCNP Survey	935	1	935	0.33	308.39	925.16
		Reminder Email	935	2	1,869	0.03	62.24	186.71
		Thank You Email	935	1	935	0.03	31.12	93.36
Private, not-for-profit businesses subtotal.		.....	5,926	5.00	29,631	0.09	2,747.19	8,241.57
Total		.....	21,497	5.1694	111,123	0.10	11,220.39	33,661.17

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2023–09706 Filed 5–5–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Information Collection for the National School Lunch Program

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a revision of a currently approved collection that FNS employs to determine public participation in the National School Lunch Program and to obtain, account for, and record information from State and program operators that is necessary to effectively manage the NSLP and ensure compliance with statutory and regulatory Program requirements.

DATES: Written comments must be received on or before July 7, 2023.

ADDRESSES: Comments may be sent to: Jennifer Otey, School Meals Program Monitoring Branch, Program Monitoring and Operational Support Division, Child Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314. Comments may also be submitted via email to *jennifer.otey@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Jennifer Otey at 703–605–3223 or via email to *jennifer.otey@usda.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate

automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: 7 CFR part 210, National School Lunch Program.

Form Number: Quarterly Report For School Food Authority Certification (QTR–SFA–CERT).

OMB Control Number: 0584–0006.

Expiration Date: July 31, 2023.

Type of Request: Revision of a currently approved collection.

Abstract: The Richard B. Russell National School Lunch Act (NSLA), as amended, authorizes the National School Lunch Program (NSLP) to safeguard the health and well-being of the nation's children and provide free or reduced-price school lunches to qualified students through subsidies to schools. The United States Department of Agriculture (USDA) provides States with general and special cash assistance and donations of foods to assist schools in serving nutritious lunches to children each school day. Participating schools must serve lunches that are nutritionally adequate and maintain menu and food production records to demonstrate compliance with the meal requirements.

Section 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1779) requires the Secretary of Agriculture to prescribe such regulations as deemed necessary to carry out this Act and the NSLA (42 U.S.C. 1751 *et seq.*). Pursuant to that provision, the Secretary issued 7 CFR part 210, which sets forth policies and procedures for the administration and operation of the NSLP. The Program is administered at the State and school food authority (SFA)/local education agency (LEA) levels, and operations include the submission of applications and agreements, submission of the number of meals served and claims to be paid, submission of data from required monitoring reviews conducted by the State agency, and maintenance of records. State and local operators of the NSLP are required to meet Federal reporting and accountability requirements and are also required to maintain records that include school food service accounts of revenues and expenditures.

FNS collects program data from the State agencies on forms FNS–10 Report of School Operations, FNS–13 Annual Report of State Revenue Matching, FNS–640 Administrative Review Data Report, FNS–777 Financial Status Report, and FNS–828 School Food Authority Paid Lunch Price Report. These forms are approved under OMB Control Number 0584–0594 Food Program Reporting System (FPRS), which expires July 31, 2023. The reporting burden associated with these reports is covered under OMB Control Number 0584–0594 and is not associated with this information collection. However, the recordkeeping burden for these forms is still maintained in this collection. One form, required under 7 CFR 210.5(d)(2), Quarterly Report for School Food Authority Certification (QTR–SFA–CERT), is included in this present collection but should be included in OMB Control Number 0584–0594. In the next renewal for 0584–0594, this form will be included.

For the Administrative Review, there are many tools, worksheets, checklists, forms, and workbooks that are used by State agencies in this process. State agencies utilize these as worksheets to measure compliance and as data collection instruments. These are included in this ICR.

This information collection is required to administer and operate this program in accordance with the NSLA. All of the reporting and recordkeeping requirements associated with the NSLP are currently approved by the Office of Management and Budget and are in force. Since the last renewal, FNS has adjusted the decimal conversions for the time estimates for some of the information requirements to keep the conversions consistent across its collections. This has resulted in a slight increase of 247 hours to the estimated burden for this collection, from 9,808,454 to 9,808,701 hours. FNS estimates that the estimated number of respondents and responses will remain unchanged from the previous renewal. There are no further changes to this collection due to the pandemic. The pandemic resulted in FNS not being able to collect updated data from State agencies and in FNS not being able to move forward with other rulemaking. Rulemaking in 2023 will impact this collection in the next renewal.

Affected Public: State, Local, and Tribal Government: Respondent groups identified include (1) State agencies; (2) school food authorities/local education agencies; and (3) schools.

Estimated Number of Respondents (Reporting): 115,935 (56 State agencies, 19,019 school food authorities, and 96,860 schools).

Estimated Number of Responses per Respondent (Reporting): 4.31.

Estimated Total Annual Responses: 499,573.

Estimated Reporting time per Response: 1.29.

Estimated Annual Reporting Burden: 643,651.

Estimated Number of Recordkeepers: 115,935 (56 State agencies, 19,019 school food authorities and local educational agencies, and 96,860 schools.).

Estimated Number of Records per Recordkeeper: 406.

Estimated Total Number of Records: 47,100,736.

Estimated Recordkeeping Time per Response: 0.19.

Total Estimated Recordkeeping Burden: 9,112,749.

Affected Public: State, Local and Tribal Government. Respondent groups identified include (1) State agencies and (2) local educational agencies.

Estimated Number of Respondents (Public Notification): 19,075 (56 State agencies and 19,019 local educational agencies).

Estimated Number of Responses per Respondent (Public Notification): 1.66.

Estimated Total Annual Responses: 31,687.

Estimated Time per Response: 1.65.

Estimated Annual Public Notification Burden: 52,301.

Estimated Annual Reporting, Recordkeeping, and Public Notification Burden: 9,808,701.

Current OMB Inventory for Part 210: 9,808,454.

Difference (change in burden with this renewal): 247.

Refer to the table below for estimated total annual burden for each type of respondent.

Affected public	Estimated number of respondents	Number of responses per respondent	Total annual responses	Estimated average hours per response	Estimated total burden (hours)
Reporting					
State Agencies	56	232.34	13,011	27.08	352,358
School Food Authorities/Local Education Agencies	19,019	15.397	292,842	0.928	271,882
Schools	96,860	2	193,720	0.1	19,411

Affected public	Estimated number of respondents	Number of responses per respondent	Total annual responses	Estimated average hours per response	Estimated total burden (hours)
Total Estimated Reporting Burden	115,935	4.31	499,573	1.29	643,651
Recordkeeping					
State Agencies	56	1,475	82,619	1.51	124,491
School Food Authorities/Local Education Agencies	19,019	21	399,399	4.33	1,731,018
Schools	96,860	481.30	46,618,718	0.16	7,257,240
Total Estimated Recordkeeping Burden	115,935	406	47,100,736	0.19	9,112,749
Public Notification					
State Agencies	56	113	6,328	.25	1,582
School Food Authorities/Local Education Agencies	19,019	1.33	25,359	2	50,719
Total Estimated Public Notification Burden	19,075	1.66	31,687	1.65	52,301
Total of Reporting, Recordkeeping, and Public Notification					
Reporting	115,935	4	499,573	1.2884029	643,651
Recordkeeping	115,935	406	47,100,736	0.19347361	9,112,749
Public Notification	19,075	2	31,687	1.6505507	52,301
Total	115,935	410.85	47,631,996	0.21	9,808,701

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2023–09710 Filed 5–5–23; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: 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 North Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 12:00 p.m. ET on Tuesday, June 6, 2023. The purpose of the meeting is to continue revising the report on Legal Financial Obligations in the state.

DATES: Tuesday, June 6, 2023, from 12:00 p.m.–1:30 p.m. Eastern Time

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1615538925

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 161 553 8925

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, Designated Federal Officer, at *vmoreno@usccr.gov* or (434) 515–0204.

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 Liliana Schiller, Support Services Specialist, at *lschiller@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 Victoria Moreno at *vmoreno@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (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, North Carolina 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 *lschiller@usccr.gov.*

Agenda

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

Dated: May 2, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–09661 Filed 5–5–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Georgia 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 Georgia 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 the post-report activities of the Committee's recent civil rights

project on civil asset forfeiture in Georgia.

DATES: Thursday, May 25, 2023, from 11 a.m.–12 p.m. Eastern Time

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1605151282.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll-Free; Meeting ID: 160 515 1282#.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, Acting Designated Federal Officer, at *vmoreno@usccr.gov* or 1–434–515–0204.

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 Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–434–515–0204.

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, Georgia 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. Approval of Minutes
III. Annoucements and Updates
IV. Vote on New Project (if applicable)
V. Discussion: Post-Report Activities
VI. Next Steps
VII. Public Comment
VIII. Adjournment

Dated: May 2, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–09660 Filed 5–5–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Household Pulse Survey; Correction

AGENCY: U.S. Census Bureau, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: On April 28, 2023, the Department of Commerce, published a 30-day public comment period notice in the **Federal Register** with FR Document Number 2023–08953 page 26273 seeking public comments for the information collection entitled, ''Household Pulse Survey 3.9 revision.'' This document referenced incorrect information in the narrative, and Commerce hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: For additional information concerning this correction, contact Cassandra Logan, U.S. Census Bureau, (301) 763–1087 (or via the internet at *Cassandra.logan@census.gov*).

SUPPLEMENTARY INFORMATION:

Narrative section incorrectly stated:

It is the Department's intention to commence data collection using the revised instrument on or about December 7, 2022.

Correction

Should have read:

The Department intends to commence data collection using the revised instrument on or about May 31, 2023.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the initial publication notice date of March 15, 2021 on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–1013.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–09752 Filed 5–5–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Semi-Annual and Annual Data Collection Instruments for EDA Grant and Cooperative Agreement Award Recipients

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on February 16, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Economic Development Administration (EDA), Department of Commerce.

Title: Semi-Annual and Annual Data Collection Instruments for EDA Grant and Cooperative Agreement Award Recipients.

OMB Control Number: 0610–0098.

Form Number(s): ED–915, ED–916, ED–917, and ED–918.

Type of Request: Extension without revision of a currently approved information collection (Form ED–915, ED–916, ED–917, and ED–918).

Number of Respondents: 3,510.

Average Hours per Response: 1–8 hours.

Burden Hours: 14,981 (Forms ED–916: 3,201 hours semiannually, ED–915, ED–917 and ED–918:11,780 annually).

Needs and Uses: EDA must comply with the Government Performance and Results Act of 1993 (Pub. L. 103–62) and the GPRA Modernization Act of 2010 (Pub. L. 111–352), which require Federal agencies to develop performance measures and report to Congress and stakeholders the results of the agency's performance. The Foundations for Evidence-Based Policymaking Act of 2018 (Pub. L. 115–435) further emphasizes the importance of updating existing methodologies for performance measurement and program evaluation to align with evolving best practices. The data collected will help EDA construct more robust performance metrics and increase accountability and transparency of the agency's work by providing better insight into the efficiency and effectiveness of all the programs under its non-infrastructure portfolio.

Affected Public: State and local governments; Development Organizations; Indian Tribes; Institutions of higher education; and Nonprofit organizations.

Frequency: Semiannual and annual.

Respondent's Obligation: Mandatory.

Legal Authority: Public Works and Economic Development Act of 1965 (PWEDA) (42 U.S.C. 3121 *et seq.*).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0610–0098.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–09655 Filed 5–5–23; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

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

DATES: Applicable May 8, 2023.

FOR FURTHER INFORMATION CONTACT: Jonathan Hall-Eastman, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230, telephone: (202) 482–1468.

SUPPLEMENTARY INFORMATION: On February 24, 2023, the U.S. Department of Commerce (Commerce), pursuant to section 702(h) of the Trade Agreements Act of 1979 (as amended) (the Act), published the quarterly update to the annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty covering the period July 1, 2022, through September 30, 2022.[1] In the *Third Quarter 2022 Update,* we requested that any party that had information on foreign government subsidy programs that benefited articles of cheese subject to an in-quota rate of duty submit such information to Commerce.[2] We received no comments, information, or requests for consultation from any party.

Pursuant to section 702(h) of the Act, we hereby provide Commerce's update of subsidies on articles of cheese that were imported during the period October 1, 2022, through December 31, 2022. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

Commerce will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed. Commerce encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing through the Federal eRulemaking Portal at *https://www.regulations.gov,* Docket No. ITA–2020–0005, ''Quarterly Update to Cheese Subject to an In-Quota Rate of Duty.'' The materials in the docket will not be edited to remove identifying or contact information, and Commerce cautions against including any information in an electronic submission that the submitter does not want publicly disclosed. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF formats only. All comments should be addressed to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: May 2, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross[3] subsidy ($/lb)	Net[4] subsidy ($/lb)
27 European Union Member States[5].	European Union Restitution Payments	0.00	0.00
Canada	Export Assistance on Certain Types of Cheese	0.47	0.47
Norway	Indirect (Milk) Subsidy *Consumer Subsidy*	0.00	0.00
	0.00	*0.00*	
Total	0.00	0.00	

[1] *See Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty,* 88 FR 11899 (February 24, 2023) (*Third Quarter 2022 Update*).

[2] *Id.*

[3] Defined in 19 U.S.C. 1677(5).

[4] Defined in 19 U.S.C. 1677(6).

[5] The 27 member states of the European Union are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY—Continued

Country	Program(s)	Gross [3] subsidy ($/lb)	Net [4] subsidy ($/lb)
Switzerland	Deficiency Payments	0.00	0.00

[FR Doc. 2023–09689 Filed 5–5–23; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Datong Juqiang Activated Carbon Co., Ltd. (Datong Juqiang) and Jilin Bright Future Chemicals Co., Ltd. (Jilin Bright), exporters of certain activated carbon 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) April 1, 2021, through March 31, 2022. Interested parties are invited to comment on these preliminary results.

DATES: Applicable May 8, 2023.

FOR FURTHER INFORMATION CONTACT: Jinny Ahn or Zachariah Hall, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0339 or (202) 482–6261, respectively.

SUPPLEMENTARY INFORMATION:

Background

This administrative review is being conducted in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this administrative review on June 9, 2022.[1] On December 15, 2022, Commerce extended the preliminary results deadline until April 25, 2022.[2]

Scope of the Order [3]

The merchandise subject to the *Order* is certain activated carbon. The products are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 3802.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the *Order* remains dispositive.[4]

Continuation of Administrative Review for Carbon Activated Tianjin Co., Ltd.

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. On September 6, 2022, Carbon Activated Tianjin Co., Ltd. (Carbon Activated) timely withdrew its request for review.[5] However, because there is still an active review request for Carbon Activated,[6] we are not rescinding this review with respect to Carbon Activated, pursuant to 19 CFR 351.213(d)(1).

Preliminary Determination of No Shipments

Based on our analysis of U.S. Customs and Border Protection (CBP) information, and the no shipment certifications submitted by Datong Municipal Yunguang Activated Carbon Co., Ltd., Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd., and Shanxi Dapu International Trade Co., Ltd., Commerce preliminarily determines that these companies had no shipments of subject merchandise during the POR.

Consistent with our practice in non-market economy (NME) cases, we are not rescinding this review but instead intend to complete the review with respect to these three companies for which we have preliminarily found no shipments and issue appropriate instructions to CBP based on the final results of the review.[7]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. We calculated export prices and constructed export prices in accordance with section 772 of the Act. Because China is an NME country within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public 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 Preliminary Decision Memorandum is available at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Verification

As provided in sections 782(i)(3)(A)–(B) of the Act, we intend to verify the information upon which we will rely in determining our final results of review with respect to the two mandatory respondents, Datong Juqiang and Jilin Bright.

Preliminary Results of the Review

Commerce preliminarily finds that seven companies for which a review

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 35165 (June 9, 2022).

[2] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated December 15, 2022.

[3] *See Notice of Antidumping Duty Order: Certain Activated Carbon from the People's Republic of China,* 72 FR 20988 (April 27, 2007) (*Order*).

[4] For a complete description of the scope of the *Order, see* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Certain Activated Carbon from the People's Republic of China; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* Carbon Activated's Letter, ''Withdrawal of Request for Antidumping Administrative Review,'' dated September 6, 2022.

[6] *See* Calgon Carbon Corporation and Cabot Norit Americas Inc.'s (collectively, the petitioners) Letter, ''Petitioners' Request for Initiation of 15th Annual Administrative Review,'' dated April 29, 2022, at 2.

[7] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) (*NME Practice*).

was requested, including Carbon Activated,[8] did not establish eligibility for a separate rate because they failed to provide either a separate rate application or separate rate certification. As such, we preliminarily determine that these seven companies are part of the China-wide entity.[9]

For those companies that have established their eligibility for a separate rate,[10] Commerce preliminarily determines that the following weighted-average dumping margins exist for the POR:

Exporter	Weighted-average dumping margin (U.S. dollars per kilogram) [11]
Datong Juqiang Activated Carbon Co., Ltd	0.36
Jilin Bright Future Chemicals Co., Ltd	0.28
Review-Specific Rate Applicable to the Following Companies	
Jacobi Carbons AB, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons Industry (Tianjin) Co., Ltd., and Jacobi Adsorbent Materials (Tianjin) Co., Ltd.[12]	0.33
Ningxia Huahui Environmental Technology Co., Ltd. (formerly Ningxia Huahui Activated Carbon Co., Ltd.) [13]	0.33
Ningxia Mineral & Chemical Limited	0.33
Shanxi Industry Technology Trading Co., Ltd	0.33
Shanxi Sincere Industrial Co., Ltd	0.33
Tancarb Activated Carbon Co., Ltd	0.33
Tianjin Channel Filters Co., Ltd	0.33

For the respondents that were not selected for individual examination in this administrative review but qualified for a separate rate, we have assigned to them the weighted-average margin calculated based on the publicly available ranged U.S. sales quantities of the mandatory respondents consistent with section 735(c)(5)(A) of the Act.[14]

Disclosure and Public Comment

Commerce intends to disclose the calculations performed for these preliminary results to the parties within five days after the date of publication of this notice in accordance with 19 CFR 351.224(b).

Because, as noted above, Commerce intends to verify the information upon which we will rely in making our final determination, interested parties may submit written comments in the form of case briefs within one week after the date of issuance of the last verification report and rebuttal comments in the form of rebuttal briefs, limited to issues raised in the case briefs, within seven days after the time limit for filing case briefs.[15] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[16]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective

[8] *See* Appendix II of this notice for a full list of the seven companies.

[9] Because no interested 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, we did not conduct a review of the China-wide entity. Thus, the rate for the China-wide entity is not subject to change as a result of this review. *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). The China-wide entity rate of 2.42 U.S. dollars per kilogram was last reviewed in *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 70163 (November 25, 2014).

[10] *See* Preliminary Decision Memorandum.

[11] In the second administrative review of the *Order,* Commerce determined that it would calculate per-unit weighted-average dumping margins and assessment rates for all future reviews. *See Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review,* 75 FR 70208, 70211 (November 17, 2010).

[12] In the third administrative review of the *Order,* Commerce found that Jacobi Carbons AB, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons Industry (Tianjin) Co., Ltd. (collectively, Jacobi) should be treated as a single entity, pursuant to sections 771(33)(E), (F), and (G) of the Act, and 19 CFR 351.401(f). *See Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review,* 76 FR 67142, 67145, n.25 (October 31, 2011); Further, in a changed circumstances review of the order, Commerce determined that Jacobi should be collapsed with its new wholly-owned Chinese affiliate, Jacobi Adsorbent Materials (JAM), and the single entity, inclusive of JAM, should be assigned the same antidumping (AD) cash deposit rate assigned to Jacobi for purposes of determining AD liability in this proceeding. *See Certain Activated Carbon from the People's Republic of China: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 86 FR 58874 (October 25, 2021). Because there were no facts presented on the record of this review which would call into question our prior findings, we continue to treat these companies as part of a single entity for this administrative review.

[13] In a changed circumstances review of the *Order,* Commerce found that Ningxia Huahui Environmental Technology Co., Ltd. is the successor-in-interest to Ningxia Huahui Activated Carbon Co. Ltd. (Ningxia Huahui) and should be assigned the same AD cash deposit rate assigned to Ningxia Huahui for purposes of determining AD liability in this proceeding. *See Certain Activated Carbon from the People's Republic of China: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 86 FR 64184 (November 17, 2021).

[14] *See* Memorandum, ''Calculation of the Margin for Respondents Not Selected for Individual Examination,'' dated concurrently with this notice; *see also* Preliminary Decision Memorandum.

[15] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d); *see also* 19 CFR 351.303 (for general filing requirements) and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications are in effect).'').

[16] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

case and rebuttal briefs.[17] If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[18] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions to Commerce must be filed electronically using ACCESS [19] and must also be served on interested parties.[20] An electronically filed document must be received successfully in its entirety by ACCESS, by 5 p.m. Eastern Time (ET) on the date that the document is due.

Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act, unless this deadline is extended.

Assessment Rates

Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[21] Commerce intends to issue assessment instructions to CBP 35 days after the publication date 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).

For each individually examined respondent whose (estimated) *ad valorem* weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, Commerce will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total quantity of those sales, in accordance with 19 CFR 351.212(b)(1).[22] Commerce will also calculate (estimated) *ad valorem* importer-specific assessment rates with which to assess whether the per-unit assessment rate is *de minimis.*[23] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated in the final results of this review is not zero or *de minimis.* Where either the respondent's *ad valorem* weighted-average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[24]

For the respondents that were not selected for individual examination in this administrative review but qualified for a separate rate, the assessment rate will be the margin established for these companies in the final results of this review.

For the final results, if we continue to treat the seven companies identified at Appendix II to this notice as part of the China-wide entity, we will instruct CBP to apply a per-unit assessment rate of $2.42 per kilogram to all entries of subject merchandise during the POR which were exported by those companies.[25]

For entries that were not reported in the U.S. sales data submitted by companies individually examined during this review, Commerce will instruct CBP to liquidate such entries at the rate for the China-wide entity.[26] Additionally, if Commerce determines 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.[27]

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated antidumping duties, as applicable.

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 each specific company listed in the final results of this review, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except that if the *ad valorem* rate is *de minimis,* then the cash deposit rate will be zero); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have separate rates, the cash deposit rate will continue to be the existing exporter-specific cash deposit rate; (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; 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

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213, and 19 CFR 351.221(b)(4).

Dated: April 25, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

[17] *See* 19 CFR 351.310(c).

[18] *See* 19 CFR 351.310(d).

[19] *See* 19 CFR 351.303.

[20] *See* 19 CFR 351.303(f).

[21] *See* 19 CFR 351.212(b)(1).

[22] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[23] For calculated (estimated) *ad valorem* importer-specific assessment rates used in determining whether the per-unit assessment rate is *de minimis, see* Memoranda, ''Preliminary Results Margin Calculation for Datong Juqiang Activated Carbon Co., Ltd.''; and ''Preliminary Results Calculation Memorandum for Jilin Bright,'' both dated concurrently with this notice, and accompanying Margin Calculation Program Logs and Output.

[24] *See* 19 CFR 351.106(c)(2).

[25] *See, e.g., Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 70163, 70165 (November 25, 2014).

[26] *See NME Practice* for a full discussion.

[27] *Id.*

Appendix II—Companies Preliminarily Determined To Be Part of the China-Wide Entity

1. Beijing Pacific Activated Carbon Products Co., Ltd.
2. Bengbu Modern Environmental Co., Ltd.
3. Carbon Activated Tianjin Co., Ltd.
4. Shanxi DMD Corp.
5. Shanxi Tianxi Purification Filter Co., Ltd.
6. Sinoacarbon International Trading Co., Ltd.
7. Tianjin Maijin Industries Co., Ltd.

[FR Doc. 2023–09731 Filed 5–5–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–883]

Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review in Part; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) is amending the final results of the administrative review, in part, of the antidumping duty order on certain hot-rolled steel flat products from the Republic of Korea (Korea), covering the period of review (POR) October 1, 2020, through September 30, 2021, to correct a ministerial error.

DATES: Applicable May 8, 2023.

FOR FURTHER INFORMATION CONTACT: Christopher Williams, 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) 482–5166.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Final Results* of this review in the **Federal Register** on April 20, 2023.[1] On April 24, 2023, we received a timely submitted ministerial error allegation from Hyundai Steel Company (Hyundai Steel).[2] We are amending the *Final Results* to correct the ministerial error raised by Hyundai Steel.

Legal Framework

A ministerial error, as defined in section 751(h) of the Tariff Act of 1930, as amended (the Act), includes ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.'' [3] With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce ''will analyze any comments received and if appropriate, correct any ministerial error by amending . . . the final results of review . . . .''

Ministerial Error

We agree with Hyundai Steel that Commerce made a ministerial error in the *Final Results* within the meaning of section 751(h) of the Act and 19 CFR 351.224(f) by inadvertently not updating the program with revised cost data from the *Final Results* when merging it with U.S. sale data, resulting in an incorrect margin calculation for Hyundai Steel. Accordingly, pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Results* to reflect the correction of this ministerial error in the calculation of Hyundai Steel's antidumping duty margin rate, which changes from 0.88 percent to 0.84 percent.

For a detailed discussion of Commerce's analysis, *see* the Ministerial Error Memorandum and Amended Final Results Analysis Memorandum.[4] Furthermore, we are amending the rate for the companies not selected for individual examination in this review based on the weighted-average dumping margins calculated for the mandatory respondents,[5] which changes from 0.88 percent to 0.84 percent.

Amended Final Results of Review

As a result of correcting the ministerial error described above, Commerce determines that the following weighted-average dumping margins exist for the period October 1, 2020, through September 30, 2021:

Producer/exporter	Weighted-average dumping margin (percent)
Hyundai Steel Company	0.84

Review-Specific Average Rate Applicable to the Following Companies:

Producer/exporter	Weighted-average dumping margin (percent)
Del Trading Inc	0.84
Dongkuk Industries Co., Ltd	0.84
Dongkuk Steel Mill Co., Ltd ..	0.84
Gs Global Corp	0.84
Gs Holdings Corp	0.84
KG Dongbu Steel Co., Ltd ...	0.84
Marubeni-Itochu Steel Korea, Ltd	0.84
Samsung C and T Corporation	0.84
Snp Ltd	0.84
Soon Ho Co., Ltd	0.84
Soon Hong Trading Co. Ltd	0.84
Sungjin Co., Ltd	0.84

Disclosure

We intend to disclose the calculations performed in connection with these amended final results of review to parties in this review within five days after public announcement of the amended final results, or if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, 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)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review.

For Hyundai Steel, we calculated importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those sales in accordance with 19 CFR 351.212(b)(1). Where an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), the entries by that importer will be liquidated without regard to antidumping duties. Because POSCO's weighted-average dumping margin was not changed in these amended final results, we will continue to instruct CBP to liquidate POSCO's entries without

[1] *See Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2020–2021,* 88 FR 24387 (April 20, 2023) (*Final Results*).

[2] *See* Hyundai Steel's Letter, ''Hyundai Steel's Comments on Ministerial Error in Final Results,'' dated April 24, 2023.

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

[4] *See* Memoranda, ''Ministerial Error Memorandum for the Final Results of the Antidumping Duty Administrative Review; 2020–2021: Certain Hot-Rolled Steel Flat Products from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Ministerial Error Memorandum); and ''Amended Final Results for Hyundai Steel Company,'' dated concurrently with this notice (Amended Final Results Analysis Memorandum).

[5] The margin for the other mandatory respondent, POSCO (Commerce treated POSCO and POSCO International Corporation as a single entity) remains unchanged from the *Final Results* and continues to be 0.00 percent.

regard to duties in accordance with 19 CFR 351.106(c)(1).

For entries of subject merchandise during the POR produced by Hyundai Steel for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

For the companies identified above that were not selected for individual examination, we will instruct CBP to liquidate entries at the rate established in these amended final results of review.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the amended 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

Upon publication of this notice in the **Federal Register**, the following amended cash deposit requirements will be retroactively effective for all shipments of subject merchandise that entered, or were withdrawn from warehouse, for consumption on or after April 20, 2023, the date of publication of the *Final Results* of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) the amended cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in these amended final results of review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer has been covered in a prior completed segment of this proceeding, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 6.05 percent, the all-others rate established in the less-than-fair-value investigation for this proceeding.[6] These amended cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice 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 review period. 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.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

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

Dated: May 2, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–09729 Filed 5–5–23; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See Order,* 81 FR at 67963, 67965.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502, A–549–502, A–489–501]

Certain Welded Carbon Steel Pipes and Tubes From India, Thailand, and Republic of Turkey: Final Results of the Expedited Sunset Review of the Antidumping Duty Orders

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

SUMMARY: As a result of these expedited sunset reviews, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on certain welded carbon steel pipes and tubes (pipe and tube) from India, Thailand, and the Republic of Turkey (Turkey) would likely lead to a continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice. The sunset period of review is 2018–2022.

DATES: Applicable May 8, 2023.

FOR FURTHER INFORMATION CONTACT: Richard Roberts, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3464.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 2023, Commerce published in the **Federal Register** the notice of initiation of the fourth sunset review of the AD orders on pipe and tube from India, Thailand, and Turkey,[1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On January 17 and 18, 2023, Commerce received notices of intent to participate from domestic interested parties [3] for these *Orders* in accordance with 19 CFR 351.218(d)(1)(i) within 15 days after the date of publication of the *Initiation Notice.* The domestic interested parties

[1] *See Antidumping Duty Order; Certain Welded Carbon Steel Standard Pipes and Tubes from India,* 51 FR 17384 (May 12, 1986); *Antidumping Duty Order; Circular Welded Carbon Steel Pipes and Tubes from Thailand,* 51 FR 8341 (March 11, 1986); and *Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products from Turkey,* 51 FR 17784 (May 15, 1986) (collectively, *Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 88 FR 63 (January 3, 2023) (*Initiation Notice*).

[3] *See* Nucor's Letters, ''Certain Welded Carbon Steel Pipes and Tubes from India: Notice of Intent to Participate in Sunset Review,'' dated January 17, 2023; ''Certain Welded Carbon Steel Pipes and Tubes from Thailand: Notice of Intent to Participate in Sunset Review'' dated January 17, 2023; and ''Certain Welded Carbon Steel Pipes and Tubes from Turkey: Notice of Intent to Participate in Sunset Review,'' dated January 17, 2023; *see also* Bull Moose, Maruichi, and Zekelman's Letters, ''Fifth Five-Year Review of the Antidumping Duty Order on Certain Welded Carbon Steel Pipes and Tubes from India: Notice of Intent to Participate'' dated January 18, 2023; ''Fifth Five-Year Review of the Antidumping Duty Order on Certain Welded Carbon Steel Pipes and Tubes from Thailand: Notice of Intent to Participate'' dated January 18, 2023; and ''Fifth Five-Year Review of the Antidumping Duty Order on Certain Welded Carbon Steel Pipes and Tubes from Turkey: Notice of Intent to Participate,'' dated January 18, 2023 (collectively, Notices of Intent to Participate). The domestic interested parties consist of the following members: Nucor Tubular Products Inc. (Nucor), Bull Moose Tube Company (Bull Moose), Maruichi American Corporation (Maruichi), and Zekelman Industries (Zekelman) (collectively, the domestic interested parties).

claimed interested party status under section 771(9)(C) of the Act, as producers in the United States of the domestic like product. On February 2, 2023, the domestic interested parties submitted timely adequate substantive responses to the *Initiation Notice* for each sunset review within the 30-day period, as specified in 19 CFR 351.218(d)(3)(i).[4]

On January 25, 2023, Commerce notified the U.S. International Trade Commission that it received notices of intent to participate from the domestic interested parties.[5] Commerce did not receive substantive responses from respondent interested parties in these sunset reviews. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited, *i.e.,* 120-day sunset reviews of the *Orders.*

Scope of the Orders

The products covered by these *Orders* are pipe and tube. A full description of the scope of the *Orders* is contained in the Issues and Decision Memorandum.[6]

Analysis of Comments Received

All issues raised in these sunset reviews, including the likelihood of continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail if the orders are revoked, are addressed in the Issues and Decision Memorandum. A list of topics discussed in the Issues and Decision Memorandum is included as 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/FRNotices/ListLayout.aspx.*

[4] *See* Domestic Interested Parties' Letter, ''Substantive Response to Notice of Initiation,'' dated February 2, 2023; Domestic Interested Parties' Letter, ''Substantive Response to Notice of Initiation,'' dated February 2, 2023; and Domestic Interested Parties' Letter, Substantive Response to Notice of Initiation,'' dated February 2, 2023 (collectively, Substantive Responses).

[5] *See* Commerce's Letter, ''Sunset Reviews for January 2023,'' dated January 25, 2023.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited Fifth Sunset Reviews of the Antidumping Duty Orders on Certain Welded Carbon Steel Pipes and Tubes from India, Thailand, and the Republic of Turkey,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Orders* on pipe and tube from India, Thailand, and Turkey would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the margins of dumping likely to prevail would be at margins up to 87.93 percent for India, 15.60 percent for Thailand, and 23.12 percent for Turkey.

Administrative Protective Order

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the 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 which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.221(c)(5)(ii).

Dated: May 2, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–09730 Filed 5–5–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Industrial Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting of the Industrial Advisory Committee.

SUMMARY: The Industrial Advisory Committee (Committee) will hold an in-person and web conference meeting on Tuesday, June 6, 2023, from 9:30 a.m. to 4:30 p.m. Eastern Time. The primary purposes of this meeting are to update the Committee on the progress of the CHIPS R&D Programs, receive updates from the Committee working groups, and allow the Committee to deliberate and discuss the progress that has been made. The final agenda will be posted on the NIST website at *https://www.nist.gov/chips/industrial-advisory-committee.*

DATES: The Industrial Advisory Committee will meet on Tuesday, June 6, 2023, from 9:30 a.m. to 4:30 p.m. Eastern Time. The meeting will be open to the public.

ADDRESSES: The meeting will be held in person and via web conference from the Mayflower Hotel, located at 1127 Connecticut Ave. NW, Washington, DC 20036. For instructions on how to attend and/or participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Regarding the IAC meeting contact Tamiko Ford at *Tamiko.Ford@NIST.gov* or (202) 594–6793.

SUPPLEMENTARY INFORMATION: The Committee was established pursuant to 15 U.S.C. 4656(b). The Committee is currently composed of 24 members, appointed by the Secretary of Commerce, to provide advice to the United States Government on matters relating to microelectronics research, development, manufacturing, and policy. Background information on the CHIPS Act and information on the Committee is available at *https://www.nist.gov/chips/industrial-advisory-committee.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. 1001 *et seq.,* notice is hereby given that the Industrial Advisory Committee will meet on Tuesday, June 6, 2023, from 9:30 a.m. to 4:30 p.m. Eastern Time. The meeting will be open to the public and will be held in-person and via web conference. Interested members of the public will be able to participate in the meeting from remote locations. The primary purposes of this meeting are to update the Committee on the progress of the CHIPS R&D Programs, receive updates from the Committee working groups, and allow the Committee to deliberate and discuss the progress that has been made. The final agenda will be posted on the NIST website at *https://*

www.nist.gov/chips/industrial-advisory-committee.

Individuals and representatives of organizations who would like to offer comments and questions related to items on the Committee's agenda for this meeting are invited to submit comments and questions in advance of the meeting. Written comments and questions may be submitted via the registration link. Approximately ten minutes will be reserved for public comments which will be read on a first-come, first-served basis. Public comments and questions will be received through the registration link.

Comments and questions from the public will not be considered during this period. Please note that all submitted comments or questions will be treated as public documents and will be made available for public inspection. All those wishing to submit a comment or question must submit their request and comment or question via the registration link *https://events.nist.gov/profile/21414* by 5:00 p.m. Eastern Time, Friday, June 2, 2023. All visitors to the meeting are required to pre-register to be admitted. Space is limited and in-person attendance will be allowed on a first-come, first-served basis. Anyone wishing to attend this meeting in-person or via web conference must register by 5 p.m. Eastern Time, Thursday, June 1, 2023, to attend. Please submit your full name, the organization you represent (if applicable), email address, and phone number via *https://events.nist.gov/profile/21414.* Non-U.S. citizens must submit additional information; please contact Tamiko Ford at *Tamiko.Ford@nist.gov* for more information.

For participants attending in person, please note that you must present a state-issued driver's license or identification card for access to the meeting. The license or identification card must be issued by a state that is compliant with the REAL ID Act of 2005 (Pub. L. 109–13), or by a state that has an extension for REAL ID compliance. NIST currently accepts other forms of federal-issued identification in lieu of a state-issued driver's license. Registration for in-person attendance will be available on site and open from 8:30 a.m. until 10 a.m.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–09713 Filed 5–5–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC989]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Tilefish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Wednesday, May 24, 2023, from 1 p.m. to 3 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Webinar connection, agenda items, and any additional information will be available at *www.mafmc.org/council-events.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Tilefish Monitoring committee will meet via webinar to review previously adopted 2024 commercial and recreational catch limits for both blueline and golden tilefish and recommend changes as appropriate. In addition, the Monitoring Committee will review commercial and recreational management measures for both species and recommend changes if needed. During this meeting, the Monitoring Committee will consider recent fishery performance as well as recommendations from the Advisory Panel, Scientific and Statistical Committee, and Council staff. Meeting materials will be posted to *www.mafmc.org.*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden at the Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: May 3, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–09712 Filed 5–5–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; User Needs Survey by the Space Weather Advisory Group

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on August 16, 2022 (87 FR 50291) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

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

Title: User Needs Survey by the Space Weather Advisory Group.

OMB Control Number: 0648–XXXX.

Form Number(s): None.

Type of Request: Regular submission (New information collection).

Number of Respondents: 491.

Average Hours per Response:

- *Aviation:* 1 hour.
- *Emergency Management:* 8 hours.
- *Global Navigation Satellite System:* 15 minutes (Survey) and 1 hour (Interview).
- *Human Space Flight:* 1 hour.
- *Power Grid:* 1 hour.
- *Research Sector:* 1 hour.
- *Space Situational Awareness:* 1 hour.

Total Annual Burden Hours: 459.

Needs and Uses: The data collection is sponsored by DOC/NOAA/NWS/Space Weather Advisory Group (SWAG). The SWAG is required under 51 U.S.C. 60601(d)(3) to undertake a comprehensive survey of space weather product users to identify the ''research,

observations, forecasting, prediction, and modeling advances required to improve space weather products.'' Specifically, the SWAG will (i) assess the adequacy of current Federal Government goals for lead time, accuracy, coverage, timeliness, data rate, and data quality for space weather observations and forecasting; (ii) identify options and methods to, in consultation with the academic community and the commercial space weather sector, improve upon the advancement of the goals described in clause (i); (iii) identify opportunities for collection of new data to address the needs of the space weather user community; (iv) identify methods to increase coordination of space weather research to operations and operations to research; (v) identify opportunities for new technologies, research, and instrumentation to aid in research, understanding, monitoring, modeling, prediction, forecasting, and warning of space weather; and (vi) identify methods and technologies to improve preparedness for potential space weather phenomena.

This collection identified seven sectors (Aviation, Emergency Management, Global Navigation Satellite System, Human Space Flight, Power Grid, Research, and Space Situational Awareness/Space Traffic Management) that will be consulted as part of this effort. Information will be collected on a one-off basis from each of the sectors. Respondents in each sector include the general public, defined as adults ages 18+. Members of the SWAG will oversee recruitment of the respondents. Respondents will be asked questions about their current use of space weather observations, information, and forecasts, technological systems, components or elements affected by space weather, current and future risk and resilience activities, future space weather requirements, and unused or new types of measurements or observations that would enhance space weather risk mitigation. This data collection serves many purposes, including gaining a better understanding of the needs of users of space weather products. The SWAG will use the data to identify the space weather research, observations, forecasting, prediction, and modeling advances required to improve space weather products. Specifically, the information will be used to advise the National Science and Technology Council's Space Weather Operations, Research, and Mitigation (SWORM) Subcommittee on improving the ability of the United States to prepare for, mitigate, respond to, and recover from space weather storms.

Affected Public: Individuals or households; Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government; Federal government.

Frequency: Once.

Respondent's Obligation: Voluntary.

Legal Authority: 51 U.S.C. 60601, Space weather.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–09738 Filed 5–5–23; 8:45 am]

BILLING CODE 3510–KE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC972]

Atlantic Highly Migratory Species; Climate Vulnerability Assessment Public Meeting and Webinar

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

ACTION: Notice of public workshop and webinar/conference call.

SUMMARY: NMFS will hold a 3-day Atlantic Highly Migratory Species (HMS) Climate Vulnerability Assessment (CVA) public workshop and webinar in May 2023. NMFS uses CVAs to identify which species may be most vulnerable based on their exposure to projected changes in the environment (*e.g.,* warming oceans) and their sensitivity or adaptability to handle those changes based on their life history characteristics. In-person workshops are a key component of the CVA scoring process. This workshop will allow a scientific panel of 15 experts to evaluate species sensitivity to climate change, identify and fix errors in scoring, allow for appropriate consideration of new information, address bias, and provide their individual scores for, and opinions on, HMS. The meeting is open to the public.

DATES: The CVA workshop and webinar will be held on Tuesday, May 16, 2023 through Thursday, May 18, 2023 from 9 a.m. to 5 p.m.

ADDRESSES: The in-person workshop will be held at the Embassy Suites by Hilton, 8000 José M. Tartak Ave, San Juan, Puerto Rico, 00979. The meeting will also be accessible via webinar/conference call. Please use this form to register for the workshop in order to receive access information: *https://forms.gle/VaoPBRX24pAMWFBC6.*

Agendas and additional meeting information can be found here: *https://www.fisheries.noaa.gov/event/atlantic-highly-migratory-species-climate-vulnerability-assessment-public-workshop-and.*

FOR FURTHER INFORMATION CONTACT: Jennifer Cudney, 301–427–8503, *jennifer.cudney@noaa.gov,* or Tyler Loughran, 301–427–8503, *tyler.loughran@noaa.gov.*

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries (tunas, billfish, swordfish, and sharks) are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). The 2006 Consolidated HMS Fishery Management Plan and its amendments are implemented by regulations at 50 CFR part 635.

The NMFS Climate Science Strategy (*https://www.fisheries.noaa.gov/national/climate/noaa-fisheries-climate-science-strategy*) prioritized the use of CVAs to better understand what is at risk and why, and to help triage and prioritize climate science funding and resource decisions. NMFS uses CVAs to identify which species may be most vulnerable based on their exposure to projected changes in the environment (*e.g.,* warming oceans) and their sensitivity or adaptability to handle those changes based on their life history characteristics. In-person workshops are a key component of the CVA scoring process. This HMS CVA workshop will allow a scientific panel of 15 experts to: evaluate the sensitivity of HMS to climate change; identify and fix errors in scoring; allow for appropriate consideration of new information; address bias; and provide their individual scores for, and opinions on, HMS. Panelists will also consider, and

provide their individual views on, whether impacts of climate change are anticipated to be negative, neutral, or positive on HMS species. The intent of the workshop is to increase transparency in the process of determining final scores. NMFS will generate preliminary scores indicating overall expected vulnerability of HMS to climate change at the end of the workshop; this will be based on consideration of the panelists' individual scores and other information and analyses. Panelists will be provided additional opportunities after the workshop to finalize their individual scores. NMFS will take these individual scores and other information and analyses into consideration when the agency develops final vulnerability rankings. Under the Magnuson-Stevens Act, NMFS is required to use the best scientific information available for fishery management per National Standard 2, 16 U.S.C. 1851(a)(2). NMFS will make the final results of the HMS CVA available to the public through a variety of outreach mechanisms including the NOAA CVA website (*https://www.fisheries.noaa.gov/national/climate/climate-vulnerability-assessments*), manuscripts, web stories, and other tools.

This workshop will include both large group discussion of relevant information and breakout groups to provide panelists the opportunity to focus on species-specific discussions. Additional information on the meeting and a copy of the draft agenda will be posted prior to the meeting (see **ADDRESSES**).

Ground rules for the workshop will be strictly enforced through the workshop and will be made available with webinar access information (see **ADDRESSES**). Members of the public are invited to observe the workshop in person or virtually, and will be provided limited opportunities to present information to a panel of scientific experts to assist in their evaluation of species' sensitivity to climate change. The workshop location will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jennifer Cudney or Tyler Loughran at 301–427–8503, at least 7 days prior to the meeting. Members of the public accessing the webinar are strongly encouraged to log/dial in 15 minutes prior to the meeting in case of technical issues. Members of the public observing the workshop via webinar are invited to observe both large group and breakout discussions, and should be prepared to indicate breakout group preferences at appropriate times.

Dated: May 3, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–09743 Filed 5–5–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC984]

Fisheries of the South Atlantic; National Marine Fisheries Service—Public Meetings

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

ACTION: Notice; public meeting.

SUMMARY: The National Marine Fisheries Service will hold a virtual Dolphin (*i.e.,* Dolphinfish or Mahi mahi) Management Strategy Stakeholder workshop on May 30, 2023.

DATES: The workshop will be held on Tuesday, May 30, 2023, from 5:30 p.m. until 8:30 p.m. EDT.

ADDRESSES: *Meeting address:* The meeting is open to members of the public. The workshop is accessible online via Google Meet at: *https://meet.google.com/viu-ajte-yux* [or dial: (US) +1 904–323–4293; PIN: 490 150 382#]. Those interested in participating should contact Cassidy Peterson (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Cassidy Peterson, Management Strategy Evaluation Specialist, NMFS Southeast Fisheries Science Center, phone (910) 708–2686; email: *Cassidy.Peterson@noaa.gov.*

SUPPLEMENTARY INFORMATION: In collaboration with the South Atlantic Fishery Management Council, NMFS is embarking on a Management Strategy Evaluation (MSE) to guide dolphin (*i.e.,* dolphinfish or mahi mahi) management in the jurisdiction. The MSE will be used to develop a management procedure that best achieves the suite of management objectives for the U.S. Atlantic dolphin fishery. Stakeholder input is necessary for characterizing the management objectives of the fishery and stock, identifying any uncertainties in the system that should be built into the MSE analysis, and providing guidance on the acceptability of the proposed management procedures.

Agenda items for the meeting include: developing an understanding of management procedures and management strategy evaluation, developing conceptual management objectives, and clarifying uncertainties that should be addressed within the framework.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to Cassidy Peterson (see **FOR FURTHER INFORMATION CONTACT**) 7 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: May 3, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–09719 Filed 5–5–23; 8:45 am]

BILLING CODE 3510–22–P

COMMISSION OF FINE ARTS

Notice of Meeting

Per 45 CFR chapter XXI 2102.3, the next meeting of the U.S. Commission of Fine Arts is scheduled for May 18, 2023, at 9:00 a.m. and will be held via online videoconference. Items of discussion may include buildings, infrastructure, parks, memorials, and public art.

Draft agendas, the link to register for the online public meeting, and additional information regarding the Commission are available on our website: *www.cfa.gov.* Inquiries regarding the agenda, as well as any public testimony, should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing *cfastaff@cfa.gov*; or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated April 28, 2023 in Washington, DC.

Susan M. Raposa,

Technical Information Specialist.

[FR Doc. 2023–09664 Filed 5–5–23; 8:45 am]

BILLING CODE 6330–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Fostering Diverse Schools Demonstration Grants

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The U.S. Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2023 for Title IV–A of the Elementary and Secondary Education Act of 1965 (ESEA) Fostering Diverse Schools Demonstration Grants, Assistance Listing Number (ALN) 84.424G. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: May 8, 2023.

Deadline for Transmittal of Applications: July 7, 2023.

Deadline for Intergovernmental Review: September 5, 2023.

Pre-Application Webinar Information: The Department will hold pre-application webinars on Tuesday, May 9, 2023, at 2:00 p.m. Eastern time and Thursday, May 18, 2023 at 2:00 p.m. Eastern time. Applicants can sign on at *oese.ed.gov/fostering-diverse-school-program-fdsp/.*

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 *https://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: Richard Wilson, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W101, Washington, DC 20202–5970. Telephone: (202) 453–6709. Email: *Richard.Wilson@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 Fostering Diverse Schools Demonstration Grants program provides competitive grants to local educational agencies (LEAs), consortia of LEAs, or one or more LEAs in partnership with a State educational agency (SEA) to provide students with access to a well-rounded education and to improve school conditions for student learning by developing or implementing, and making publicly available as a resource for other LEAs and SEAs, comprehensive plans for increasing school socioeconomic diversity in preschool through grade 12.

Background:

Our country's rich diversity is its strength. Research suggests that students are better prepared for success when they learn together in schools where students and educators represent a wide range of backgrounds and experiences.[1] Supporting diverse student populations in LEAs, schools, classrooms, and educational programs or courses is a way to provide more well-rounded educational experiences and opportunities that support academic achievement for all students, consistent with section 4107 of the ESEA. In addition, schools with diverse student populations provide safe and healthy environments that enable academic achievement, consistent with section 4108 of the ESEA. This goal is supported by research showing that students attending diverse schools have better test scores and higher college attendance and graduation rates.[2] The Fostering Diverse Demonstration Schools Grants program is intended to help build the capacity of LEAs to meet the needs of students—including academic, social, emotional, and mental health—by increasing access to and equity in diverse and inclusive learning environments. This program is being established with funds from the 2 percent reservation for technical assistance and capacity building under section 4103(a)(3) of the ESEA, which is designed to support States and LEAs in carrying out activities authorized under the Student Support and Academic Enrichment Grants program in Title IV, part A of the ESEA, including activities that support access to a well-rounded education and activities that support safe and healthy students and their academic and overall well-being. Grants are available to LEAs, individually or in partnership with other LEAs or with a SEA, to develop, enhance, or implement plans that foster socioeconomic diversity in preschool through grade 12 for the purpose of increasing academic achievement through providing access to a well-rounded education and supporting student well-being. The Explanatory Statement[3] for Division H of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103), directs the Department to prioritize its Title IV, part A reservation for technical assistance and capacity building to support SEAs and LEAs in fostering school diversity efforts across and within school districts. Awards under this FY 2023 competition will be supported with FY 2022 Title IV, part A technical assistance and capacity building funds, which remain available for obligation by the Department until September 30, 2023.

Research suggests that income segregation is increasing[4] and that students in socioeconomically isolated schools (*i.e.,* schools overwhelmingly composed of children from low-income backgrounds) have less access to the critical resources and funding that are necessary for high-quality educational experiences than students in socioeconomically diverse or more affluent schools, and as a result have

[1] Palardy, G. (2008). ''Differential school effects among low, middle, and high social class composition schools.'' School Effectiveness and School Improvement 19, 1: 21–49. *https://doi.org/10.1080/09243450801936845.*

Mickelson, R.A. (2008). ''Twenty-first Century Social Science Research on School Diversity and Educational Outcomes,'' Ohio State Law Journal 69: 1173–228. *https://kb.osu.edu/handle/1811/71161.*

Egalite, A., B. Kisida, and M.A. Winters. (2015). ''Representation in the Classroom: The Effect of Own-race Teachers on Student Achievement,'' Economics of Education Review, 45, 44–52. *https://doi.org/10.1016/j.econedurev.2015.01.007.*

Palardy, G.J. (2013). ''High school socioeconomic segregation and student attainment,'' American Educational Research Journal, 50, 4: 714. *https://doi.org/10.3102/0002831213481240.*

Ayscue, J., Frankenberg, E. and Siegel-Hawley, G. (2017). ''The Complementary Benefits of Racial and Socioeconomic Diversity in Schools.'' Research Brief No. 10. National Coalition on School Diversity. *https://eric.ed.gov/?id=ED603698.*

Dee, T. (2004). Teachers, race and student achievement in a randomized experiment. The Review of Economics and Statistics, 86,1: 195–210. *https://eric.ed.gov/?id=ED464172.*

Gershenson, S., Hart, C. M. D., Hyman, J., Lindsay, C. A., & Papageorge, N. W. (2022). ''The long-run impacts of same race teachers.'' American Economic Journal: Economic Policy, 14(4): 300–342. *https://doi.org/10.1257/pol.20190573.*

[2] Tegeler, P., Mickelson, R. A., & Bottia, M. (2011). What We Know about School Integration, College Attendance, and the Reduction of Poverty. Research Brief No. 4. Updated. *https://eric.ed.gov/?id=ED571628.* National Coalition on School Diversity; Eaton, S. (2011). School Racial and Economic Composition & Math and Science Achievement. Research Brief No. 1. Updated. *National Coalition on School Diversity. https://eric.ed.gov/?id=ED571622.*

[3] See page S8895 of *https://www.congress.gov/117/crec/2022/12/20/168/198/CREC-2022-12-20-pt2-PgS8553-2.pdf.*

[4] Owens, A. (2018). Income segregation between school districts and inequality in students' achievement. *Sociology of education, 91*(1), 1–27. *https://journals.sagepub.com/doi/full/10.1177/0038040717741180.*

negative academic outcomes.[5] This disparity can ultimately have detrimental effects on the individual lives of students and the foundation of democracy.[6]

Research also suggests that school diversity provides a range of benefits to students, including improved leadership skills, social mobility, civic engagement, academic success, empathy, and understanding.[7] Unfortunately, nearly 70 years after the *Brown* v. *Board of Education* decision, much of the progress toward school diversity and equality has stalled or even reversed in many communities.[8] For example, demographic isolation has been exacerbated by policy choices related to school assignment, zoning, and transportation options that create inequitable access to high-quality schools. The U.S. Government Accountability Office (GAO) has documented the situation in a recent report showing the ''student population has significantly diversified, but many schools remain divided along racial, ethnic, and economic lines.'' [9] Another recent GAO report documented the increase in percentages of schools with high concentrations of students from families with low incomes and high concentrations of students of particular races.[10]

In addition to diverse schools, students' experiences in diverse classrooms can provide a range of academic, social, and emotional benefits, including increased civic engagement, improved critical thinking skills, and innovation.[11] However, even when school buildings overall are more diverse, in some cases, the classrooms providing more rigorous educational opportunities in the building do not reflect such diversity.

Through the Title IV–A Grants for Fostering Diverse Schools Demonstration program, the Department invites LEAs, consortia of LEAs, or one or more LEAs in partnership with a SEA to apply for funding to—(1) develop or enhance a locally tailored comprehensive plan to increase socioeconomic diversity across and within LEAs, schools, and academic programs or courses, as applicable; or (2) implement a locally tailored comprehensive plan to foster socioeconomic diversity across and within districts and schools, and within classrooms, as applicable. The Department seeks to support applicants that promote the use of evidence-based strategies to increase access to high-quality, well-rounded learning experiences, support safe and healthy students by increasing diversity across and within districts, schools, and courses, or both. The Department also seeks to support applicants that demonstrate student, family, educator, and community involvement in the development and implementation of their school diversity plans. In either case, projects supported by this program must complement, rather than duplicate, the ongoing work of the grantee, and funds awarded under this grant must supplement, and not supplant, non-Federal funds that would otherwise be available for activities funded under this program.

The Department expects applicants to submit proposals to develop or implement plans for diversity that are responsive to the significant body of research showing the importance of student diversity in fostering academic achievement. In developing their proposals, applicants should consider strategies to encourage socioeconomic diversity in schools, courses, and programs. Applicants may also propose to voluntarily foster diversity more broadly by considering legally permissible strategies for promoting diversity as it relates to factors such as race/ethnicity, culture, geography, the percentage of English learners, and the percentage of students with disabilities.

As part of the Department's Raise the Bar: Lead The World initiative (see *https://www.ed.gov/raisethebar/*), the Department has identified three focus areas and six strategies to help support LEAs and SEAs drive improvements in educational excellence for students in preschool through grade 12 and provide conditions that enable success for all students in their educational attainment, college, and careers. The Fostering Diverse Schools Demonstration program will help advance the Department's efforts in two of these focus areas in particular: Accelerate Learning for Every Student and Deliver a Comprehensive and Rigorous Education for Every Student.

Priorities: This competition includes two absolute priorities and three competitive preference priorities. We are establishing the absolute priorities and competitive preference priorities for the FY 2023 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Absolute Priorities: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one of these priorities. An applicant must identify in the project abstract the absolute priority to which it is applying.

Note: The Secretary intends to create two separate rank orders, one for each absolute priority. As a result, the Secretary may fund applications out of the overall rank order, but the Secretary is not bound to do so.

These priorities are:

Absolute Priority 1—Developing or Enhancing a Comprehensive Plan to Increase Socioeconomic Diversity.

To meet this priority, an applicant must propose to develop or enhance, and make publicly available, including by posting on the applicant's website, a comprehensive plan to increase socioeconomic diversity (as defined in this notice) across the LEA, or LEAs, as applicable, for the purpose of promoting academic achievement by providing students with access to a well-rounded education, fostering safe and healthy schools, or both.

The application must include—

(a) A description of how the applicant will develop or enhance a plan to increase socioeconomic diversity across the LEA, or LEAs, as applicable, including a description of the students, families, and school community or communities to be served, including disaggregated demographic data (*e.g.,* income, race, ethnicity, disability status, status as an English learner).

(b) A description of how the applicant will document and publicly disseminate the results of the funded project to increase the capacity of other LEAs to implement similar programs.

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[5] Reardon, S. F. (2016). School segregation and racial academic achievement gaps. RSF: The Russell Sage Foundation Journal of the Social Sciences, 2(5), 34–57. *https://www.rsfjournal.org/content/2/5/34.*

Palardy, G. J. (2013). ''High school socioeconomic segregation and student attainment.'' *American Educational Research Journal,* 50(4), 714–754. *https://doi.org/10.3102/0002831213481240.*

[6] Kahlenberg, R. D., Potter, H., & Quick, K. (2019). A bold agenda for school integration. The Century Foundation. *https://eric.ed.gov/?id=ED603383.*

[7] Ibid.

[8] Logan, J. R., Minca, E., & Adar, S. (2012). The Geography of Inequality: Why Separate Means Unequal in American Public Schools. Sociology of Education, 85(3), 287–301. *https://doi.org/10.1177/0038040711431588.*

[9] U.S. Government Accountability Office. (2022). ''K–12 Education: Student Population Has Significantly Diversified, but Many Schools Remain Divided Along Racial, Ethnic, and Economic Lines.'' GAO–22–104737. *https://www.gao.gov/products/gao-22-104737.*

[10] U.S. Government Accountability Office. (2016). ''K–12 Education: Better Use of Information Could Help Agencies Identify Disparities and Address Racial Discrimination.'' GAO–16–345. *https://www.gao.gov/products/gao-16-345.*

[11] Kahlenberg, R. D., Potter, H., & Quick, K. (2019). A bold agenda for school integration. Ibid. *https://eric.ed.gov/?id=ED603383.*

(c) A timeline and approach for conducting a comprehensive assessment of the geographic area to be served, including using established survey or data collection methods to identify: areas of limited socioeconomic diversity; related barriers to and opportunities for diversity at the educational program, classroom, school, and district levels (including those related to resource equity and adequacy); and educational opportunities (for example, advanced courses, opportunities to participate in rigorous career education or courses of study leading to an in-demand and high-value industry-recognized credential, dual or concurrent enrollment, work-based learning, and academic enrichment experiences) and outcomes of students attending included schools that will inform the comprehensive plan to increase socioeconomic diversity. Such an assessment could include: identifying enrollment strategies that promote diversity while taking into account geographic proximity; analyzing the location and capacity of existing school facilities and the adequacy of local or regional transportation infrastructure to support more diverse student bodies; or examining school boundaries and feeder patterns.

(d) A timeline and approach for family, student, community, and educator engagement (such as public hearings or other open forums) to inform the development of the comprehensive plan to increase socioeconomic diversity.

(e) Action steps and a timeline to produce a comprehensive plan to increase socioeconomic diversity approved by district leadership by the end of the grant period that can serve as a roadmap for immediate and future policy and implementation actions to promote socioeconomic diversity in schools.

Absolute Priority 2—Implementing a Comprehensive Plan to Increase Socioeconomic Diversity.

To meet this priority, an applicant must propose to implement its existing high-quality comprehensive plan to increase socioeconomic diversity across the LEA, or LEAs, as applicable, for the purpose of promoting academic achievement by providing students with access to a well-rounded education, fostering safe and healthy schools, or both. In proposing a project under this priority, an applicant must—

(a) Provide evidence that the comprehensive plan to increase socioeconomic diversity is based on a comprehensive assessment of the geographic area to be served, including using established survey or data collection methods to identify areas of limited socioeconomic diversity; related barriers to socioeconomic diversity at the educational program, classroom, school, and district levels (including those related to resource equity and adequacy); and educational opportunities and outcomes of students attending included schools. The data may also include within-school data and analysis including course enrollment, academic achievement, school climate data, school staffing, and other measures related to a well-rounded education.

(b) Demonstrate, including by providing a description and relevant substantiating documentation, that the comprehensive plan to increase socioeconomic diversity is based on rigorous family, student, community, and educator engagement.

(c) Document a commitment to ambitious, but achievable, goals for increasing socioeconomic diversity and transparent, published data analysis of progress relative to those goals.

Competitive Preference Priorities: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 20 points to an application, depending on how well the application meets these priorities. An applicant must identify each competitive preference priority that it believes it meets in the project abstract, including relevant data and data sources that support the applicant's assertion that it meets the priority.

These priorities are:

Competitive Preference Priority 1—Fostering Socioeconomic Diversity in One or More High-Need LEAs. (0 or 10 points)

To meet this priority, an applicant must propose a project that will foster socioeconomic diversity in one or more high-need LEAs (as defined in this notice). To meet this priority, the applicant must identify relevant qualifying data in its project abstract or indicate in the project abstract where in the application such data are found.

Competitive Preference Priority 2—Strengthening Cross-Agency Coordination and Community Engagement to Advance Systemic Change. (Up to 5 points)

To meet this priority, an applicant must propose a project that takes a systemic, evidence-based approach to improving outcomes for all students by coordinating efforts with other local government agencies (*e.g.,* housing or transportation), community-based organizations, social service agencies, institutions of higher education, or early learning providers to promote socioeconomic diversity in schools. To meet this priority, the applicant must identify the coordinating agencies, and their proposed contributions to the project, in its project abstract.

Competitive Preference Priority 3—Fostering Socioeconomic Diversity Through Regional Approaches. (0 or 5 points)

To meet this priority, an applicant must be a consortium of two or more LEAs that propose to increase socioeconomic diversity in schools in the participating LEAs. To receive points for this priority, the applicant must include a partnership agreement or proposed memorandum of understanding (MOU) among all members of the consortium, identified at the time of the application, that describes the role of each partner in carrying out the proposed project and each partner's efforts to advance socioeconomic diversity within the region. In addition, the MOU or partnership agreement must identify and describe the LEAs and schools that make up the region and indicate whether the project will include all schools within the LEAs or specific regions and/or schools within the LEAs.

Note: The written partnership agreement or proposed MOU necessary to receive points for this priority is in addition to the signed letters of support that are required of all applicants.

Requirements: We are establishing these application and program requirements for the FY 2023 grant competition and any subsequent year for which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1).

Application Requirement: In addition to addressing the requirements included in the applicable Absolute Priority, applicants must include the following in their application:

(a) Signed letters demonstrating broad community support for the proposal from at least five established community organizations representing diverse populations.

(b) A description of how the proposed project will be designed to improve student outcomes, including increased academic achievement, in schools served by the LEA(s) by doing either or both of the following:

(1) Increasing access to well-rounded educational opportunities.

(2) Supporting safe, healthy, and supportive school environments.

Program Requirements: Grantees must adhere to the following program requirements:

(a) A grantee receiving an award under any absolute priority must, over the course of the project period, disseminate lessons learned as a result of the grant in at least three instances (such as articles, presentations, or peer-to-peer learning opportunities).

(b) By the end of the project period, a grantee receiving an award under Absolute Priority 1 must also—

(1) Produce a comprehensive plan to increase socioeconomic diversity that is posted on each affected LEA's website to serve as a roadmap for short-term and long-term policy and implementation actions to diversify schools; and

(2) Demonstrate in the final comprehensive plan to increase socioeconomic diversity that the applicant considered the feedback from family, student, community, and educator engagement efforts.

(c) A grantee receiving an award under Absolute Priority 2 must also conduct and make publicly available, including on its public website, an annual report of the progress achieved during the project period on its specific goals and metrics for success, including disaggregated data (*e.g.,* income, race, ethnicity, disability status, status as an English learner), and include in the evaluation the steps it will take to refine or improve activities.

(d) A grantee that submitted a proposed partnership agreement or MOU in response to Competitive Preference Priority 3 must provide a final version signed by all parties within 60 days of receiving the grant award.

Definitions: We are establishing the definitions of ''comprehensive plan to increase socioeconomic diversity,'' ''high-need local educational agency,'' and ''children from low-income backgrounds'' for the FY 2023 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1). The definitions of ''local educational agency'' and ''well-rounded education'' are from ESEA section 8101.

Children from low-income backgrounds means students and children who are from low-income families using any of the poverty measures in section 1113(a)(5) of the ESEA.

Comprehensive plan to increase socioeconomic diversity means a comprehensive plan (approved by an LEA's leadership) to—

(a) Increase socioeconomic diversity within schools, classrooms, educational programs, or courses or across and within school district(s), for the purpose of promoting academic achievement; and

(b) Promote student academic achievement by fostering inclusive and welcoming learning environments that support the academic, social, emotional, and mental health needs of all students within classrooms and extracurricular activities in the district or districts and increase access to safe, healthy, and/or well-rounded educational opportunities.

The plan must include all of the following:

(1) The results of a comprehensive assessment of the area to be served.

(2) Goals, metrics to determine progress and success, timelines, and cost estimates for improving and sustaining socioeconomic diversity in covered LEAs, schools, classrooms, and educational programs.

(3) Professional development activities that support educators in creating safe, supportive, and inclusive learning environments.

(4) Actions that build capacity to collect and analyze data that provide information for transparency, evaluation, and continuous improvement, including data that supports meeting diversity goals for students and educators, and equitable access to, and success in, programs and activities.

(5) An approach to sustaining robust ongoing engagement with families, students, community members, and educators.

(6) A comprehensive set of strategies designed to improve academic outcomes for all students at each of the following levels: (1) LEA, (2) school, and (3) classroom. The plan must ensure that approaches offer schoolwide opportunities (*i.e.,* to benefit all students in the school). Strategies may include, for example, consideration of neighborhood residence in student assignment; revised school assignment and feeder patterns; regional coordination; interdistrict or intradistrict transfers; weighted or unweighted admissions policies; open enrollment policies that allow families to choose or rank schools; providing new or expanded access to schoolwide specialized academic programs, unique curricular options, or facilities designed to attract students from diverse socioeconomic backgrounds; or funding supplemental costs of transportation to allow for socioeconomic school diversity.

(7) Specific methods for disseminating lessons learned during implementation.

High-need local educational agency means a local educational agency—

(a)(1) For which at least 40 percent of the children served by the agency are children from low-income backgrounds;

(2) That meets the eligibility requirements for funding under the Small, Rural School Achievement (SRSA) program under section 5211(b) of the ESEA; or

(3) That meets the eligibility requirements for funding under the Rural and Low-Income School (RLIS) program under section 5221(b) of the ESEA.

Local educational agency—

(a) In General. The term ''local educational agency'' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) Administrative Control and Direction. The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(c) Bureau of Indian Education Schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the ESEA with the smallest student population, except that the school shall not be subject to the jurisdiction of any SEA other than the Bureau of Indian Education.

(d) Educational Service Agencies. The term includes educational service agencies and consortia of those agencies.

(e) State Educational Agency. The term includes the SEA in a State in which the SEA is the sole educational agency for all public schools.

Well-rounded education means courses, activities, and programming in subjects such as English, reading or language arts, writing, science, technology, engineering, mathematics, foreign languages, civics and government, economics, arts, history,

geography, computer science, music, career and technical education, health, physical education, and any other subject, as determined by the State or local educational agency, with the purpose of providing all students access to an enriched curriculum and educational experience.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, definitions, and requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under section 4103(a)(3) of the ESEA (20 U.S.C. 7113(a)(3)) and it therefore qualifies for the GEPA exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priorities, requirements, and definitions under section 437(d)(1) of GEPA. The priorities, requirements, and definitions will apply to the FY 2023 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Program Authority: Section 4103(a)(3) of the ESEA (20 U.S.C. 7113(a)(3)).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in the Federal civil rights laws.

Applicable Regulations:

(a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 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.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $10,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $250,000–500,000 per year for grants under Absolute Priority 1; $1,000,000–$4,000,000 per year for grants under Absolute Priority 2.

Estimated Average Size of Awards: $375,000 per year for grants under Absolute Priority 1; $2,000,000 per year for grants under Absolute Priority 2.

Estimated Number of Awards:

(a) *Absolute Priority 1:* 4–8.

(b) *Absolute Priority 2:* 1–3.

Note: The Department is not bound by any estimates in this notice.

Maximum Award: For grants under Absolute Priority 1, we will not make an award exceeding $500,000 for a single budget period of 12 months. For grants under Absolute Priority 2, we will not make an award exceeding $4,000,000 for a single budget period of 12 months.

Project Period:

For grants under Absolute Priority 1, up to 24 months.

For grants under Absolute Priority 2, up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs, consortia of LEAs, or one or more LEAs in partnership with an SEA.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program is subject to the supplement-not-supplant requirements in ESEA section 4110.

c. *Indirect Cost Rate Information:* This program uses a restricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

d. *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 the Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Equitable Services for Children and Educators in Private Schools:* A grantee under this program is required to provide for the equitable participation of private school children, teachers, and other educational personnel in accordance with section 8501 of the ESEA (20 U.S.C. 7881). Applicants must consult with appropriate private school officials before the entity makes any decision that affects the opportunities of eligible private school children and educators to receive equitable services under this program. (ESEA section 8501(c)(3)). Consultation might include a brief survey of private schools or other information gathering to indicate the schools' interest in participating and the population to be served to allow the applicant to consider the needs of private school children and educators in developing its application, and to include the projected costs for equitable services in the application.

4. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* 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 *https://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.

2. *Intergovernmental Review:* This program 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 program.

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 75 pages and (2) 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, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- 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 one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210. The selection criteria are as follows:

(a) *Need for project* (up to 10 points).

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project. (up to 5 points)

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (up to 5 points)

(b) *Quality of the project design* (up to 25 points).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (up to 5 points)

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (up to 5 points)

(iii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance. (up to 5 points)

(iv) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (up to 5 points)

(v) The extent to which the applicant demonstrates that it has the resources to operate the project beyond the length of the grant, including a multiyear financial and operating model and accompanying plan; the demonstrated commitment of any partners; evidence of broad support from stakeholders (such as State educational agencies and teachers' unions) critical to the project's long-term success; or more than one of these types of evidence. (up to 5 points)

(c) *Quality of project services* (up to 15 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. (up to 5 points)

(3) In addition, the Secretary considers the following factors:

(i) The likely impact of the services to be provided by the proposed project on the intended recipients of those services. (up to 5 points)

(ii) The extent to which the services to be provided by the proposed project are focused on those with the greatest needs. (up to 5 points)

(d) *Quality of project personnel* (up to 10 points).

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(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 historically been underrepresented based on race, color, national origin, gender, age, or disability. (up to 5 points)

(3) In addition, the Secretary considers the qualifications, including relevant training and experience, of key project personnel. (up to 5 points)

(e) *Adequacy of resources* (up to 10 points).

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project. (up to 5 points)

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (up to 5 points)

(f) *Quality of the management plan* (up to 20 points).

(1) The Secretary considers the quality of the management plan for, and the evaluation to be conducted of, the proposed project.

(2) In determining the quality of the management plan and the project evaluation, the Secretary considers the following factors:

(i) 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. (up to 5 points)

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (up to 5 points)

(iii) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate. (up to 10 points)

(g) *Quality of the project evaluation* (up to 10 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 will provide valid and reliable performance data on relevant outcomes. (up to 5 points)

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (up to 5 points)

Note: The project evaluation selection criterion relates to performance measure (b) under the Performance Measures section of this notice.

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. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this program 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.

4. *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.

5. *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 John S. McCain National Defense Authorization Act for Fiscal Year 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 or subgrantee 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 *https://www2.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:*

(a) *Program Performance Measures.* The performance measures for this program are—

(1) For grants under Absolute Priority 1:

(i) The percentage of affected families who were engaged in the planning process (that is, the number of affected families who were engaged divided by the estimated total number of affected families);

(ii) The percentage of affected educators who were engaged in the planning process (that is, the number of affected educators who were engaged divided by the total number of affected educators);

(iii) The percentage of affected students who were engaged in the planning process (that is, the number of affected students who were engaged divided by the total number of affected students);

(iv) The number of community partners who were engaged in the planning process;

(v) The number of grantees that developed or enhanced, and published, a comprehensive plan for increasing socioeconomic diversity; and

(vi) The number of grantees that have implemented or are implementing their comprehensive plan within 24-months of the end of the project period.

(2) For grants under Absolute Priority 2:

(i) The number of grantees that met their project-specific goals for increasing and sustaining socioeconomic diversity in covered schools, as measured against goals set forth in their comprehensive plans for increasing socioeconomic diversity.

(ii) The increase in the number of students with access to well-rounded educational opportunities, compared with a baseline determined by the grantee.

(iii) The number of schools demonstrating improved outcomes in each of the following, which must be reported to the Department overall and by student group (for each group identified in ESEA section 1111(c)(2)):

(A) Increasing student achievement;

(B) Increasing high school graduation rates;

(C) Reducing school discipline rates, including reduced disproportionality in discipline rates; and

(D) Improving kindergarten readiness.

(iv) The number of community partners engaged.

(b) *Project-Specific Performance Measures.* Applicants must propose project-specific performance measures and performance targets consistent with the objectives of the proposed project, including measures to address how the project will enhance and expand the provision of well-rounded education opportunities to students and support student health and success. Applicants must provide the following information as directed under 34 CFR 75.110(b) and (c):

(1) *Performance measures.* How each proposed performance measure would accurately measure the performance of the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition.

(2) *Baseline data.* (i) Why each proposed baseline is valid; or (ii) if the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) *Performance targets.* Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

(4) *Data collection and reporting.* (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

All grantees must submit annual performance reports with information that is responsive to these performance measures.

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.

James F. Lane,

Principal Deputy Assistant Secretary, Delegated the Authority To Perform the Functions and Duties of the Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2023–09667 Filed 5–5–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0077]

Agency Information Collection Activities; Comment Request; Program for International Student Assessment 2025 (PISA 2025) Main Study Recruitment and Field Test

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before July 7, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0077. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 4C210, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection

activities, please contact Carrie Clarady, 202–245–6347.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Program for International Student Assessment 2025 (PISA 2025) Main Study Recruitment and Field Test.

OMB Control Number: 1850–0755.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 58,672.

Total Estimated Number of Annual Burden Hours: 18,909.

Abstract: The Program for International Student Assessments (PISA) is an international assessment of 15-year-olds, which focuses on assessing students' reading, mathematics, and science literacy. PISA was first administered in 2000 and is typically conducted every three years. The United States has participated in all of the previous cycles and planned to participate in 2021 in order to track trends and to compare the performance of U.S. students with that of students in other education systems. PISA is sponsored by the Organization for Economic Cooperation and Development (OECD). In the United States, PISA is conducted by the National Center for Education Statistics (NCES), within the U.S. Department of Education.

In each administration of PISA, one of the subject areas (reading, mathematics, or science literacy) is the major domain and has the broadest content coverage, while the other two subjects are the minor domains. PISA emphasizes functional skills that students have acquired as they near the end of mandatory schooling (aged 15 years), and students' knowledge and skills gained both in and out of school environments. Other areas may also be assessed, such as, in the case of PISA 2025, Learning in a Digital World (LDW), which will be an innovative domain in 2025. PISA assesses students' knowledge and skills gained both in and out of school environments. In addition to the cognitive assessments described above, PISA 2025 will include questionnaires administered to school principals and assessed students. To prepare for the main study, PISA countries will conduct a field test in the spring of the year previous, primarily to evaluate newly developed assessment and questionnaire items but also to test the assessment operations.

This request is to conduct PISA 2025 main study recruitment and the PISA 2025 field test. This submission requests all burden for both the field test (scheduled for early 2024) and the main study (scheduled for late 2025), and presents materials (including recruitment and communications materials) and the final international drafts of the field test instruments. As part of this submission, NCES is publishing a notice in the **Federal Register** allowing first a 60- and then a 30-day public comment period. We anticipate that some materials will be revised after the 60-day public comment period and encourage stakeholders to see individual documents for details. The materials that will be used in the 2025 main study will be based upon the field test materials included in this submission. Additionally, this submission is designed to adequately justify the need for and overall practical utility of the full study and to present the overarching plan for all of the phases of the data collection, providing as much detail about the measures to be used as is available at the time of this submission.

We plan to submit a revision (along with a 30-day public comment period) in October 2023 in order to clear the final US version of the field test instrument, as well as finalize any updated materials for use in the 2024 field test. In order to begin recruiting schools for the main study by October 2024, we will submit a change-request to OMB in May 2024 with the final main study recruitment materials and parental consent letters, details about any changes to the design and procedures for the main study, and updates to the respondent burden estimates for the main study data collection. Subsequently in spring 2025 we will submit a clearance request, with a 30-day public comment period notice published in the **Federal Register**, with the final main study procedures and instruments for data collection in the fall of 2025.

Dated: May 2, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–09650 Filed 5–5–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0036]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Impact Evaluation To Inform the Teacher and School Leader Incentive Program

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before June 7, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting

statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Elizabeth Wilde, 202–245–6122.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Impact Evaluation to Inform the Teacher and School Leader Incentive Program.

OMB Control Number: 1850–0950.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 1,995.

Total Estimated Number of Annual Burden Hours: 853.

Abstract: Congress mandated that IES conduct an independent evaluation of the Teacher and School Leader Incentive Program (TSL), which supports a variety of strategies aimed at improving the quality of teaching and attracting and retaining effective educators. In response to the legislative mandate to evaluate the TSL program, the first evaluation component addresses the need to understand the characteristics of districts that received TSL grants and the key strategies they are using to improve educator effectiveness and student achievement. The focus of the second evaluation component arises from a need to assess effectiveness, focusing on a single, common strategy of designating teacher leaders to provide coaching to other teachers. This strategy of focusing on a single, common strategy of grantees is part of an evidence-building strategy for the program that complements evidence on other aspects of the grant that have been previously evaluated. More research is needed to provide guidance on whether this teacher leader strategy improves teacher effectiveness and student achievement. The second component of the evaluation uses a random assignment design to study the impacts (and implementation and cost-effectiveness) of the teacher leader role in non-TSL districts.

Dated: May 3, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–09750 Filed 5–5–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Personnel Development To Improve Services and Results for Children With Disabilities—Preparation of Special Education, Early Intervention, and Related Services Leadership Personnel

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 Special Education, Early Intervention, and Related Services Leadership Personnel, Assistance Listing Number 84.325D. This notice relates to the approved information collection under OMB control number 1820–0028.

DATES:

Applications Available: May 8, 2023.

Deadline for Transmittal of Applications: July 7, 2023.

Deadline for Intergovernmental Review: September 5, 2023.

Pre-Application Webinar Information: No later than May 15, 2023, the Office of Special Education and Rehabilitative Services (OSERS) will post pre-recorded informational webinars designed to provide technical assistance to interested applicants. The webinars may be found at *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: Celia Rosenquist, U.S. Department of Education, 400 Maryland Avenue SW, Room 5076, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: 202–245–7373. Email: *Celia.Rosenquist@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

Purposes of Program: The purposes of this program are to (1) help address State-identified needs for personnel preparation in special education, early intervention, related services, and regular education to work with children, including infants and toddlers, 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 and experience, to be successful in serving those children.

Priority: This competition includes one absolute priority and, within that absolute priority, two competitive preference priorities. 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 Special Education, Early Intervention, and Related Services Leadership Personnel.

Background:

The Department is committed to promoting equity for children with disabilities to access educational resources and opportunities. The Department also places a high priority on increasing the number of leadership personnel, including increasing the number of multilingual leadership personnel and leadership personnel from racially and ethnically diverse backgrounds, who provide, or prepare

others to provide, services to children with disabilities. To support these goals, under this absolute priority, the Department will fund projects that support doctoral degree programs to prepare and increase the number of personnel who are well qualified for, and can act effectively in, leadership positions as researchers and special education/early intervention/related services personnel preparers in institutions of higher education (IHEs), or as leaders in State educational agencies (SEAs), lead agencies (LAs) under Part C of IDEA, local educational agencies (LEAs), early intervention services programs (EIS programs), or schools, including increasing the number of multilingual leadership personnel and leadership personnel from racially and ethnically diverse backgrounds at the doctoral level in special education, early intervention, and related services.

There is a well-documented need for special education, early intervention, and related services leadership personnel who serve critical roles within different settings (Bellamy & Iwaszuk, 2017; Castillo et al., 2014; Montrosse & Young, 2012; NCSI, 2018a; NCSI, 2018b; Robb et al., 2012; Tucker et al., 2020). For example, leadership personnel in IHEs teach practices supported by research to future special education, early intervention, related services, and general education professionals. These leaders also conduct research that increases knowledge of effective interventions and services for children, including infants and toddlers, and youth with disabilities. Another example of a critical leadership role includes special education and early intervention administrators who supervise and evaluate the implementation of instructional programs to ensure that State or local agencies are meeting the needs of children with disabilities. Administrators also ensure that schools and programs meet Federal, State, and local requirements for special education, early intervention, and related services.

The need to increase the number of multilingual leadership personnel and leadership personnel from racially and ethnically diverse backgrounds has been recognized due to the significant benefits for both personnel and the children they serve (*e.g.,* Carver-Thomas, 2018; deBettencourt et al., 2016). For example, special education programs at IHEs benefit from multilingual faculty and faculty from racially and ethnically diverse backgrounds who bring different perspectives, experiences, and contexts to the program and its curriculum, which, in turn, benefits the individuals enrolled in the program and the children with disabilities those individuals will ultimately serve (*e.g.,* deBettencourt, et al., 2016; Maggin et al., 2021). A multilingual faculty and faculty from racially and ethnically diverse backgrounds also brings different perspectives, experiences, and contexts to research, which is critical to promoting innovative advances in knowledge and practice (*e.g.,* Hofstra et al., 2020), including advances in knowledge of effective culturally and linguistically responsive instruction and interventions and services that improve outcomes for children with disabilities. Special education and early intervention administrators have a critical role in increasing the number of multilingual personnel and personnel from racially and ethnically diverse backgrounds who support children with disabilities through policies, initiatives, and promoting an inclusive culture in early intervention and school settings (*e.g.,* Carver-Thomas, 2018; Steiner et al., 2022) as well as retaining personnel. Administrators also ensure that schools and programs implement culturally and linguistically responsive instructional programs to ensure that State or local agencies are meeting the needs of children with disabilities (Bellamy et al., 2014).

Leadership personnel can have significant influence in preparing and supporting personnel, policy, and research. All leadership personnel need to promote high expectations and have current knowledge of effective culturally and linguistically responsive instruction, interventions, and services that improve outcomes for children with disabilities. Critical competencies for special education, early intervention, and related services leadership personnel vary depending on the type of leadership personnel and the requirements of the preparation program, but can include, for example, skills needed for postsecondary instruction, administration and supervision, interpreting and applying research, policy development and implementation, organizational and systems change, communication, collaboration, and the use of technologies to support in-person and distance education (Boscardin & Lashley, 2018; Bruns et al., 2017). Scholars' acquisition of competencies and success in doctoral programs depends on factors such as supportive supervision, experiential learning opportunities, access to resources, and developing and enhancing professional networks and collaborative learning opportunities (Douglas, 2020; Sverdlik et al., 2018). Networks, in particular, are integral to leadership development and critical to addressing complex problems (Cullen-Lester et al., 2017; Hoppe & Reinelt, 2010).

Priority:

The purpose of this priority is to support doctoral degree programs to prepare and increase the number of personnel who are well-qualified for, and can act effectively in, leadership positions as researchers and special education/early intervention/related services personnel preparers in IHEs, or as leaders in SEAs, LAs under Part C of IDEA, LEAs, or EIS programs, including increasing the number of multilingual leadership personnel and leadership personnel from racially and ethnically diverse backgrounds at the doctoral level in special education, early intervention, and related services. Proposed projects must be designed to prepare graduates to be well-qualified for, and act effectively in, leadership positions as researchers and special education/early intervention/related services personnel preparers in IHEs, or as leaders in SEAs, LAs, LEAs, or EIS programs. Projects must support a program that culminates in a doctoral degree (Ph.D. or Ed.D.).

Note: Eligible applicants include partnerships [1] that are comprised of two or three IHEs with doctoral programs that prepare scholars [2] and otherwise meet the eligibility requirements. For additional information regarding group applications, refer to 34 CFR 75.127, 75.128, and 75.129.

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 scholars

[1] For the purposes of this priority, a ''partnership'' is a group comprised of two or three IHEs with doctoral programs in which (a) each IHE enrolls and supports scholars as part of the partnership, and (b) the partnership provides joint experiences each year for scholars to learn from faculty and scholars at each participating IHE that promote the acquisition of leadership competencies through coursework, research, internship experiences, work-based experiences, or other opportunities as a requirement of the project.

[2] For the purposes of this priority, ''scholar'' is limited to an individual who (a) is pursuing a doctoral degree related to special education, early intervention, or related services; (b) receives scholarship assistance as authorized under section 662 of IDEA (34 CFR 304.3(g)); and (c) will be able to be employed in a position that serves children with disabilities for at least 51 percent of their time or case load. See *https://pdp.ed.gov/OSEP/Home/Regulation* for more information.

are not on track to complete the program by the end of that period.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in the priority. All projects funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Note: Preparation programs that lead to clinical doctoral degrees in related services (*e.g.,* a Doctor of Audiology degree or Doctor of Physical Therapy degree) are not included in this priority. These types of preparation programs are eligible to apply for funding under the Preparation of Early Intervention and Special Education Personnel Serving Children with Disabilities who have High-Intensity Needs (84.325K), Preparation of Related Services Personnel Serving Children with Disabilities who have High-Intensity Needs priority (84.325R), or the Personnel Preparation of Special Education, Early Intervention, and Related Services Personnel at Historically Black Colleges and Universities, Tribally Controlled Colleges and Universities, and other Minority Serving Institutions priority (84.325M) that the Office of Special Education Programs (OSEP) intends to fund in FY 2023.

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 would increase the number of leadership personnel who are well qualified to advance practice, policy, or research in the project's preparation focus area and how it will provide, or prepare others to provide, effective culturally and linguistically responsive instruction, interventions, and services that improve outcomes for children with disabilities;

(2) The doctoral program to date has been successful (including program data, if available) in producing leadership personnel. Applicants should include data for the number of students who have completed the doctoral program disaggregated by race, national origin and primary language(s), and disability status; the types of leadership positions that recent program graduates are employed in related to their preparation; the professional accomplishments of program graduates that demonstrate their leadership in special education, early intervention, or related services (*e.g.,* public service, awards, publications); and the percentage of program graduates finding employment related to their preparation serving students with disabilities in underserved communities if applicable (*e.g.,* employed in districts with high rates of poverty); and

Note: Data on the success of a doctoral program should be no more than 5 years old on the start date of the project proposed in the application. When reporting percentages, the denominator (*i.e.,* the total number of scholars or program graduates) must be provided.

(3) Scholar competencies to be acquired in the program relate to knowledge and skills needed by the leadership personnel in the project's proposed preparation focus area to provide, or prepare others to provide, effective culturally and linguistically responsive instruction, interventions, and services, including through distance education, that improve outcomes for children with disabilities.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how—

(1) The applicant will recruit and retain scholars participating in the project. To meet this requirement, the narrative must describe—

(i) The selection criteria the applicant will use to identify doctoral applicants for admission to the program;

(ii) The recruitment strategies the project will use to attract doctoral 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 doctoral applicants from groups that are underrepresented in the field, including applicants with disabilities, multilingual applicants, and applicants from racially and ethnically diverse backgrounds, but the scholar 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 laws.

(iii) The approach that will be used to mentor and support all scholars in completing the program and preparing them for careers in special education, early intervention, or related services; and

(2) The project is designed to promote the acquisition of the competencies needed by leadership personnel in the project's proposed preparation focus area to provide, or prepare others to provide, effective culturally and linguistically responsive instruction, interventions, and services that improve outcomes for children with disabilities. To address this requirement, the applicant must—

(i) Describe how the proposed project components, such as coursework, research, internship experiences, work-based experiences, program evaluation, and other opportunities provided to scholars, and sequence of the components will enable the scholars to acquire the competencies needed by leadership personnel;

Note: Applicants that propose partnership projects must describe how the project components and sequence of the components are designed to ensure that scholars have opportunities to acquire the competencies needed by leadership personnel through engaging and collaborating with faculty and scholars at each IHE participating in the partnership.

(ii) Describe how the proposed project components will prepare scholars to provide, or prepare others to provide, culturally and linguistically responsive effective instruction, interventions, and services that improve outcomes for children with disabilities, in a variety of educational or early childhood and early intervention settings, including in-person and remote settings;

(iii) Describe how the proposed project will engage partners, including multilingual individuals, individuals and families from racially and ethnically diverse backgrounds, public or private entities (*e.g.,* organizations, centers, agencies, schools, programs) that provide services to multilingual children with disabilities and their families, and public or private entities that provide services to children of color with disabilities and their families, to inform project components; and

(iv) Describe how the proposed project components will promote the acquisition of scholars' knowledge of strategies and approaches in attracting, preparing, and retaining future personnel with disabilities, multilingual personnel and personnel from racially and ethnically diverse backgrounds, who will work with, and provide effective culturally and linguistically responsive instruction, interventions, and services to, children with disabilities and their families.

(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;

(3) The time commitments of the project director and other key project personnel are adequate to meet the objectives of the proposed project; and

(4) For proposed partnership projects, the project will establish policies, procedures, standards, and fiscal management of the partnership.

(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, childcare) will be disseminated and how the project will support scholars accessing those accommodations and resources on 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 while 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 the scholar's financial needs, including a consideration of all costs associated with the attendance, even if that means enrolling fewer scholars as part of the proposed project. 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 childcare; and an allowance for room and board), travel in conjunction with training assignments, including conference registration, and stipends to support scholars' completion of the program and professional development. 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 leadership project have been met. The applicant must describe the outcomes to be measured for both the project and the scholars, particularly the acquisition of scholars' competencies, and the evaluation methodologies to be employed, data collection methods, and possible analyses; and

(2) Collect, analyze, and use data on scholars supported by the project to inform the proposed 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 clinic experience in a high-need LEA,[3] a high-poverty school,[4] a school implementing a comprehensive support and improvement plan,[5] a school implementing a targeted support and improvement plan [6] 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 includes the project's required coursework that provides the title, description, and learning goals; and

(ii) Four exemplars of course syllabi in research methods, evaluation methods, or data analysis courses required by the degree program;

Note: Partnership projects should include two course syllabi from each participating IHE.

(3) Include in the application budget attendance by the project director at a 3-day project directors' meeting in Washington, DC, during each year of the project. The budget may also provide for the attendance of scholars at the same 3-day project directors' meetings in Washington, DC; and

(4) Provide an assurance that—

(i) The project will meet the requirements in 34 CFR 304.23, particularly those related to (A) informing all scholarship recipients of their service obligation commitment; and (B) 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 the U.S. Constitution and 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 childcare; and an allowance for room and board) will not be conditioned on the scholar working

[3] 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.

[4] 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.

[5] 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.

[6] 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 as defined in section 1111(d)(2) of the ESEA.

for the grantee (*e.g.,* personnel at the IHE);

(vii) The project director, key personnel, and scholars will actively participate in the cross-project collaboration, advanced trainings, and cross-site learning opportunities (*e.g.,* webinars, briefings) supported by OSEP. This network is intended to promote opportunities for participants to 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) 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 (DCS) website at *https://pdp.ed.gov/osep* for further information about this data collection requirement.

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that address the following priorities. Under 34 CFR 75.105(c)(2)(i), we award an additional 3 points to an application that meets Competitive Preference Priority 1 and an additional 3 points to an application that meets Competitive Preference Priority 2. Applicants should indicate in the abstract if competitive preference priorities are addressed, and which competitive preference priorities are being addressed.

These priorities are:

Competitive Preference Priority 1—Applications from New Potential Grantees (0 or 3 points).

(a) Under this priority, an applicant must demonstrate that the applicant (*i.e.,* the IHE) has not had an active discretionary grant under the program from which it seeks funds, including through membership in a group application submitted in accordance with 34 CFR 75.127–75.129, in the last 5 years before the deadline date for submission of applications under the 84.325D program.

(b) For the purposes of this priority, a grant or contract is active until the end of the grant's or contract's project or funding period, including any extensions of those periods that extend the grantee's or contractor's authority to obligate funds.

Competitive Preference Priority 2—Partnership Applications that Include Minority-Serving Institutions (MSIs) (0 or 3 points).

(a) Under this priority, a partnership application that includes one or more IHEs that meet the definition of an MSI.[7]

(b) For purposes of this priority, the Department will use the FY 2022 Eligibility Matrix to determine MSI eligibility.

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[7] For purposes of this priority, ''Minority-Serving Institution (MSI)'' means an institution that is eligible to receive assistance under sections 316 through 320 of part A of title III, under part B of title III, or under title V of the Higher Education Act of 1965, as amended. For purposes of this priority, the Department will use the FY 2022 Eligibility Matrix to determine MSI eligibility (see *www2.ed.gov/about/offices/list/ope/idues/eligibility.html*).

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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: $9,750,000.

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: $225,000–$250,000 per year for an individual IHE; $450,000–$500,000 per year for a two-IHE partnership application; and $675,000–$750,000 for a three-IHE partnership application.

Estimated Average Size of Awards: $237,500 per year for an individual IHE; $475,000 per year for a two-IHE group application; and $712,500 per year for a three-IHE group application.

Maximum Award: For a single budget period of 12 months, we will not make an award exceeding: for an individual IHE, $250,000; for a two-IHE group application, $500,000; and for a three-IHE group application, $750,000.

Estimated Number of Awards: Up to 39 awards for individual IHEs. However, the total number of awards may change depending on the number of group application awards under the absolute priority.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* 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 *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 and private nonprofit organizations. 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 projects 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 775045) and available at *www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* 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 for the proposed project.

(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; and

(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 research or evidence-based practices (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: (1) 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; (2) 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 (3) 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. 2023–09688 Filed 5–5–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0078]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Early Childhood Longitudinal Study, Kindergarten Class of 2023–24 (ECLS–K:2024) Kindergarten and First-Grade Fall 2023 Materials Revision

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before June 7, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, 202–245–6347.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Early Childhood Longitudinal Study, Kindergarten Class of 2023–24 (ECLS–K:2024) Kindergarten and First-Grade Fall 2023 Materials Revision.

OMB Control Number: 1850–0750.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals and households.

Total Estimated Number of Annual Responses: 159,964.

Total Estimated Number of Annual Burden Hours: 87,154.

Abstract: The Early Childhood Longitudinal Study (ECLS) program, conducted by the National Center for Education Statistics (NCES) within the Institute of Education Sciences (IES) of the U.S. Department of Education (ED), draws together information from multiple sources to provide rich, descriptive data on child development, early learning, and school progress. The ECLS program studies deliver national data on children's status at birth and at various points thereafter; children's transitions to nonparental care, early care and education programs, and school; and children's experiences and growth through the elementary grades. The Early Childhood Longitudinal Study, Kindergarten Class of 2023–24 (ECLS–K:2024) is the fourth cohort in the series of early childhood longitudinal studies. The study will advance research in child development and early learning by providing a detailed and comprehensive source of current information on children's early learning and development, transitions into kindergarten and beyond, and progress through school. The ECLS–K:2024 will provide data about the population of children who will be kindergartners in the 2023–24 school year, focusing on children's early school experiences continuing through the fifth grade, and will include collection of data from parents, teachers, and school administrators, as well as direct child assessments.

The request to conduct the first three national data collection rounds for the

ECLS–K:2024 was approved on April 7, 2023 (OMB# 1850–0750 v.26). The ECLS–K:2024 fall kindergarten data collection will be conducted from August until December 2023, followed by the spring (March–July 2024) kindergarten round, and the spring (March–July 2025) first-grade round. Each of these rounds of data collection will involve advance school contacts, for example to conduct student sampling activities, collect teacher and school information, and locate families whose children may have moved schools. Future OMB packages will be submitted for the third-and fifth-grade field test (to be conducted in March–July 2026), as well as for the national spring (March–July 2027) third-grade round and the spring (March–July 2029) fifth-grade round.

This current revision request (accompanied by 30 days of public comment) is to update study respondent materials, web and paper surveys, and website designs that will be used in the kindergarten and first-grade data collection activities. Many of the revisions in this package were made based on analyses of the fall 2022 field test data (OMB #1850–0750 v.25), which informed changes to the design of the surveys and child assessment. Other changes occurred after further discussion on operational procedures. Revisions to the study instruments (and to some extent, the respondent materials and websites) are largely limited to changes to the fall kindergarten materials; additional revision requests will be submitted to OMB for revisions to the spring kindergarten and spring first-grade materials once additional analyses of the fall 2022 field test data are complete. National data collection work completed to date will also inform these future revisions. The requested changes do not affect the approved total cost to the federal government for conducting this study.

Dated: May 3, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–09717 Filed 5–5–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–321–C]

Application for Renewal of Authorization To Export Electric Energy; Emera Energy Services Subsidiary No. 1 LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Emera Energy Services Subsidiary No. 1 LLC (the Applicant or EESS–1) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before June 7, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *electricity.exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On June 13, 2022, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1–DEL–S3–2022–2 and Redelegation Order No. S3–DEL–GD1–2022.

On April 19, 2007, DOE issued Order No. EA–321, authorizing EESS–1 to transmit electric energy from the United States to Canada as a power marketer. This authority was renewed on October 2, 2013 (Order No. EA–321–A) and on September 18, 2018 (Order No. EA–321–B). On March 15, 2023, EESS–1 filed an application with DOE (Application or App) for renewal of their export authority for an additional five-year term. App at 1.

In its Application, EESS–1 states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area. EESS–1 operates as a marketing company involved in, among other things, the purchase and sale of electricity in the United States as a power marketer.'' App at 5. EESS–1 represents that it ''will purchase surplus electric energy from electric utilities and other suppliers within the United States and will export this energy to Canada over the international electric transmission facilities.'' App at 6. Therefore, the Applicant contends that ''because this electric energy will be purchased from others voluntarily, it will be surplus to the needs of the selling entities. EESS–1's export of power will not impair the sufficiency of electric power supply in the U.S.'' *Id.*

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the email address provided previously. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the previously provided email address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning EESS–1's Application should be clearly marked with GDO Docket No. EA–321–C. Additional copies are to be provided directly to Keith Sutherland, Vice President, Legal & Regulatory Affairs—Emera Energy, 5151 Terminal Road, Halifax, NS B3J 1A1 Canada, *keith.sutherland@emeraenergy.com* and Bonnie A. Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, Maryland 20854, *bonnie@suchmanlawllc.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *https://www.energy.gov/gdo/pending-*

applications or by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on May 1, 2023, by Maria Robinson, Director, Grid Deployment Office, 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 May 3, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–09726 Filed 5–5–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–322–C]

Application for Renewal of Authorization To Export Electric Energy; Emera Energy Services Subsidiary No. 2 LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Emera Energy Services Subsidiary No. 2 LLC (the Applicant or EESS–2) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before June 7, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *electricity.exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On June 13, 2022, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1–DEL–S3–2022–2 and Redelegation Order No. S3–DEL–GD1–2022.

On April 19, 2007, DOE issued Order No. EA–322, authorizing EESS–2 to transmit electric energy from the United States to Canada as a power marketer. This authority was renewed on October 2, 2013 (Order No. EA–322–A) and on September 18, 2018 (Order No. EA–322–B). On March 15, 2023, EESS–2 filed an application with DOE (Application or App) for renewal of their export authority for an additional five-year term. App at 1.

In its Application, EESS–2 states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area. EESS–2 operates as a marketing company involved in, among other things, the purchase and sale of electricity in the United States as a power marketer.'' App at 5. EESS–2 represents that it ''will purchase surplus electric energy from electric utilities and other suppliers within the United States and will export this energy to Canada over the international electric transmission facilities.'' App at 6. Therefore, the Applicant contends that ''because this electric energy will be purchased from others voluntarily, it will be surplus to the needs of the selling entities. EESS–2's export of power will not impair the sufficiency of electric power supply in the U.S.'' *Id.*

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the email address provided previously. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the previously provided email address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning EESS–2's Application should be clearly marked with GDO Docket No. EA–322–C. Additional copies are to be provided directly to Keith Sutherland, Vice President, Legal & Regulatory Affairs—Emera Energy, 5151 Terminal Road, Halifax, NS B3J 1A1 Canada, *keith.sutherland@emeraenergy.com* and Bonnie A. Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, Maryland 20854, *bonnie@suchmanlawllc.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *https://www.energy.gov/gdo/pending-applications* or by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on May 1, 2023, by Maria Robinson, Director, Grid Deployment Office, 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 May 3, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–09727 Filed 5–5–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–323–C]

Application for Renewal of Authorization To Export Electric Energy; Emera Energy Services Subsidiary No. 3 LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Emera Energy Services Subsidiary No. 3 LLC (the Applicant or EESS–3) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before June 7, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *electricity.exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On June 13, 2022, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1–DEL–S3–2022–2 and Redelegation Order No. S3–DEL–GD1–2022.

On April 19, 2007, DOE issued Order No. EA–323, authorizing EESS–3 to transmit electric energy from the United States to Canada as a power marketer. This authority was renewed on October 2, 2013 (Order No. EA–323–A) and on September 18, 2018 (Order No. EA–323–B). On March 15, 2023, EESS–3 filed an application with DOE (Application or App) for renewal of their export authority for an additional five-year term. App at 1.

In its Application, EESS–3 states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area. EESS–3 operates as a marketing company involved in, among other things, the purchase and sale of electricity in the United States as a power marketer.'' App at 5. EESS–3 represents that it ''will purchase surplus electric energy from electric utilities and other suppliers within the United States and will export this energy to Canada over the international electric transmission facilities.'' App at 6. Therefore, the Applicant contends that ''because this electric energy will be purchased from others voluntarily, it will be surplus to the needs of the selling entities. EESS–3's export of power will not impair the sufficiency of electric power supply in the U.S.'' *Id.*

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the email address provided previously. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the previously provided email address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning EESS–3's Application should be clearly marked with GDO Docket No. EA–323–C. Additional copies are to be provided directly to Keith Sutherland, Vice President, Legal & Regulatory Affairs—Emera Energy, 5151 Terminal Road, Halifax, NS B3J 1A1 Canada, *keith.sutherland@emeraenergy.com* and Bonnie A. Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, Maryland 20854, *bonnie@suchmanlawllc.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *https://www.energy.gov/gdo/pending-applications* or by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on May 1, 2023, by Maria Robinson, Director, Grid Deployment Office, 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 May 3, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–09734 Filed 5–5–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–452–A]

Application for Renewal of Authorization To Export Electric Energy; Matador Power Marketing, Inc.

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Matador Power Marketing, Inc. (the Applicant or Matador Power) has applied for renewed authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before June 7, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *electricity.exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority,

previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On June 13, 2022, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1–DEL–S3–2022–2 and Redelegation Order No. S3–DEL–GD1–2022.

On June 28, 2018, DOE issued Order No. EA–452 authorizing Matador Power to transmit electric energy from the United States to Mexico as a power marketer. On February 27, 2023, Matador Power filed an application with DOE (Application or App) for renewal of their export authority for an additional five-year term. App at 1.

In its Application, Matador Power states that it ''does not have any affiliates or upstream owners that possess any ownership interest or involvement in any other company that is a traditional utility or that owns, operates, or controls any electric generation, transmission or distribution facilities.'' App at 2. Matador Power represents that it ''will purchase power to be exported from a variety of sources such as power marketers, independent power producers, or U.S. electric utilities and federal power marketing entities as those terms are defined in Sections 3(22) and 3(19) of the FPA.'' App at 3. Matador Power also states ''[b]y definition, such power is surplus to the system of the generator and, therefore, the electric power that Matador Power will export on either a firm or interruptible basis will not impair the sufficiency of the electric power supply within the U.S.'' Id.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the email provided previously. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the email address previously provided in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning COP's Application should be clearly marked with GDO Docket No. EA–452–A. Additional copies are to be provided directly to Ruta Kalvaitis Skučas and Jennifer L. Mersing, K&L Gates LLP, 1601 K St. NW, Washington, DC 20006, *ruta.skucas@klgates.com* and *jennifer.mersing@klgates.com,* and Diana Stoica, Matador Power Marketing, Inc., 50 Carroll Street Toronto, ON, M4M 3G3 Canada, *rtdesk@matadorpm.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *https://www.energy.gov/gdo/pending-applications* or by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on May 1, 2023, by Maria Robinson, Director, Grid Deployment Office, 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 May 3, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–09745 Filed 5–5–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. 23–46–LNG]

Corpus Christi Liquefaction, LLC; CCL Midscale 8–9, LLC; and Cheniere Marketing, LLC; Application for Long-Term Authorization To Export Liquefied Natural Gas to Non-Free Trade Agreement Nations

AGENCY: Office of Fossil Energy and Carbon Management, Department of Energy.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy and Carbon Management (FECM) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed by Corpus Christi Liquefaction, LLC, CCL Midscale 8–9, LLC, and Cheniere Marketing, LLC (collectively, Applicants) on April 6, 2023. The Applicants request long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) in a volume equivalent to approximately 170 billion cubic feet (Bcf) of natural gas per year (Bcf/yr) from the proposed Corpus Christi Liquefaction Midscale Trains 8 & 9 Project (Project), to be located at and adjacent to the existing Corpus Christi LNG terminal (CCL Terminal) in San Patricio and Nueces Counties, Texas. The Applicants filed the Application under the Natural Gas Act (NGA).

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed electronically as detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, July 7, 2023.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, DOE has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid–19 pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Office of Resource Sustainability staff at (202) 586–4749 or (202) 586–7893 to discuss the need for alternative arrangements. Once the Covid–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

FOR FURTHER INFORMATION CONTACT:

Jennifer Wade or Peri Ulrey, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–4749 or (202) 586–7893, *jennifer.wade@hq.doe.gov* or *peri.ulrey@hq.doe.gov.*

Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Energy Delivery and Resilience, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793, *cassandra.bernstein@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The Applicants state that the proposed Project will include two midscale LNG trains (Trains 8 and 9) and supporting infrastructure, which will be interconnected and operated, on an integrated basis, with the existing LNG storage tanks, control buildings, marine facilities, and other ancillary facilities at the CCL Terminal.[1] The Applicants seek to export LNG by ocean-going carrier from the proposed Project in a volume equivalent to approximately 170 Bcf/yr of natural gas (approximately 0.47 Bcf per day) on a non-additive basis to: (i) any nation with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA nations), and (ii) any other nation with which trade is not prohibited by U.S. law or policy (non-FTA nations). This Notice applies only to the portion of the Application requesting authority to export LNG to non-FTA countries pursuant to section 3(a) of the NGA.[2] DOE will review the Applicants' request for an export authorization to FTA countries separately pursuant to NGA section 3(c).[3]

The Applicants seek this authorization on their own behalf and as agent for other parties that may hold title to the LNG at the time of export. The Applicants request the authorization for a term commencing on the date of first commercial export from the Project and extending through December 31, 2050.

Additional details can be found in the Application, posted on the DOE website at: *www.energy.gov/sites/default/files/2023-04/Corpus%20Christi%20Liquefaction%20LLC%20et%20al.%20DOE%20Application.pdf.*

DOE Evaluation

In reviewing the Application, DOE will consider any issues required by law or policy. DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. As part of this analysis, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),[4] and DOE's response to public comments received on that Study.[5]

Additionally, DOE will consider the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014);[6]
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States,* 79 FR 32260 (June 4, 2014);[7] and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update,* 84 FR 49278 (Sept. 19, 2019), and DOE's response to public comments received on that study.[8]

Parties that may oppose this Application should address these issues and documents in their comments and protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to this proceeding evaluating the Application must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to this proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590, including the service requirements.

As noted, DOE is only accepting electronic submissions at this time. Please email the filing to *fergas@hq.doe.gov.* All filings must include a reference to ''Docket No. 23–46–LNG'' or ''Corpus Christi Liquefaction, LLC *et al.* Application'' in the title line.

Please Note: Please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner.

The Application and any filed protests, motions to intervene, notices of intervention, and comments will also be available electronically by going to the following DOE Web address: *www.energy.gov/fecm/regulation.*

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

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[1] The Applicants state that the Liquefaction Project at the CCL Terminal is currently operational, and an expansion of the Liquefaction Project, called the Stage 3 Project, is under construction.

[2] 15 U.S.C. 717b(a).

[3] 15 U.S.C. 717b(c).

[4] *See* NERA Economic Consulting, Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (June 7, 2018), *www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf.*

[5] U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018).

[6] The Addendum and related documents are available at *www.energy.gov/fecm/addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[7] The 2014 Life Cycle Greenhouse Gas Report is available at *www.energy.gov/fecm/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.*

[8] U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update—Response to Comments, 85 FR 72 (Jan. 2, 2020). The 2019 Update and related documents are available at *https://fossil.energy.gov/app/docketindex/docket/index/21.*

Signed in Washington, DC, on May 2, 2023.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement. Office of Resource Sustainability.

[FR Doc. 2023–09728 Filed 5–5–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–325–C]

Application for Renewal of Authorization To Export Electric Energy; Emera Energy Services Subsidiary No. 5 LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Emera Energy Services Subsidiary No. 5 LLC (the Applicant or EESS–5) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before June 7, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *electricity.exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On June 13, 2022, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1–DEL–S3–2022–2 and Redelegation Order No. S3–DEL–GD1–2022.

On April 19, 2007, DOE issued Order No. EA–325, authorizing EESS–5 to transmit electric energy from the United States to Canada as a power marketer. This authority was renewed on October 2, 2013 (Order No. EA–325–A) and on September 18, 2018 (Order No. EA–325–B). On March 15, 2023, EESS–5 filed an application with DOE (Application or App) for renewal of their export authority for an additional five-year term. App at 1.

In its Application, EESS–5 states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area. EESS–5 operates as a marketing company involved in, among other things, the purchase and sale of electricity in the United States as a power marketer.'' App at 5. EESS–5 represents that it ''will purchase surplus electric energy from electric utilities and other suppliers within the United States and will export this energy to Canada over the international electric transmission facilities.'' App at 6. Therefore, the Applicant contends that ''because this electric energy will be purchased from others voluntarily, it will be surplus to the needs of the selling entities. EESS–5's export of power will not impair the sufficiency of electric power supply in the U.S.'' *Id.*

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the email address provided previously. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the email address previously provided in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning EESS–5's Application should be clearly marked with GDO Docket No. EA–325–C. Additional copies are to be provided directly to Keith Sutherland, Vice President, Legal & Regulatory Affairs—Emera Energy, 5151 Terminal Road, Halifax, NS B3J 1A1 Canada, *keith.sutherland@emeraenergy.com* and Bonnie A. Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, Maryland 20854, *bonnie@suchmanlawllc.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *https://www.energy.gov/gdo/pending-applications* or by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on May 1, 2023, by Maria Robinson, Director, Grid Deployment Office, 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 May 3, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–09736 Filed 5–5–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–453–A]

Application for Renewal of Authorization To Export Electric Energy; Matador Power Marketing, Inc.

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Matador Power Marketing, Inc. (the Applicant or Matador Power) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before June 7, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *electricity.exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The United States Department of Energy

(DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On June 13, 2022, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1–DEL–S3–2022–2 and Redelegation Order No. S3–DEL–GD1–2022.

On June 28, 2018, DOE issued Order No. EA–453 authorizing Matador Power to transmit electric energy from the United States to Canada as a power marketer. On February 27, 2023, Matador Power filed an application with DOE (Application or App) for renewal of their export authority for an additional five-year term. App at 1.

In its Application, Matador Power states that it ''does not have any affiliates or upstream owners that possess any ownership interest or involvement in any other company that is a traditional utility or that owns, operates, or controls any electric generation, transmission or distribution facilities.'' App at 2. Matador Power represents that it ''will purchase power to be exported from a variety of sources such as power marketers, independent power producers, or U.S. electric utilities and federal power marketing entities as those terms are defined in Sections 3(22) and 3(19) of the FPA.'' App at 3. Matador Power also states ''[b]y definition, such power is surplus to the system of the generator and, therefore, the electric power that Matador Power will export on either a firm or interruptible basis will not impair the sufficiency of the electric power supply within the U.S.'' Id.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the email address provided previously. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the email address provided previously in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning COP's Application should be clearly marked with GDO Docket No. EA–453–A. Additional copies are to be provided directly to Ruta Kalvaitis Skučas and Jennifer L. Mersing, K&L Gates LLP, 1601 K St. NW, Washington, DC 20006, *ruta.skucas@klgates.com* and *jennifer.mersing@klgates.com,* and Diana Stoica, Matador Power Marketing, Inc., 50 Carroll Street Toronto, ON, M4M 3G3 Canada, *rtdesk@matadorpm.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *https://www.energy.gov/gdo/pending-applications* or by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on May 1, 2023, by Maria Robinson, Director, Grid Deployment Office, 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 May 3, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–09742 Filed 5–5–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–324–C]

Application for Renewal of Authorization To Export Electric Energy; Emera Energy Services Subsidiary No. 4 LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Emera Energy Services Subsidiary No. 4 LLC (the Applicant or EESS–4) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before June 7, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *electricity.exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On June 13, 2022, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1–DEL–S3–2022–2 and Redelegation Order No. S3–DEL–GD1–2022.

On April 19, 2007, DOE issued Order No. EA–324, authorizing EESS–4 to transmit electric energy from the United States to Canada as a power marketer. This authority was renewed on October 2, 2013 (Order No. EA–324–A) and on September 18, 2018 (Order No. EA–324–B). On March 15, 2023, EESS–4 filed an application with DOE (Application or App) for renewal of their export authority for an additional five-year term. App at 1.

In its Application, EESS–4 states that it ''does not own or control any electric power generation or transmission

facilities and does not have a franchised electric power service area. EESS–4 operates as a marketing company involved in, among other things, the purchase and sale of electricity in the United States as a power marketer.'' App at 5. EESS–4 represents that it ''will purchase surplus electric energy from electric utilities and other suppliers within the United States and will export this energy to Canada over the international electric transmission facilities.'' App at 6. Therefore, the Applicant contends that ''because this electric energy will be purchased from others voluntarily, it will be surplus to the needs of the selling entities. EESS–4's export of power will not impair the sufficiency of electric power supply in the U.S.'' *Id.*

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the email address provided previously. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the email address previously provided in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning EESS–4's Application should be clearly marked with GDO Docket No. EA–324–C. Additional copies are to be provided directly to Keith Sutherland, Vice President, Legal & Regulatory Affairs—Emera Energy, 5151 Terminal Road, Halifax, NS B3J 1A1 Canada, *keith.sutherland@emeraenergy.com* and Bonnie A. Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, Maryland 20854, *bonnie@suchmanlawllc.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at *https://www.energy.gov/gdo/pending-applications* or by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on May 1, 2023, by Maria Robinson, Director, Grid Deployment Office, 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 May 3, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–09733 Filed 5–5–23; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. EPA–HQ–OAR–2023–0216; FRL–10833–01–OAR]

Development of Guidance for Zero-Emission Clean Heavy-Duty Vehicles, Port Equipment, and Fueling Infrastructure Deployment Under the Inflation Reduction Act Funding Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for information (RFI).

SUMMARY: To support development of potentially multiple funding programs under the Inflation Reduction Act of 2022, EPA invites public comment to inform the availability of zero-emission technologies in the heavy-duty vehicle and port sectors. Although EPA already has considerable information about the availability of certain types of these technologies, in order to ensure that EPA has the most comprehensive and current information available in this dynamic space, EPA is inviting this comment. EPA is especially interested in comments detailing the availability, market price, and performance of zero-emission trucks, zero-emission port equipment, electric charging and other fueling infrastructure needs for zero-emission technologies in the near term (1–3 years, and 1–5 years for port equipment), and whether the components of these systems are manufactured in the United States. The Build America Buy America Act (BABA) requires iron, steel, manufactured products, and construction materials used in infrastructure projects funded by federal financial assistance to be produced in the United States. While BABA provides the opportunity for EPA to issue certain waivers to these requirements, approval depends on many factors, including the price and availability of domestically sourced materials and products. With responses to this RFI EPA seeks to improve in particular the Agency's understanding of availability and differences in zero-emission class 6 and 7 trucks, zero-emission trucks that serve ports and port equipment as well as their related charging and fueling infrastructure requirements. This information will enable EPA to effectively design programs to expeditiously fund currently available zero-emission technologies as well as consider allowances, such as longer project timeframes, for specific technologies.

DATES: Comments must be received on or before June 5, 2023, to allow for their consideration during development of these funding programs. EPA may consider comments received after the due date to the extent practicable.

ADDRESSES: You may submit your comments, identified by Docket ID No. EPA–HQ–OAR–2023–0216, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and follow the online instructions for submitting comments;
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, OAR Docket ID No. EPA–HQ–OAR–2023–0216, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460;
- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m. EST., Monday through Friday, except Federal holidays.

Instructions: All submissions received must include the Docket ID No. EPA–HQ–OAR–2023–0216. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Dennis Johnson, Manager, Technology Assessment Branch, (202) 343–9278, or via email at *johnson.dennis@epa.gov.* U.S. EPA, Room: WJC-North 5512DD,

Mail Code: 6406A, 1200 Pennsylvania Avenue NW, Washington, DC 20460. Office hours are from 8 a.m. to 4:30 p.m. EST Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: In this RFI, the Agency provides a brief background on the Clean Heavy-Duty Vehicle and Clean Ports Programs under the IRA, background information on BABA provisions, and then describes five areas of interest. The RFI then requests comments and responses to specific topics in each of these areas of interest. This RFI also includes guidance on submitting comments, procedures for submitting confidential business information as well as where to find additional information.

Responding to This RFI

Please indicate in your written comments the topic number(s) below you are commenting on and provide specific examples or information to illustrate your comments where possible. Please follow the instructions on *https://www.regulations.gov* and the docket website for submitting comments, but do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute as there are separate instructions below for submitting CBI. Once submitted, comments cannot be edited or removed from the docket. You do not need to address every topic and should focus on those where you have relevant expertise or experience. The EPA may publish any comment received to its public docket or to *https://www.regulations.gov* without change, including any personal information provided. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. In all cases, to the extent possible, please cite any public data related to or that support your responses. If data are available, but non-public, describe such data to the extent permissible. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system).

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 RFI 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 RFI, it is important that you clearly designate the submitted comments as CBI. Pursuant to 40 CFR part 2, you may ask EPA 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 EPA, 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, EPA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this RFI. Submissions containing CBI should be sent to Dennis Johnson, Manager, Technology Assessment Branch, via email at *johnson.dennis@epa.gov* or to Dennis Johnson, U.S. EPA, Room: WJC North 5512DD, Mail Code: 6406A, 1200 Pennsylvania Avenue NW, Washington, DC 20460. Any comment submissions that EPA receives that are not specifically designated as CBI will be placed in the public docket for this matter.

Background

In this section the Agency provides background information on two programs in the Inflation Reduction Act (IRA). The IRA enacted as Public Law 117–169 (August 16, 2022), includes important new programs to address climate change by reducing greenhouse gas emissions and to improve air quality through use of zero-emission vehicles and equipment. Among these programs is a (1) Clean Heavy-Duty Vehicles Program, and (2) Grants to Reduce Air Pollution at Ports Program. These programs provide funding that EPA will distribute to eligible recipients.

The Clean Heavy-Duty Vehicles (HDV) Program directs the Administrator to make awards of grants and rebates to eligible recipients and to make contracts to eligible contractors for providing rebates ($1 billion total). Eligible recipients include states, municipalities, Indian Tribes, or nonprofit school transportation associations. Eligible contractor means a contractor that has the capacity; (A) to sell, lease, license, or contract for service zero-emission vehicles, or charging or other equipment needed to charge, fuel, or maintain zero-emission vehicles, or to contract for service an eligible vehicle, or (B) to arrange financing for such a sale, lease, license, or contract for service. Funding can be for up to 100% of the costs for (1) the incremental costs of replacing an eligible class 6 or 7 heavy-duty vehicle with a zero-emission vehicle (2) purchasing, installing, operating and maintaining infrastructure needed to charge, fuel or maintain zero-emission vehicles; (3) workforce development and training to support the maintenance, charging, fueling and operation of zero-emission vehicles; and (4) planning and technical activities to support the adoption and deployment of zero-emission vehicles.

The Grants to Reduce Air Pollution at Ports Program (hereafter ''Clean Ports Program'') provides the Administrator funding to award rebates and grants to eligible recipients on a competitive basis ($3 billion total). Rebate and grant funding may be used: (A) to purchase or install zero-emission port equipment or technology for use at or to directly serve, one or more ports; (B) to conduct any relevant planning or permitting in connection with the purchase or installation of such zero-emission port equipment or technology; and (C) to develop qualified climate action plans. Eligible recipients include: (A) a port authority; (B) a state, regional, local or Tribal Agency that has jurisdiction over a port authority or a port; (C) an air pollution control agency; or (D) a private entity that (i) applies for a grant in partnership with an entity described in (A) through (C) and (ii) and owns, operates, or uses the facilities, cargo-handling equipment, transportation equipment or related technology of a port. Zero-emission port equipment or technology means a human-operated equipment or human-maintained technology that; (A) produces zero emissions of any air pollutant or any greenhouse gas other than water vapor; or (B) captures 100 percent of the emissions produced by an ocean-going vessel at berth.

Zero-emission vehicles and equipment are increasingly being offered for sale in the commercial truck and ports markets. Current options include vehicles powered by electricity and hydrogen. The Agency is aware of many of these product offerings. However, given the wide range of potential vehicles and equipment that could be considered for funding under the Clean HDV and Clean Ports Programs, EPA believes it is critical to provide an opportunity for all stakeholders (*e.g.,* manufacturers, distributors, installers, fleet operators, port operators) to share information about their products and firsthand experience with zero-emission technologies if they so choose, in order

to give EPA the broadest understanding possible of potential vehicles and equipment eligible to fund.

Charging and Fueling Infrastructure: Through the Clean HDV and Clean Ports programs, EPA may fund charging and other fueling infrastructure as an eligible expense in supporting zero-emission heavy-duty vehicle and port equipment projects. To this end, the Agency seeks information on the manufacturing and assembly of electric charging and other fueling infrastructure for zero-emission commercial vehicles and port equipment, such as whether zero-emissions fueling infrastructure manufactured in the United States can comply with applicable BABA requirements. This RFI is intended to: (A) help EPA better understand whether and to what extent domestic sourcing is available now, or may be possible in the near future, for electric charging and other fueling equipment and components; (B) ensure domestic manufacturers have the opportunity to identify any electric vehicle (EV) charger and fueling equipment meeting applicable BABA requirements; (C) ensure domestic manufacturers have the opportunity to identify any electric charging and other fueling equipment that could meet a domestic final assembly condition, and identify the portion of components that could meet a domestic manufacturing requirements; and (D) highlight benefits of shifting manufacturing processes to the United States.

Through this RFI, EPA seeks information regarding the availability of zero-emission heavy-duty vehicle and port equipment, electric chargers and fueling equipment, such as for hydrogen, that is manufactured and/or assembled in the United States, including whether they comply with applicable BABA requirements. EPA is not aware of any zero-emission heavy-duty vehicle or port equipment electric chargers or fueling equipment that currently meets applicable BABA requirements for steel and iron or manufactured products. The Agency is interested in promptly obtaining more information on this issue and others discussed in this notice to assess if sufficient quantities of equipment are currently available to comply with BABA requirements or whether sufficient equipment would be available in the near future.

Build America Buy America Act

In January 2021, the President issued Executive Order (E.O.) 14005, titled ''Ensuring the Future is Made in All of America by All of America's Workers.'' 86 FR 7475 (Jan. 28, 2021). E.O. 14005 states that the United States Government ''should, consistent with applicable law, use terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States.'' The EPA is committed to ensuring strong and effective Buy America implementation consistent with E.O. 14005. At the same time, the EPA must also consider how to ensure that electric chargers and fueling equipment, such as for hydrogen, are widely available in the immediate future to implement EPA-funded projects throughout the United States and its territories in a timely and cost-effective manner.

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (''IIJA''), Public Law 117–58, which includes the Build America, Buy America (BABA) Act. Public Law 117–58, sections 70901–52. The Act strengthens Made in America Laws and will bolster America's industrial base, protect national security, and support high-paying jobs. The Act requires that the head of each covered Federal agency ensure that ''none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States'' (Build America, Buy America (BABA) Act, Pub. L. 117–58, Sections 70911–70917), unless a waiver is granted.[1] This means that the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation. IIJA section 70912(6)(B). For all steel or iron materials used in infrastructure projects that involve the obligation of federal financial assistance, manufacturing processes, including application of a coating, must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. Such projects involve both the acquisition and installation of such equipment. These requirements apply to the obligation of all federal financial assistance for infrastructure projects, including IRA funds. EPA is committed to ensuring strong and effective Buy America implementation consistent with E.O. 14005. In implementing the IRA Clean HDV and Ports Programs, EPA will ensure compliance with BABA requirements.

Request for Comments and Information

In this section, the Agency describes general areas of interest to be addressed in these topics. To inform development of the Clean HDV and Clean Ports Programs, EPA requests comments and information from the public on the following five areas of interest:

A. *Technology Availability and Market-Readiness:* EPA recognizes that some zero-emission heavy-duty trucks are currently being marketed for sale. Consequently, EPA requests current and expected near term (within 1, 2, and 3 years) availability of potentially eligible zero-emission class 6 (gross vehicle weight rating 19,501–26,000 pounds) and class 7 (GVWR 26,001–33,000 pounds) vehicles, such as refuse haulers, day cab tractors, cargo vans, school buses, and straight trucks. Additionally, EPA is seeking responses to these same questions with respect to commercial trucks that may be used at ports, such as zero-emission service trucks and class 7 and 8 (GVWR >33,000 pounds) dray trucks. EPA requests responses to the questions regarding the current state of zero-emission port equipment and related fuel infrastructure availability, including commercial readiness and production volumes, for near-term as current capabilities, as well as in the 1-, 2-, 3- and 5-year timeframes.

B. *Performance:* EPA requests information regarding current and expected near-term characteristics of zero-emissions heavy-duty vehicles (1 to 3 years) and port equipment (1 to 5 years) and related fueling with regards to performance, reliability, and durability, including standard and optional warranty information, and descriptions of performance comparing the zero-emission truck or equipment to those operating on conventional petroleum-based liquid fuels.

C. *Pricing:* EPA requests information regarding current and expected near-term market prices of zero-emission heavy-duty vehicles (1 to 3 years), port equipment (1 to 5 years) and related fueling infrastructure, as well as the incremental costs relative to those

[1] OMB M–22–11, *https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf.*

operating on conventional petroleum-based liquid fuels.

D. *Domestic Materials Sourcing and Manufacturing:* EPA requests information regarding the extent to which materials are sourced from the U.S. and if manufacturing occurs in the U.S. to comply with BABA requirements currently, or in the near-term, especially with respect to electric charging and other fueling equipment.

E. *Other Practical Considerations:* EPA requests information that can inform implementation of zero-emission heavy-duty vehicle, port equipment, and related charging/fueling infrastructure projects. Please provide information such as necessary training, maintenance facility modifications, required safety equipment and the availability of hydrogen from different sources that produce zero-emissions.

Topics for Areas of Interest

In this section, the Agency requests responses to specific topics. Please indicate in your written comments the topic number(s) you are commenting on and provide specific examples or information to illustrate your comments where possible.

Topics

A. Technology Availability and Market-Readiness

1. Using the following categories as a guide, please identify specific types of vehicles or equipment that you are providing information about in response to this RFI. For each item you identify, please provide a description, and specify the type of powertrain (*e.g.,* electric [non-battery], battery-electric, hydrogen fuel cell electric, or other zero-emissions technologies).

a. *Zero-emissions class 6 and 7 vehicles:* including but not limited to school buses, refuse trucks, utility trucks, box trucks, cargo vans, and day cab tractors.

b. *Zero-emission port equipment:* including but not limited to port dray trucks, cargo handling equipment, yard tractors, locomotives, railcar movers, harbor craft, shore power, and technologies to capture 100 percent of emissions produced by an ocean-going vessel at berth.

c. Zero-emissions fueling infrastructure: including but not limited to heavy-duty electric vehicle, equipment, and locomotive chargers, as well as hydrogen refueling infrastructure.

2. For each of the items you identified in response to Topic 1, please:

a. Describe the current and the expected availability of the equipment based on sales volumes, number and size of manufacturers, and other key industry factors.

b. Provide information on the near-term demand outlook for this equipment. For entities that are eligible for funding, please describe how many and what types of zero-emission heavy-duty vehicles and port technologies you anticipate purchasing in the near-term.

c. Provide information regarding whether the current and expected near-term manufacturing capacity would be adequate to meet the expected market demand, including anticipated federal funding. Please specify any factors helping or preventing the industry from meeting the expected demand today and in the near-term and provide information on the availability of and materials used in key components such as batteries, electric motors, high-voltage cables, storage tanks, pumps, hoses, nozzles, enclosures, and required safety equipment.

d. Provide information on whether various duty cycles affect available power levels at the installation site and dwell times needed for charging, whether charging is anticipated to happen on site or en route, and how expected needs for zero-emission heavy-duty vehicles and zero-emission port equipment might differ from what is commercially available today and in the near-term timeframes.

e. Please indicate to what extent it is human-operated equipment and/or a human-maintained technology.

f. Provide information on the current and expected near-term average customer delivery time.

3. For each of the items you identified in response to Topic 1.c., please describe the current and expected availability or unavailability of components, such as, electrical plugs, transformers, electrical switchgear, hydrogen storage tanks, pumps, hoses, nozzles, enclosures, and required safety equipment.

4. For each of the *battery-electric* and *charger* items you identified in response to Topic 1, please describe the standard and optional equipment specifications. Please specify the type of charging included, *e.g.* whether it uses the SAE J1772 connector for AC charging (also known as the Jplug), if it provides DC Fast Charging, if it uses the Combine Charging System (CCS) connector, if it uses the CHAdeMO connector, if it uses the Megawatt Charging System (MCS), and or whether it uses an additional connector technology and what type, whether it uses inductive charging, and other relevant information such as maximum power rating (kW) and standards to which the equipment is certified.

5. For each of the *battery-electric* items you identified in response to Topic 1, please describe whether and how the batteries can be upgraded or replaced.

B. Performance

6. For each item you identified in response to Topic 1, please:

a. Describe the expected service life and long-term operation and maintenance requirements relative to those operating on conventional petroleum-based liquid fuels.

b. Describe charging or fueling requirements. Potential items to consider include: connections to the electric grid, including electric distribution upgrades; vehicle-to-grid integration, including smart charge management, bi-directional charging or other protocols that can minimize impacts to the grid, alignment with electric distribution interconnection processes; potentially unique charging systems (such as for vessels or locomotives), multi-use charging stations to charge different types of equipment, potential to charge multiple systems concurrently; on-site energy storage; and potential use of renewable energy sources to power charging, energy storage and/or hydrogen production.

c. Describe the original manufacturer's warranty. Please include all applicable parameters, such as years, hours or miles of operation, and number of charging cycles and as well as whether the warranty covers the damage from any potential charger malfunction.

d. Describe differences in performance and operational characteristics between the zero-emission HDV or port equipment and the comparable conventionally fueled counterpart. Please fully explain all differences in capacity, speed, operating range, impacts on operation due to ambient conditions or limitations in capabilities.

7. For each of the *battery-electric* items you identified in response to Topic 1, please:

a. Identify all charger manufacturers or charger models with which this item has been verified to have full technology compatibility or other EV charging standards and how compliance was demonstrated. Please provide information on how the technology compatibility was verified.

b. Please describe what type of safety mechanisms are used to protect battery packs from water intrusion, corrosion due to flooding and salt, thermal runaway events, and/or other hazards.

C. Pricing

8. For each of the items you identified in response to Topic 1, please:

a. Specify the current market price (or price range) and what is included in that price. For example, in the case of chargers, please specify whether it is for a complete charger pedestal, power equipment and associated electrical system capable of charging one or more vehicles. Please also specify if additional costs for installation and commissioning are included.

b. Provide information on the price outlook through calendar year, and, where applicable, through the near-term future. Please identify and describe any opportunities for reducing prices.

c. Please also discuss the incremental and lifecycle costs as well as the payback period relative to similar equipment or vehicles operating on conventional petroleum-based liquid fuels. In addition to the total cost, where possible, please provide cost information itemized by category (for example: purchase of vehicles or equipment, installation, maintenance, fuel/charging, insurance, other operating expenses) and include the key assumptions used to estimate them.

d. Please identify and describe any opportunities for reducing prices of zero-emision technologies.

e. Provide information regarding global supply chain constraints, local permitting, safety requirements and needs that may increase costs, impact delivery timeframes, or extend installation time.

9. EPA is interested in better understanding the current lifetime costs/Total Cost of Ownership (TCO) gap between electric and diesel school buses as well as how that gap is expected to change over time. For each of the TCO cost categories (a–c) listed here, please provide cost estimates using the following parameters: a period of analysis of 10 years; a fleet size of 50 buses; and a 5-year straight line depreciation schedule (please clearly state what alternative assumptions have been made). Also, please clearly state what assumptions have been made on geographic region of analysis and/or specific districts; average vehicle life expectancy; sales tax; and annual days of operation. To the extent other HD vehicle types, such as dray trucks, can address the TCO in this fashion, please provide a similar description for those vehicle types.

a. Capital cost (CAPEX) categories: Vehicle, charging/fueling infrastructure, residual value.

b. Operating cost (OPEX) categories; Operating expense, fuel/electricity, insurance, registration.

c. Other (please specify).

D. Domestic Materials Sourcing and Manufacturing

10. For each of the applicable items you identified in response to Topic 1, please specify whether the product meets BABA requirements or is currently manufactured in the United States to meet a domestic final assembly condition. (Yes or No)

11. If you answered ''Yes'' to Topic 10:

a. Please identify all manufacturers that can either meet BABA requirements or can currently manufacture equipment in the United States.. For those that meet the condition of manufactured in the United States, but do not meet the domestic content requirement, please identify the percentage of components manufactured in the United States as calculated by cost of components (if known).

b. How many of each equipment type meeting BABA requirements or manufactured in the United States conditions can be manufactured per year during the next 5 years?

c. What portion of the total market supply for each equipment type do you estimate to be BABA compliant?

d. What is the typical cost for the steel and iron used in this equipment type?

e. What percent of the total cost is typically represented by the steel and iron used to manufacture this equipment type? If you cannot provide the percent, please describe if it is more or less than 50% of the total cost.

f. Can the origins of the steel and iron used in this equipment type be certified by documentation? If so, how?

12. If you answered ''No'' to Topic 10:

a. What steps can manufacturers take to increase equipment that meets BABA requirements?

b. What additional support is needed ensure a sufficient supply of equipment that meets BABA requirements?

c. How long might it take to undertake those steps?

d. What is the volume of equipment that could be shifted to manufacture in compliance with BABA requirements?

e. Can that volume be ramped up over time, and if so at what annual growth rate?

13. For available zero-emission technologies, please describe any differences between domestically manufactured or assembled and non-domestic equipment. Please address any differences in supply availability, price, replacement part delivery, functionality, security, etc.

E. Other Practical Considerations for Program Design

14. For each of the items you identified in response to Topic 1, please provide examples of best practices relating to project development, installation, and adoption of zero-emissions equipment and related electric, hydrogen, or other fueling infrastructure you identified in response to Topic 1.

15. For each of the *fueling infrastructure* types you identified in response to Question 1, please provide examples of the phases and time required for planning, permitting, sourcing, delivering, and installing this equipment.

16. Please identify any unique factors for states, municipalities, utilities, ports authorities, Indian Tribes, or nonattainment areas to consider in developing zero-emission projects including necessary charging or other fueling infrastructure.

17. If known, please describe opportunities and best practices to:

a. Maximize environmental benefits such as replacing the oldest, highest use, highest emitting equipment with available zero emission technologies.

b. Maximize benefits with technologies to service one or more ports and intermodal facilities to potentially share or coordinate charging/fueling infrastructure.

c. Leverage or improve zero-emission transport corridors.

d. Maximize benefits for workforce development and jobs training outcomes.

e. Maximize benefits for disadvantaged communities and/or advancing other environmental justice objectives.

18. Please describe what specialized workforce expertise, including key occupations, is needed to support the installation, use, and maintenance of (1) clean heavy-duty vehicles, and (2) zero-emission port equipment. What (if any) challenges do you anticipate in meeting your expertise and capacity needs? How can these challenges be effectively addressed?

May 3, 2023.

Sarah Dunham,

Director, Office of Transportation and Air Quality.

[FR Doc. 2023–09802 Filed 5–5–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

TIME AND DATE: 10:00 a.m., Tuesday, May 16, 2023.

PLACE: The Richard V. Backley Hearing Room, Room 511, 1331 Pennsylvania Avenue NW, Suite 504 North, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *American Soda, LLC,* Docket No. WEST 2020–0278. (Issues include whether the Judge erred in concluding that the operator had failed to report an accident in a timely manner.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

PHONE NUMBER FOR LISTENING TO MEETING: 1–(866) 236–7472; Passcode: 678–100.

Authority: 5 U.S.C. 552b.

Dated: May 4, 2023.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2023–09821 Filed 5–4–23; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

TIME AND DATE: 10:00 a.m., Thursday, May 18, 2023.

PLACE: The Richard V. Backley Hearing Room, Room 511, 1331 Pennsylvania Avenue NW, Suite 504 North, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *American Soda, LLC,* Docket No. WEST 2021–0278. (Issues include whether the Judge erred in concluding that the operator had failed to report an accident in a timely manner.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

PHONE NUMBER FOR LISTENING TO MEETING: 1–(866) 236–7472; Passcode: 678–100.

Authority: 5 U.S.C. 552b.

Dated: May 4, 2023.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2023–09822 Filed 5–4–23; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

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 paragraph 7 of the Act.

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 23, 2023.

A. *Federal Reserve Bank of Kansas City* (Jeffrey Imgarten, Assistant Vice President) One Memorial Drive, Kansas City, Missouri 64198–0001. Comments can also be sent electronically to *KCApplicationComments@kc.frb.org:*

1. *John Sneed, individually, and as trustee of the FMS Bank Employee Stock Ownership and 401K Trust, and Mary Sneed, all of Fort Morgan, Colorado;* to form the Sneed Family Group, a group acting in concert, to acquire voting shares of Morgan Capital Corporation, and thereby indirectly acquire voting shares of FMS Bank, both of Fort Morgan, Colorado.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–09751 Filed 5–5–23; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–588]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *June 7, 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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Electronic Funds Transfer Authorization Agreement; *Use:* Section 1815(a) of the Social Security Act provides the authority for the Secretary of Health and Human Services to pay providers/suppliers of Medicare services at such time or times as the Secretary determines appropriate (but no less frequently than monthly). Under Medicare, CMS, acting for the Secretary, contracts with Fiscal Intermediaries and Carriers to pay claims submitted by providers/suppliers who furnish services to Medicare beneficiaries. Under CMS' payment policy, Medicare providers/suppliers have the option of receiving payments electronically. The collection and verification of this information via Form CMS–588 protects our beneficiaries from illegitimate health care providers/suppliers. These procedures also protect the Medicare Trust Funds against fraud. No comments were received in response to the 60-day comment period. *Form Number:* CMS–588 (OMB control number: 0938–0626); *Frequency:* Occasionally; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 115,833; *Total Annual Responses:* 115,833; *Total Annual Hours:* 57,917. (For policy questions regarding this collection contact Frank Whelan at (410) 786–1302.)

Dated: May 3, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–09724 Filed 5–5–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0955–0020]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before June 7, 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: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 264–0041, or *PRA@HHS.GOV.* When submitting comments or requesting information, please include the document identifier 0955–0020–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: United States Core Data for Interoperability New Data Element Submission Form.

Type of Collection: Continuation with revision.

OMB No.: 0955–0020—Office of the National Coordinator for Health Information Technology—United States Core Data for Interoperability.

Abstract: The Office of the National Coordinator for Health Information Technology is seeking the extension of approval with revision for the information collection request item ''United States Core Data for Interoperability (USCDI) New Data Element Submission Form.'' The USCDI is a standardized set of health data classes and constituent data elements used to support nationwide, interoperable health information exchange. The USCDI Version 1 is the required standard data elements set to which all health IT developers must conform to obtain ONC certification. This certification is required for participation in some federal healthcare payment plans. In order to insure the USCDI remains current and reflects the needs of the health IT community, ONC has established a predictable, transparent, and collaborative process to solicit broad stakeholder input to expand the USCDI. Anyone, including ONC staff, staff from other federal agencies, and other stakeholders may submit proposals for new data elements and classes. ONC will evaluate each submission and provide feedback to the submitter. ONC will draft a new version of the USCDI based on these submissions and this draft will undergo review by ONC's federal advisory committee, the Health Information Technology Advisory Committee (HITAC), as well as by the general public. Upon approval by the National Coordinator for Health Information Technology, new data classes and data elements from these submissions will be added to the newest version of the USCDI standard for integration into health information technology products such as electronic health records. ONC is seeking approval to continue to collect this information from health IT stakeholders, with some revisions to the information requested.

Need and Proposed Use of the Information: The information collected from this submission system is needed, as it will comprise the sum total of the items ONC will evaluate for addition to

the next version of the USCDI. The requested data will provide supporting documentation to justify addition of the data elements to the USCDI, and, if the documentation does justify addition to the USCDI, and assignment to one of several levels of candidate data elements for future development and consideration. The requested data and ONC's evaluation of the data will be publicly available for review at any time to provide transparency and predictability in the USCDI expansion process. It will contain information about the submitter to allow ONC to provide direct feedback to submitters on ONC's evaluation of such submission.

Likely Respondents: Likely respondents to this new submission system will be various health IT stakeholders including health care providers, standards development organizations, health IT developers and vendors as well as members of the HITAC.

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
USCDI Submission	200	1	20/60	67
Total	200			67

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2023–09741 Filed 5–5–23; 8:45 am]

BILLING CODE 4150–12–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Community Health Aide Program: Tribal Assessment & Planning

Announcement Type: New.

Funding Announcement Number: HHS–2023–IHS–TAP–0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.382.

Key Dates

Application Deadline Date: August 7, 2023.

Earliest Anticipated Start Date: September 20, 2023.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting applications for grants for the Community Health Aide Program (CHAP) Tribal Assessment and Planning (TAP) program. This program is authorized under the Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); and the Indian Health Care Improvement Act, 25 U.S.C. 1616l. The Assistance Listings section of SAM.gov (*https://sam.gov/content/home*) describes this program under 93.382.

Background

The national CHAP will provide a network of health aides trained to support licensed health professionals while providing direct health care, health promotion, and disease prevention services. These providers will work within a referral relationship under the supervision of licensed clinical providers that includes clinics, service units, and hospitals. The CHAP aides increased access to direct health services, including inpatient and outpatient visits.

The Alaska CHAP has become a model for efficient and high quality health care delivery in rural Alaska providing approximately 300,000 patient encounters per year and responding to emergencies 24 hours a day, 7 days a week. Specialized providers in dental and behavioral health were later introduced to respond to the needs of patients and address the health disparities in oral health and mental health amongst American Indian and Alaska Natives.

The national CHAP is a workforce model that includes three different provider types that act as extenders of their licensed clinical supervisor. The national CHAP currently includes a behavioral health aide, community health aide, and dental health aide. Each of the health aide categories operate in a tiered level practice system. The national CHAP model provides an opportunity for increased access to care through the extension of primary care, dental, and behavioral health clinicians.

In 2010, under the permanent reauthorization of the Indian Health Care Improvement Act (IHCIA), Congress provided the Secretary of Health and Human Services, acting through the IHS, the authority to expand the CHAP nationally. In 2016, the IHS initiated Tribal Consultation on expanding the CHAP to the contiguous 48 states. In 2018, the HIS formed the CHAP Tribal Advisory Group (TAG) and began developing the program. In 2020, the IHS announced the national CHAP policy, which formally created the national CHAP.

Purpose

The TAP program purpose is to support the assessment and planning of Tribes and Tribal Organizations (T/TO) in determining the feasibility of implementing CHAP in their respective communities. The program is designed to support the regional flexibility required for T/TO to design a program unique to the needs of their individual communities across the country through the identification of feasibility factors.

The focus of the program is to:

Part 1: Assess whether the T/TO can integrate CHAP into the Tribal health system including the health care workforce.

Part 2: Identify systemic barriers that prohibit the complete integration of CHAP into an existing health care system. The barriers should be related to:

- Clinical infrastructure.
- Workforce barriers.
- Certification of providers.
- Training of providers.
- Inclusion of culture in the services provided by a CHAP provider.

Part 3: Plan partnerships across the T/TO geographic region to address the barriers including reimbursement, training, education, clinical infrastructure, implementation cost, and determination of system integration.

II. Award Information

Funding Instrument—Grant

Estimated Funds Available

The total funding identified for fiscal year (FY) 2023 is approximately $1,500,000. Individual award amounts for the first budget year are anticipated to be between $250,000 and $500,000. The funding available for competing and subsequent continuation 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 three to five awards under this program announcement.

Period of Performance

The period of performance is for 2 years.

III. Eligibility Information

1. Eligibility

To be eligible for this funding opportunity applicant must be one of the following, as defined by 25 U.S.C. 1603:

- A federally recognized Indian Tribe as defined by 25 U.S.C. 1603(14). The term ''Indian Tribe'' means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or group, or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States (U.S.) to Indians because of their status as Indians.
- A Tribal organization as defined by 25 U.S.C. 1603(26). The term ''Tribal organization'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(l)): ''Tribal organization'' means the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: provided that, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant. Applicant shall submit letters of support and/or Tribal Resolutions from the Tribes to be served.

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 TAP 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.

Specifically, an applicant may not apply to both this opportunity, TAP, and the CHAP Tribal Planning and Implementation (TPI) opportunity (number HHS–2023–IHS–TPI–0001).

An organization currently carrying out a CHAP in the U.S. in accordance with 25 U.S.C. 1616l through an Indian Self-Determination and Education Assistance Act (ISDEAA) agreement is not eligible to apply.

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.

Proof of Nonprofit Status

Organizations claiming nonprofit status must submit a current copy of the 501(c)(3) Certificate with the application.

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 objective 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 objective 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 15 pages). See section IV.2.A, Project Narrative for instructions.

1. Background information on the organization.
2. Proposed scope of work, objectives, and activities that provide a description of what the applicant plans to accomplish.

- 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.
- Letters of Support from organization's Board of Directors.
- 501(c)(3) Certificate.
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- 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 of current Office of Management and Budget (OMB) Financial Audit (if applicable).

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 15 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 (8½ x 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 15-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)

Describe the community and how it would benefit from the implementation of CHAP. Describe the community's current health disparities relating to primary, behavioral, and oral health care. Describe the T/TO's current health program activities, how long it has been operating and what programs or services are currently being provided. Describe in full the organization's infrastructure and its ability to identify and assess the barriers that could impact or prohibit the integration of CHAP.

Part 2: Program Planning and Evaluation (limit—6 pages)

Section 1: Program Plans

Describe in full the direction the T/TO plans to take in the CHAP TAP. The program plan should first clearly identify the problems within the community related to behavioral, primary, and oral health. The program plan should then include the plan to assess problem(s). This should include a timeline for the assessment. The program plan should identify a timeline to determine whether CHAP can address the barriers identified.

Section 2: Program Activities

Describe in full the activities to identify problems creating barriers within the community related to behavioral, primary, and oral health. These activities should be categorized (at a minimum) within key factors related to clinical infrastructure, workforce barriers, training infrastructure, and cultural inclusion. Describe in full how the applicant plans to assess the problems identified. Finally, describe in detail the activities and associated timeline to determine whether CHAP is feasible and activities to quantify the cost associated with CHAP. The program activities should detail which partners will aid in identifying and assessing barriers related to clinical infrastructure, workforce barriers, training infrastructure, and cultural inclusion.

Section 3: Staffing Plan

Describe key staff tasked with carrying out the program activities in section 2. Applicants should account for potential stakeholder partnerships following the assessment of barriers in the staffing plan.

Section 4: Timeline

Describe a timeline not to exceed two years for the completion of the program plan, activities, and evaluation plan. Provide a timeline chart depicting a realistic timeline that details all major activities, milestones, and applicable staffing plans. The timeline should include the projected progress report due at the midpoint of the project period. The timeline chart should not exceed one page.

Section 5: Program Evaluation

The evaluation plan should identify and describe significant program activities and achievements associated with the assessment and planning of whether CHAP can address identified barriers within the existing T/TO health system. The evaluation plan should organize all identified problems that lead to barriers into major categories related to clinical infrastructure, workforce barriers, training infrastructure, and cultural inclusion specific to the scope of practice of prospective CHAP providers. The evaluation plan should detail how these barriers can be quantified. The evaluation plan should outline a tentative plan on how the barriers can be overcome. Include plans to incorporate CHAP into the existing infrastructure and where new infrastructure will need to be built, where and how new workforce can be recruited and/or developed if needed, where and how training for new CHAP providers will be developed, how existing workforce will be trained to support and integrate the CHAP program and how culture will be integrated throughout the components. The evaluation plan should detail how the applicant will measure the assessment of whether CHAP can address the issues identified including number of partnerships for each major category of barriers, other factors that may impact feasibility, and sustainability. Finally, the evaluation plan should detail how the applicant plans to calculate the total cost associated with integrating CHAP as part of the planning process.

Part 3: Program Report (limit—5 pages)

Section 1: Describe your organization's significant program activities and accomplishments over the past 2 years associated with the goals of this announcement.

At the conclusion of the program period, using the findings from the evaluation, the T/TO should determine the feasibility of implementing a CHAP within the T/TO's community. The Outcome Report should describe in full the findings of the program plan, evaluation, and determination on stage of readiness for implementation. The findings should select from one of the following readiness assessment levels:

1. The CHAP program is not a good fit for the needs of the organization and/or the organization will not be ready to implement the CHAP program in the foreseeable future.

2. The organization would be a good fit for the CHAP program but the organization has a great deal of work to do in preparation for the implementation of the CHAP program.

3. The findings show multiple areas of organizational readiness for the implementation of the CHAP program.

The outcome report should organize the findings into at least 5 categories:

(1) Clinical Infrastructure: Describe assessments of clinical infrastructure and plans for how to implement the CHAP program with the current or modified clinical infrastructure. Include information as to the facility workspace, information technology, transportation concerns for CHAP providers, program collaborations, Area-level administration, clinic staffing and leadership, legislative issues, and any other infrastructure items relevant to the successful implementation of the CHAP.

(2) Workforce Barriers: Describe assessments of workforce barriers regarding the implementation of a CHAP program within the organization and any proposed changes. Include information on identified recruitment opportunities and partnerships, information on human resource ability to manage additional recruitment activities, specifics relating to capacity to provide CHAP supervision and ability to provide support for students for any identified needs (such as transportation, childcare, etc.), which may limit ability of potential CHAP providers to engage in CHAP activities, and any other factors impacting the implementation of a CHAP program.

(3) Training Infrastructure: Assess all identified realistic sources for training of CHAP providers. Include any Tribal Colleges and Universities, non-tribal institutions, other Tribal or non-tribal training programs and any other resources, both local and non-local if relationships are realistic for a sustainable CHAP program. Include information on whether training would be in-situ, virtual or a hybrid model. Include information on both classroom and hands-on skills-based training. Also include information on supervisory training and continuing education training.

(4) Cultural Inclusion: Detail assessment and plans to incorporate cultural elements throughout all aspects of the CHAP program, both in the training of CHAP providers and in all aspects of the delivery of care through the CHAP program throughout the organization.

(5) Implementation Cost: Based on the findings and measurable outcomes of the categories, the applicant should explicitly identify whether CHAP is feasible for implementation into the T/TO's respective community. Applicants should develop an organized report that highlights the categories succinctly and includes data (quantitative or qualitative) from the evaluation plan. The evaluation plan should outline a tentative plan on how the barriers can be overcome if applicable. The outcome report should explicitly detail the cost associated with integrating CHAP if it is found that CHAP can address the barriers identified in the assessment phase. 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 allowable up to 90 days before the start date of the award provided the costs are otherwise allowable if awarded. Pre-award costs are incurred at the risk of the applicant.
- The available funds are inclusive of direct and indirect costs.
- Only one grant 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 awardees to report information on sub-awards. Accordingly, all IHS awardees 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 awardee 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 (10 points)

Identify the proposed project and plans to identify the feasibility of implementing a CHAP within the T/TO community. The needs should clearly identify the existing health system and how the CHAP may be a viable workforce model for the community needs.

The feasibility report should organize the findings into at least five categories:

a. *Clinical Infrastructure:* Describe assessments of clinical infrastructure and plans for how to implement the CHAP program with the current or modified clinical infrastructure. Include information as to the facility workspace, information technology, transportation concerns for CHAP providers, program collaborations, Area-level administration, clinic staffing and leadership, legislative issues and any other infrastructure items relevant to the successful implementation of the CHAP.

b. *Workforce Barriers:* Describe assessments of workforce barriers regarding the implementation of a CHAP program within the organization and any proposed changes. Include information on identified recruitment opportunities and partnerships, information on human resource ability to manage additional recruiting activities, specifics relating to capacity to provide CHAP supervision and ability to provide support for students for any identified needs (such as transportation, childcare, etc.), which may limit ability of potential CHAP providers to engage in CHAP activities and any other factors impacting the implementation of a CHAP program.

c. *Training Infrastructure:* Assess all identified realistic sources for training of CHAP providers. Include any Tribal Colleges and Universities, non-tribal institutions, other tribal training programs and any other resources, both local and non-local if relationships are realistic for a sustainable CHAP program. Include information on whether training would be in-situ, virtual or a hybrid model. Include information on both classroom and hands-on skills-based training. Also include information on supervisory training and continuing education training.

d. *Cultural Inclusion:* Detail assessment and plans to incorporate cultural elements throughout all aspects of the CHAP program, both in the training of CHAP providers and in all aspects of the delivery of care through the CHAP program throughout the organization.

e. *Implementation Cost:* Based on the findings and measurable outcomes of the categories, the applicant should explicitly identify whether CHAP is feasible for implementation into the T/TO's respective community. Applicants

should develop an organized report that highlights the categories succinctly and includes data (quantitative or qualitative) from the evaluation plan. The evaluation plan should outline a tentative plan on how the barriers can be overcome if applicable. The outcome report should explicitly detail the cost associated with integrating CHAP if it is found that CHAP can address the barriers identified in the assessment phase. 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. Project Objective(s), Work Plan and Approach (30 points)

The work plan should be comprised of two key parts: Program Information and Program Plan. Acceptable Program Information should provide information related to three key sections: community profile; health and infrastructure; and organizational capacity. The Program Information part should demonstrate a robust community profile that highlights the existing health system, demographic data of community members and user population, and a detail of the T/TO carrying out the proposed activity. An acceptable Program Plan should include details of the applicant's plan to address the program objective. The Program Plan should address, at a minimum, key activities related to clinical infrastructure, workforce barriers, and training infrastructure.

C. Program Evaluation (30 points)

The program evaluation should address how the applicant intends to measure major categories related to clinical infrastructure, workforce barriers, training infrastructure, cultural inclusion (See Sample Logic Model in Appendix Related Documents in *Grants.gov*) specific to the scope of practice of prospective CHAP providers, and implementation costs. The evaluation plan should identify how the applicant plans to determine the feasibility of CHAP integration into the Tribal system, measurement of significant systematic barriers, implementation cost associated with CHAP, and planning for the scope of work. List measurable and attainable goals with explicit timelines that detail expectation of findings. The program evaluation report should organize the findings into at least 5 categories:

a. *Clinical Infrastructure:* Describe assessments of clinical infrastructure and plans for how to implement the CHAP program with the current or modified clinical infrastructure. Include information as to the facility workspace, information technology, transportation concerns for CHAP providers, program collaborations, Area-level administration, clinic staffing and leadership, legislative issues and any other infrastructure items relevant to the successful implementation of the CHAP.

b. *Workforce Barriers:* Describe assessments of workforce barriers regarding the implementation of a CHAP program within the organization and any proposed changes. Include information on identified recruitment opportunities and partnerships, information on human resource ability to manage additional recruiting activities, specifics relating to capacity to provide CHAP supervision and ability to provide support for students for any identified needs (such as transportation, childcare, etc.), which may limit ability of potential CHAP providers to engage in CHAP activities and any other factors impacting the implementation of a CHAP program.

c. *Training Infrastructure:* Assess all identified realistic sources for training of CHAP providers. Include any Tribal Colleges and Universities, non-tribal institutions, other tribal training programs and any other resources, both local and non-local if relationships are realistic for a sustainable CHAP program. Include information on whether training would be in-situ, virtual or a hybrid model. Include information on both classroom and hands-on skills-based training. Also include information on supervisory training and continuing education training.

d. *Cultural Inclusion:* Detail assessment and plans to incorporate cultural elements throughout all aspects of the CHAP program, both in the training of CHAP providers and in all aspects of the delivery of care through the CHAP program throughout the organization.

e. *Implementation Cost:* Based on the findings and measurable outcomes of the categories, the applicant should explicitly identify whether CHAP is feasible for implementation into the T/TO's respective community. Applicants should develop an organized report that highlights the categories succinctly and includes data (quantitative or qualitative) from the evaluation plan. The evaluation plan should outline a tentative plan on how the barriers can be overcome if applicable.

D. Organizational Capabilities, Key Personnel, and Qualifications (10 Points)

Provide a detailed biographical sketch of each member of key personnel assigned to carry out the objectives of the program plan. The sketches should detail the qualifications and expertise of identified staff.

E. Categorical Budget and Budget Justification (20 Points)

Provide a detailed budget of each expenditure directly related to the identified program activities.

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 the 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 Clinical and Preventative Services (OCPS) 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 Grants:

- 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 part 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 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. Data Collection and Reporting

To satisfy the reporting requirements, the applicant is expected to develop an outcome report. The outcome report should explicitly state whether CHAP implementation and integration into existing healthcare system is viable or not. The Outcome Report should describe in full the findings of the program plan, evaluation, and determination on stage of readiness for implementation. The Outcome Report should organize the findings into at least five categories:

1. Clinical Infrastructure.
2. Workforce Barriers.
3. Training Infrastructure.
4. Cultural Inclusion.
5. Implementation Cost.

Applicants are encouraged to identify additional categories above the five aforementioned and may choose to develop subcategories that best fit the program plan.

D. 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 grants 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/.*

E. Non-Discrimination Legal Requirements for Awardees of Federal Financial Assistance

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.

F. 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 the 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:

Donna E. Enfield, Public Health Advisor, Office of Clinical and Preventative Services, 5600 Fishers Lane, Rockville, MD 20857, Phone: (301) 526–6966, Email: *IHSCHAP@ihs.gov.*

2. Questions on grants 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*.

3. For technical assistance with *Grants.gov,* please contact the *Grants.gov* help desk at (800) 518–4726, or by email at *support@grants.gov.*

4. For technical assistance with GrantSolutions, please contact the GrantSolutions help desk at (866) 577–0771, or by email at *help@grantsolutions.gov.*

VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement, and contract awardees 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.

Roselyn Tso,

Director, Indian Health Service.

[FR Doc. 2023–09721 Filed 5–5–23; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Development, Risk and Prevention Study Section.

Date: June 1–2, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anna L Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Addiction Risks and Mechanisms Study Section.

Date: June 5–6, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, (301) 496–0726, *prenticekj@mail.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Arthritis, Connective Tissue and Skin Study Section.

Date: June 6–7, 2023.

Time: 8:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Washington DC/Georgetown, 2201 M. Street NW, Washington, DC 20037.

Contact Person: Robert Gersch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (301) 867–5309, *robert.gersch@nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Analytics and Statistics for Population Research Panel B Study Section.

Date: June 6–7, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jessica Campbell Chambers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–5693, *jessica.chambers@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 2, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–09702 Filed 5–5–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Generic Clearance for the Collection of Customer Participation and Performance Management With NIH Programs, Products, and Services (National Institutes of Health)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide an opportunity for public comment on proposed data collection projects, the National Institutes of Health, National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured

of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Diane Kreinbrink, Program Manager, Office of Management Policy and Compliance, National Cancer Institute, 9609 Medical Center Drive, Room 2W446, Bethesda, Maryland, 20892 or call non-toll-free number (240) 276–7283 or email your request, including your address to: *diane.kreinbrink@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public, and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function 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) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Generic Clearance for the Collection of Customer Participation and Performance Management with NIH Programs, Products, and Services (NIH), 0925–XXXX: Expiration Date XX/XX/XXXX, NEW, National Institutes of Health (NIH).

Need and Use of Information Collection: Evaluating the effectiveness of leadership, programs, and services is essential for the vitality of any institution. Leadership review at NIH focuses on the productivity of the IC, management of resources and budget allocations, training activities, and influence on dimensions of diversity, inclusion, promotion of investigators and staff (including NIH Equity Committee (NEC) reports), and positive workforce culture.

Program and service reviews may focus on operational performance; outputs, outcomes, and impacts; policy compliance, stewardship, diversity, equity, and inclusion. Both types of reviews and evaluations may solicit input from IC staff and leadership (IC Director, Deputy Director, E.O.) and relevant program participants and stakeholders about the program's effectiveness, leader, or process. They may include comparisons with other ICs or programs, external benchmarks, and outcome metrics where appropriate and applicable. This input should provide meaningful information that can be used to identify strengths and areas that need improvement. Reports developed from the review or evaluation may be presented by the IC Director to the IC's Advisory Council or Board, to other IC or NIH leadership (such as the Deputy Director for Intramural Research and the NIH Director), or to program participants or the broader public. Such reports may include recommendations and proposed actions to address areas for improvement. In public or broadly shared reports, any sensitive information in the reviews or evaluations will be summarized and presented in aggregate.

This clearance will allow direct assessment and measurement of the customer/respondent base for participation in and satisfaction with NIH programs, products, and services. The clearance will also enable offices to assess participants' experience and accomplishments during or since participation and their preferences for existing and future programming, products, and services. The information collected using these tools informs and supports budgeting, program management and design, program planning, results reporting, information dissemination, and outreach initiatives.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 3,375.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hour
Individuals, Households, Private Sector, State Government, Local Government, Tribal Government, or Federal Government.	Performance Measurement.	500	1	30/60	250
	Interviews	1,000	1	1	1,000
	Program Reviews	500	1	45/60	375
	Surveys	5,000	1	15/60	1,250
	Focus Groups	500	1	1	500
Totals			7,500		3,375

Dated: May 3, 2023.

Diane Kreinbrink,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2023–09708 Filed 5–5–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA International Program: Research and Training Support.

Date: May 24, 2023.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Preethy Nayar, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, Bethesda, MD 20892, (301) 443–4577, *nayarp2@csr.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Exploratory Studies to Investigate Mechanisms of HIV Infection, Replication, Latency, and/or Pathogenesis in the Context of SUD.

Date: June 12, 2023.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Soyoun Cho, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, Bethesda, MD 20892, (301) 594–9460, *Soyoun.cho@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 2, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–09704 Filed 5–5–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trials in Neurology.

Date: May 11–12, 2023.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate cooperative agreement applications

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Rockville, MD 20852, 301–435–6033, *rajarams@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Phase 2 Clinical Trials in Neurology.

Date: May 12, 2023.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Iqbal Sayeed, Ph.D. Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Rockville, MD 20852, 301–496–9223, *iqbal.sayeed@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: May 3, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–09711 Filed 5–5–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Limited Competition: Resources and Workforce Development for the Regional Biocontainment Laboratories (UC7 Clinical Trial Not Allowed).

Date: June 1–2, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F30, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Scott Jakes, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F30, Rockville, MD 20852, (240) 669–5931, *jakesse@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 2, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–09703 Filed 5–5–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Neurological Sciences Training Initial Review Group; NST–3 Study Section.

Date: June 5–6, 2023.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Lataisia Cherie Jones, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Rockville, MD 20852, 301–496–9223, *lataisia.jones@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; HEAL Initiative: Pain Therapeutics Development [Small Molecules and Biologics].

Date: June 12, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Room 3208, MSC 9529, Rockville, MD 20852, 301–496–9223, *Ana.Olariu@nih.gov.*

Name of Committee: Neurological Sciences Training Initial Review Group; NST–2 Study Section NINDS Career Development Award Review.

Date: June 15–16, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: DeAnna Lynn Adkins, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS, NIH, NSC, 6001 Executive Blvd., Room 3208, MSC 9529, Rockville, MD 20852, 301–496–9223, *deanna.adkins@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Neurology and Neurosurgery R25 Review.

Date: June 30, 2023.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3204, MSC 9529, Rockville, MD 20852, 301–496–0660, *benzingw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: May 3, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–09705 Filed 5–5–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be held as a virtual meeting and will be open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting.

The meeting will be 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: Fogarty International Center Advisory Board.

Date: June 5–6, 2023.

Closed: June 5, 2023, 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate the second level of grant applications.

Place: Fogarty International Center, National Institutes of Health, Lawton Chiles International House (Stone House), 16 Center Drive, Conference Room, Bethesda, MD 20892 (Virtual Meeting).

Open: June 6, 2023, 10:00 a.m. to 2:00 p.m.

Agenda: Update and discussion of current and planned Fogarty International Center activities.

Place: Fogarty International Center, National Institutes of Health, Lawton Chiles International House (Stone House), 16 Center Drive, Conference Room, Bethesda, MD 20892 (Virtual Meeting).

Meeting Access: https://www.fic.nih.gov/About/Advisory/Pages/default.aspx.

Contact Person: Kristen Weymouth, Executive Secretary, Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2C02, Bethesda, MD 20892, 301–495–1415, *kristen.weymouth@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Persons listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.fic.nih.gov/About/Advisory/Pages/default.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: May 3, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–09701 Filed 5–5–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2023 Notice of Funding Opportunity Modification

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services (HHS).

ACTION: Modification of the fiscal year (FY) 2022 state opioid response notice of funding opportunity (NOFO), TI–22–005.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) has modified the FY 2022 State Opioid Response (SOR) NOFO (TI–22–005). The modifications include adding a new appendix with the FY 2023 allocations based on increased funding and amending the funding limitations/restrictions to increase the administrative costs (*i.e.,* indirect costs) in FY 2023. The FY 2022 State Opioid Response Modified NOFO (TI–22–005) can be found at *https://www.samhsa.gov/grants/grant-announcements/ti-22-005.*

FOR FURTHER INFORMATION CONTACT: C. Danielle Johnson Byrd, MPH, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration (240) 276–0300, *OPIOIDSOR@samhsa.hhs.gov.*

Authority: FY 2022 Consolidated Appropriations Act [Pub. L. 117–103] and FY 2023 Consolidated Appropriations Act [Pub. L. 117–328].

Dated: May 3, 2023.

Ann Ferrero,

Public Health Analyst.

[FR Doc. 2023–09739 Filed 5–5–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0017]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Advance Permission To Enter as Nonimmigrant

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until July 7, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0017 in the body of the letter, the agency name and Docket ID USCIS–2008–0009. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2008–0009.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2008–0009 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Advance Permission to Enter as Nonimmigrant.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–192; e-SAFE; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The data collected will be used by CBP and USCIS to determine whether the applicant is eligible to enter the United States temporarily under the provisions of section 212(d)(3), 212(d)(13), and 212(d)(14) of the INA. The respondents for this information collection are certain inadmissible nonimmigrant aliens who wish to apply for permission to enter the United States and applicants for T nonimmigrant status or petitioners for U nonimmigrant status. CBP has developed an electronic filing system, called Electronic Secured Adjudication Forms Environment (e-SAFE), through which Form I–192 can be submitted when filed with CBP.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–192 is 61,050 and the estimated hour burden per response is 1 hour and 10 minutes; the estimated total number of respondents for the information collection e-SAFE is 7,000 and the estimated hour burden per response is 55 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 77,869 hours.

(7) *An estimate of the total public burden (in cost) associated with the*

collection: The estimated total annual cost burden associated with this collection of information is $17,522,875.

Dated: May 2, 2023.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–09692 Filed 5–5–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0016]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until June 7, 2023.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2006–0070. All submissions received must include the OMB Control Number 1615–0016 in the body of the letter, the agency name and Docket ID USCIS–2006–0070.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on January 6, 2023, at 88 FR 1087, allowing for a 60-day public comment period. USCIS received eight comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0070 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Relief under Former Section 212(c) of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–191; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS and EOIR use the information on the form to properly assess and determine whether the applicant is eligible for a waiver under former section 212(c) of INA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–191 is 118 and the estimated hour burden per response is 1 hour and 23 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 163 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $60,770.

Dated: May 2, 2023.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–09690 Filed 5–5–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX22.LQ00.UN80423; OMB Control Number 1028–NEW]

Agency Information Collection Activities: Assessment of Flooding Impacts and Climate Inequities

AGENCY: Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey

(USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before July 7, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW—Flooding in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact John Warner by email at *jcwarner@usgs.gov,* or by telephone at 508–457–2237. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval. We may not conduct or sponsor, nor are you 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 the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: We will investigate social vulnerability to coastal-storm flooding in urban neighborhoods to assess inequities in the burden of flood risk. Recent flood disasters arising from severe coastal storms and hurricanes (*i.e.,* Hurricane Ida 2021) have demonstrated the critical importance of incorporating rainfall into assessments of coastal flood risk. Climate change is leading to both increasing rainfall intensity and higher water levels during floods, creating increased risk for residents of low-lying areas such as those living in basement apartments who are often low-income or from minority racial groups. We will collect data on vulnerability to flooding from rainfall and tidal flooding through interviews and household/small business surveys. Participants will be drawn from residents and businesses in the Jamaica Bay watershed in and around Brooklyn, New York, who have experienced rainfall and/or tidal flooding within the last four years. Interview participants will be identified through snowball sampling and contact with community leaders. We plan to interview or conduct focus group discussions (FGDs) with 20 residents and to interview 5 small business owners, with each interview or FGD lasting 1–2 hours. Participants will share their experiences, concerns, and responses to flooding events and risks. Interviews will be recorded and transcribed. Transcripts will then be analyzed using qualitative data analysis software such as Atlas.ti. We will survey 300 households and 150 small- to medium business owners, with each survey lasting about 30 minutes. We will select survey participants through stratified random sampling. We will use regression analysis on the survey data to investigate indicators of vulnerability.

Title of Collection: Assessment of Flooding Impacts and Climate Inequities.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Residents and businesses in the Jamaica Bay watershed in and around Brooklyn, New York, who have experienced rainfall and/or tidal flooding during the last 4 years.

Total Estimated Number of Annual Respondents: 475: 20 resident interviews or FGD participants, 5 small business interviews; 300 household surveys, 150 small business surveys.

Total Estimated Number of Annual Responses: 475: 20 resident interviews or FGD participants, 5 small business interviews; 300 household surveys, 150 small business surveys.

Estimated Completion Time per Response: 2 hours for resident interviews or FGDs, 1 hour or less for small business interviews, 0.5 hour for household surveys and 0.5 hours for small business surveys.

Total Estimated Number of Annual Burden Hours: 270 Hours.

20 resident interviews/FGD × 2 hrs = 40 hrs

5 small business interviews × 1 hr = 5 hrs

300 household surveys × 0.5 hr = 150 hrs

150 small business surveys × 0.5 hr = 75 hrs

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq*).

Jane Denny,

Acting Center Director, USGS Woods Hole Coastal and Marine Science Center.

[FR Doc. 2023–09695 Filed 5–5–23; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23EN05ESBJF00]

Assessment of Biodiversity and Climate Change; Request for Public Comment and Nomination

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: The U.S. Geological Survey (USGS) provides science to support the mission of the Department of the Interior. In the FY22 budget, Congress charged the USGS with developing an assessment of the linkages between biodiversity and climate change. The USGS, in collaboration with Environment and Climate Change Canada (ECCC) and Mexico's La Comisión Nacional para el Conocimiento y Uso de la Biodiversidad (CONABIO), and with assistance from the Morris K. Udall and Stewart L. Udall Foundation's John S. McCain III National Center for Environmental Conflict Resolution (National Center), will undertake a two-year (2023–2025) regional assessment of biodiversity and climate change, culminating in the first-ever assessment report addressing these two challenges together for the United States, Canada, Mexico, U.S. territories, and Freely Associated States. This notice announces the opportunity for the public to comment on the draft prospectus for the assessment, provide nominations for membership on the assessment authoring team (administered by the USGS), and provide expressions of interest in serving on the Biodiversity and Climate Change Assessment Guidance Committee (Guidance Committee) which will be convened by the National Center.

DATES:

- Comments regarding the draft prospectus must be submitted no later than July 7, 2023.
- Nominations for participation on the authoring team must be submitted no later than July 7, 2023.
- Expressions of interest or requests for additional information about the assessment Guidance Committee must be submitted no later than June 7, 2023.

ADDRESSES: The draft prospectus may be viewed and downloaded electronically here: *https://contribute.globalchange.gov/.*

You may submit comments, nominations, an expression of interest, and/or a request for additional information, by any of the following methods: by email to *biodiversityclimatechange@usgs.gov* or through the portal at *https://contribute.globalchange.gov/;* or

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request (ICR), contact Katherine C. Malpeli by email at *biodiversityclimatechange@usgs.gov* or by telephone at 919–896–5029. 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: The assessment process and report production will be led by the USGS and will be authored by 130 scientists, policy experts, practitioners, and relevant knowledge-holders from government, universities, communities, and the private sector. Authoring-team roles include co-chairs, coordinating lead authors, lead authors, and review editors. The 35-member Guidance Committee, an independent, multidisciplinary stakeholder body with diverse policy and technical expertise, will be convened and facilitated by the National Center. Guidance Committee members will engage throughout the assessment process and report production to provide guidance and feedback regarding the policy relevance of the report content and ensure its messaging supports policymakers and other report audiences. The National Center will convene the Guidance Committee on a rolling basis, beginning early in the assessment process, to ensure that the Guidance Committee can provide multidisciplinary perspectives on the draft prospectus and assessment report drafts.

All authoring team and Guidance Committee members are expected to contribute meaningfully and substantially to the assessment process. The authoring team and Guidance Committee will comprise experts, knowledge-holders, and practitioners with experience in a number of areas, including (but not limited to) the physical sciences, biological sciences, social sciences, climate-change impacts, application of indigenous and local knowledge, valuation of biodiversity and ecosystem services (economic and non-economic), conservation decision-making and planning (local to national), and existing laws, policies, and policy tools relevant to biodiversity or climate change. Participants are sought from diverse backgrounds and sectors, including (but not limited to) academic institutions, governmental and non-governmental research institutions, government agencies concerned with natural-resource management (local to national), indigenous governments and communities, business and industry, non-governmental organizations, and the general public. The assessment process is committed to an inclusive approach, with diverse representation among disciplines, perspectives, sectors, regions, expertise, and demographic backgrounds.

The assessment will build on the recently completed Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) global assessment and the Intergovernmental Panel on Climate Change-IPBES co-sponsored scientific outcome report, scaling down to the continental, national, and subnational contexts. The resulting report will contribute to the National Nature Assessment, a 4-year undertaking led by the U.S. Global Change Research Program.

The authoring team and the Guidance Committee will meet periodically via virtual meetings from 2023 through 2025. The Guidance Committee and full authoring team will meet in person in Fall 2023. Likewise, the Guidance Committee and a subset of assessment authors (co-chairs, coordinating authors) will meet a second time in person in mid-2024.

Members of the Guidance Committee and assessment-authoring team (including review editors) serve as independent experts (*i.e.,* not representing their institution or organization) on a voluntary basis without compensation. However, while away from their homes or regular places of business, Guidance Committee members and assessment authors engaged in meetings associated with the development of this assessment report may be entitled to travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703, in the same manner as persons employed intermittently in Federal Government service.

The USGS and its partners seek:

- public comments on a draft prospectus (*https://contribute.globalchange.gov/*) for the assessment of biodiversity and climate change,
- nominations of individuals to serve on the assessment's authoring team,
- and expressions of interest and requests for additional information concerning the assessment's Guidance Committee.

Each nomination for the authoring team and each expression of interest for the Guidance Committee should include (a) name, (b) phone number, (c) email address, and (d) affiliation (where relevant). Additional information may also be shared at the nominator's discretion.

Public comments on the prospectus should be accompanied by the commentor's name, phone number,

email address, and affiliation (at the commentor's discretion).

Shawn Carter,

Chief Scientist, National Climate Adaptation Science Center.

[FR Doc. 2023–09749 Filed 5–5–23; 8:45 am]

BILLING CODE 4388–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_ID_FRN_MO4500168909]

Opportunity To Comment on Changes to the Proposed Four Rivers Field Office Resource Management Plan, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of significant change.

SUMMARY: The Bureau of Land Management (BLM) is soliciting comments on clarifications and significant changes (collectively 'changes') to the Proposed Four Rivers Field Office Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS) released in February 2020. The environmental consequences of the proposed changes and clarifications have been analyzed as part of the RMP/EIS process. Following consideration of any comments on these changes, the BLM will issue a Record of Decision (ROD) for the Four Rivers Field Office RMP.

DATES: Written comments on the changes to the proposed plan will be accepted June 7, 2023.

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

- *e-planning: https://eplanning.blm.gov/eplanning-ui/project/1250/510.*
- *Fax:* (208) 384–3326.
- *Mail:* BLM Four Rivers Field Office, Attn: Lonnie Huter, Planning and Environmental Coordinator, 3948 Development Avenue, Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: Lonnie Huter, Planning and Environmental Coordinator, telephone: (208) 384–3300; address: BLM Four Rivers Field Office, 3948 Development Avenue, Boise, ID 83705; email: *Lhuter@blm.gov.* 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 for contacting Mr. Huter. 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: The Environmental Protection Agency (EPA) published the Notice of Availability (NOA) for the Draft RMP and EIS on May 24, 2019, which initiated a 60-day public comment period. The EPA published the NOA for the Proposed RMP and Final EIS on February 14, 2020, which initiated a 30-day BLM protest period and 60-day Governor's consistency review period. The BLM received eight protest letters. In response to new information and based on additional policy discussions, the BLM has determined that it will clarify and make changes to the proposed plan.

The clarifications and changes will include separating the fluid mineral allocation management action into two allocation management actions—one for oil and gas and one for geothermal. The allocation will identify additional 'closed' areas for oil and gas leasing and development. In addition, one fluid mineral management action regarding prioritization of mineral leasing within high potential areas will be added. There are also other minor clarifications and editorial corrections. This notice initiates a 30-day public comment period on the changes and clarifications (43 CFR 1610.2(e)).

These changes will reduce the potential for speculative oil and gas exploration in areas with low or no potential for oil and gas. The Proposed RMP/EIS contains a Reasonably Foreseeable Development Scenario (RFDS) for oil and gas exploration, development, production, and reclamation activity. The RFDS provides the basis for the effects analysis described in the Draft and Proposed RMP. Since oil and gas development was projected to occur in high and moderate oil and gas potential areas, and since these areas retain the same allocation management action as in the Proposed RMP, the effects of the revised management actions are the same as those described within the effects analysis included in the Proposed RMP.

Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised 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. Further information regarding the changes can be found at *https://eplanning.blm.gov/eplanning-ui/project/1250/510.*

(Authority: 43 CFR 1610.2.)

Karen Kelleher,

BLM Idaho State Director.

[FR Doc. 2023–09740 Filed 5–5–23; 8:45 am]

BILLING CODE 4331–19–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_HQ_FRN_MO# 4500169335]

Notice of Availability of the Draft Resource Management Plan Amendment and Supplemental Environmental Impact Statement for the 2015 Miles City Field Office Approved Resource Management Plan, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLMPA), the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) Amendment and Draft Supplemental Environmental Impact Statement (EIS) for the 2015 Miles City Field Office Approved RMP that is available for public review and comment.

DATES: This notice announces the opening of a 90-day comment period for the Draft RMP Amendment/Supplemental EIS beginning with the date following the Environmental Protection Agency's (EPA) publication of its Notice of Availability (NOA) in the **Federal Register**. The EPA usually publishes its NOAs on Fridays.

To afford the BLM the opportunity to consider comments in the Proposed RMP Amendment/Final EIS, please ensure your comments are received prior to the close of the 90-day comment period or 15 days after the last public meeting, whichever is later.

The BLM will be holding two public meetings on the following dates at the following locations:

- June 6, 2023, at the Miles City Field Office, 111 Garryowen Road, Miles City, Montana from 5 p.m. to 7 p.m. MT.
- June 7, 2023, virtual meeting from 4 p.m. to 6 p.m. MT. Registration for meeting in the ePlanning project website (see **ADDRESSES**).

ADDRESSES: The Draft RMP Amendment/Supplemental EIS is

available for review on the BLM ePlanning project website at *https://eplanning.blm.gov/eplanning-ui/project/2021155/510.*

Written comments related to the Draft RMP Amendment/Supplemental EIS may only be submitted by any of the following methods:

- *Website: https://eplanning.blm.gov/eplanning-ui/project/2021155/510*
- *Mail:* Miles City Draft Supplemental EIS/RMP Amendment, Attn: Irma Nansel, Project Manager, 111 Garryowen Road, Miles City, Montana 59301.

Documents pertinent to this proposal may be examined online at *https://eplanning.blm.gov/eplanning-ui/project/2021155/510* and at the Miles City Field Office.

FOR FURTHER INFORMATION CONTACT: Irma Nansel, Project Manager, telephone 406–233–3653; or at the address BLM Miles City Field Office, 111 Garryowen Road, Miles City, MT, 59301; email *inansel@blm.gov.* 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 for contacting Ms. Nansel. 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: This document provides notice that the BLM Montana/Dakotas State Director has prepared a Draft RMP Amendment/Supplemental EIS and provides information announcing the opening of the comment period on the Draft RMP Amendment/Supplemental EIS. The RMP amendment would change the existing 2015 Miles City Field Office Approved RMP.

The planning area is located in Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Treasure, Wibaux, and portions of Big Horn and Valley Counties, Montana, and encompasses approximately 2.7 million surface acres and 11.7 million acres of Federal coal mineral estate of public land.

Purpose and Need

The purpose of this Draft RMP Amendment/Supplemental EIS is to address a United States District Court of Montana order (*Western Organization of Resource Councils, et al.* v. *BLM*; CV 00076–GF–BMM; 8/3/2022). The purpose and need of this Draft Supplemental EIS is to provide additional land use planning level analysis that considers no-leasing and limited coal leasing alternatives; to disclose the public health impacts, both climate and non-climate, of burning fossil fuels (coal, oil, and gas); and to complete new coal screens in accordance with 43 CFR 3420.1–4 to determine the lands to be made available for further consideration for coal leasing in the planning area.

Alternatives Including the Preferred Alternatives

The BLM has analyzed four alternatives in detail, including the no action alternative, varying the amount of BLM-administered Federal coal available for further consideration for coal leasing.

The No Action Alternative is the decision from the 2019 Approved RMP Amendment and brings forward the decisions that preclude coal leasing and development in the Miles City Field Office. It identified approximately 1,214,380 acres of Federal coal as available for further consideration for coal leasing across the Miles City Field Office.

The Action alternatives applied the coal screens (43 CFR 3420.1–4(e)) using current data and evaluated the issues identified through internal and public scoping. Application of coal screen 1 (development potential) identified approximately 1,745,000 Federal coal acres as having development potential. The Action alternatives also address the NEPA deficiencies identified by the court order associated with the application of the multiple-use screen. Specifically, they apply a multiple-use climate change criterion that uses greenhouse gas emissions as a proxy for climate change. Reducing availability of Federal lands reduces contribution of greenhouse gas emissions from the development and combustion of Federal coal from the planning area.

Alternative B analyzes approximately 57,690 acres of Federal coal as available for further consideration for coal leasing. Alternative C analyzes approximately 810 acres of Federal coal as available for further consideration for coal leasing, and Alternative D analyzes 0 (zero) acres of Federal coal as available for further consideration for coal leasing. The BLM revised the coal reasonably foreseeable development scenario from the 2015 Miles City RMP using the most current publicly available coal production data to forecast development during the planning period, to 2038. The revised reasonably foreseeable development scenario was applied to all alternatives.

The BLM further considered one additional alternative but dismissed it from detailed analysis, as explained in the Draft RMP Amendment/Supplemental EIS.

Identifying a preferred alternative(s) does not indicate any final decision commitments from the BLM. In developing the final supplemental EIS and potential RMP amendment, which is the next phase of the planning process, the decision maker may select various components from each of the alternatives analyzed in the Draft Supplemental EIS. The Final Supplemental EIS and Potential RMP Amendment may also reflect changes and adjustments based on comments received on the Draft Supplemental EIS, new information, or changes in BLM policies or priorities.

The BLM used the impact analysis, along with recommendations from cooperating agencies; consideration of planning criteria; and anticipated resolution of resource conflicts to identify Alternatives B and D as co-preferred alternatives from the suite of alternatives analyzed. Specifically, the identification of the co-preferred alternatives was based on the following.

- Two different alternatives have been identified as co-preferred alternatives for the purpose of public comment and review;
- Satisfaction of statutory requirements and the court order; and
- Provision of an acceptable approach to addressing key planning issues.

Schedule for the Decision-Making Process

The BLM will provide additional opportunities for public participation consistent with the NEPA and land use planning processes, including a 30-day public protest period and a 60-day Governor's consistency review on the Proposed RMP Amendment. The Proposed RMP Amendment/Final Supplemental EIS is anticipated to be available for public protest in September 2023 with an Approved RMP and Record of Decision in December 2023.

The date(s) and location(s) of any additional meetings will be announced at least 15 days in advance through local media, newspapers, the ePlanning project page (see **ADDRESSES**), and the BLM website *(*see **ADDRESSES**).

The BLM will continue to consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.)

Sonya I. Germann,

State Director.

[FR Doc. 2023–09714 Filed 5–5–23; 8:45 am]

BILLING CODE 4331–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_WY_FRN_MO4500169330]

Notice of Availability of the Draft Resource Management Plan Amendment and Supplemental Environmental Impact Statement for the 2015 Buffalo Field Office Approved Resource Management Plan, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) Amendment and Draft Supplemental Environmental Impact Statement (EIS) for the 2015 Buffalo Field Office Approved RMP and by this notice is providing information announcing the opening of the comment period on the Draft RMP Amendment/Supplemental EIS.

DATES: This notice announces the opening of a 90-day comment period for the Draft RMP Amendment/Supplemental EIS beginning with the date following the Environmental Protection Agency's (EPA) publication of its Notice of Availability (NOA) in the **Federal Register**. The EPA usually publishes its NOAs on Fridays.

To afford the BLM the opportunity to consider comments in the Proposed RMP Amendment/Final EIS, please ensure your comments are received prior to the close of the 90-day comment period or 15 days after the last public meeting, whichever is later.

The BLM will hold one in-person public meeting on May 31, 2023, from 5 to 7 p.m. MT in Gillette, Wyoming, at the George Amos Building, 412 South Gillette Avenue, Gillette, Wyoming 82716. The BLM will also host one online public meeting on June 5, 2023, from 5 to 7 p.m. MT.

ADDRESSES: The Draft RMP Amendment/Supplemental EIS is available for review on the BLM ePlanning project website at *https://eplanning.blm.gov/eplanning-ui/project/2021239/510.*

Written comments related to the Draft RMP Amendment/Supplemental EIS may be submitted by any of the following methods:

- *Website: https://eplanning.blm.gov/eplanning-ui/project/2021239/510.*
- *Email: BLM_WY_Buffalo_WYMail@blm.gov.*
- *Mail:* Buffalo RMP Amendment SEIS, Attn: Thomas Bills, Project Manager, BLM Buffalo Field Office, 1425 Fort Street, Buffalo, WY 82834.

Documents pertinent to this proposal may be examined online at *https://eplanning.blm.gov/eplanning-ui/project/2021239/510* and at the Buffalo Field Office.

FOR FURTHER INFORMATION CONTACT: Thomas Bills, Project Manager, telephone 307–684–1131; address BLM Buffalo Field Office, 1425 Fort Street, Buffalo, WY 82834; email *tbills@blm.gov.* Individuals in the United States who are deaf, deaf-blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Bills. 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: This document provides notice that the BLM Wyoming State Director has prepared a Draft RMP Amendment/Supplemental EIS and provides information announcing the opening of the comment period on the Draft RMP Amendment/Supplemental EIS. The RMP amendment provides additional analysis for land use planning in accordance with the Montana District Court's order and would change the existing 2015 Buffalo Field Office Approved RMP and 2019 Buffalo Field Office Approved RMP Amendment.

The Buffalo planning area is located in Campbell, Johnson, and Sheridan Counties, Wyoming. The Coal Development Potential Area is located within Campbell County, Wyoming, and encompasses approximately 48 billion short tons of recoverable BLM-administered Federal coal.

Purpose and Need

The purpose of this Draft RMP Amendment/Supplemental EIS is to address a United States District Court of Montana order (*Western Organization of Resource Councils,* et al. v. *BLM*; CV 00076–GF–BMM; 8/3/2022). In relation to land use planning, the BLM must prepare a Draft RMP Amendment/Supplemental EIS to address the following direction in the court order:

(1) complete new coal screening and NEPA analysis that considers no-leasing and limited coal leasing alternatives, and

(2) disclose the public health impacts, both climate and non-climate, of burning fossil fuels (coal and oil and gas) from the planning areas.

Alternatives Including the Preferred Alternatives

The BLM has analyzed three alternatives in detail, including the no action alternative, varying the amount of BLM-administered Federal coal authorized to be available for leasing. The alternatives are: (1) approximately 48.0 billion short tons of recoverable BLM-administered coal within the Coal Development Potential Area established in the 2019 RMP amendment/Final Supplemental EIS would be suitable for further consideration of leasing (No Action); (2) the Coal Development Potential Area would be unavailable for leasing (no leasing alternative); and (3) a reduced level of coal (1.24 billion short tons of recoverable BLM-administered coal) would be available for leasing within the Coal Development Potential Area.

The BLM considered three additional alternatives but dismissed these alternatives from detailed analysis as explained in the Draft RMP Amendment/Supplemental EIS.

Identifying a preferred alternative(s) does not indicate any final decision commitments from the BLM. In developing the Final SEIS and Potential RMPA, which is the next phase of the planning process, the decision maker may select various components from each of the alternatives analyzed in the Draft SEIS. The Final SEIS and Potential RMPA may also reflect changes and adjustments based on comments received on the Draft SEIS, new information, or changes in BLM policies or priorities.

The BLM used the impact analysis, along with recommendations from cooperating agencies; consideration of planning criteria; and anticipated resolution of resource conflicts to

identify Alternatives A (no leasing) and C (limited leasing) as co-preferred alternatives from the suite of alternatives analyzed. Specifically, the identification of the co-preferred alternatives was based on the following.

- Two different alternatives have been identified has co-preferred alternatives for the purpose of public comment and review;
- Satisfaction of statutory requirements and the court order; and
- Provision of an acceptable approach to addressing key planning issues.

Schedule for the Decision-Making Process

The BLM will provide additional opportunities for public participation consistent with the NEPA and land use planning processes, including a 30-day public protest period and a 60-day Governor's consistency review on the Proposed RMP Amendment. The Proposed RMP Amendment/Final Supplemental EIS is anticipated to be available for public protest in September 2023 with an Approved RMP and Record of Decision in December 2023.

The BLM will hold one in-person public meeting on May 31, 2023, from 5 to 7 p.m. MT in Gillette, Wyoming, at the George Amos Building, 412 S Gillette Ave., Gillette, WY 82716. The BLM will also host one online public meeting on June 5 from 5 to 7 p.m. MT. The date(s) and location(s) of any additional meetings will be announced at least 15 days in advance through local media, newspapers, ePlanning project page (see **ADDRESSES**), and BLM website (see **ADDRESSES**).

The BLM will continue to consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.)

Andrew S. Archuleta,

Wyoming State Director.

[FR Doc. 2023–09735 Filed 5–5–23; 8:45 am]

BILLING CODE 4331–26–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_HQ_FRN_MO4500169907]

Notice of Use Authorizations; Special Recreation Permits, Other Than on Developed Recreation Sites; Adjustment in Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of fee adjustments.

SUMMARY: The Bureau of Land Management (BLM) is adjusting certain Special Recreation Permit (SRP) fees for various recreation activities on BLM-managed public lands and related waters. The BLM is adjusting the minimum fee for commercial, competitive, and organized group activities and events, and assigned sites.

FOR FURTHER INFORMATION CONTACT: Cory Roegner, Division of Recreation and Visitor Services, telephone: (385) 258–0496, email: *croegner@blm.gov.* 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: 43 CFR 2932.31 authorizes the BLM Director to periodically adjust SRP fees. This notice establishes that, effective immediately: (i) the minimum fee for commercial use is $130 per year (an increase from $115); (ii) the minimum fee for both competitive events and organized group activities is $7 per person per day (an increase from $6) or $130 (an increase from $115), whichever is greater; and (iii) the minimum fee for an assigned site for exclusive use is $260 per site (an increase from $230). Individual states have the option of imposing application fees as a matter of cost recovery and/or establishing higher minimum fees for certain other SRPs. The next fee adjustment is scheduled for March 1, 2026.

The intended effect of the fee calculation process is to ensure fees cover administrative costs of permit issuance, provide a fair return to the U.S. Government for use of the public lands, and reflect fair market value. The BLM, in coordination with the U.S. Forest Service, automatically adjusts the minimum commercial, competitive, organized group activity SRP fees, and minimum assigned site fees every 3 years.

These fees are calculated and adjusted based on the change in the Implicit Price Deflator-Gross Domestic Product Index (IPD–GDP). The IPD–GDP is available from the U.S. Department of Commerce, Bureau of Economic Analysis in Table 1.1.9, at the following website: *http://www.bea.gov/iTable/.*

(Authority: 43 U.S.C. 1740, 16 U.S.C. 6802, and 43 CFR 2932.31.)

Troy Frost,

Deputy Assistant Director, National Conservation Lands and Community Partnerships.

[FR Doc. 2023–09694 Filed 5–5–23; 8:45 am]

BILLING CODE 4331–30–P

INTERIOR DEPARTMENT

National Indian Gaming Commission

Notice of Approved Class III Tribal Gaming Ordinance

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of the approval of Estom Yumeka Maidu Tribe of the Enterprise Rancheria Class III gaming ordinance by the Chairman of the National Indian Gaming Commission.

DATES: This notice is applicable May 8, 2023.

FOR FURTHER INFORMATION CONTACT: Dena Wynn, Office of General Counsel at the National Indian Gaming Commission, 202–632–7003, or by facsimile at 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.,* established the National Indian Gaming Commission (Commission). Section 2710 of IGRA authorizes the Chairman of the Commission to approve Class II and Class III tribal gaming ordinances. Section 2710(d)(2)(B) of IGRA, as implemented by NIGC regulations, 25 CFR 522.8, requires the Chairman to publish, in the **Federal Register**, approved Class III tribal gaming ordinances and the approvals thereof.

IGRA requires all tribal gaming ordinances to contain the same

requirements concerning tribes' sole proprietary interest and responsibility for the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees and primary management officials. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission.

Thus, the Commission believes that publishing a notice of approved Class III tribal gaming ordinances in the **Federal Register**, is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Every ordinance and approval thereof is posted on the Commission's website (*www.nigc.gov*) under General Counsel, Gaming Ordinances within five (5) business days of approval.

On April 28, 2023, the Chairman of the National Indian Gaming Commission approved Estom Yumeka Maidu Tribe of the Enterprise Rancheria Class III Gaming Ordinance. A copy of the approval letter is posted with this notice and can be found with the approved ordinance on the NIGC's website (*www.nigc.gov*) under General Counsel, Gaming Ordinances. A copy of the approved Class III ordinance will also be made available upon request. Requests can be made in writing to the Office of General Counsel, National Indian Gaming Commission, Attn: Dena Wynn, 1849 C Street NW, MS #1621, Washington, DC 20240 or at *info@nigc.gov.*

National Indian Gaming Commission.
Dated: May 2, 2023.

Rea Cisneros,

Acting General Counsel.

April 28, 2023
VIA EMAIL
Chairwoman Glenda Nelson
Estom Yumeka Maidu Tribe of the Enterprise Rancheria
2133 Monte Vista Avenue
Oroville, CA 95966
Re: Estom Yumeka Maidu Tribe of the Enterprise Rancheria Amended Gaming Ordinance
Dear Chairwoman Nelson:

This letter responds to the February 21, 2023 submission on behalf of the Estom Yumeka Maidu Tribe of the Enterprise Rancheria (''Tribe'') informing the National Indian Gaming Commission that the Tribe amended its gaming ordinance. The amendments to the tribal gaming code were intended to reflect the Tribe's current practices and needs and recent regulatory changes. Thank you for bringing these amendments to our attention. The amended ordinance, as noted above, is approved as it is consistent with the requirements of the Indian Gaming Regulatory Act and NIGC's regulations. If you have any questions or require anything further, please contact Rachel Hill at (918) 581–6214.

Sincerely,
E. Sequoyah Simermeyer, Chairman
cc: John A. Maier, Attorney, Maier Pfeffer Kim Geary & Cohen, LLP

[FR Doc. 2023–09747 Filed 5–5–23; 8:45 am]
BILLING CODE 7565–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1361]

Certain Wi-Fi Routers, Wi-Fi Devices, Mesh Wi-Fi Network Devices, and Hardware and Software Components Thereof; Notice of Institution

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 3, 2023, under section 337 of the Tariff Act of 1930, as amended, on behalf of Netgear Inc. of San Jose, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain Wi-Fi routers, Wi-Fi devices, mesh Wi-Fi network devices, and hardware and software components thereof by reason of the infringement of certain claims of U.S. Patent No. 7,936,714 (''the '714 patent''); U.S. Patent No. 10,681,698 (''the '698 patent''); U.S. Patent No. 10,278,179 (''the '179 patent''); U.S. Patent No. 9,468,025 (''the '025 patent''); U.S. Patent No. 10,327,242 (''the '242 patent''); and U.S. Patent No. 10,356,681 (''the '681 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2023).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 2, 2023, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–5, 13–17, 31, and 32 of the '714 patent; claims 1–22 of the '698 patent; claims 1–19 of the '179 patent; claims 1–8, 10, 11, and 13–21 of the '025 patent; claims 1–4, 6–9, 14–19, 22–25, 27–30, and 35–37 of the '242 patent; and claims 3, 4, 10, and 11 of the '681 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''multi-band and mesh Wi-Fi routers and networking devices and components thereof'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Netgear Inc., 350 East Plumeria Drive, San Jose, CA 95134

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

TP-Link Technologies Co., Ltd., South Building, No. 5 Keyuan Road, Central

Zone Science & Technology Park Nanshan, Shenzhen, Guangdong Province, 518057 China

TP-Link Corporation Limited, f/k/a TP-Link International Limited, Room 901, 9/F., New East Ocean Centre, 9 Science Museum Road, Tsim Sha Tsui, Kowloon, Hong Kong

TP-Link USA Corporation, 10 Mauchly, Irvine, CA 92618

TP-Link Research Institute USA Corp., d/b/a TP-Link Research America Corp., 245 Charcot Ave., San Jose, CA 95131

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party to this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 3, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–09716 Filed 5–5–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Proposed Settlement Agreement Under the Oil Pollution Act

Notice is hereby given that the United States of America, on behalf of the Department of the Interior (''DOI'') acting through the U.S. Fish and Wildlife Service, is providing an opportunity for public comment on a proposed non-judical settlement agreement (''Settlement Agreement'') among the Department of the Interior, the Texas General Land Office, the Texas Commission on Environmental Quality, and the Texas Parks and Wildlife Department (collectively ''Trustees'') and AET, Inc., Ltd. and AET Ship Management, PTE., Ltd. (collectively, ''AET'').

The Settlement Agreement resolves the civil claims of the Trustees against AET arising by virtue of their natural resource trustee authority under the Oil Pollution Act of 1990, 33 U.S.C. 2702, and applicable state law, for injury to, impairment of, destruction of, loss of, diminution of value of, and/or loss of use of natural resources resulting from the January 23, 2010 discharge of sour crude oil into the Sabine-Neches Waterway in the City of Port Arthur, Jefferson County, Texas at or from the T/V Eagle Otome as a result of the T/V Eagle Otome's collision with the towboat Dixie Vengeance.

Under the proposed Settlement Agreement, AET agrees to pay $400,000 to the Trustees, as follows: $311,492 to the DOI Natural Resource Damage Assessment and Restoration Fund to be used to restore, replace, rehabilitate, and/or acquire the equivalent of those natural resources and their services injured by the discharge of oil and for the Trustees' restoration planning and oversight of restoration implementation; and $88,508 for Trustees' past assessment costs. AET will receive from the Trustees a covenant not to sue for the claims resolved by the settlement, subject to reservations and reopeners.

The publication of this notice opens a period for public comment on the proposed Settlement Agreement. Comments on the proposed Settlement Agreement should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to the Eagle Otome Settlement Agreement, DJ Ref. No. 90–5–1–1–12446. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Settlement Agreement may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Settlement Agreement upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $3.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–09682 Filed 5–5–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Innovation and Opportunity Act (WIOA) 2023 Lower Living Standard Income Level (LLSIL)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: Title I of WIOA requires the U.S. Secretary of Labor (Secretary) to update and publish the LLSIL tables annually, for uses described in the law (including determining eligibility for youth). WIOA defines the term ''low-income individual'' as (*inter alia*) one whose total family annual income does not exceed the higher level of the poverty line or 70 percent of the LLSIL. This issuance provides the Secretary's annual LLSIL for 2023 and references the current 2023 Health and Human Services ''Poverty Guidelines.''

DATES: This notice is May 8, 2023.

FOR FURTHER INFORMATION CONTACT: Contact Samuel Wright, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room C–4526, Washington, DC 20210; Telephone: 202–693–2870; Fax: 202–693–3015

(these are not toll-free numbers); Email address: *wright.samuel.e@dol.gov.* Individuals with hearing or speech impairments may access the telephone number above via their state's telecommunications relay service (TRS) by dialing 7–1–1 to make TTY calls.

Federal Youth Employment Program Information: Sara Hastings, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room N–4464, Washington, DC 20210; Telephone: 202–693–3599; Email: *hastings.sara@dol.gov.* Individuals with hearing or speech impairments may access the telephone number above via their state's telecommunications relay service (TRS) by dialing 7–1–1 to make TTY calls.

SUPPLEMENTARY INFORMATION: The purpose of WIOA is to provide workforce investment activities through statewide and local workforce investment systems that increase the employment, retention, and earnings of participants. WIOA programs are intended to increase the occupational skill attainment by participants and the quality of the workforce, thereby reducing welfare dependency and enhancing the productivity and competitiveness of the Nation.

LLSIL is used for several purposes under the WIOA. Specifically, WIOA section 3(36) defines the term ''low-income individual'' for eligibility purposes, and sections 127(b)(2)(C) and 132(b)(1)(B)(v)(IV) define the terms ''disadvantaged youth'' and ''disadvantaged adult'' in terms of the poverty line or LLSIL for State formula allotments. The Governor and state and local workforce development boards use the LLSIL for determining eligibility for youth and adults for certain services. ETA encourages Governors and state/local boards to consult the WIOA Final Rule and ETA guidance for more specific guidance in applying LLSIL to program requirements. The U.S. Department of Health and Human Services (HHS) published the most current poverty-level guidelines in the **Federal Register**, January 19, 2023. The HHS 2023 Poverty guidelines may also be found on the internet at *https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines.*

ETA will have the 2023 LLSIL and the HHS Poverty guidelines available on its website at *www.dol.gov/agencies/eta/llsil.*

WIOA Section 3(36)(B) defines LLSIL as ''that income level (adjusted for regional, metropolitan, urban and rural differences and family size) determined annually by the Secretary of Labor based on the most recent lower living family budget issued by the Secretary.'' The most recent lower living family budget was issued by the Secretary in fall 1981. The four-person urban family budget estimates, previously published by the U.S. Bureau of Labor Statistics (BLS), provided the basis for the Secretary to determine the LLSIL. BLS terminated the four-person family budget series in 1982, after publication of the fall 1981 estimates. Currently, BLS provides data to ETA, which ETA then uses to develop the LLSIL tables, as provided in the Appendices to this **Federal Register** notice.

This notice updates the LLSIL to reflect cost of living increases for 2022, by calculating the percentage change in the most recent 2022 Consumer Price Index for All Urban Consumers (CPI–U) for an area to the 2022 CPI–U, and then applying this calculation to each of the previously published 2022 LLSIL figures. The 2023 LLSIL tables will be available on the ETA LLSIL website at *www.dol.gov/agencies/eta/llsil.*

The website contains updated figures for a four-person family in Table 1, listed by region for both metropolitan and non-metropolitan areas. Incomes in all of the tables are rounded up to the nearest dollar. Since program eligibility for ''low-income individuals,'' ''disadvantaged adults,'' and ''disadvantaged youth'' may be determined by family income at 70 percent of the LLSIL, pursuant to WIOA section 3(36)(A)(ii) and section 3(36)(B), respectively, those figures are listed as well.

I. Jurisdictions

Jurisdictions included in the various regions, based generally on the Census Regions of the U.S. Department of Commerce, are as follows:

A. Northeast

Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the U.S. Virgin Islands.

B. Midwest

Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

C. South

Alabama, American Samoa, Arkansas, Delaware, District of Columbia, Florida, Georgia, Northern Marianas, Oklahoma, Palau, Puerto Rico, South Carolina, Kentucky, Louisiana, Marshall Islands, Maryland, Micronesia, Mississippi, North Carolina, Tennessee, Texas, Virginia, and West Virginia.

D. West

Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. Additionally, the LLSIL Excel file provides separate figures for Alaska, Hawaii, and Guam.

Data for selected Metropolitan Statistical Areas (MSAs) are also available. These are based on annual CPI–U changes for a 12-month period ending in December 2022. The updated LLSIL figures for these MSAs and 70 percent of LLSIL are also available in the LLISL Excel file.

The LLSIL Excel file also lists each of the various figures at 70 percent of the updated 2023 LLSIL for family sizes of one to six persons. Please note, for families larger than six persons, an amount equal to the difference between the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding 70 percent of the LLSIL figure, the figure is shaded.

The LLSIL Excel file also indicates 100 percent of LLSIL for family sizes of one to six, and is used to determine self-sufficiency as noted at section 3(36)(A)(ii) and section 3(36)(B) of WIOA.

II. Use of These Data

Governors should designate the appropriate LLSILs for use within the State using the LLSIL Excel files on the website. The Governor's designation may be provided by disseminating information on MSAs and metropolitan and non-metropolitan areas within the state or it may involve further calculations. An area can be part of multiple LLSIL geographies. For example, an area in the State of New Jersey may have four or more LLSIL figures. All cities, towns, and counties that are part of a metro area in New Jersey are a part of the Northeast metropolitan; some of these areas can also be a portion of the New York City MSA. New Jersey also has areas that are part of the Philadelphia MSA, a less populated area in New Jersey may be a part of the Northeast non-metropolitan. If a workforce investment area includes areas that would be covered by more than one LLSIL figure, the Governor may determine which is to be used.

A state's policies and measures for the workforce investment system shall be accepted by the Secretary to the extent that they are consistent with WIOA and WIOA regulations.

III. Disclaimer on Statistical Uses

It should be noted that publication of these figures is only for the purpose of meeting the requirements specified by WIOA as defined in the law and regulations. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series were terminated by BLS in 1982. The CPI–U adjustments used to update LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL, but are not in the CPI–U. Thus, these figures should not be used for any statistical purposes and are valid only for those purposes under WIOA as defined in the law and regulations.

Brent Parton,

Acting Assistant Secretary for Employment and Training.

[FR Doc. 2023–09662 Filed 5–5–23; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

[OMB Control No. 1240–0022]

Proposed Extension of Information Collection; Notice of Law Enforcement Officer's Injury or Occupational Disease (CA–721); and Notice of Law Enforcement Officer's Death (CA–722)

AGENCY: Office of Workers' Compensation Programs, Division of Federal Employees' Longshore and Harbor Workers' Compensation, (OWCP/DFELHWC) Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, OWCP/DFELHWC is soliciting comments on the information collection for Notice of Law Enforcement Officer's Injury or Occupational Disease (CA–721) and Notice of Law Enforcement Officer's Death (CA–722).

DATES: All comments must be received on or before July 7, 2023.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL—OWCP/DFELHWC, Office of Workers' Compensation Programs, Division of Federal Employees' Longshore and Harbor Workers' Compensation, U.S. Department of Labor, 200 Constitution Ave. NW, Room S–3323, Washington, DC 20210.
- OWCP/DFELHWC will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs, Office of Workers' Compensation Programs, Division of Federal Employees' Longshore, and Harbor Workers' Compensation, OWCP/DFELHWC, at *suggs.anjanette@dol.gov* (email); (202) 354–9660.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Employees' Compensation Act (FECA) provides, under 5 U.S.C. 8191, *et seq.* and 20 CFR 10.735, that non-Federal law enforcement officers injured or killed under certain circumstances are entitled to the benefits of the Act, to the same extent as if they were employees of the Federal Government. The CA–721 and CA–722 are used by non-Federal law enforcement officers and their survivors to claim compensation under the FECA. Form CA–721 is used for claims for injury. Form CA–722 is used for claims for death. The authority for this collection is 5 U.S.C. 8191–8193.

II. Desired Focus of Comments

OWCP/DFELHWC is soliciting comments concerning the proposed information collection related to the Notice of Law Enforcement Officer's Injury or Occupational Disease (CA–721) and Notice of Law Enforcement Officer's Death (CA–722). OWCP/DFELHWC is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of OWCP/DFELHWC's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection 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.

Background documents related to this information collection request are available at *https://regulations.gov* and at DOL–OWCP/DFELHWC located at 200 Constitution Ave. NW, Room S–3323, Washington, DC 20210. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This information collection request concerns Notice of Law Enforcement Officer's Injury or Occupational Disease (CA–721), Notice of Law Enforcement Officer's Death (CA–722). OWCP/DFELHWC has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Office of Workers' Compensation Programs, Division of Federal Employees' Longshore, and Harbor Workers' Compensation, OWCP/DFELHWC.

OMB Number: 1240–0022.

Affected Public: Individuals or Households.

Number of Respondents: 2.

Frequency: On occasion.

Estimated Annualized Burden Hours and Cost Table: $40.00.

Number of Responses: 2.

Annual Burden Hours: 2.5 hours.

Annual Respondent or Recordkeeper Cost: $3.00.

OWCP Forms: Form CA–721, Notice of Law Enforcement Officer's Injury or Occupational Disease; Form CA–722, Notice of Law Enforcement Officer's Death.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and

will be available at *https://www.reginfo.gov.*

Anjanette Suggs,

Certifying Officer.

[FR Doc. 2023–09670 Filed 5–5–23; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Agency Information Collection Activities; Comment Request

AGENCY: Division of Coal Mine Workers' Compensation (DCMWC), Office of Workers' Compensation Programs, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Application for Approval of a Representative's fee in Black Lung Claim Proceedings Conducted by U.S. Department of Labor.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by July 7, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Program, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The CM–972 is sent to and completed by the authorized representative of a black lung claimant whose claim has been approved for benefits. The completed form is then returned to and evaluated by the district director, administrative law judge, or appropriate appellate tribunal before whom the claimed services were performed, and a fee amount is determined. The regulations (20 CFR 725.366) set forth specific requirements for the items of information that must be included on fee applications. The CM–972 was designed to collect this information. 20 CFR 725.366 authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention 1240–0011.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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.

Agency: DOL–OWCP–DCMWC.

Type of Review: Extension.

Title of Collection: 1240–0011.

Form: CM–972, Application for Approval of a Representative's Fee in Black Lung Claim Proceedings Conducted by the U.S. Department of Labor, 1240–0011.

OMB Control Number: 1240–0011.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 590.

Frequency: On occasion.

Total Estimated Annual Responses: 590.

Estimated Average Time per Response: 42 minutes.

Estimated Total Annual Burden Hours: 413 hours.

Total Estimated Annual Other Cost Burden: $186.00.

(Authority: 44 U.S.C. 3506(c)(2)(A))

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2023–09665 Filed 5–5–23; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Coal Mine Operator Response to Schedule for the Submission of Additional Evidence and Operator Response to Notice of Claim

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Coal Mine Operator Response to Schedule for the Submission of Additional Evidence and Operator Response to Notice of Claim.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the

Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by July 7, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Program, Division of Coal Mine Workers' Compensation, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

This ICR seeks to extend PRA authority for the Coal Mine Operator Response to Schedule for Submission of Additional Evidence (Form CM–2970) and Operator Response to Notice of Claim (Form CM–2970a) information collection. The OWCP, Division of Coal Mine Workers' Compensation (DCMWC) administers the Black Lung Benefits Act (30 U.S.C. 901 *et seq.*), which provides benefits to coal miners totally disabled due to pneumoconiosis and their surviving dependents. When the DCMWC makes a preliminary analysis of a claimant's eligibility for benefits, and if a coal mine operator has been identified as potentially liable for payment of those benefits, the responsible operator is notified of the preliminary analysis. Regulations codified at 20 CFR part 725 require that a coal mine operator be identified and notified of potential liability as early in the adjudication process as possible. Forms CM–2790 and CM–2970a are used for claims filed after January 19, 2001, and indicate that the coal mine operator will submit additional evidence or respond to the notice of claim. Black Lung Benefits Act section 426 authorizes this information collection. *See* 30 U.S.C. 936.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention 1240–0033.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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.

Agency: DOL–OWCP–DCMWC.

Type of Review: Extension.

Title of Collection: Coal Mine Operator Response to Schedule for the Submission of Additional Evidence and Operator Response to Notice of Claim.

Form: CM–2970 and CM–2970a.

OMB Control Number: 1240–0033.

Affected Public: Private Sector—businesses or other for-profits.

Estimated Number of Respondents: 8,082.

Frequency: As needed.

Total Estimated Annual Responses: 8,082.

Estimated Average Time per Response: 10 minutes–CM–2970 and 15 minutes–CM–2970a.

Estimated Total Annual Burden Hours: 1,790 hours.

Total Estimated Annual Other Cost Burden: $2,230.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: May 2, 2023.

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2023–09666 Filed 5–5–23; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Coal Mine Workers' Compensation; Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Survivor's Form For Benefits Under The Black Lung Benefits Act.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by July 7, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Program, Division of Coal Mine

Workers' Compensation, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *suggs.anjanette@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov*.

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

This collection of information is required to administer the benefit payment provisions of the Black Lung Benefits Act for survivors of deceased miners. Completion of this form constitutes the application for benefits by survivors and assists in determining the survivor's entitlement to benefits. Form CM–912 is authorized for use by the Black Lung Benefits Act (30 U.S.C. 901, *et seq*.) and regulations (20 CFR 725.304) and is used to gather information from a survivor of a miner to determine whether the survivor is entitled to benefits. This information collection is currently approved for use through March 31, 2020.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention 1240–0027.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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.

Agency: DOL–OWCP–DCMWC.

Type of Review: Extension.

Title of Collection: Survivor's Form For Benefits Under The Black Lung Benefits Act.

Form: Survivor's Form For Benefits Under The Black Lung Benefits Act, CM–912, 1240–0027.

OMB Control Number: 1240–0027.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,067.

Frequency: One time.

Total Estimated Annual Responses: 1,067.

Estimated Average Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 142 hours.

Total Estimated Annual Other Cost Burden: $645.

Dated: May 5, 2023.

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2023–09671 Filed 5–5–23; 8:45 am]

BILLING CODE 4510–CK–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 39 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St., SW, Washington, DC, 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from David Travis, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506; *travisd@arts.gov,* or call 202/682–5001.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chair of March 11, 2022, these sessions will be closed to the public pursuant to 5 U.S.C. 10.

The upcoming meetings are:

Federal Advisory Committee on International Exhibitions (review of applications): This meeting will be closed.

Date and time: June 2, 2023; 2:00 p.m. to 4:00 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: June 6, 2023; 11:30 a.m. to 1:30 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: June 6, 2023; 12:00 p.m. to 2:00 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: June 6, 2023; 2:30 p.m. to 4:30 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: June 6, 2023; 3:00 p.m. to 5:00 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: June 7, 2023; 11:30 a.m. to 1:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: June 7, 2023; 2:30 p.m. to 4:30 p.m.

Dance (review of applications): This meeting will be closed.
Date and time: June 8, 2023; 12:00 p.m. to 2:00 p.m.
Dance (review of applications): This meeting will be closed.
Date and time: June 8, 2023; 3:00 p.m. to 5:00 p.m.
Dance (review of applications): This meeting will be closed.
Date and time: June 12, 2023; 12:00 p.m. to 2:00 p.m.
Media Arts (review of applications): This meeting will be closed.
Date and time: June 13, 2023; 11:30 a.m. to 1:30 p.m.
Opera (review of applications): This meeting will be closed.
Date and time: June 13, 2023; 12:00 p.m. to 2:00 p.m.
Media Arts (review of applications): This meeting will be closed.
Date and time: June 13, 2023; 2:30 p.m. to 4:30 p.m.
Opera (review of applications): This meeting will be closed.
Date and time: June 13, 2023; 3:00 p.m. to 5:00 p.m.
Media Arts (review of applications): This meeting will be closed.
Date and time: June 14, 2023; 11:30 a.m. to 1:30 p.m.
Media Arts (review of applications): This meeting will be closed.
Date and time: June 14, 2023; 2:30 p.m. to 4:30 p.m.
Artist Communities (review of applications): This meeting will be closed.
Date and time: June 14, 2023; 3:00 p.m. to 5:00 p.m.
Artist Communities (review of applications): This meeting will be closed.
Date and time: June 15, 2023; 3:00 p.m. to 5:00 p.m.
Music (review of applications): This meeting will be closed.
Date and time: June 20, 2023; 12:00 p.m. to 2:00 p.m.
Arts Education (review of applications): This meeting will be closed.
Date and time: June 20, 2023; 1:30 p.m. to 3:30 p.m.
Music (review of applications): This meeting will be closed.
Date and time: June 20, 2023; 3:00 p.m. to 5:00 p.m.
Design (review of applications): This meeting will be closed.
Date and time: June 21, 2023; 11:30 a.m. to 1:30 p.m.
Local Arts Agencies (review of applications): This meeting will be closed.
Date and time: June 21, 2023; 1:00 p.m. to 3:00 p.m.
Local Arts Agencies (review of applications): This meeting will be closed.
Date and time: June 21, 2023; 3:30 p.m. to 5:30 p.m.
Music (review of applications): This meeting will be closed.
Date and time: June 22, 2023; 12:00 p.m. to 2:00 p.m.
Arts Education (review of applications): This meeting will be closed.
Date and time: June 22, 2023; 1:30 p.m. to 3:30 p.m.
Design (review of applications): This meeting will be closed.
Date and time: June 22, 2023; 2:30 p.m. to 4:30 p.m.
Music (review of applications): This meeting will be closed.
Date and time: June 22, 2023; 3:00 p.m. to 5:00 p.m.
Music (review of applications): This meeting will be closed.
Date and time: June 23, 2023; 12:00 p.m. to 2:00 p.m.
Music (review of applications): This meeting will be closed.
Date and time: June 22, 2023; 3:00 p.m. to 5:00 p.m.
Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.
Date and time: June 26, 2023; 2:00 p.m. to 4:00 p.m.
Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.
Date and time: June 27, 2023; 2:00 p.m. to 4:00 p.m.
Music (review of applications): This meeting will be closed.
Date and time: June 28, 2023; 12:00 p.m. to 2:00 p.m.
Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.
Date and time: June 28, 2023; 2:00 p.m. to 4:00 p.m.
Music (review of applications): This meeting will be closed.
Date and time: June 28, 2023; 3:00 p.m. to 5:00 p.m.
Arts Education (review of applications): This meeting will be closed.
Date and time: June 29, 2023; 1:30 p.m. to 3:30 p.m.
Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.
Date and time: June 29, 2023; 2:00 p.m. to 4:00 p.m.
Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.
Date and time: June 30, 2023; 2:00 p.m. to 4:00 p.m.

Dated: May 2, 2023.

David Travis,

Specialist, National Endowment for the Arts.

[FR Doc. 2023–09673 Filed 5–5–23; 8:45 am]

BILLING CODE 7537–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2023–142; Order No. 6496]

Competitive Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recent filing by the Postal Service of specific rates for its Inbound Letter Post Small Packets and Bulky Letters product effective January 1, 2024. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 12, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On April 28, 2023, the Postal Service filed a notice of rates not of general applicability for Inbound Letter Post Small Packets and Bulky Letters (Inbound E-format Letter Post) effective January 1, 2024.[1] The Postal Service requests that the Commission favorably review the proposed prices so that the Postal Service may submit the prices to the Universal Postal Union (UPU) before the June 1, 2023 deadline. Notice at 8.

II. Contents of Filing

In its Notice, the Postal Service proposes new prices for the Inbound Letter Post Small Packets and Bulky Letters product. *Id.* at 3. Under the UPU, by June 1, 2023, the Postal Service may submit self-declared rates for Inbound Letter Post Small Packets and Bulky Letters that would take effect on January 1, 2023.[2] The Postal Service states that

[1] Notice of the United States Postal Service of Rates Not of General Applicability for Inbound E-Format Letter Post, and Application for Non-Public Treatment, April 28, 2023, at 1 (Notice).

[2] *Id.;* Universal Postal Convention (UPU Convention) Article 29.1. The UPU Convention is available at, *https://www.upu.int/UPU/media/upu/*

the proposed prices comply with 39 U.S.C. 3633. Notice at 5. To support its proposed Inbound Letter Post Small Packets and Bulky Letters prices, the Postal Service filed the proposed prices; a copy of the certification required under 39 CFR 3035.105(c)(2); and a redacted copy of Governors' Decision No. 19–1. *Id.* at 6; *see id.* Attachments 2–4. The Postal Service also filed redacted financial workpapers. Notice at 6.

In addition, the Postal Service filed an unredacted copy of Governors' Decision No. 19–1, the unredacted new prices, and related financial information under seal. *Id.* at 7. The Postal Service also provided an application for non-public treatment of materials filed under seal filed pursuant to 39 CFR part 3011. *Id.* at 6; *see id.* Attachment 1.

III. Administrative Actions

The Commission establishes Docket No. CP2023–142 for consideration of matters raised by the Notice and appoints Katalin K. Clendenin to serve as Public Representative in this docket. The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, and 39 CFR 3035.105 and .107. Comments are due no later than May 12, 2023. The public portions of the filing can be accessed via the Commission's website (*http://www.prc.gov*).

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2023–142 for consideration of the matters raised by the Postal Service's Notice.

2. Comments are due no later than May 12, 2023.

3. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin will serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these dockets.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2023–09723 Filed 5–5–23; 8:45 am]

BILLING CODE 7710–FW–P

files/aboutUpu/acts/actsOfCurrentCycle/actsLastCongressActsEn.pdf.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97420; File No. SR–PEARL–2023–19]

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 To Modify Certain Connectivity and Port Fees

May 2, 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 20, 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 certain connectivity and port fees.[3]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] All references to the ''Exchange'' in this filing mean MIAX Pearl Options. Any references to the equities trading facility of MIAX PEARL, LLC, will specifically be referred to as ''MIAX Pearl Equities.''

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 as follows: (1) increase the fees for a 10 gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection for Members[4] and non-Members; (2) amend the calculation of fees for MIAX Express Network Full Service (''MEO'')[5] Ports (Bulk and Single); and (3) amend the fees for Full Service MEO Ports (Bulk and Single). The Exchange and its affiliate, Miami International Securities Exchange, LLC (''MIAX'') operated 10Gb ULL connectivity on a single shared network that provided access to both exchanges via a single 10Gb ULL connection. The Exchange last increased fees for 10Gb ULL connections from $9,300 to $10,000 per month on January 1, 2021.[6] At the same time, MIAX also increased its 10Gb ULL connectivity fee from $9,300 to $10,000 per month.[7] The Exchange and MIAX shared a combined cost analysis in those filings due to the single shared 10Gb ULL connectivity network for both exchanges. In those filings, the Exchange and MIAX allocated a combined total of $17.9 million in expenses to providing 10Gb ULL connectivity.[8]

Beginning in late January 2023, the Exchange also recently determined a substantial operational need to no longer operate 10Gb ULL connectivity on a single shared network with MIAX. The Exchange bifurcated 10Gb ULL connectivity due to ever-increasing capacity constraints and to enable it to continue to satisfy the anticipated access needs for Members and other market participants.[9] Since the time of

[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] The term ''MEO Interface'' or ''MEO'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[6] *See* Securities Exchange Act Release No. 90981 (January 25, 2021), 86 FR 7582 (January 29, 2021) (SR–PEARL–2021–01).

[7] *See* Securities Exchange Act Release No. 90980 (January 25, 2021), 86 FR 7602 (January 29, 2021) (SR–MIAX–2021–02).

[8] *See id.*

[9] *See MIAX Options and MIAX Pearl Options—Announce planned network changes related to shared 10G ULL extranet,* issued August 12, 2022, *available at https://www.miaxoptions.com/alerts/2022/08/12/miax-options-and-miax-pearl-options-announce-planned-network-changes-related-0.* The Exchange will continue to provide access to both the Exchange and MIAX over a single shared 1Gb

Continued

2021 increase discussed above,[10] the Exchange experienced ongoing increases in expenses, particularly internal expenses.[11] As discussed more fully below, the Exchange recently calculated increased annual aggregate costs of $11,567,509 for providing 10Gb ULL connectivity on a single unshared network (an overall increase over its prior cost to provide 10Gb ULL connectivity on a shared network with MIAX) and $1,644,132 for providing Full Service MEO Ports.[12]

Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection with nanosecond granularity, and continuous improvements in network performance with the goal of improving the subscriber's experience. The costs associated with maintaining and enhancing a state-of-the-art network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those increased costs by amending fees for connectivity services. Subscribers expect the Exchange to provide this level of support so they continue to receive the performance they expect. This differentiates the Exchange from its competitors.

The Exchange now proposes to amend the Fee Schedule to amend the fees for 10Gb ULL connectivity and Full Service MEO Ports (Bulk and Single) in order to recoup cost related to bifurcating 10Gb connectivity to the Exchange and MIAX as well as the ongoing costs and increase in expenses set forth below in the Exchange's cost analysis.[13] The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The Exchange initially filed the proposal on December 30, 2022 (SR–PEARL–2022–62) (the ''Initial Proposal'').[14] On February 23, 2023, the Exchange withdrew the Initial Proposal and replaced it with a revised proposal (SR–PEARL–2023–08) (the ''Second Proposal'').[15] On April 20, 2023, the Exchange withdrew the Second Proposal and replaced it with this proposal (SR–PEARL–2023–19).

The Exchange previously included a cost analysis in the Initial Proposal. As described more fully below, the Exchange provides an updated cost analysis that includes, among other things, additional descriptions of how the Exchange allocated costs among it and its affiliated exchanges (separately among MIAX Pearl Options and MIAX Pearl Equities, MIAX and MIAX Emerald [16] (together with MIAX and MIAX Pearl Equities, the ''affiliated markets'')) to ensure no cost was allocated more than once, as well as additional detail supporting its cost allocation processes and explanations as to why a cost allocation in this proposal may differ from the same cost allocation in a similar proposal submitted by one of its affiliated exchanges. Although the baseline cost analysis used to justify the proposed fees was made in the Initial Proposal and Second Proposal, the fees themselves have not changed since the Initial Proposal or Second Proposal and the Exchange still proposes fees that are intended to cover the Exchange's cost of providing 10Gb ULL connectivity and Full Service MEO Ports with a reasonable mark-up over those costs.

* * * * *

Starting in 2017, following the United States Court of Appeals for the District of Columbia's *Susquehanna Decision* [17] and various other developments, the Commission began to undertake a heightened review of exchange filings, including non-transaction fee filings that was substantially and materially different from it prior review process (hereinafter referred to as the ''Revised Review Process''). In the *Susquehanna Decision,* the D.C. Circuit Court stated that the Commission could not maintain a practice of ''unquestioning reliance'' on claims made by a self-regulatory organization (''SRO'') in the course of filing a rule or fee change with the Commission.[18] Then, on October 16, 2018, the Commission issued an opinion in *Securities Industry and Financial Markets Association* finding that exchanges failed both to establish that the challenged fees were constrained by significant competitive forces and that these fees were consistent with the Act.[19] On that same day, the Commission issued an order remanding to various exchanges and national market system (''NMS'') plans challenges to over 400 rule changes and plan amendments that were asserted in 57 applications for review (the ''Remand Order'').[20] The Remand Order directed the exchanges to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [21] The Commission denied requests by various exchanges and plan participants for reconsideration of the Remand Order.[22] However, the Commission did extend the deadlines in the Remand Order ''so that they d[id] not begin to run until the resolution of the appeal of the SIFMA Decision in the D.C. Circuit and the issuance of the court's mandate.'' [23] Both the Remand Order and the Order Denying Reconsideration were appealed to the D.C. Circuit.

While the above appeal to the D.C. Circuit was pending, on March 29, 2019, the Commission issued an order disapproving a proposed fee change by BOX Exchange LLC (''BOX'') to establish connectivity fees (the ''BOX Order''), which significantly increased the level of information needed for the Commission to believe that an exchange's filing satisfied its obligations under the Act with respect to changing a fee.[24] Despite approving hundreds of

connection. *See* Securities Exchange Act Release Nos. 96553 (December 20, 2022), 87 FR 79379 (December 27, 2022) (SR–PEARL–2022–60); 96545 (December 20, 2022) 87 FR 79393 (December 27, 2022) (SR–MIAX–2022–48).

[10] The Exchange notes it last filed to amend the fees for Full Service MEO Ports in 2018 (excluding filings made in July 2021 through early 2022), prior to which the Exchange provided Full Service MEO Ports free of charge since the it launched operations in 2017 and absorbed all costs since that time. *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[11] For example, the New York Stock Exchange, Inc.'s (''NYSE'') Secure Financial Transaction Infrastructure (''SFTI'') network, which contributes to the Exchange's connectivity cost, increased its fees by approximately 9% since 2021. Similarly, since 2021, the Exchange, and its affiliates, experienced an increase in data center costs of approximately 17% and an increase in hardware and software costs of approximately 19%. These percentages are based on the Exchange's actual 2021 and proposed 2023 budgets.

[12] For the avoidance of doubt, all references to costs in this filing, including the cost categories discussed below, refer to costs incurred by MIAX Pearl Options only and not MIAX Pearl Equities, the equities trading facility.

[13] The Exchange notes that MIAX will make a similar filing to increase its 10Gb ULL connectivity fees.

[14] *See* Securities Exchange Act Release No. 96632 (January 10, 2023), 88 FR 2707 (January 17, 2023) (SR–PEARL–2022–62).

[15] *See* Securities Exchange Act Release No. 97082 (March 8, 2023), 88 FR 15825 (March 14, 2023) (SR–PEARL–2023–05).

[16] The term ''MIAX Emerald'' means MIAX Emerald, LLC. *See* Exchange Rule 100.

[17] *See Susquehanna International Group, LLP* v. *Securities & Exchange Commission,* 866 F.3d 442 (D.C. Circuit 2017) (the ''Susquehanna Decision'').

[18] *Id.*

[19] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84432, 2018 WL 5023228 (October 16, 2018) (the ''SIFMA Decision'').

[20] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). *See* 15 U.S.C. 78k-1, 78s; *see also* Rule 608(d) of Regulation NMS, 17 CFR 242.608(d) (asserted as an alternative basis of jurisdiction in some applications).

[21] *Id.* at page 2.

[22] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 85802, 2019 WL 2022819 (May 7, 2019) (the ''Order Denying Reconsideration'').

[23] Order Denying Reconsideration, 2019 WL 2022819, at *13.

[24] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–

access fee filings in the years prior to the BOX Order (described further below) utilizing a ''market-based'' test, the Commission changed course and disapproved BOX's proposal to begin charging connectivity at one-fourth the rate of competing exchanges' pricing.

Also while the above appeal was pending, on May 21, 2019, the Commission Staff issued guidance ''to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act.'' [25] In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [26] The Staff Guidance also states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [27]

Following the BOX Order and Staff Guidance, on August 6, 2020, the D.C. Circuit vacated the Commission's SIFMA Decision in *NASDAQ Stock Market, LLC* v. *SEC* [28] and remanded for further proceedings consistent with its opinion.[29] That same day, the D.C. Circuit issued an order remanding the Remand Order to the Commission for reconsideration in light of *NASDAQ.* The court noted that the Remand Order required the exchanges and NMS plan participants to consider the challenges that the Commission had remanded in light of the SIFMA Decision. The D.C. Circuit concluded that because the SIFMA Decision ''has now been vacated, the basis for the [Remand Order] has evaporated.'' [30] Accordingly, on August 7, 2020, the Commission vacated the Remand Order and ordered the parties to file briefs addressing whether the holding in *NASDAQ* v. *SEC* that Exchange Act Section 19(d) does not permit challenges to generally applicable fee rules requiring dismissal of the challenges the Commission previously remanded.[31] The Commission further invited ''the parties to submit briefing stating whether the challenges asserted in the applications for review . . . should be dismissed, and specifically identifying any challenge that they contend should not be dismissed pursuant to the holding of *Nasdaq* v. *SEC.*'' [32] Without resolving the above issues, on October 5, 2020, the Commission issued an order granting SIFMA and Bloomberg's request to withdraw their applications for review and dismissed the proceedings.[33]

As a result of the Commission's loss of the *NASDAQ* vs. *SEC* case noted above, the Commission never followed through with its intention to subject the over 400 fee filings to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [34] As such, all of those fees remained in place and amounted to a baseline set of fees for those exchanges that had the benefit of getting their fees in place before the Commission Staff's fee review process materially changed. The net result of this history and lack of resolution in the D.C. Circuit Court resulted in an uneven competitive landscape where the Commission subjects all new non-transaction fee filings to the new Revised Review Process, while allowing the previously challenged fee filings, mostly submitted by incumbent exchanges prior to 2019, to remain in effect and not subject to the ''record'' or ''review'' earlier intended by the Commission.

While the Exchange appreciates that the Staff Guidance articulates an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, the practical effect of the Revised Review Process, Staff Guidance, and the Commission's related practice of continuous suspension of new fee filings, is anti-competitive, discriminatory, and has put in place an un-level playing field, which has negatively impacted smaller, nascent, non-legacy exchanges (''non-legacy exchanges''), while favoring larger, incumbent, entrenched, legacy exchanges (''legacy exchanges'').[35] The legacy exchanges all established a significantly higher baseline for access and market data fees prior to the Revised Review Process. From 2011 until the issuance of the Staff Guidance in 2019, national securities exchanges filed, and the Commission Staff did not abrogate or suspend (allowing such fees to become effective), at least 92 filings [36] to amend exchange connectivity or port fees (or similar access fees). The support for each of those filings was a simple statement by the relevant exchange that the fees were constrained by competitive forces.[37] These fees remain in effect today.

BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04) (Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network). The Commission noted in the BOX Order that it ''historically applied a 'market-based' test in its assessment of market data fees, which [the Commission] believe[s] present similar issues as the connectivity fees proposed herein.'' *Id.* at page 16. Despite this admission, the Commission disapproved BOX's proposal to begin charging $5,000 per month for 10Gb connections (while allowing legacy exchanges to charge rates equal to 3–4 times that amount utilizing ''market-based'' fee filings from years prior).

[25] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), *available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Staff Guidance'').

[26] *Id.*

[27] *Id.*

[28] *NASDAQ Stock Mkt., LLC* v. *SEC,* No 18–1324, — Fed. App'x —-, 2020 WL 3406123 (D.C. Cir. June 5, 2020). The court's mandate was issued on August 6, 2020.

[29] *Nasdaq* v. *SEC,* 961 F.3d 421, at 424, 431 (D.C. Cir. 2020). The court's mandate issued on August 6, 2020. The D.C. Circuit held that Exchange Act ''Section 19(d) is not available as a means to challenge the reasonableness of generally-applicable fee rules.'' *Id.* The court held that ''for a fee rule to be challengeable under Section 19(d), it must, at a minimum, be targeted at specific individuals or entities.'' *Id.* Thus, the court held that ''Section 19(d) is not an available means to challenge the fees at issue'' in the SIFMA Decision. *Id.*

[30] *Id.* at *2; *see also id.* (''[T]he sole purpose of the challenged remand has disappeared.'').

[31] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 89504, 2020 WL 4569089 (August 7, 2020) (the ''Order Vacating Prior Order and Requesting Additional Briefs'').

[32] *Id.*

[33] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 90087 (October 5, 2020).

[34] *See supra* note 29, at page 2.

[35] Commission Chair Gary Gensler recently reiterated the Commission's mandate to ensure competition in the equities markets. *See* ''Statement on Minimum Price Increments, Access Fee Caps, Round Lots, and Odd-Lots'', by Chair Gary Gensler, dated December 14, 2022 (stating ''[i]n 1975, Congress tasked the Securities and Exchange Commission with responsibility to facilitate the establishment of the national market system and *enhance competition in the securities markets, including the equity markets*'' (*emphasis added*)). In that same statement, Chair Gary Gensler cited the five objectives laid out by Congress in 11A of the Exchange Act (15 U.S.C. 78k–1), including ensuring ''fair competition among brokers and dealers, among exchange markets, and *between exchange markets* and markets other than exchange markets. . . .'' (*emphasis added*). *Id.* at note 1. *See also* Securities Acts Amendments of 1975, *available at https://www.govtrack.us/congress/bills/94/s249.*

[36] This timeframe also includes challenges to over 400 rule filings by SIFMA and Bloomberg discussed above. *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). Those filings were left to stand, while at the same time, blocking newer exchanges from the ability to establish competitive access and market data fees. *See The Nasdaq Stock Market, LLC* v. *SEC,* Case No. 18–1292 (DC Cir. June 5, 2020). The expectation at the time of the litigation was that the 400 rule flings challenged by SIFMA and Bloomberg would need to be justified under revised review standards.

[37] *See, e.g.,* Securities Exchange Act Release Nos. 74417 (March 3, 2015), 80 FR 12534 (March 9, 2015) (SR–ISE–2015–06); 83016 (April 9, 2018), 83 FR 16157 (April 13, 2018) (SR–PHLX–2018–26); 70285 (August 29, 2013), 78 FR 54697 (September

Continued

The net result is that the non-legacy exchanges are effectively now blocked by the Commission Staff from adopting or increasing fees to amounts comparable to the legacy exchanges (which were not subject to the Revised Review Process and Staff Guidance), despite providing enhanced disclosures and rationale to support their proposed fee changes that far exceed any such support provided by legacy exchanges. Simply put, legacy exchanges were able to increase their non-transaction fees during an extended period in which the Commission applied a ''market-based'' test that only relied upon the assumed presence of significant competitive forces, while exchanges today are subject to a cost-based test requiring extensive cost and revenue disclosures, a process that is complex, inconsistently applied, and rarely results in a successful outcome, *i.e.,* non-suspension. The Revised Review Process and Staff Guidance changed decades-long Commission Staff standards for review, resulting in unfair discrimination and placing an undue burden on inter-market competition between legacy exchanges and non-legacy exchanges.

Commission Staff now require exchange filings, including from non-legacy exchanges such as MIAX Pearl, to provide detailed cost-based analysis in place of competition-based arguments to support such changes. However, even with the added detailed cost and expense disclosures, the Commission Staff continues to either suspend such filings and institute disapproval proceedings, or put the exchanges in the unenviable position of having to repeatedly withdraw and re-file with additional detail in order to continue to charge those fees.[38] By impeding any path forward for non-legacy exchanges to establish commensurate non-transaction fees, or by failing to provide any alternative means for smaller markets to establish ''fee parity'' with legacy exchanges, the Commission is stifling competition: non-legacy exchanges are, in effect, being deprived of the revenue necessary to compete on a level playing field with legacy exchanges. This is particularly harmful, given that the costs to maintain exchange systems and operations continue to increase. The Commission Staff's change in position impedes the ability of non-legacy exchanges to raise revenue to invest in their systems to compete with the legacy exchanges who already enjoy disproportionate non-transaction fee based revenue. For example, the Cboe Exchange, Inc. (''Cboe'') reported ''access and capacity fee'' revenue of $70,893,000 for 2020[39] and $80,383,000 for 2021.[40] Cboe C2 Exchange, Inc. (''C2'') reported ''access and capacity fee'' revenue of $19,016,000 for 2020[41] and $22,843,000 for 2021.[42] Cboe BZX Exchange, Inc. (''BZX'') reported ''access and capacity fee'' revenue of $38,387,000 for 2020[43] and $44,800,000 for 2021.[44] Cboe EDGX Exchange, Inc. (''EDGX'') reported ''access and capacity fee'' revenue of $26,126,000 for 2020[45] and $30,687,000 for 2021.[46] For 2021, the affiliated Cboe, C2, BZX, and EDGX (the four largest exchanges of the Cboe exchange group) reported $178,712,000 in ''access and capacity fees'' in 2021. NASDAQ Phlx, LLC (''NASDAQ Phlx'') reported ''Trade Management Services'' revenue of $20,817,000 for 2019.[47] The Exchange notes it is unable to compare ''access fee'' revenues with NASDAQ Phlx (or other affiliated NASDAQ exchanges) because after 2019, the ''Trade Management Services'' line item was bundled into a much larger line item in PHLX's Form 1, simply titled ''Market services.''[48]

The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages. First, legacy exchanges are able to use their additional non-transaction revenue for investments in infrastructure, vast marketing and advertising on major media outlets,[49] new products and other innovations. Second, higher non-transaction fees provide the legacy exchanges with greater flexibility to lower their transaction fees (or use the revenue from the higher non-transaction fees to subsidize transaction fee rates), which are more immediately impactful in competition for order flow and market share, given the variable nature of this cost on member firms. The prohibition of a reasonable path forward denies the Exchange (and other non-legacy exchanges) this flexibility, eliminates the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share with legacy exchanges. While one could debate whether the pricing of non-transaction fees are subject to the same market forces as transaction fees, there is little doubt that subjecting one exchange to a materially different standard than that historically applied to legacy exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

While the Commission has clearly noted that the Staff Guidance is merely guidance and ''is not a rule, regulation or statement of the . . . Commission . . . the Commission has neither approved nor disapproved its content . . .'',[50] this is not the reality experienced by exchanges such as MIAX Pearl. As such, non-legacy exchanges are forced to rely on an opaque cost-based justification standard. However, because the Staff Guidance is devoid of detail on what must be contained in cost-based justification, this standard is nearly impossible to meet despite repeated good-faith efforts by the Exchange to provide substantial amount of cost-related details. For example, the Exchange has attempted to increase fees

5, 2013) (SR–NYSEMKT–2013–71); 76373 (November 5, 2015), 80 FR 70024 (November 12, 2015) (SR–NYSEMKT–2015–90); 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEARCA–2016–172).

[38] The Exchange has filed, and subsequently withdrew, various forms of this proposed fee change numerous times since August 2021 with each proposal containing hundreds of cost and revenue disclosures never previously disclosed by legacy exchanges in their access and market data fee filings prior to 2019.

[39] According to Cboe's 2021 Form 1 Amendment, access and capacity fees represent fees assessed for the opportunity to trade, including fees for trading-related functionality. *See* Cboe 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[40] *See* Cboe 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001155.pdf.*

[41] *See* C2 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000469.pdf.*

[42] *See* C2 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001156.pdf.*

[43] *See* BZX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[44] *See* BZX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001152.pdf.*

[45] *See* EDGX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000467.pdf.*

[46] *See* EDGX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001154.pdf.*

[47] According to PHLX, ''Trade Management Services'' includes ''a wide variety of alternatives for connectivity to and accessing [the PHLX] markets for a fee. These participants are charged monthly fees for connectivity and support in accordance with [PHLX's] published fee schedules.'' *See* PHLX 2020 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2001/20012246.pdf.*

[48] *See* PHLX Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000475.pdf.* The Exchange notes that this type of Form 1 accounting appears to be designed to obfuscate the true financials of such exchanges and has the effect of perpetuating fee and revenue advantages of legacy exchanges.

[49] *See, e.g., CNBC Debuts New Set on NYSE Floor, available at https://www.cnbc.com/id/46517876.*

[50] *See supra* note 25, at note 1.

using a cost-based justification numerous times, having submitted over six filings.[51] However, despite providing 100+ page filings describing in extensive detail its costs associated with providing the services described in the filings, Commission Staff continues to suspend such filings, with the rationale that the Exchange has not provided sufficient detail of its costs and without ever being precise about what additional data points are required. The Commission Staff appears to be interpreting the reasonableness standard set forth in Section 6(b)(4) of the Act [52] in a manner that is not possible to achieve. This essentially nullifies the cost-based approach for exchanges as a legitimate alternative as laid out in the Staff Guidance. By refusing to accept a reasonable cost-based argument to justify non-transaction fees (in addition to refusing to accept a competition-based argument as described above), or by failing to provide the detail required to achieve that standard, the Commission Staff is effectively preventing non-legacy exchanges from making any non-transaction fee changes, which benefits the legacy exchanges and is anticompetitive to the non-legacy exchanges. This does not meet the fairness standard under the Act and is discriminatory.

Because of the un-level playing field created by the Revised Review Process and Staff Guidance, the Exchange believes that the Commission Staff, at this point, should either (a) provide sufficient clarity on how its cost-based standard can be met, including a clear and exhaustive articulation of required data and its views on acceptable margins,[53] to the extent that this is pertinent; (b) establish a framework to provide for commensurate non-transaction based fees among competing exchanges to ensure fee parity; [54] or (c) accept that certain competition-based arguments are applicable given the linkage between non-transaction fees and transaction fees, especially where non-transaction fees among exchanges are based upon disparate standards of review, lack parity, and impede fair competition. Considering the absence of any such framework or clarity, the Exchange believes that the Commission does not have a reasonable basis to deny the Exchange this change in fees, where the proposed change would result in fees meaningfully lower than comparable fees at competing exchanges and where the associated non-transaction revenue is meaningfully lower than competing exchanges.

In light of the above, disapproval of this would not meet the fairness standard under the Act, would be discriminatory and place a substantial burden on competition. The Exchange would be uniquely disadvantaged by not being able to increase its access fees to comparable levels (or lower levels than current market rates) to those of other options exchanges for connectivity. If the Commission Staff were to disapprove this proposal, that action, and not market forces, would substantially affect whether the Exchange can be successful in its competition with other options exchanges. Disapproval of this filing could also be viewed as an arbitrary and capricious decision should the Commission Staff continue to ignore its past treatment of non-transaction fee filings before implementation of the Revised Review Process and Staff Guidance and refuse to allow such filings to be approved despite significantly enhanced arguments and cost disclosures.[55]

Lastly, the Exchange notes that the Commission Staff has allowed similar fee increases by other exchanges to remain in effect by publishing those filings for comment and allowing the exchange to withdraw and re-file numerous times.[56] Recently, the Commission Staff has not afforded the Exchange the same flexibility.[57] This again is evidence that the Commission Staff is not treating non-transaction fee filings in a consistent manner and is holding exchanges to different levels of scrutiny in reviewing filings.

* * * * *

10Gb ULL Connectivity Fee Change

MIAX Pearl Options recently filed a proposal to no longer operate 10Gb connectivity to MIAX Pearl Options on a single shared network with its affiliate, MIAX. This change is an operational necessity due to ever-increasing capacity constraints and to accommodate anticipated access needs for Members and other market participants.[58] This proposal: (i) sets forth the applicable fees for the bifurcated 10Gb ULL network; and (ii) removes provisions in the Fee Schedule that provides for a shared 10Gb ULL network; and (iii) specifies that market participants may continue to connect to both MIAX Pearl Options and MIAX via the 1Gb network.

MIAX Pearl Options bifurcated the MIAX Pearl Options and MIAX 10Gb ULL networks in the first quarter of 2023, which change became effective on January 23, 2023. The Exchange issued an alert on August 12, 2022 publicly announcing the planned network

[51] *See* Securities Exchange Act Release Nos. 92798 (August 27, 2021), 86 FR 49360 (September 2, 2021) (SR–PEARL–2021–33); 92644 (August 11, 2021), 86 FR 46055 (August 17, 2021) (SR–PEARL–2021–36); 93162 (September 28, 2021), 86 FR 54739 (October 4, 2021) (SR–PEARL–2021–45); 93556 (November 10, 2021), 86 FR 64235 (November 17, 2021) (SR–PEARL–2021–53); 93774 (December 14, 2021), 86 FR 71952 (December 20, 2021) (SR–PEARL–2021–57); 93894 (January 4, 2022), 87 FR 1203 (January 10, 2022) (SR–PEARL–2021–58); 94258 (February 15, 2022), 87 FR 9659 (February 22, 2022) (SR–PEARL–2022–03); 94286 (February 18, 2022), 87 FR 10860 (February 25, 2022) (SR–PEARL–2022–04); 94721 (April 14, 2022), 87 FR 23573 (April 20, 2022) (SR–PEARL–2022–11); 94722 (April 14, 2022), 87 FR 23660 (April 20, 2022) (SR–PEARL–2022–12); 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR–PEARL–2022–18).

[52] 15 U.S.C. 78f(b)(4).

[53] To the extent that the cost-based standard includes Commission Staff making determinations as to the appropriateness of certain profit margins, the Exchange believes that Staff should be clear as to what they determine is an appropriate profit margin.

[54] In light of the arguments above regarding disparate standards of review for historical legacy non-transaction fees and current non-transaction fees for non-legacy exchanges, a fee parity alternative would be one possible way to avoid the current unfair and discriminatory effect of the Staff Guidance and Revised Review Process. *See, e.g., CSA Staff Consultation Paper 21–401, Real-Time Market Data Fees, available at https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/Policy2/21401_Market_Data_Fee_CSA_Staff_Consulation_Paper.pdf.*

[55] The Exchange's costs have clearly increased and continue to increase, particularly regarding capital expenditures, as well as employee benefits provided by third parties (*e.g.,* healthcare and insurance). Yet, practically no fee change proposed by the Exchange to cover its ever increasing costs has been acceptable to the Commission Staff since 2021. The only other fair and reasonable alternative would be to require the numerous fee filings unquestioningly approved before the Staff Guidance and Revised Review Process to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review,'' and to ensure a comparable review process with the Exchange's filing.

[56] *See, e.g.,* Securities Exchange Act Release Nos. 93937 (January 10, 2022), 87 FR 2466 (January 14, 2022) (SR–MEMX–2021–22); 94419 (March 15, 2022), 87 FR 16046 (March 21, 2022) (SR–MEMX–2022–02); SR–MEMX–2022–12 (withdrawn before being noticed); 94924 (May 16, 2022), 87 FR 31026 (May 20, 2022) (SR–MEMX–2022–13); 95299 (July 15, 2022), 87 FR 43563 (July 21, 2022) (SR–MEMX–2022–17); SR–MEMX–2022–24 (withdrawn before being noticed); 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26); 94901 (May 12, 2022), 87 FR 30305 (May 18, 2022) (SR–MRX–2022–04); SR–MRX–2022–06 (withdrawn before being noticed); 95262 (July 12, 2022), 87 FR 42780 (July 18, 2022) (SR–MRX–2022–09); 95710 (September 8, 2022), 87 FR 56464 (September 14, 2022) (SR–MRX–2022–12); 96046 (October 12, 2022), 87 FR 63119 (October 18, 2022) (SR–MRX–2022–20); 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26); *and* 96430 (December 1, 2022), 87 FR 75083 (December 7, 2022) (SR–MEMX–2022–32).

[57] *See* Securities Exchange Act Release Nos. 94721 (April 14, 2022), 87 FR 23573 (April 20, 2022) (SR–PEARL–2022–11) *and* 94722 (April 14, 2022), 87 FR 23660 (April 20, 2022) (SR–PEARL–2022–12).

[58] *See supra* note 9.

change and implementation plan and dates to provide market participants adequate time to prepare.[59] Upon bifurcation of the 10Gb ULL network, subscribers need to purchase separate connections to MIAX Pearl Options and MIAX at the applicable rate. The Exchange's proposed amended rate for 10Gb ULL connectivity is described below. Prior to the bifurcation of the 10Gb ULL networks, subscribers to 10Gb ULL connectivity were able to connect to both MIAX Pearl Options and MIAX at the applicable rate set forth below.

The Exchange, therefore, proposes to amend the Fee Schedule to increase the fees for Members and non-Members to access the Exchange's system networks[60] via a 10Gb ULL fiber connection and to specify that this fee is for a dedicated connection to MIAX Pearl Options and no longer provides access to MIAX. Specifically, MIAX Pearl Options proposes to amend Sections 5)a)-b) of the Fee Schedule to increase the 10Gb ULL connectivity fee for Members and non-Members from $10,000 per month to $13,500 per month (''10Gb ULL Fee'').[61] The Exchange also proposes to amend the Fee Schedule to reflect the bifurcation of the 10Gb ULL network and specify that only the 1Gb network provides access to both MIAX Pearl Options and MIAX.

The Exchange proposes to make the following changes to reflect the bifurcated 10Gb ULL network for the Exchange and MIAX. First, in the Definitions section of the Fee Schedule, the Exchange proposes to amend the last sentence in the definition of ''MENI'' to specify that the MENI can be configured to provide network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange's affiliate, MIAX, via a single, shared 1Gb connection. Next, the Exchange proposes to amend the explanatory paragraphs below the network connectivity fee tables in Sections 5)a)-b) of the Fee Schedule to specify that, with the bifurcated 10Gb ULL network, Members (and non-Members) utilizing the MENI to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and MIAX via a single, can only do so via a shared 1Gb connection.

The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the primary and secondary facilities in any month the Member or non-Member is credentialed to use any of the Exchange APIs or market data feeds in the production environment. The Exchange will continue to pro-rate the fees when a Member or non-Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the Member or non-Member has been credentialed to utilize any of the Exchange APIs or market data feeds in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate.

Full Service MEO Ports—Bulk and Single

Background

The Exchange also proposes to amend Section 5)d) of the Fee Schedule to amend the calculation and amount of fees for Full Service MEO Ports. The Exchange currently offers different types of MEO Ports depending on the services required by the Member, including a Full Service MEO Port-Bulk,[62] a Full Service MEO Port-Single,[63] and a Limited Service MEO Port.[64] For one monthly price, a Member may be allocated two (2) Full-Service MEO Ports of either type per matching engine[65] and may request Limited Service MEO Ports for which MIAX Pearl will assess Members Limited Service MEO Port fees based on a sliding scale for the number of Limited Service MEO Ports utilized each month. The two (2) Full-Service MEO Ports that may be allocated per matching engine to a Member may consist of: (a) two (2) Full Service MEO Ports—Bulk; (b) two (2) Full Service MEO Ports—Single; or (c) one (1) Full Service MEO Port—Bulk and one (1) Full Service MEO Port—Single.

Currently, the Exchange assesses Members Full Service MEO Port Fees, either for a Full Service MEO Port—Bulk and/or for a Full Service MEO Port—Single, based upon the monthly total volume executed by a Member and its Affiliates[66] on the Exchange, across all origin types, not including Excluded Contracts,[67] as compared to the Total Consolidated Volume (''TCV''),[68] in all MIAX Pearl-listed options. The Exchange adopted a tier-based fee structure based upon the volume-based tiers detailed in the definition of ''Non-Transaction Fees Volume-Based Tiers'' described in the Definitions section of the Fee Schedule. The Exchange assesses these and other monthly Port fees to Members in each month the market participant is credentialed to use a Port in the production environment.

Full Service MEO Port (Bulk) Fee Changes

Current Full Service MEO Port (Bulk) Fees. The Exchange currently assesses all Members (Market Makers[69] and Electronic Exchange Members[70]

[59] *Id.*

[60] The Exchange's system networks consist of the Exchange's extranet, internal network, and external network.

[61] Market participants that purchase additional 10Gb ULL connections as a result of this change will not be subject to the Exchange's Member Network Connectivity Testing and Certification Fee under Section 4)c) of the Exchange's fee schedule. *See* Section 4)c) of the Exchange's fee schedule *available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_10192022.pdf* (providing that ''Network Connectivity Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. Member Network Connectivity Testing and Certification Fees will not be assessed for testing and certification of connectivity to the Exchange's Disaster Recovery Facility.'').

[62] ''Full Service MEO Port—Bulk'' means an MEO port that supports all MEO input message types and binary bulk order entry. *See* the Definitions Section of the Fee Schedule.

[63] ''Full Service MEO Port—Single'' means an MEO port that supports all MEO input message types and binary order entry on a single order-by-order basis, but not bulk orders. *See* the Definitions Section of the Fee Schedule.

[64] ''Limited Service MEO Port'' means an MEO port that supports all MEO input message types, but does not support bulk order entry and only supports limited order types, as specified by the Exchange via Regulatory Circular. *See* the Definitions Section of the Fee Schedule.

[65] A ''Matching Engine'' is a part of the Exchange's electronic system that processes options orders and trades on a symbol-by-symbol basis. *See* the Definitions Section of the Fee Schedule.

[66] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). *See* the Definitions Section of the Fee Schedule.

[67] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[68] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* the Definitions Section of the Fee Schedule.

[69] The term ''Market Maker'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[70] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

(''EEMs'')) monthly Full Service MEO Port—Bulk fees as follows:

(i) if its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $3,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $4,500; and

(iii) if its volume falls within the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $5,000.

Proposed Full Service MEO Port (Bulk) Fees. The Exchange proposes to amend the calculation and amount of Full Service MEO Port (Bulk) fees for EEMs and Market Makers. In particular, for EEMs, the Exchange proposes to move away from the above-described volume tier-based fee structure and instead charge all EEMs that utilize Full Service MEO Ports (Bulk) a flat monthly fee of $7,500. For this flat monthly fee, EEMs will continue to be entitled to two (2) Full Service MEO Ports (Bulk) for each Matching Engine for the single monthly fee of $7,500. The Exchange now proposes to amend the calculation and amount of Full Service MEO Port (Bulk) fees for Market Makers by moving away from the above-described volume tier-based fee structure to harmonize the Full Service MEO Port (Bulk) fee structure for Market Makers with that of the Exchange's affiliates, MIAX and MIAX Emerald.[71] The Exchange proposes that the amount of the monthly Full Service MEO Port (Bulk) fees for Market Makers would be based on the lesser of either the per class traded or percentage of total national average daily volume (''ADV'') measurement based on classes traded by volume. The amount of monthly Market Maker Full Service MEO Port (Bulk) fee would be based upon the number of classes in which the Market Maker was registered to quote on any given day within the calendar month, or upon the class volume percentages. This change in how Full Service MEO Port (Bulk) fees are calculated is identical to how the Exchange assesses Market Makers Trading Permit fees, which is in line with how numerous exchanges charge similar membership fees.

Specifically, the Exchange proposes to adopt the following Full Service MEO Port (Bulk) fees for Market Makers: (i) $5,000 for Market Maker registrations in up to 10 option classes or up to 20% of option classes by national ADV; (ii) $7,500 for Market Maker registrations in up to 40 option classes or up to 35% of option classes by ADV; (iii) $10,000 for Market Maker registrations in up to 100 option classes or up to 50% of option classes by ADV; and (iv) $12,000 for Market Maker registrations in over 100 option classes or over 50% of option classes by ADV up to all option classes listed on MIAX Pearl. For example, if Market Maker 1 elects to quote the top 40 option classes which consist of 58% of the total national average daily volume in the prior calendar quarter, the Exchange would assess $7,500 to Market Maker 1 for the month which is the lesser of 'up to 40 classes' and 'over 50% of classes by volume up to all classes listed on MIAX Pearl'. If Market Maker 2 elects to quote the bottom 1000 option classes which consist of 10% of the total national average daily volume in the prior quarter, the Exchange would assess $5,000 to Market Maker 2 for the month which is the lesser of 'over 100 classes' and 'up to 20% of classes by volume. The Exchange notes that the proposed tiers (ranging from $5,000 to $12,000) are lower than the tiers that the Exchange's affiliates charge for their comparable ports (ranging from $5,000 to $20,500) for similar per class tier thresholds.[72]

With the proposed changes, a Market Maker would be determined to be registered in a class if that Market Maker has been registered in one or more series in that class.[73] The Exchange will assess MIAX Pearl Options Market Makers the monthly Market Maker Full Service MEO Port (Bulk) fee based on the greatest number of classes listed on MIAX Pearl Options that the MIAX Pearl Options Market Maker registered to quote in on any given day within a calendar month. Therefore, with the proposed changes to the calculation of Market Maker Full Service MEO Port (Bulk) fees, the Exchange's Market Makers would be encouraged to quote in more series in each class they are registered in because each additional series in that class would not count against their total classes for purposes of the Full Service MEO Port (Bulk) fee tiers. The class volume percentage is based on the total national ADV in classes listed on MIAX Pearl Options in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly Market Maker Full Service MEO Port (Bulk) fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national ADV.

The Exchange also proposes to adopt an alternative lower Full Service MEO Port (Bulk) fee for Market Makers who fall within the 2nd, 3rd and 4th levels of the proposed Market Maker Full Service MEO Port (Bulk) fee table: (i) Market Maker registrations in up to 40 option classes or up to 35% of option classes by volume; (ii) Market Maker registrations in up to 100 option classes or up to 50% of option classes by volume; and (iii) Market Maker registrations in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Pearl Options. In particular, the Exchange proposes to adopt footnote ''**'' following the Market Maker Full Service MEO Port (Bulk) fee table for these Monthly Full Service MEO Port (Bulk) tier levels. New proposed footnote ''**'' will provide that if the Market Maker's total monthly executed volume during the relevant month is less than 0.040% of the total monthly TCV for MIAX Pearl-listed option classes for that month, then the fee will be $6,000 instead of the fee otherwise applicable to such level.

The purpose of the alternative lower fee designated in proposed footnote ''**'' is to provide a lower fixed fee to those Market Makers who are willing to quote the entire Exchange market (or substantial amount of the Exchange market), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on the Exchange. The Exchange believes that, by offering lower fixed fees to Market Makers that execute less volume, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option marketplace, but have been decreasing in number in recent years, due to industry consolidation. Since these smaller-scale Market Makers utilize less Exchange capacity due to lower overall volume executed, the Exchange believes it is reasonable and equitable to offer such Market Makers a lower fixed fee. The Exchange notes that the Exchange's affiliates, MIAX and MIAX Emerald, also provide lower MIAX Express Interface (''MEI'') Port fees (the comparable ports on those exchanges) for Market Makers who quote the entire MIAX and MIAX Emerald markets (or substantial amount of those markets), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on MIAX

[71] *See* MIAX Fee Schedule, Section (5)(d)(ii) and MIAX Emerald Fee Schedule, Section (5)(d)(ii).

[72] *See id.*

[73] Pursuant to Exchange Rule 602(a), a Member that has qualified as a Market Maker may register to make markets in individual series of options.

or MIAX Emerald.[74] The proposed changes to the Full Service MEO Port (Bulk) fees for Market Makers who fall within the 2nd, 3rd and 4th levels of the fee table are based upon a business determination of current Market Maker assignments and trading volume.

Unlike other options exchanges that provide similar port functionality and charge fees on a per port basis,[75] the Exchange offers Full Service MEO Ports as a package and provides Members with the option to receive up to two Full Service MEO Ports (described above) per matching engine to which that Member connects. The Exchange currently has twelve (12) matching engines, which means Market Makers may receive up to twenty-four (24) Full Service MEO Ports for a single monthly fee, that can vary based on the lesser of either the per class traded or percentage of total national ADV measurement based on classes traded by volume, as described above. For illustrative purposes, the Exchange currently assesses a fee of $5,000 per month for Market Makers that reach the highest Full Service MEO Port (Bulk) tier, regardless of the number of Full Service MEO Ports allocated to the Market Maker. For example, assuming a Market Maker connects to all twelve (12) matching engines during a month, with two Full Service MEO Ports (Bulk) per matching engine, this results in an effective fee of $208.33 per Full Service MEO Port ($5,000 divided by 24) for the month, as compared to other exchanges that charge over $1,000 per port and require multiple ports to connect to all of their matching engines.[76] This fee had been unchanged since the Exchange adopted Full Service MEO Port fees in 2018.[77] The Exchange proposes to increase Full Service MEO Port fees, with the highest monthly fee of $12,000 for the Full Service MEO Ports (Bulk). Market Makers will continue to receive two (2) Full Service MEO Ports to each matching engine to which they connect for the single flat monthly fee. Assuming a Market Maker connects to all twelve (12) matching engines during the month, with two Full Service MEO Ports per matching engine, this would result in an effective fee of $500 per Full Service MEO Port ($12,000 divided by 24).

FULL SERVICE MEO PORTS

[Bulk]

	Number of match engines	Total number of ports for market maker to connect to all match engines	Total fee (monthly)	Effective per port fee
Pricing Based on Market Maker Being Charged the Highest Tier (Current)	12	24	$5,000	$208.33
Pricing Based on Market Maker Being Charged the Highest Tier (as proposed)	12	24	12,000	500

Full Service MEO Port (Single) Fee Changes

Current Full Service MEO Port (Single) Fees. The Exchange currently assesses all Members (Market Makers and EEMs) monthly Full Service MEO Port (Single) fees as follows:

(i) if its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $2,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $3,375; and

(iii) if its volume falls within the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $3,750.

Proposed Full Service MEO Port (Single) Fees. The Exchange proposes to amend the calculation and amount of Full Service MEO Port (Single) fees for EEMs and Market Makers. In particular, the Exchange proposes to move away from the above-described volume tier-based fee structure and instead charge all Members that utilize Full Service MEO Ports (Single) a flat monthly fee of $4,000. For this flat monthly fee, all Members will continue to be entitled to two (2) Full Service MEO Ports (Single) for each Matching Engine for the single monthly fee of $4,000.

The Exchange offers various types of ports with differing prices because each port accomplishes different tasks, are suited to different types of Members, and consume varying capacity amounts of the network. For instance, MEO ports allow for a higher throughput and can handle much higher quote/order rates than FIX ports. Members that are Market Makers or high frequency trading firms utilize these ports (typically coupled with 10Gb ULL connectivity) because they transact in significantly higher amounts of messages being sent to and from the Exchange, versus FIX port users, who are traditionally customers sending only orders to the Exchange (typically coupled with 1Gb connectivity). The different types of ports cater to the different types of Exchange Memberships and different

[74] *See* MIAX Fee Schedule, Section 5)d)ii), note ''*'' and MIAX Emerald Fee Schedule, Section (5)(d)(ii), note ''■''.

[75] *See* NYSE American Options Fee Schedule, Section V.A., Port Fees (each port charged on a per matching engine basis, with NYSE American having 17 match engines). *See* NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020) (providing a link to an Excel file detailing the number of matching engines per options exchange); NYSE Arca Options Fee Schedule, Port Fees (each port charged on a per matching engine basis, NYSE Arca having 19 match engines); *and* NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020) (providing a link to an Excel file detailing the number of matching engines per options exchange). *See* NASDAQ Fee Schedule, NASDAQ Options 7 Pricing Schedule, Section 3, Nasdaq Options Market—Ports and Other Services (each port charged on a per matching engine basis, with Nasdaq having multiple matching engines). *See* NASDAQ Specialized Quote Interface (SQF) Specification, Version 6.5b (updated February 13, 2020), Section 2, Architecture, *available at https://www.nasdaq.com/docs/2020/02/18/Specialized-Quote-Interface-SQI-6.5b.pdf* (the ''NASDAQ SQF Interface Specification''). The NASDAQ SQF Interface Specification also provides that NASDAQ's affiliates, NASDAQ Phlx and NASDAQ BX, Inc. (''BX''), have trading infrastructures that may consist of multiple matching engines with each matching engine trading only a range of option classes. Further, the NASDAQ SQF Interface Specification provides that the SQF infrastructure is such that the firms connect to one or more servers residing directly on the matching engine infrastructure. Since there may be multiple matching engines, firms will need to connect to each engine's infrastructure in order to establish the ability to quote the symbols handled by that engine.

[76] *Id. See also infra* notes 101 to 108 and accompanying text.

[77] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

capabilities of the various Exchange Members. Certain Members need ports and connections that can handle using far more of the network's capacity for message throughput, risk protections, and the amount of information that the System has to assess. Those Members account for the vast majority of network capacity utilization and volume executed on the Exchange, as discussed throughout. For example, three (3) Members account for 64% of all 10Gb ULL connections and Full Service MEO Ports purchased.

The Exchange proposes to increase its monthly Full Service MEO Port fees since it has not done so since the fees were adopted in 2018,[78] which are designed to recover a portion of the costs associated with directly accessing the Exchange. As described above, the Exchange's affiliates, MIAX and MIAX Emerald, also charge fees for their high throughput, low latency ports in a similar fashion as the Exchange proposes to charge for its MEO Ports—generally, the more active user the Member (*i.e.,* the greater number/greater national ADV of classes assigned to quote on MIAX and MIAX Emerald), the higher the MEI Port fee.[79] This concept is, therefore, not new or novel.

Implementation. The proposed fee changes are immediately effective.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with Section 6(b) of the Act[80] in general, and furthers the objectives of Section 6(b)(4) of the Act[81] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposed fees further the objectives of Section 6(b)(5) of the Act[82] in that they are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes under the Revised Review Process and as set forth in recent Staff Guidance. Based on both the BOX Order[83] and the Staff Guidance,[84] the Exchange believes that the proposed fees are consistent with the Act because they are: (i) reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Staff Guidance; and (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Exchange believes that exchanges, in setting fees of all types, should meet high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.''[85] The Staff Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.''[86] In the Staff Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, . . ., specific information, including quantitative information, should be provided to support that argument.''[87]

The proposed fees are reasonable because they promote parity among exchange pricing for access, which promotes competition, including in the Exchanges' ability to competitively price transaction fees, invest in infrastructure, new products and other innovations, all while allowing the Exchange to recover its costs to provide dedicated access via 10Gb ULL connectivity (driven by the bifurcation of the 10Gb ULL network) and Full Service MEO Ports. As discussed above, the Revised Review Process and Staff Guidance have created an uneven playing field between legacy and non-legacy exchanges by severely restricting non-legacy exchanges from being able to increase non-transaction relates fees to provide them with additional necessary revenue to better compete with legacy exchanges, which largely set fees prior to the Revised Review Process. The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages: (i) additional non-transaction revenue that may be used to fund areas other than the non-transaction service related to the fee, such as investments in infrastructure, advertising, new products and other innovations; and (ii) greater flexibility to lower their transaction fees by using the revenue from the higher non-transaction fees to subsidize transaction fee rates. The latter is more immediately impactful in competition for order flow and market share, given the variable nature of this cost on Member firms. The absence of a reasonable path forward to increase non-transaction fees to comparable (or lower rates) limits the Exchange's flexibility to, among other things, make additional investments in infrastructure and advertising, diminishes the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share. Again, while one could debate whether the pricing of non-transaction fees are subject to the same market forces as transaction fees, there is little doubt that subjecting one exchange to a materially different standard than that applied to other exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

The Proposed Fees Ensure Parity Among Exchange Access Fees, Which Promotes Competition

The Exchange commenced operations in February 2017[88] and adopted its initial fee schedule, with 10Gb ULL connectivity fees set at $8,500 (the Exchange originally had a non-ULL 10Gb connectivity option, which it has since removed) and a fee waiver for all

[78] *See id.*

[79] *See* MIAX Fee Schedule, Section 5)d)ii); MIAX Emerald Fee Schedule, Section 5)d)ii).

[80] 15 U.S.C. 78f(b).

[81] 15 U.S.C. 78f(b)(4).

[82] 15 U.S.C. 78f(b)(5).

[83] *See supra* note 24.

[84] *See supra* note 25.

[85] *Id.*

[86] *Id.*

[87] *Id.*

[88] *See* MIAX PEARL Successfully Launches Trading Operations, dated February 6, 2017, *available at https://www.miaxoptions.com/sites/default/files/alert-files/MIAX_Press_Release_02062017.pdf.*

Full Service MEO Port fees.[89] As a new exchange entrant, the Exchange chose to offer Full Service MEO Ports free of charge to encourage market participants to trade on the Exchange and experience, among things, the quality of the Exchange's technology and trading functionality. This practice is not uncommon. New exchanges often do not charge fees or charge lower fees for certain services such as memberships/trading permits to attract order flow to an exchange, and later amend their fees to reflect the true value of those services, absorbing all costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives before increasing non-transaction fees encourages market entry and fee parity, which promotes competition among exchanges. It also enables new exchanges to mature their markets and allow market participants to trade on the new exchanges without fees serving as a potential barrier to attracting memberships and order flow.[90]

Later in 2018, as the Exchange's market share increased,[91] the Exchange adopted nominal fees for Full Service MEO Ports.[92] The Exchange last increased the fees for its 10Gb ULL fiber connections from $9,300 to $10,000 per month on January 1, 2021.[93] The Exchange balanced business and competitive concerns with the need to financially compete with the larger incumbent exchanges that charge higher fees for similar connectivity and use that revenue to invest in their technology and other service offerings.

The proposed changes to the Fee Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces, which constrains its pricing determinations for transaction fees as well as non-transaction fees. The fact that the market for order flow is competitive has 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 order-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 possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [94]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, 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.'' [95]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' '' [96] As a result, and as evidenced above, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [97] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [98] In the Revised Review Process and Staff Guidance, Commission Staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.'' [99]

The Exchange believes the competing exchanges' 10Gb connectivity and port fees are useful examples of alternative approaches to providing and charging for access and demonstrating how such fees are competitively set and constrained. To that end, the Exchange believes the proposed fees are competitive and reasonable because the proposed fees are similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with comparable market shares. As such, the Exchange believes that denying its ability to institute fees that are closer to parity with legacy exchanges, in effect, impedes its ability to compete, including in its pricing of transaction fees and ability to invest in competitive infrastructure and other offerings.

The following table shows how the Exchange's proposed fees remain similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with similar market share. Each of the market data rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

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[89] *See* Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR–PEARL–2017–10).

[90] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) (stating, ''[t]he Exchange established this lower (when compared to other options exchanges in the industry) Participant Fee in order to encourage market participants to become Participants of BOX. . .''). *See also* Securities Exchange Act Release No. 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (SR–MEMX–2020–10) (proposing to adopt the initial fee schedule and stating that ''[u]nder the initial proposed Fee Schedule, the Exchange proposes to make clear that it does not charge any fees for membership, market data products, physical connectivity or application sessions.''). MEMX's market share has increased and recently proposed to adopt numerous non-transaction fees, including fees for membership, market data, and connectivity. *See* Securities Exchange Act Release Nos. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19) (proposing to adopt membership fees); 96430 (December 1, 2022), 87 FR 75083 (December 7, 2022) (SR–MEMX–2022–32) *and* 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26) (proposing to adopt fees for connectivity). *See also, e.g.,* Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR–NYSENAT–2020–05), *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf* (initiating market data fees for the NYSE National exchange after initially setting such fees at zero).

[91] The Exchange experienced a monthly average trading volume of 3.94% for the month of March 2018. *See* Market at a Glance, *available at www.miaxoptions.com.*

[92] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[93] *See* Securities Exchange Act Release No. 90981 (January 25, 2021), 86 FR 7582 (January 29, 2021) (SR–PEARL–2021–01).

[94] *See NetCoalition,* 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[95] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[96] *See NetCoalition,* 615 F.3d at 534–35; see also H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[97] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

[98] *Id.*

[99] *See* Staff Guidance, *supra* note 25.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
MIAX Pearl Options (as proposed) (equity options market share of 6.96% for the month of March 2023) [100].	10Gb ULL connection	$13,500.
	Full Service MEO Port (Bulk) for Market Makers.	Lesser of either the per class basis or percentage of total national ADV by the Market Maker, as follows: $5,000—up to 10 classes or up to 20% of classes by volume. $7,500**—up to 40 classes or up to 35% of classes by volume. $10,000**—up to 100 classes or up to 50% of classes by volume. $12,000**—over 100 classes or over 50% of all classes by volume up to all classes (or $500 per port per matching engine). ** A lower rate of $6,000 will apply to these tiers if the Market Maker's total monthly executed volume is less than 0.040% of total monthly TCV for MIAX Pearl options.
	Full Service MEO Port (Bulk) for EEMs.	$7,500 (or $312.50 per port per matching engine).
	Full Service MEO Port (Single) for Market Makers and EEMs.	$4,000 (or $166.66 per port per matching engine).
NASDAQ [101] (equity options market share of 7.51% for the month of March 2023) [102].	10Gb Ultra fiber connection	$15,000 per connection.
	SQF Port [103]	1–5 ports: $1,500 per port; 6–20 ports: $1,000 per port; 21 or more ports: $500 per port.
NASDAQ ISE LLC ("ISE") [104] (equity options market share of 5.91% for the month of March 2023) [105].	10Gb Ultra fiber connection	$15,000 per connection.
	SQF Port	$1,100 per port.
NYSE American LLC ("NYSE American") [106] (equity options market share of 7.50% for the month of March 2023) [107].	10Gb LX LCN connection ..	$22,000 per connection.
	Order/Quote Entry Port	1–40 ports: $450 per port; 41 or more ports: $150 per port.
NASDAQ GEMX, LLC ("GEMX") [108] (equity options market share of 2.00% for the month of March 2023) [109].	10Gb Ultra connection	$15,000 per connection.
	SQF Port	$1,250 per port.

The Exchange acknowledges that, without additional contextual information, the above table may lead someone to believe that the Exchange's proposed fees for Full Service MEO Ports is higher than other exchanges when in fact, that is not true. The Exchange provides each Member or non-Member access to two (2) ports on all twelve (12) matching engines for a single fee and a vast majority choose to connect to all twelve (12) matching engines and utilize both ports for a total of 24 ports. Other exchanges charge on a per port basis and require firms to connect to multiple matching engines, thereby multiplying the cost to access their full market.[110] On the Exchange, this is not the case. The Exchange provides each Member or non-Member access, but does not require they connect to, all twelve (12) matching engines.

There is no requirement, regulatory or otherwise, that any broker-dealer connect to and access any (or all of) the available options exchanges. Market participants may choose to become a member of one or more options exchanges based on the market participant's assessment of the business opportunity relative to the costs of the Exchange. With this, there is elasticity of demand for exchange membership. As an example, one Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023 as a direct result of the proposed connectivity and port fee changes on MIAX Pearl Options.

It is not a requirement for market participants to become members of all options exchanges, in fact, certain market participants conduct an options business as a member of only one options market.[111] A very small number

[100] *See supra* note 91.

[101] *See* NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services *and* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.

[102] *See* supra note 91.

[103] Similar to the MIAX Pearl Options' MEO Ports, SQF ports are primarily utilized by Market Makers.

[104] *See* ISE Pricing Schedule, Options 7, Section 7, Connectivity Fees *and* ISE Rules, General 8: Connectivity.

[105] *See* supra note 91.

[106] *See* NYSE American Options Fee Schedule, Section V.A. Port Fees *and* Section V.B. Co-Location Fees.

[107] *See* supra note 91.

[108] *See* GEMX Pricing Schedule, Options 7, Section 6, Connectivity Fees *and* GEMX Rules, General 8: Connectivity.

[109] *See* supra note 91.

[110] *See* Specialized Quote Interface Specification, Nasdaq PHLX, Nasdaq Options Market, Nasdaq BX Options, Version 6.5a, Section 2, Architecture (revised August 16, 2019), *available at http://www.nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/SQF6.5a-2019-Aug.pdf.* The Exchange notes that it is unclear whether the NASDAQ exchanges include connectivity to each matching engine for the single fee or charge per connection, per matching engine. *See also* NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020). The Exchange notes that NYSE provides a link to an Excel file detailing the number of matching engines per options exchange, with Arca and Amex having 19 and 17 matching engines, respectively.

[111] BOX recently adopted an electronic market maker trading permit fee. *See* Securities Exchange Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17). In that proposal, BOX stated that, ". . . it is not aware of any reason why Market Makers could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such Market Maker, did not

Continued

of market participants choose to become a member of all sixteen options exchanges. Most firms that actively trade on options markets are not currently Members of the Exchange and do not purchase connectivity or port services at the Exchange. Connectivity and ports are only available to Members or service bureaus, and only a Member may utilize a port.[112]

One other exchange recently noted in a proposal to amend their own trading permit fees that of the 62 market making firms that are registered as Market Makers across Cboe, MIAX, and BOX, 42 firms access only one of the three exchanges.[113] The Exchange and its affiliates, MIAX and MIAX Emerald, have a total of 47 members. Of those 47 total members, 35 are members of all three affiliated exchanges, four are members of only two (2) affiliated exchanges, and eight (8) are members of only one affiliated exchange. The Exchange also notes that no firm is a Member of the Exchange only. The above data evidences that a broker-dealer need not have direct connectivity to all options exchanges, let alone the Exchange and its two affiliates, and broker-dealers may elect to do so based on their own business decisions and need to directly access each exchange's liquidity pool.

Not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the broker-dealer membership analysis of the options exchanges discussed above. As noted above, this is evidenced by the fact that one Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023 as a direct result of the proposed connectivity and port fee changes on MIAX Pearl Options. Indeed, broker-dealers choose if and how to access a particular exchange and because it is a choice, the Exchange must set reasonable pricing, otherwise prospective members would not connect and existing members would disconnect from the Exchange. The decision to become a member of an exchange, particularly for registered market makers, is complex, and not solely based on the non-transactional costs assessed by an exchange. As noted herein, specific factors include, but are not limited to: (i) an exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. Becoming a member of the exchange does not ''lock'' a potential member into a market or diminish the overall competition for exchange services.

In lieu of becoming a member at each options exchange, a market participant may join one exchange and elect to have their orders routed in the event that a better price is available on an away market. Nothing in the Order Protection Rule requires a firm to become a Member at—or establish connectivity to—the Exchange.[114] If the Exchange is not at the NBBO, the Exchange will route an order to any away market that is at the NBBO to ensure that the order was executed at a superior price and prevent a trade-through.[115]

With respect to the submission of orders, Members may also choose not to purchase any connection at all from the Exchange, and instead rely on the port of a third party to submit an order. For example, a third-party broker-dealer Member of the Exchange may be utilized by a retail investor to submit orders into an Exchange. An institutional investor may utilize a broker-dealer, a service bureau,[116] or request sponsored access[117] through a member of an exchange in order to submit a trade directly to an options exchange.[118] A market participant may either pay the costs associated with becoming a member of an exchange or, in the alternative, a market participant may elect to pay commissions to a broker-dealer, pay fees to a service bureau to submit trades, or pay a member to sponsor the market participant in order to submit trades directly to an exchange.

Non-Member third-parties, such as service bureaus and extranets, resell the Exchange's connectivity. This indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange's connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity and other access fees to its market. The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity. Unlike other exchanges, the Exchange also does not currently assess fees on third-party resellers on a per customer basis (*i.e.,* fees based on the number of firms that connect to the Exchange indirectly via the third-party).[119] Indeed, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own.[120] Particularly, in the event that a market participant views the Exchange's direct connectivity and access fees as more or less attractive than competing markets, that market participant can choose to

make business or economic sense for such Market Maker to access such exchange. [BOX] again notes that no market makers are required by rule, regulation, or competitive forces to be a Market Maker on [BOX].'' Also in 2022, MEMX established a monthly membership fee. *See* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19). In that proposal, MEMX reasoned that that there is value in becoming a member of the exchange and stated that it believed that the proposed membership fee ''is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange'' and that ''neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange.''

[112] Service Bureaus may obtain ports on behalf of Members.

[113] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees). The Exchange believes that BOX's observation demonstrates that market making firms can, and do, select which exchanges they wish to access, and, accordingly, options exchanges must take competitive considerations into account when setting fees for such access.

[114] *See* Options Order Protection and Locked/Crossed Market Plan (August 14, 2009), *available at https://www.theocc.com/getmedia/7fc629d9-4e54-4b99-9f11- c0e4db1a2266/options_order_protection_plan.pdf.*

[115] Members may elect to not route their orders by utilizing the Do Not Route order type. *See* Exchange Rule 516(g).

[116] Service Bureaus provide access to market participants to submit and execute orders on an exchange. On the Exchange, a Service Bureau may be a Member. Some Members utilize a Service Bureau for connectivity and that Service Bureau may not be a Member. Some market participants utilize a Service Bureau who is a Member to submit orders.

[117] Sponsored Access is an arrangement whereby a Member permits its customers to enter orders into an exchange's system that bypass the Member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third-party technology provider.

[118] This may include utilizing a floor broker and submitting the trade to one of the five options trading floors.

[119] *See, e.g.,* Nasdaq Price List—U.S. Direct Connection and Extranet Fees, *available at,* U.S. Direct-Extranet Connection (nasdaqtrader.com); *and* Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); *and* 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114).

[120] The Exchange notes that resellers, such as SFTI, are not required to publicize, let alone justify or file with the Commission their fees, and as such could charge the market participant any fees it deems appropriate (including connectivity fees higher than the Exchange's connectivity fees), even if such fees would otherwise be considered potentially unreasonable or uncompetitive fees.

connect to the Exchange indirectly or may choose not to connect to the Exchange and connect instead to one or more of the other 16 options markets. Accordingly, the Exchange believes that the proposed fees are fair and reasonable and constrained by competitive forces.

The Exchange is obligated to regulate its Members and secure access to its environment. In order to properly regulate its Members and secure the trading environment, the Exchange takes measures to ensure access is monitored and maintained with various controls. Connectivity and ports are methods utilized by the Exchange to grant Members secure access to communicate with the Exchange and exercise trading rights. When a market participant elects to be a Member, and is approved for membership by the Exchange, the Member is granted trading rights to enter orders and/or quotes into Exchange through secure connections.

Again, there is no legal or regulatory requirement that a market participant become a Member of the Exchange. This is again evidenced by the fact that one MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023 as a direct result of the proposed connectivity and port fee changes on MIAX Pearl Options. If a market participant chooses to become a Member, they may then choose to purchase connectivity beyond the one connection that is necessary to quote or submit orders on the Exchange. Members may freely choose to rely on one or many connections, depending on their business model.

Bifurcation of 10Gb ULL Connectivity and Related Fees

The Exchange began to operate on a single shared network with MIAX when MIAX Pearl Options commenced operations as a national securities exchange on February 7, 2017.[121] The Exchange and MIAX have operated on a single shared network to provide Members with a single convenient set of access points for both exchanges. Both the Exchange and MIAX offer two methods of connectivity, 1Gb and 10Gb ULL connections. The 1Gb connection services are supported by a discrete set of switches providing 1Gb access ports to Members. The 10Gb ULL connection services are supported by a second and mutually exclusive set of switches providing 10Gb ULL access ports to Members. Previously, both the 1Gb and 10Gb ULL shared extranet ports allow Members to use one connection to access both exchanges, namely their trading platforms, market data systems, test systems, and disaster recovery facilities.

The Exchange stresses that bifurcating the 10Gb ULL connectivity between the Exchange and MIAX was not designed with the objective to generate an overall increase in access fee revenue. Rather, the proposed change was necessitated by 10Gb ULL connectivity experiencing a significant decrease in port availability mostly driven by connectivity demands of latency sensitive Members that seek to maintain multiple 10Gb ULL connections on every switch in the network. Operating two separate national securities exchanges on a single shared network provided certain benefits, such as streamlined connectivity to multiple exchanges, and simplified exchange infrastructure. However, doing so was no longer sustainable due to ever-increasing capacity constraints and current system limitations. The network is not an unlimited resource. As described more fully in the proposal to bifurcate the 10Gb ULL network,[122] the connectivity needs of Members and market participants has increased every year since the launch of MIAX Pearl Options and the operations of the Exchange and MIAX on a single shared 10Gb ULL network is no longer feasible. This required constant System expansion to meet Member demand for additional ports and 10Gb ULL connections has resulted in limited available System headroom, which eventually became operationally problematic for both the Exchange and its customers.

As stated above, the shared network is not an unlimited resource and its expansion was constrained by MIAX's and MIAX Pearl Options' ability to provide fair and equitable access to all market participants of both markets. Due to the ever-increasing connectivity demands, the Exchange found it necessary to bifurcate 10Gb ULL connectivity to the Exchange's and MIAX's Systems and networks to be able to continue to meet ongoing and future 10Gb ULL connectivity and access demands.[123]

Unlike the switches that provide 1Gb connectivity, the availability for additional 10Gb ULL connections on each switch had significantly decreased. This was mostly driven by the connectivity demands of latency sensitive Members (*e.g.,* Market Makers and liquidity removers) that sought to maintain connectivity across multiple 10Gb ULL switches. Based on the Exchange's experience, such Members did not typically use a shared 10Gb ULL connection to reach both the Exchange and MIAX due to related latency concerns. Instead, those Members maintain dedicated separate 10Gb ULL connections for the Exchange and separate dedicated 10Gb ULL connections for MIAX. This resulted in a much higher 10Gb ULL usage per switch by those Members on the shared 10Gb ULL network than would otherwise be needed if the Exchange and MIAX had their own dedicated 10Gb ULL networks. Separation of the Exchange and MIAX 10Gb ULL networks naturally lends itself to reduced 10Gb ULL port consumption on each switch and, therefore, increased 10Gb ULL port availability for current Members and new Members.

Prior to bifurcating the 10Gb ULL network, the Exchange and MIAX continued to add switches to meet ongoing demand for 10Gb ULL connectivity. That was no longer sustainable because simply adding additional switches to expand the current shared 10Gb ULL network would not adequately alleviate the issue of limited available port connectivity. While it would have resulted in a gain in overall port availability, the existing switches on the shared 10Gb ULL network in use would have continued to suffer from lack of port headroom given many latency sensitive Members' needs for a presence on each switch to reach both the Exchange and MIAX. This was because those latency sensitive Members sought to have a presence on each switch to maximize the probability of experiencing the best network performance. Those Members routinely decide to rebalance orders and/or messages over their various connections to ensure each connection is operating with maximum efficiency. Simply adding switches to the extranet would not have resolved the port availability needs on the shared 10Gb ULL network since many of the latency sensitive

[121] *See* Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (establishing MIAX Pearl Options Fee Schedule and establishing that the MENI can also be configured to provide network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facility of the MIAX Pearl Options' affiliate, MIAX, via a single, shared connection).

[122] *See* Securities Exchange Act Release Nos. 96553 (December 20, 2022), 87 FR 79379 (December 27, 2022) (SR–PEARL–2022–60); 96545 (December 20, 2022) 87 FR 79393 (December 27, 2022) (SR–MIAX–2022–48).

[123] Currently, the Exchange maintains sufficient headroom to meet ongoing and future requests for 1Gb connectivity. Therefore, the Exchange did not propose to alter 1Gb connectivity and continues to provide 1Gb connectivity over a shared network.

Members were unwilling to relocate their connections to a new switch due to the potential detrimental performance impact. As such, the impact of adding new switches and rebalancing ports would not have been effective or responsive to customer needs. The Exchange has found that ongoing and continued rebalancing once additional switches are added has had, and would have continued to have had, a diminishing return on increasing available 10Gb ULL connectivity.

Based on its experience and expertise, the Exchange found the most practical way to increase connectivity availability on its switches was to bifurcate the existing 10Gb ULL networks for the Exchange and MIAX by migrating the exchanges' connections from the shared network onto their own set of switches. Such changes accordingly necessitated a review of the Exchange's previous 10Gb ULL connectivity fees and related costs. The proposed fees necessary to allow the Exchange to cover ongoing costs related to providing and maintaining such connectivity, described more fully below. The ever increasing connectivity demands that necessitated this change further support that the proposed fees are reasonable because this demand reflects that Members and non-Members believe they are getting value from the 10Gb ULL connections they purchase.

The Exchange announced on August 12, 2022 the planned network change and January 23, 2023 implementation date to provide market participants adequate time to prepare.[124] Since August 12, 2022, the Exchange has worked with current 10Gb ULL subscribers to address their connectivity needs ahead of the January 23, 2023 date. Based on those interactions and subscriber feedback, the Exchange experienced a minimal net increase of approximately six (6) overall 10Gb ULL connectivity subscriptions across the Exchange and MIAX. This anticipated immaterial increase in overall connections reflect a minimal fee impact for all types of subscribers and reflects that subscribers elected to reallocate existing 10Gb ULL connectivity directly to the Exchange or MIAX, or chose to decrease or cease connectivity as a result of the change.

Should the Commission Staff disapprove such fees, it would effectively dictate how an exchange manages its technology and would hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval could also have the adverse effect of discouraging exchanges from optimizing its operations and deploying innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from covering its costs and monetizing its operational enhancements, thus adversely impacting competition. Also, as noted above, the economic consequences of not being able to better establish fee parity with other exchanges for non-transaction fees hampers the Exchange's ability to compete on transaction fees.

Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

In proposing to charge fees for connectivity services, the Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and transparently assessing the impact on Members—both generally and in relation to other Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,[125] and Rule 19b–4 thereunder,[126] with respect to the types of information SROs should provide when filing fee changes, and Section 6(b) of the Act,[127] which requires, among other things, that exchange fees be reasonable and equitably allocated,[128] not designed to permit unfair discrimination,[129] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[130] This rule change proposal addresses those requirements, and the analysis and data in each of the sections that follow are designed to clearly and comprehensively show how they are met.[131] The Exchange reiterates that the legacy exchanges with whom the Exchange vigorously competes for order flow and market share, were not subject to any such diligence or transparency in setting their baseline non-transaction fees, most of which were put in place before the Revised Review Process and Staff Guidance.

As detailed below, the Exchange recently calculated its aggregate annual costs for providing physical 10Gb ULL connectivity to the Exchange at $11,567,509 (or approximately $963,959 per month, rounded to the nearest dollar when dividing the annual cost by 12 months) and its aggregate annual costs for providing Full Service MEO Ports at $1,644,132 (or approximately $137,012 per month, rounded to the nearest dollar when dividing the annual cost by 12 months). In order to cover the aggregate costs of providing connectivity to its Users (both Members and non-Members[132]) going forward and to make a modest profit, as described below, the Exchange proposes to modify its Fee Schedule to charge a fee of $13,500 per month for each physical 10Gb ULL connection and to remove language providing for a shared 10Gb ULL network between the Exchange and MIAX. The Exchange also proposes to modify its Fee Schedule to charge tiered rates for Full Service MEO Ports (Bulk) depending on the number of classes assigned or the percentage of national ADV, which is in line with how the Exchange's affiliates, MIAX and MIAX Emerald, assess fees for their comparable MEI Ports.

In 2019, the Exchange completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis'').[133] The Cost Analysis required a detailed analysis of the Exchange's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services, physical connectivity, and port

[124] *See supra* note 9.

[125] 15 U.S.C. 78s(b)(1).

[126] 17 CFR 240.19b–4.

[127] 15 U.S.C. 78f(b).

[128] 15 U.S.C. 78f(b)(4).

[129] 15 U.S.C. 78f(b)(5).

[130] 15 U.S.C. 78f(b)(8).

[131] *See* Staff Guidance, *supra* note 25.

[132] Types of market participants that obtain connectivity services from the Exchange but are not Members include service bureaus and extranets. Service bureaus offer technology-based services to other companies for a fee, including order entry services, and thus, may access application sessions on behalf of one or more Members. Extranets offer physical connectivity services to Members and non-Members.

[133] The Exchange frequently updates it Cost Analysis as strategic initiatives change, costs increase or decrease, and market participant needs and trading activity changes. The Exchange's most recent Cost Analysis was conducted ahead of this filing.

access (which provide order entry, cancellation and modification functionality, risk functionality, the ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (''cost drivers'').

As an initial step, the Exchange determined the total cost for the Exchange and the affiliated markets. That total cost was then divided among the Exchange and each of its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (*e.g.,* price time or pro-rata), which may impact message traffic, individual system architectures that impact platform size,[134] storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time. This will result in different allocation percentages among the Exchange and its affiliated markets. Meanwhile this allocation methodology ensures that no portion of any cost was allocated twice or double-counted between the Exchange and its affiliated markets.

Next, the Exchange adopted an allocation methodology with thoughtful and consistently applied principles to guide how much of a particular cost amount allocated to the Exchange pursuant to the above methodology should be allocated within the Exchange to each core service. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of 1Gb and 10Gb ULL physical connectivity (62%), with smaller allocations to all ports (5%), and the remainder to the provision of transaction execution, membership services and market data services (33%). This next level of the allocation methodology at the individual exchange level also took into account a number of factors similar to those set forth under the first allocation methodology described above, to determine the appropriate allocation to connectivity or market data versus what is to be allocated to providing other services. The allocation methodology was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an estimated allocation of each cost driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity and port services, membership fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; many Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange's costs, the Exchange's methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges' interdependent costs, the Exchange will continue to be left with its best efforts to attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange's extensive updated Cost Analysis, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of connectivity services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of connectivity services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity services. In turn, the Exchange allocated certain costs more to physical connectivity and others to ports, while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, the Exchange estimates that the cost drivers to provide 10Gb ULL connectivity and Full Service MEO Port services, results in an aggregate monthly cost of approximately $1,106,971 (utilizing the rounded numbers when dividing the annual cost for 10Gb ULL connectivity and annual cost for Full Service MEO Ports by 12 months, then adding both numbers together), as further detailed below.

Lastly, the Exchange notes that, based on: (i) the total expense amounts contained in this filing (which are 2023 projected expenses), and (ii) the total expense amounts contained in the related MIAX Pearl Equities filing (also 2023 projected expenses), MIAX PEARL, LLC's total costs have increased at a greater rate over the last three years than the total costs of MIAX PEARL, LLC's affiliated exchanges, MIAX and MIAX Emerald. This is also reflected in the total costs reported in MIAX PEARL, LLC's Form 1 filings over the last three years, when comparing MIAX PEARL, LLC to MIAX PEARL, LLC's affiliated exchanges, MIAX and MIAX Emerald. This is primarily because that MIAX PEARL, LLC operates two markets, one for options and one for equities, while MIAX and MIAX Emerald each operate only one market. This is also due to higher current expense for MIAX PEARL, LLC for 2022 and 2023, due to a hardware refresh (*i.e.,* replacing old hardware with new equipment) for MIAX Pearl Options, as well as higher costs associated with MIAX Pearl Equities due to greater development efforts to grow that newer marketplace.[135] The Exchange confirms

[134] For example, MIAX Pearl Options maintains 12 matching engines, MIAX Pearl Equities maintains 24 matching engines, MIAX maintains 24 matching engines and MIAX Emerald maintains 12 matching engines.

[135] *See, e.g.,* Securities Exchange Act Release Nos. 94301 (February 23, 2022), 87 FR 11739 (March 2, 2022) (SR–PEARL–2022–06) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 2617(b) To Adopt Two New Routing Options, and To Make Related Changes and

Continued

that there is no double counting of expenses between the options and equities platform of MIAX Pearl; the greater expense amounts of the MIAX PEARL, LLC (relative to its affiliated exchanges, MIAX and MIAX Emerald) is solely attributed to the unique factors of MIAX Pearl discussed above.

Costs Related to Offering Physical 10Gb ULL Connectivity

The following chart details the individual line-item costs considered by the Exchange to be related to offering physical dedicated 10Gb ULL connectivity via an unshared network as well as the percentage of the Exchange's overall costs that such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 26.9% of its overall Human Resources cost to offering physical connectivity).

Cost drivers	Annual cost [136]	Monthly cost [137]	Percent of all
Human Resources	$3,675,098	$306,258	26.3
Connectivity (external fees, cabling, switches, etc.)	70,163	5,847	60.6
Internet Services, including External Market Data	322,388	26,866	73.3
Data Center	739,983	61,665	60.6
Hardware and Software Maintenance and Licenses	959,157	79,930	58.6
Depreciation	1,885,969	157,164	58.2
Allocated Shared Expenses	3,914,751	326,229	49.2
Total	11,567,509	963,959	40.5

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering physical 10Gb ULL connectivity. The Exchange notes that some of its cost allocation percentages for certain categories of expense differ when compared to the same categories of expense described by the Exchange's affiliates in their similar proposed fee changes for connectivity and ports. This is because MIAX Pearl Equities' cost allocation methodology utilizes the actual projected costs of MIAX Pearl Equities (which are specific to MIAX Pearl Equities, and are independent of the costs projected and utilized by MIAX Pearl Equities' affiliates) to determine its actual costs. MIAX Pearl Equities provides additional explanation below (including the reason for the deviation) where MIAX Pearl Equities considers such deviation in allocations to be non *de minimis.*

Human Resources

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include providing and maintaining physical connectivity and performance thereof (primarily the Exchange's network infrastructure team, which spends most of their time performing functions necessary to provide physical connectivity) and for which the Exchange allocated a percentage of 42.9% of each employee's time assigned to the Exchange based on the above-described allocation methodology. The Exchange also allocated Human Resources costs to provide physical connectivity to a limited subset of personnel with ancillary functions related to establishing and maintaining such connectivity (such as information security and finance personnel), for which the Exchange allocated cost on an employee-by-employee basis (*i.e.,* only including those personnel who do support functions related to providing physical connectivity) and then applied a smaller allocation to such employees (less than 17%). The Exchange notes that it and its affiliated markets have 184 employees and each department leader has direct knowledge of the time spent by those spent by each employee with respect to the various tasks necessary to operate the Exchange. Specifically, twice a year and as needed with additional new hires and new project initiatives, in consultation with employees as needed, managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine that market's individual Human Resources expense. Then, again managers and department heads assign a percentage of each employee's time allocated to the Exchange into buckets including network connectivity, ports, market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing physical connectivity, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing physical connectivity. This includes personnel from the following Exchange departments that are predominately involved in providing 1Gb and 10Gb ULL connectivity: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. The Exchange notes that senior level executives were only allocated Human Resources costs to the extent the

Clarifications to Rules 2614(a)(2)(B) and 2617(b)(2)); 94851 (May 4, 2022), 87 FR 28077 (May 10, 2022) (SR–PEARL–2022–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Exchange Rule 532, Order Price Protection Mechanisms and Risk Controls); 95298 (July 15, 2022), 87 FR 43579 (July 21, 2022) (SR–PEARL–2022–29) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC To Amend the Route to Primary Auction Routing Option Under Exchange Rule 2617(b)(5)(B)); 95679 (September 6, 2022), 87 FR 55866 (September 12, 2022) (SR–PEARL–2022–34) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 2614, Orders and Order Instructions, To Adopt the Primary Peg Order Type); 96205 (November 1, 2022), 87 FR 67080 (November 7, 2022) (SR–PEARL–2022–43) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 2614, Orders and Order Instructions and Rule 2618, Risk Settings and Trading Risk Metrics To Enhance Existing Risk Controls); 96905 (February 13, 2023), 88 FR 10391 (February 17, 2023) (SR–PEARL–2023–03) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 2618 To Add Optional Risk Control Settings); 97236 (March 31, 2023), 88 FR 20597 (April 6, 2023) (SR–PEARL–2023–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rules 2617 and 2626 Regarding Retail Orders Routed Pursuant to the Route to Primary Auction Routing Option).

[136] The Annual Cost includes figures rounded to the nearest dollar.

[137] The Monthly Cost was determined by dividing the Annual Cost for each line item by twelve (12) months and rounding up or down to the nearest dollar.

Exchange believed they are involved in overseeing tasks related to providing physical connectivity. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity and Internet Services

The Connectivity cost includes external fees paid to connect to other exchanges and third parties, cabling and switches required to operate the Exchange. The Connectivity line-item is more narrowly focused on technology used to complete connections to the Exchange and to connect to external markets. The Exchange notes that its connectivity to external markets is required in order to receive market data to run the Exchange's matching engine and basic operations compliant with existing regulations, primarily Regulation NMS.

The Exchange relies on various connectivity and content service providers for connectivity and data feeds for the entire U.S. options industry, as well as content, connectivity, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity. Specifically, the Exchange utilizes connectivity and content service providers to connect to other national securities exchanges, the Options Price Reporting Authority (''OPRA''), and to receive market data from other exchanges and market data providers. The Exchange understands that these service providers provide services to most, if not all, of the other U.S. exchanges and other market participants. Connectivity and market data provided these service providers is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity. Without these services providers, the Exchange would not be able to connect to other national securities exchanges, market data providers, or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its connectivity and content service provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment (such as dedicated space, security services, cooling and power). The Exchange notes that it does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties. The Exchange has allocated a high percentage of the Data Center cost (60.6%) to physical 10Gb ULL connectivity because the third-party data centers and the Exchange's physical equipment contained therein is the most direct cost in providing physical access to the Exchange. In other words, for the Exchange to operate in a dedicated space with connectivity of participants to a physical trading platform, the data centers are a very tangible cost, and in turn, if the Exchange did not maintain such a presence then physical connectivity would be of no value to market participants.

External Market Data

External Market Data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange included External Market Data fees to the provision of 10Gb ULL connectivity as such market data is necessary here to offer certain services related to such connectivity, such as certain risk checks that are performed prior to execution, and checking for other conditions (*e.g.,* re-pricing of orders to avoid lock or crossed markets, trading collars). This allocation was included as part of the internet Services cost described above.[138] Thus, as market data from other Exchanges is consumed at the matching engine level, (to which 10Gb ULL connectivity provides access to) in order to validate orders before additional entering the matching engine or being executed, the Exchange believes it is reasonable to allocate a small amount of such costs to 10Gb ULL connectivity.

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer physical connectivity to the Exchange.[139] The Exchange notes that this allocation is greater than MIAX and MIAX Emerald options exchanges by more than a *de minimis* amount as MIAX Pearl Options allocated 58.6% of its Hardware and Software Maintenance and License expense towards 10Gb ULL connectivity, while MIAX and MIAX Emerald allocated 49.8% and 50.9%, respectively, to the same category of expense. MIAX Pearl Equities allocated a higher percentage of the same category of expense (58%) towards its Hardware and Software Maintenance and License expense for 10Gb ULL connectivity, which MIAX Pearl Equities explains in its own proposal to amend its 10Gb ULL connectivity fees. This is because MIAX Pearl Options is in the process of replacing and upgrading various hardware and software used to operate its options trading platform in order to maintain premium network performance. At the time of this filing, the Exchange is undergoing a major hardware refresh, replacing older hardware with new hardware. This hardware includes servers, network switches, cables, optics, protocol data units, and cabinets, to maintain a state-of-the-art technology platform. Because of the timing of the hardware refresh with the timing of this filing, the Exchange has materially higher expense than its affiliates.

Monthly Depreciation

All physical assets and software, which also includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. As noted above, the Exchange allocated 58.2% of all depreciation costs to providing physical 10Gb ULL connectivity. The Exchange notes, however, that it did not allocate depreciation costs for any depreciated software necessary to operate the Exchange to physical connectivity, as such software does not impact the

[138] This allocation may differ from MIAX Pearl Equities due to the different amount of proprietary market data feeds the Exchange purchases for its options and equities trading platforms. For options, the Exchange primarily relies on data purchased from OPRA. For equities, the Exchange does not solely rely on data purchased from the consolidated tape plans (*e.g.,* Nasdaq UTP, CTA, and CQ plans), but rather purchases multiple proprietary market data feeds from other equities exchanges. *See, e.g.,* Exchange Rule 2613 (setting forth the data feeds the Exchange subscribes to for each equities exchange and trading center).

[139] This expense may be greater than the Exchange's affiliated markets, specifically MIAX and MIAX Emerald, because, unlike MIAX and MIAX Emerald, MIAX Pearl Options and MIAX Pearl Equities each maintain an additional gateway to accommodate their Members' and Equity Members' access and connectivity needs. This added gateway contributes to the difference in allocations between MIAX Pearl Equities and MIAX Pearl Options and MIAX and MIAX Emerald.

provision of physical connectivity. The Exchange also notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost.

Allocated Shared Expenses

Finally, a limited portion of general shared expenses was allocated to overall physical connectivity costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide physical connectivity. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange notes that the cost of paying directors to serve on its Board of Directors is also included in the Exchange's general shared expenses.[140] The Exchange notes that the 49.2% allocation of general shared expenses for physical 10Gb ULL connectivity is higher than that allocated to general shared expenses for Full Service MEO Ports based on its allocation methodology that weighted costs attributable to each Core Service based on an understanding of each area. While physical connectivity has several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Centers, as described above), Full Service MEO Ports do not require as many broad or indirect resources as other Core Services. The total monthly cost for 10Gb ULL connectivity of $963,959 was divided by the number of physical 10Gb ULL connections the Exchange maintained at the time that proposed pricing was determined (108), to arrive at a cost of approximately $8,925 per month, per physical 10Gb ULL connection.

Costs Related to Offering Full Service MEO Ports

The following chart details the individual line-item costs considered by the Exchange to be related to offering Full Service MEO Ports as well as the percentage of the Exchange's overall costs such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 8.3% of its overall Human Resources cost to offering Full Service MEO Ports).

Cost drivers	Annual cost[141]	Monthly cost[142]	Percent of all
Human Resources	$1,159,831	$96,653	8.3
Connectivity (external fees, cabling, switches, etc.)	1,589	132	1.4
Internet Services, including External Market Data	6,033	503	1.4
Data Center	41,881	3,490	3.4
Hardware and Software Maintenance and Licenses	22,438	1,870	1.4
Depreciation	127,986	10,666	3.9
Allocated Shared Expenses	284,374	23,698	3.6
Total	1,644,132	137,012	5.8

Human Resources

With respect to Full Service MEO Ports, the Exchange calculated Human Resources cost by taking an allocation of employee time for employees whose functions include providing Full Service MEO Ports and maintaining performance thereof (including a broader range of employees such as technical operations personnel, market operations personnel, and software engineering personnel) as well as a limited subset of personnel with ancillary functions related to maintaining such connectivity (such as sales, membership, and finance personnel). Just as described above for 10Gb ULL connectivity, the estimates of Human Resources cost were again determined by consulting with department leaders, determining which employees are involved in tasks related to providing application sessions and maintaining performance thereof, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing application sessions and maintaining performance thereof. This includes personnel from the following Exchange departments that are predominately involved in providing Full Service MEO Ports: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. The Exchange notes that senior level executives were only allocated Human Resources costs to the extent the Exchange believed they are involved in overseeing tasks related to providing application sessions and maintaining performance thereof. The Human Resources cost was again calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity and Internet Services

The Connectivity cost includes external fees paid to connect to other exchanges, cabling and switches, as described above. For purposes of Full Service MEO Ports, the Exchange also includes a portion of its costs related to External Market Data, as described below.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs (the Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties).

[140] The Exchange notes that MEMX allocated a precise amount of 10% of the overall cost for directors to providing physical connectivity. The Exchange does not calculate is expenses at that granular a level. Instead, director costs are included as part of the overall general allocation.

[141] *See supra* note 136 (describing rounding of Annual Costs).

[142] *See supra* note 137 (describing rounding of Monthly Costs based on Annual Costs).

External Market Data

External Market Data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange included External Market Data fees to the provision of application sessions as such market data is also necessary here (in addition to physical connectivity) to offer certain services related to such sessions, such as validating orders on entry against the national best bid and national best offer and checking for other conditions (*e.g.,* whether a symbol is halted). This allocation was included as part of the internet Services cost described above.[143] Thus, as market data from other Exchanges is consumed at the application session level in order to validate orders before additional processing occurs with respect to such orders, the Exchange believes it is reasonable to allocate a small amount of such costs to application sessions.

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to monitor the health of the order entry services provided by the Exchange, as described above.

Monthly Depreciation

All physical assets and software, which also includes assets used for testing and monitoring of order entry infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which is owned by the Exchange and some of which is leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange allocated 3.9% of all depreciation costs to providing Full Service MEO Ports. In contrast to physical connectivity, described above, the Exchange did allocate depreciation costs for depreciated software necessary to operate the Exchange to Full Service MEO Ports because such software is related to the provision of such connectivity. The Exchange also notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost.

Allocated Shared Expenses

Finally, a limited portion of general shared expenses was allocated to overall Full Service MEO Ports costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide application sessions. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange again notes that the cost of paying directors to serve on its Board of Directors is included in the calculation of Allocated Shared Expenses, and thus a portion of such overall cost amounting to less than 4.0% of the overall cost for directors was allocated to providing Full Service MEO Ports. The Exchange notes that the 3.6% allocation of general shared expenses for Full Service MEO Ports is lower than that allocated to general shared expenses for physical connectivity based on its allocation methodology that weighted costs attributable to each Core Service based on an understanding of each area. While Full Service MEO Ports have several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Centers, as described above), 10Gb ULL connectivity requires a broader level of support from Exchange personnel in different areas, which in turn leads to a broader general level of cost to the Exchange. The total monthly cost of $137,012 was divided by the number of Full Service MEO Ports the Exchange maintained at the time that proposed pricing was determined (20 total; 16 Full Service MEO Port, Bulk, and 4 Full Service MEO Port, Single), to arrive at a cost of approximately $6,851 per month, per Full Service MEO Port.

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core services (including physical connectivity or Full Service MEO Ports) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal and the filings the Exchange submitted proposing fees for proprietary data feeds offered by the Exchange. For instance, in calculating the Human Resources expenses to be allocated to physical connections based upon the above described methodology, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a high percentage of the cost of such personnel (42.9%) given their focus on functions necessary to provide physical connections. The salaries of those same personnel were allocated only 12.3% to Full Service MEO Ports and the remaining 44.8% was allocated to 1Gb connectivity, other port services, transaction services, membership services and market data. The Exchange did not allocate any other Human Resources expense for providing physical connections to any other employee group, outside of a smaller allocation of 16.9% for 10Gb ULL connectivity or 17.3% for the entire network, of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel. In contrast, the Exchange allocated much smaller percentages of costs (6.0% or less) across a wider range of personnel groups in order to allocate Human Resources costs to providing Full Service MEO Ports. This is because a much wider range of personnel are involved in functions necessary to offer, monitor and maintain Full Service MEO Ports but the tasks necessary to do so are not a primary or full-time function.

In total, the Exchange allocated 26.9% of its personnel costs to providing physical connections and 8.3% of its personnel costs to providing Full Service MEO Ports, for a total allocation of 35.2% Human Resources expense to provide these specific connectivity services. In turn, the Exchange allocated the remaining 64.8% of its Human Resources expense to membership services, transaction services, other port services and market data. Thus, again, the Exchange's allocations of cost across core services were based on real costs of

[143] This allocation may differ from MIAX Pearl Equities due to the different amount of proprietary market data feeds the Exchange purchases for its options and equities trading platforms. MIAX Pearl Options primarily relies on data purchased from OPRA. MIAX Pearl Equities does not solely rely on data purchased from the consolidated tape plans (*e.g.,* Nasdaq UTP, CTA, and CQ plans), but rather purchases multiple proprietary market data feeds from other equities exchanges. *See, e.g.,* Exchange Rule 2613 (setting forth the data feeds the Exchange subscribes to for each equities exchange and trading center). The Exchange separately notes that MEMX separately allocated 7.5% of its external market data costs to providing physical connectivity.

operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including physical connections and Full Service MEO Ports, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide connectivity services to its Members and non-Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing connectivity services, but instead allocated approximately 62.1% of the Exchange's overall depreciation and amortization expense to connectivity services (58.2% attributed to 10Gb ULL physical connections and 3.9% to Full Service MEO Ports). The Exchange allocated the remaining depreciation and amortization expense (approximately 37.9%) toward the cost of providing transaction services, membership services, other port services and market data.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. The Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from connectivity, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity and/or Full Service MEO Ports or in obtaining new clients that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

The Exchange notes that the Cost Analysis is based on the Exchange's 2023 fiscal year of operations and projections. It is possible however that such costs will either decrease or increase. To the extent the Exchange sees growth in use of connectivity services it will receive additional revenue to offset future cost increases.

However, if use of connectivity services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange would propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, we believe that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Projected Revenue [144]

The proposed fees will allow the Exchange to cover certain costs incurred by the Exchange associated with providing and maintaining necessary hardware and other network infrastructure as well as network monitoring and support services; without such hardware, infrastructure, monitoring and support the Exchange would be unable to provide the connectivity services. Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection(s). The above cost, namely those associated with hardware, software, and human capital, enable the Exchange to measure network performance with nanosecond granularity. These same costs are also associated with time and money spent seeking to continuously improve the network performance, improving the subscriber's experience, based on monitoring and analysis activity. The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by amending fees for connectivity services. Subscribers, particularly those of 10Gb ULL connectivity, expect the Exchange to provide this level of support to connectivity so they continue to receive the performance they expect. This differentiates the Exchange from its competitors. As detailed above, the Exchange has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue.

The Exchange's Cost Analysis estimates the annual cost to provide 10Gb ULL connectivity services at $11,567,509. Based on current 10Gb ULL connectivity services usage, the Exchange would generate annual revenue of approximately $17,496,000. This represents an estimated profit margin of 34% when compared to the cost of providing 10Gb ULL connectivity services, which will decrease over time.[145] The Exchange's Cost Analysis estimates the annual cost to provide Full Service MEO Port services at $1,644,132. Based on current Full Service MEO Port services usage, the Exchange would generate annual revenue of approximately $1,644,000. This represents a small negative margin when compared to the cost of providing Full Service MEO Port services, which will decrease over time.[146] Even if the Exchange earns those amounts or incrementally more, the Exchange believes the proposed fees are fair and reasonable because they will not result in excessive pricing that deviates from that of other exchanges or supra-competitive profit, when comparing the total expense of the Exchange associated

[144] For purposes of calculating revenue for 10Gb ULL connectivity, the Exchange used revenues for February 2023, the first full month for which it provided dedicated 10Gb ULL connectivity to MIAX Pearl Options and ceased operating a shared 10Gb ULL network with MIAX.

[145] Assuming the U.S. inflation rate continues at its current rate, the Exchange believes that the projected profit margins in this proposal will decrease; however, the Exchange cannot predict with any certainty whether the U.S. inflation rate will continue at its current rate or its impact on the Exchange's future profits or losses. *See, e.g., https://www.usinflationcalculator.com/inflation/current-inflation-rates/* (last visited April 18, 2023).

[146] *Id.*

with providing 10Gb ULL connectivity and Full Service MEO Port services versus the total projected revenue of the Exchange associated with network 10Gb ULL connectivity and Full Service MEO Port services.

* * * * *

The Exchange has operated at a cumulative net annual loss since it launched operations in 2017.[147] The Exchange has operated at a net loss due to a number of factors, one of which is choosing to forgo revenue by offering certain products, such as connectivity, at lower rates than other options exchanges to attract order flow and encourage market participants to experience the high determinism, low latency, and resiliency of the Exchange's trading systems. The Exchange should not now be penalized for seeking to raise its fees in light of necessary technology changes and its increased costs after offering such products as discounted prices. Therefore, the Exchange believes the proposed fees are reasonable because they are based on both relative costs to the Exchange to provide dedicated 10Gb ULL connectivity and Full Service MEO Ports, the extent to which the product drives the Exchange's overall costs and the relative value of the product, as well as the Exchange's objective to make access to its Systems broadly available to market participants. The Exchange also believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup the Exchange's costs of providing dedicated 10Gb ULL connectivity and Full Service MEO Ports.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent customer activity actually produces the revenue estimated. As a competitor in the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such projections will be realized. For instance, in order to generate the revenue expected from 10Gb ULL connectivity and Full Service MEO Ports, the Exchange will have to be successful in retaining existing clients that wish to utilize 10Gb ULL connectivity and Full Service MEO Ports and/or obtaining new clients that will purchase such access. To the extent the Exchange is successful in encouraging new clients to utilize 10Gb ULL connectivity and Full Service MEO Ports, the Exchange does not believe it should be penalized for such success. To the extent the Exchange has mispriced and experiences a net loss in clients, the Exchange could experience a net reduction in revenue. While the Exchange believes in transparency around costs and potential revenue, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted.

The Exchange is owned by a holding company that is the parent company of four exchange markets and, therefore, the Exchange and its affiliated markets must allocate shared costs across all of those markets accordingly, pursuant to the above-described allocation methodology. In contrast, the Investors Exchange LLC (''IEX'') and MEMX, which are currently each operating only one exchange, in their recent non-transaction fee filings can allocate the entire amount of that same cost to a single exchange. This can result in lower profit margins for the non-transaction fees proposed by IEX and MEMX because the single allocated cost does not experience the efficiencies and synergies associated with shared costs across multiple platforms. The Exchange and its affiliated markets must share a single cost, which results in cost efficiencies that cause a broader gap between the allocated cost amount and projected revenue, even though the fee levels being proposed are lower or similar to competing markets (as described above). To the extent that the application of a cost-based standard results in Commission Staff making determinations as to the appropriateness of certain profit margins, the Commission Staff must consider whether the proposed fee level is comparable to, or on parity with, the same fee charged by competing exchanges and how different cost allocation methodologies (such as across multiple markets) may result in different profit margins for comparable fee levels. If it is the case that the Commission Staff is making determinations as to appropriate profit margins, the Exchange believes that Staff should be clear to all market participants as to what they determine is an appropriate profit margin and should apply such determinations consistently and, in the case of certain legacy exchanges, retroactively, if such standards are to avoid having a discriminatory effect.

Further, the proposal reflects the Exchange's efforts to control its costs, which the Exchange does on an ongoing basis as a matter of good business practice. A potential profit margin should not be judged alone based on its size, but is also indicative of costs management and whether the ultimate fee reflects the value of the services provided. For example, a profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling its costs, but not excessive where on another exchange where that exchange is charging comparable fees but has a lower profit margin due to higher costs. Doing so could have the perverse effect of not incentivizing cost control where higher costs alone could be used to justify fees increases.

The Proposed Pricing is not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that the proposed fees are reasonable, fair, equitable, and not unfairly discriminatory because they are designed to align fees with services provided and will apply equally to all subscribers.

10Gb ULL Connectivity

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity and port alternatives, as the users of 10Gb ULL connections consume substantially more bandwidth and network resources than users of 1Gb ULL connection. Specifically, the Exchange notes that 10Gb ULL connection users account for more than 99% of message traffic over the network, driving other costs that are linked to capacity utilization, as described above, while the users of the 1Gb ULL connections account for less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have the same business needs for the high-performance network as 10Gb ULL users.

The Exchange's high-performance network and supporting infrastructure (including employee support), provides unparalleled system throughput with the network ability to support access to several distinct options markets. To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange

[147] The Exchange has incurred a cumulative loss of $79 million since its inception in 2017 to 2021. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000461.pdf.*

must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages to satisfy its record keeping requirements under the Exchange Act.[148] Thus, as the number of messages an entity increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb ULL users pay for the vast majority of the shared network resources from which all market participants' benefit.

Full Service MEO Ports

The tiered pricing structure for Full Service MEO Ports has been in effect since 2018.[149] The Exchange now proposes a pricing structure that is used by the Exchange's affiliates, MIAX and MIAX Emerald, except with lower pricing for each tier for Full Service MEO Ports (Bulk) and a flat fee for Full Service MEO Ports (Single). Members that are frequently in the highest tier for Full Service MEO Ports consume the most bandwidth and resources of the network. Specifically, like above for the 10Gb ULL connectivity, the Exchange notes that the Market Makers who reach the highest tier for Full Service MEO Ports (Bulk) account for approximately greater than 84% of ADV on the Exchange, while Market Makers that are typically in the lowest Tier for Full Service MEO Ports, account for approximately less than 14% of ADV on the Exchange. The remaining 1% is accounted for by Market Makers who are frequently in the middle Tier for Full Service MEO Ports (Bulk).

To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. Billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the Exchange Act.[150] Thus, as the number of connections a Market Maker has increases, the related pull on Exchange resources also increases. The Exchange sought to design the proposed tiered-pricing structure to set the amount of the fees to relate to the number of connections a firm purchases. The more connections purchased by a Market Maker likely results in greater expenditure of Exchange resources and increased cost to the Exchange.

The Exchange further believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory because, for the flat fee, the Exchange provides each Member two (2) Full Service MEO Ports for each matching engine to which that Member is connected. Unlike other options exchanges that provide similar port functionality and charge fees on a per port basis,[151] the Exchange offers Full Service MEO Ports as a package and provides Members with the option to receive up to two Full Service MEO Ports per matching engine to which it connects. The Exchange currently has twelve (12) matching engines, which means Members may receive up to twenty-four (24) Full Service MEO Ports for a single monthly fee, that can vary based on certain volume percentages. The Exchange currently assesses Members a fee of $5,000 per month in the highest Full Service MEO Port—Bulk Tier, regardless of the number of Full Service MEO Ports allocated to the Member. Assuming a Member connects to all twelve (12) matching engines during a month, with two Full Service MEO Ports per matching engine, this results in a cost of $208.33 per Full Service MEO Port—Bulk ($5,000 divided by 24) for the month. This fee has been unchanged since the Exchange adopted Full Service MEO Port fees in 2018.[152] Members will continue to receive two (2) Full Service MEO Ports to each matching engine to which they are connected for the single flat monthly fee. Assuming a Member connects to all twelve (12) matching engines during the month, and achieves the highest Tier for that month, with two Full Service MEO Ports (Bulk) per matching engine, this would result in a cost of $500 per Full Service MEO Port ($12,000 divided by 24).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing 10Gb ULL connectivity and Full Service MEO Ports at below market rates to market participants since the Exchange launched operations. As described above, the Exchange has operated at a cumulative net annual loss since it launched operations in 2017 [153] due to providing a low-cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very lower fee, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low-cost exchange alternative to the options industry, which resulted in lower initial revenues. Examples of this are 10Gb ULL connectivity and Full Service MEO Ports, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Further, the Exchange does not believe that the proposed fee increase for the 10Gb ULL connection change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. As is the case with the current proposed flat fee, the proposed fee would apply uniformly to all market participants regardless of the number of connections they choose to purchase. The proposed fee does not favor certain categories of market participants in a manner that

[148] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[149] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[150] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[151] *See supra* notes 101 to 109 and accompanying text.

[152] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[153] *See supra* note 147.

would impose an undue burden on competition.

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, Exchange personnel has been informally discussing potential fees for connectivity services with a diverse group of market participants that are connected to the Exchange (including large and small firms, firms with large connectivity service footprints and small connectivity service footprints, as well as extranets and service bureaus) for several months leading up to that time. The Exchange does not believe the proposed fees for connectivity services would negatively impact the ability of Members, non-Members (extranets or service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers to compete with other market participants or that they are placed at a disadvantage.

The Exchange does anticipate, however, that some market participants may reduce or discontinue use of connectivity services provided directly by the Exchange in response to the proposed fees. In fact, as mentioned above, one MIAX Pearl Options Market Maker terminated their membership on January 1, 2023 as a direct result of the proposed fee changes.[154] The Exchange does not believe that the proposed fees for connectivity services place certain market participants at a relative disadvantage to other market participants because the proposed connectivity pricing is associated with relative usage of the Exchange by each market participant and does not impose a barrier to entry to smaller participants. The Exchange believes its proposed pricing is reasonable and, when coupled with the availability of third-party providers that also offer connectivity solutions, that participation on the Exchange is affordable for all market participants, including smaller trading firms. As described above, the connectivity services purchased by market participants typically increase based on their additional message traffic and/or the complexity of their operations. The market participants that utilize more connectivity services typically utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the proposed fees for connectivity services do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed connectivity fees reflects the network resources consumed by the various size of market participants and the costs to the Exchange of providing such connectivity services.

Inter-Market Competition

The Exchange also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, options market participants are not forced to connect to all options exchanges. There is no reason to believe that our proposed price increase will harm another exchange's ability to compete. There are other options markets of which market participants may connect to trade options at higher rates than the Exchange's. There is also a range of alternative strategies, including routing to the exchange through another participant or market center or accessing the Exchange indirectly. Market participants are free to choose which exchange or reseller to use to satisfy their business needs. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange also believes that the proposed fees for 10Gb connectivity are appropriate and warranted in light of it bifurcating 10Gb connectivity between the Exchange and MIAX and would not impose any burden on competition because this is a technology driven change that would assist the Exchange in recovering costs related to providing dedicating 10Gb connectivity to the Exchange while enabling it to continue to meet current and anticipated demands for connectivity by its Members and other market participants. Separating its 10Gb network from MIAX would enable the Exchange to better compete with other exchanges by ensuring it can continue to provide adequate connectivity to existing and new Members, which may increase in ability to compete for order flow and deepen its liquidity pool, improving the overall quality of its market.

The proposed rates for 10Gb ULL connectivity are also driven by the Exchange's need to bifurcate its 10Gb ULL network shared with MIAX so that it can continue to meet current and anticipated connectivity demands of all market participants. Similarly, and also in connection with a technology change, Cboe Exchange, Inc. (''Cboe'') amended access and connectivity fees, including port fees.[155] Specifically, Cboe adopted certain logical ports to allow for the delivery and/or receipt of trading messages—*i.e.,* orders, accepts, cancels, transactions, etc. Cboe established tiered pricing for BOE and FIX logical ports, tiered pricing for BOE Bulk ports, and flat prices for DROP, Purge Ports, GRP Ports and Multicast PITCH/Top Spin Server Ports. Cboe argued in its fee proposal that the proposed pricing more closely aligned its access fees to those of its affiliated exchanges, and reasonably so, as the affiliated exchanges offer substantially similar connectivity and functionality and are on the same platform that Cboe migrated to.[156] Cboe also justified its proposal by stating that, ''. . .the Exchange believes substitutable products and services are in fact available to market participants, including, among other things, other options exchanges a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity and/or trading of any options product, including proprietary products, in the Over- the-Counter (OTC) markets.'' [157] Cboe stated in its proposal that,

> The rule structure for options exchanges are also fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange

[154] The Exchange acknowledges that IEX included in its proposal to adopt market data fees after offering market data for free an analysis of what its projected revenue would be if all of its existing customers continued to subscribe versus what its projected revenue would be if a limited number of customers subscribed due to the new fees. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945 (April 13, 2022) (SR–IEX–2022–02). MEMX did not include a similar analysis in either of its recent non-transaction fee proposals. *See, e.g., supra* note 56. The Exchange does not believe a similar analysis would be useful here because it is amending existing fees, not proposing to charge a new fee where existing subscribers may terminate connections because they are no longer enjoying the service at no cost.

[155] *See* Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR–CBOE–2020–105). The Exchange notes that Cboe submitted this filing *after* the Staff Guidance and contained no cost based justification.

[156] *Id.* at 71676.

[157] *Id.*

or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements. Gone are the days when the retail brokerage firms (such as Fidelity, Schwab, and eTrade) were members of the options exchanges—they are not members of the Exchange or its affiliates, they do not purchase connectivity to the Exchange, and they do not purchase market data from the Exchange. Accordingly, not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the recent significant reduction in the number of broker-dealers that are members of all options exchanges.[158]

The proposal also referenced the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''),[159] wherein the Commission discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models. The Commission acknowledged that, even if an exchange were to exit the marketplace due to its proposed fee-related change, it would not significantly impact competition in the market for exchange trading services because these markets are served by multiple competitors.[160] Further, the Commission explicitly stated that ''[c]onsequently, demand for these services in the event of the exit of a competitor is likely to be swiftly met by existing competitors.'' [161] Finally, the Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[162]

Cboe also filed to establish a monthly fee for Certification Logical Ports of $250 per Certification Logical Port.[163] Cboe reasoned that purchasing additional Certification Logical Ports, beyond the one Certification Logical Port per logical port type offered in the production environment free of charge, is voluntary and not required in order to participate in the production environment, including live production trading on the Exchange.[164]

In its statutory basis, Cboe justified the new port fee by stating that it believed the Certification Logical Port fee were reasonable because while such ports were no longer completely free, TPHs and non-TPHs would continue to be entitled to receive free of charge one Certification Logical Port for each type of logical port that is currently offered in the production environment.[165] Cboe noted that other exchanges assess similar fees and cited to NASDAQ LLC and MIAX.[166] Cboe also noted that the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.[167] Finally, similar proposals to adopt a Certification Logical Port monthly fee were filed by Cboe BYX Exchange, Inc.,[168] BZX,[169] and Cboe EDGA Exchange, Inc.[170]

The Cboe fee proposals described herein were filed subsequent to the D.C. Circuit decision in *Susquehanna Int'l Grp., LLC* v. *SEC,* 866 F.3d 442 (DC Cir. 2017), meaning that such fee filings were subject to the same (and current) standard for SEC review and approval as this proposal. In summary, the Exchange requests the Commission apply the same standard of review to this proposal which was applied to the various Cboe and Cboe affiliated markets' filings with respect to non-transaction fees. If the Commission were to apply a different standard of review to this proposal than it applied to other exchange fee filings it would create a burden on competition such that it would impair the Exchange's ability to make necessary technology driven changes, such as bifurcating its 10Gb ULL network, because it would be unable to monetize or recoup costs related to that change and compete with larger, non-legacy exchanges.

* * * * *

In conclusion, as discussed thoroughly above, the Exchange regrettably believes that the application of the Revised Review Process and Staff Guidance has adversely affected inter-market competition among legacy and non-legacy exchanges by impeding the ability of non-legacy exchanges to adopt or increase fees for their market data and access services (including connectivity and port products and services) that are on parity or commensurate with fee levels previously established by legacy exchanges. Since the adoption of the Revised Review Process and Staff Guidance, and even more so recently, it has become extraordinarily difficult to adopt or increase fees to generate revenue necessary to invest in systems, provide innovative trading products and solutions, and improve competitive standing to the benefit of non-legacy exchanges' market participants. Although the Staff Guidance served an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, it has also negatively impacted non-legacy exchanges in particular in their efforts to adopt or increase fees that would enable them to more fairly compete with legacy exchanges, despite providing enhanced disclosures and rationale under both competitive and cost basis approaches provided for by the Revised Review Process and Staff Guidance to support their proposed fee changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received one comment letter on the Initial Proposal and one comment letter on the Second Proposal from the same commenter.[171] In their letters, the sole commenter seeks to incorporate comments submitted on previous Exchange proposals to which the Exchange has previously responded. To the extent the sole commenter has attempted to raise new issues in its letters, the Exchange believes those issues are not germane to this proposal in particular, but rather raise larger issues with the current environment surrounding exchange non-transaction fee proposals that should be addressed

[158] *Id.* at 71676.

[159] *See* Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19).

[160] *Id.*

[161] *Id.*

[162] *Id.*

[163] *See* Securities Exchange Act Release No. 94512 (March 24, 2002), 87 FR 18425 (March 30, 2022) (SR–Cboe–2022–011). Cboe offers BOE and FIX Logical Ports, BOE Bulk Logical Ports, DROP Logical Ports, Purge Ports, GRP Ports and Multicast PITCH/Top Spin Server Ports. For each type of the aforementioned logical ports that are used in the production environment, the Exchange also offers corresponding ports which provide Trading Permit Holders and non-TPHs access to the Exchange's certification environment to test proprietary systems and applications (*i.e.,* ''Certification Logical Ports'').

[164] *See* Securities Exchange Act Release No. 94512 (March 24, 2002), 87 FR 18425 (March 30, 2022) (SR–Cboe–2022–011).

[165] *Id.* at 18426.

[166] *Id.*

[167] *Id.*

[168] *See* Securities Exchange Act Release No. 94507 (March 24, 2002), 87 FR 18439 (March 30, 2022) (SR–CboeBYX–2022–004).

[169] *See* Securities Exchange Act Release No. 94511 (March 24, 2002), 87 FR 18411 (March 30, 2022) (SR–CboeBZX–2022–021).

[170] *See* Securities Exchange Act Release No. 94517 (March 25, 2002), 87 FR 18848 (March 31, 2022) (SR–CboeEDGA–2022–004).

[171] *See* letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023 *and* letter from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023.

by the Commission through rule making, or Congress, more holistically and not through an individual exchange fee filing. Among other things, the commenter is requesting additional data and information that is both opaque and a moving target and would constitute a level of disclosure materially over and above that provided by any competitor exchanges.

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,[172] and Rule 19b–4(f)(2)[173] 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–PEARL–2023–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2023–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–PEARL–2023–19 and should be submitted on or before May 30, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[174]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09683 Filed 5–5–23; 8:45 am]

BILLING CODE 8011–01–P

[172] 15 U.S.C. 78s(b)(3)(A)(ii).

[173] 17 CFR 240.19b–4(f)(2).

[174] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 12:00 p.m. on Thursday, May 11, 2023.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: May 4, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–09852 Filed 5–4–23; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97421; File No. SR–MIAX–2023–19]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing of a Proposed Rule Change To Amend Exchange Rule 307, Position Limits

May 2, 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 21, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 307, Position Limits.

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 proposes to amend Exchange Rule 307, Position Limits, to adopt new paragraph (g) to codify the process for adjusting position limits as a result of a stock split [3] or reverse stock split [4] in the underlying security.

Background

Currently, Exchange Rule 307(d) provides that position limits shall be determined in the following manner: (1) a 25,000 contract limit applies to those to those options having an underlying security that does not meet the requirements for a higher option contract limit; (2) To be eligible for the 50,000 contract limit, either the most recent six (6) month trading volume of the underlying security must have totaled at least twenty (20) million shares, or the most recent six (6) month trading volume of the underlying security must have totaled at least fifteen (15) million shares and the underlying security must have at least forty (40) million shares currently outstanding; (3) To be eligible for the 75,000 contract limit, either the most recent six (6) month trading volume of the underlying security must have totaled at least forty (40) million shares or the most recent six (6) month trading volume of the underlying security must have totaled at least thirty (30) million shares and the underlying security must have at least 120 million shares currently outstanding; (4) To be eligible for the 200,000 contract limit, either the most recent six (6) month trading volume of the underlying security must have totaled at least eighty (80) million shares or the most recent six (6) month trading volume of the underlying security must have totaled at least sixty (60) million shares and the underlying security must have at least 240 million shares currently outstanding; (5) To be eligible for the 250,000 contract limit, either the most recent six (6) month trading volume of the underlying security must have totaled at least 100 million shares or the most recent six (6) month trading volume of the underlying security must have totaled at least seventy-five (75) million shares and the underlying security must have at least 300 million shares currently outstanding.

The Rule also provides that, every six (6) months, the Exchange will review the status of underlying securities to determine which limit should apply. A higher limit will be effective on the date set by the Exchange, while any change to a lower limit will take effect after the last expiration then trading, unless the requirement for the same or a higher limit is met at the time of the intervening six (6) month review. If, however, subsequent to a six (6) month review, an increase in volume and/or outstanding shares would make a stock eligible for a higher position limit prior to the next review, the Exchange in its discretion may immediately increase such position limit.[5] Additionally, Interpretations and Policies .01 of the Rule establishes position limits that exceed the highest limit (250,000 contracts) available by Rule for certain underlying securities.

The Securities and Exchange Commission (the ''Commission'') has recognized that position limits (and exercise limits) serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surround [sic] the use of options. In the past, the Commission has stated that: [6]

Since the inception of standardized options trading, the options exchanges have had rules limiting the aggregate number of options contracts that a member or customer may hold or exercise. These position and exercise limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate the underlying market so as to benefit the option position, or that might contribute to disruptions in the underlying market. In addition, such limits serve to reduce the possibility of disruption in the options market itself, especially in illiquid options classes.[7]

Proposal

The Exchange now proposes to amend its position limit rule, Exchange Rule 307, to codify and make permanent the position limit changes that currently

[3] A stock split is a corporate action in which a company issues additional shares to shareholders, increasing the total by the specified ratio based on the shares they held previously. A stock split happens when a company increase the number of its shares to boost the stock's liquidity. Although the number of shares outstanding increases by a specific multiple, the total dollar value of all shares outstanding remains the same because a split does not fundamentally change the company's value. The most common split ratios are 2-for-1 or 3-for-1 (sometimes denoted as 2:1 or 3:1). This means that for every share held before the split, each stockholder will have two or three shares, respectively, after the split. Example of a stock split, in August 2020, Apple (AAPL) split its shares 4-for-1. Right before the split, each share was trading around $540. After the split, the price per share at the market open was $135 (approximately $540/4). An investor who owned 1,000 share of the stock pre-split would have owned 4,000 shares post-split. Apple's outstanding shares increased from 3.4 billion to approximately 13.6 billion, while the market capitalization remained largely unchanged at $2 trillion. Adam Hayes, *What a Stock Split Is and How It Works, With an Example,* Investopedia (June 7, 2022), *https://www.investopedia.com/terms/s/stocksplit.asp* (last visited 4/17/2023).

[4] A reverse stock split is a type of corporate action that consolidates the number of existing shares of stock into fewer (higher-priced) shares. A reverse stock split divides the existing total quantity of shares by a number such as five or ten, which would then be called a 1-for-5 or 1-for-10 reverse split, respectively. A reverse stock split is also known as stock consolidation, stock merge, or share rollback and is the opposite of a stock split, where a share is divided (split) into multiple parts. Say a pharmaceutical company has ten million outstanding shares in the market, which are trading for $5 per share. As the share price is lower, the company management may wish to artificially inflate the per-share price. They decide to go for the 1-for-5 reverse stock split, which essentially means merging five existing share into one new share. Once the corporate action exercise is over, the company will have 2 million new shares (10 million/5), with each share now costing $25 each ($5 × 5). Akhilesh Ganti, *Reverse Stock Split: What It Is, How It Works, Examples,* Investopedia (July 11, 2022), *https://www.investopedia.com/terms/r/reversesplit.asp* (last visited 4/17/2023).

[5] *See* Exchange Rule 307(e).

[6] *See* Securities Exchange Act Release No. 47346 (February 11, 2003), 68 FR 8316 (February 20, 2003) (SR–CBOE–2002–26) (Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change Increasing Position and Exercise Limits for Options on the DIAMONDS Trust).

[7] *See* Securities Exchange Act Release No. 93525 (November 4, 2021), 86 FR 62584 (November 10, 2021) (SR–CBOE–2021–029) (Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments Nos. 1, 2, and 3, To Increase Position Limits for Options on Two Exchange-Traded Funds).

occur when an underlying security undergoes a corporate stock split. Currently, when an underlying undergoes a stock split, its position limit is adjusted by the Options Clearing Corporation by the factor of the split.[8] For example, an underlying that has a position limit of 250,000 contracts that undergoes a four-for-one stock split will have a new position limit of 1,000,000 contracts. However, while the stock split is a permanent corporate action in the underlying, the position limit adjustment is temporary and lasts only until the time that the last option listed at the time the stock split occurred expires.[9]

To address this issue, the Exchange proposes to similarly apply the adjustment factor to the current position limit, by adopting paragraph (g), Corporate Actions, to Exchange Rule 307, and new subparagraph (g)(1) to describe the Exchange's process for handling stock splits. Additionally, the Exchange proposes to adopt new subparagraph (g)(2) to describe the Exchange's process for handling reverse stock splits.

Specifically, new subparagraph (g)(1) will provide that the position limit that was in effect at the time of the stock split shall be adjusted by multiplying the current position limit value in effect for the underlying by the stock split ratio.[10] The Exchange also proposes to include an example in its rule text to illustrate the operation of the rule by stating, if the current position limit is 250,000 contracts and there is a four-for-one (4:1) stock split in the underlying, the new position limit would be 1,000,000 contracts ($4 \times 250{,}000$).

Similarly, new subparagraph (g)(2) will provide that the position limit that was in effect at the time of the reverse stock split shall be adjusted by dividing the current position limit value in effect for the underlying by the reverse stock split ratio.[11] The Exchange also proposes to include an example in its rule text to illustrate the operation of the rule by stating, if the current position limit is 250,000 contracts and there is one-for-two (1:2) reverse stock split in the underlying, the new position limit would be 125,000 contracts (250,000/2). The Exchange also proposes to adopt rule text to provide that the new position limit will be the greater of the adjusted position limit or the lowest position limit defined in paragraph (d).

The Exchange believes that its proposal presents a logical approach to addressing stock splits in underlying securities as it maintains the integrity of the position limit to shares outstanding ratio, both pre and post-split, and promotes consistency and stability in the marketplace. For example, a position limit of 250,000 contracts on an underlying security that has 4,000,000,000 shares outstanding represents control of 25,000,000 shares or 0.625% of the total shares outstanding. If the underlying security has a four-for-one stock split, the number of shares outstanding would increase to 16,000,000,000. Therefore, to maintain the same position limit to shares outstanding ratio the position limit should accordingly increase fourfold to 1,000,000 contracts, where control of 100,000,000 shares would represent control of 0.625% of the total shares outstanding.

Currently, the scenario described above occurs when there is a stock split, however, when the last option listed at the time of the stock split expires, the position limit is re-evaluated in accordance to the criteria described in Exchange Rule 307(d)(1)–(5), (where the maximum contract limit is 250,000),[12] and the position limit is permanently re-adjusted in accordance to the Rule. However, the reversion of the position limit, even to the maximum limit of 250,000 contracts, unnecessarily restricts trading by imposing a stricter position limit relative to the number of shares outstanding post-stock split than existed pre-stock split. The Exchange's proposal will maintain the position limit ratio to shares outstanding so that the pre-split ratio and post-split ratio are identical, and will eliminate any market disruptions that may occur as a result of the current process for handling stock splits.

Additionally, the Exchange proposes to amend 307(e) to facilitate the six month reevaluation process on underlyings that have undergone a split. Specifically, the Exchange proposes that the split factor be used for analysis purposes under paragraph (d) of Rule 307. The Exchange proposes to adopt rule text that will provide that, for underlying securities whose position limit has been adjusted pursuant to proposed paragraph (g), the split factor shall be used for analysis under paragraph (d). For example, under Exchange Rule 307(d)(5) to be eligible for the 250,000 contract limit, either the most recent six (6) month trading volume of the underlying security must have totaled at least 100 million shares or the most recent six (6) month trading volume of the underlying security must have totaled at least seventy-five (75) million shares and the underlying security must have at least 300 million shares currently outstanding. Under the Exchange's proposal to use the split factor for analysis under paragraph (d), in the event of a four-for-one split in the underlying each threshold would be increased by the split factor and increased fourfold. Therefore the first test would require a six month trading volume of 400 million shares ($100{,}000{,}000 \times 4$), and the second test would require a six month trading volume of 300 million shares ($75{,}000{,}000 \times 4$) and the underlying security would be required to have at least 1,200,000,000 shares currently outstanding ($300{,}000{,}000 \times 4$). The Exchange proposes to take a similar approach with reverse stock splits, and proposes to adopt rule text to provide that, for reverse stock splits, the split factor would be similarly applied and used as a divisor in the calculations rather than as a multiplier.

Additionally, the Exchange proposes to adopt new subparagraph (3) to paragraph (g) to state that, for the purposes of paragraph (g), the term ''stock'' shall pertain solely to equity securities and not be inclusive of Exchange Traded Funds. Rule 307 provides position limits for both equity securities and Exchange Traded Funds,[13] and the Exchange's believes that adopting this rule text provides specificity regarding the scope of the Exchange's proposal.

The Exchange believes its proposal provides a uniform and consistent approach for reevaluating position limits for underlyings that were subject to a stock split, as the split factor is properly applied (multiplied for share splits and divided for reverse share splits) to each threshold value under paragraph (d) to establish the proper position limit.

2. Statutory Basis

The Exchange believes that its 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 foster cooperation and coordination with persons engaged in

[8] The Exchange does not believe that the OCC immediately adjusts position limits for reverse stock splits.

[9] It is the Exchange's understanding and belief that this is the OCC's process.

[10] *See* proposed Exchange Rule 307(g)(1).

[11] *See* proposed Exchange Rule 307(g)(2).

[12] *See* Exchange Rule 307(d)(5).

[13] *See* Interpretations and Policies .01 of Rule 307.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms 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 its proposal would remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest because it provides a method for addressing position limit changes as a result of stock splits occurring in the underlying instrument. Currently, position limits are adjusted at the time of the stock split but revert back to the original position limit when the last listed option at the time of the split expires, which does not benefit investors or the public interest, as the original position limit is no longer meaningfully related to the current shares outstanding. The Exchange also believes that clarifying that its proposal applies only to equity stocks and not to Exchange Traded Funds will avoid investor confusion.

The Exchange believes that its proposal is designed to prevent fraudulent and manipulative acts and practices as the proposal maintains the established position limit relative to shares outstanding pre and post stock split. The Exchange believes its proposal promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to transactions in securities, as the proposal provides a defined calculation in the Exchange's rule to account for stock splits in underlying securities. Additionally, the Exchange proposes a corollary method for handling reverse stock split that employs similar logic.

The Exchange notes that the industry recently experienced an issue with a stock split in Apple Inc. (''AAPL'') that this proposal is tangentially designed to address. In August of 2020, AAPL underwent a four-for-one stock split. Prior to the stock split there were approximately 4,000,000,000 shares of AAPL outstanding [16] and the position limit for AAPL was 250,000 contracts (25,000,000 shares). On August 28, 2020, the Options Clearing Corporation (the ''OCC'') published a Memo indicating that effective August 31, 2020, a contract multiplier of 4 and a strike divisor of 4 would be applied to AAPL contracts and strikes.[17] The OCC also adjusted the position limit for AAPL by the same factor, setting the equity position limit to 100,000,000 shares (1,000,000 contracts). Position limits are published daily by the OCC on its website.[18] However, when the last AAPL option listed at the time of the stock split in 2020 expired in 2022, the OCC reverted back to the original equity position limit for AAPL of 25,000,000 shares (250,000 contracts). Although this position limit technically adheres to Exchange rules,[19] it is more restrictive than the original position limit. Prior to the stock split AAPL had approximately 4,000,000,000 shares outstanding and the position limit of 250,000 contracts represented control of 25,000,000 shares or 0.625% of the shares outstanding. After the stock split AAPL had approximately 16,000,000,000 shares outstanding.[20] The immediate adjustment of the position limit from 250,000 contracts to 1,000,000 contracts reflects control of 100,000,000 shares or 0.625% of the shares outstanding which retains the pre-stock split ratio. Re-adjusting the position limit back to 25,000,000 shares (250,000 contracts) when there are 16,000,000,000 shares outstanding reduces the position limit to 0.156% of the shares outstanding, making the post-stock split position limit more restrictive than the pre-stock split position limit.

This reversion to the pre-stock split position disrupts the market in a number of ways. First, it prevents market participants from effectively pursuing their trading and investment strategies in the same fashion as they had pre-stock split as the position limit relative to shares outstanding becomes more restrictive. Secondly, the reversion to the pre-stock split position limit introduces an element of risk as market participants must unwind their post-stock split positions prior to the occurrence of the reversion back to the pre-stock split position limit level to remain compliant with position limit rules. Finally, the reversion of the position limit may negatively impact trading volumes, as market participants that use option contracts to hedge their risks will not be able to maintain the same levels of market exposure.

Using AAPL as an example, pre-split, a market participant could have had an options position of 250,000 contracts that represented 0.0625% of the total shares outstanding. Post-split, the market participant could have an options position of 1,000,000 contracts, which would still represent 0.0625% of the total shares outstanding. When the reversion back to the pre-split position limit occurs (250,000 contracts) the market participant is forced to reduce its trading activity as the maximum position limit now represents 0.1563% of the total shares outstanding. This reduction in trading volume also represents a reduction in available liquidity. Robust liquidity facilitates price discovery and benefits competition by improving bid/ask spreads, tighter bid/ask spreads lead to better execution prices. Therefore, the reversion to the pre-split position limit negatively impacts liquidity, trading volume, and possibly execution prices.

The Exchange believes that its proposed formula for reevaluating position limits for underlyings that have undergone a stock split or reverse stock split would remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest because it provides a uniform and consistent approach for re-evaluating position limits.

Each option exchange has a similar position limit rule,[21] and the minimum position limit value is used by the OCC. The Exchange believes its proposal will allow each exchange to adopt a similar provision to their position limit rule to harmonize position limit adjustments as a result of stock splits in underlying securities. The Exchange believes this will foster cooperation and coordination with persons engaged in regulating and processing information with respect to transactions in securities by standardizing the calculation of position limits for underlying securities that undergo a stock split. All market participants are able to determine position limits on a daily basis as each day the Options Clearing Corporation publishes a Position Limit file. Additionally, the OCC publishes a Position Limit Change file which reflects position limit adjustments and provides the Start Date and Starting Position Limit coupled with the End

[16] Apple Inc. Form 10–Q for the Quarterly Period Ended June 27, 2020 states that 4,275,634,000 shares of common stock were issued and outstanding as of July 17, 2020.

[17] *See* OCC Memo #47509, Apple Inc.—4 for 1 Stock Split (August 28, 2020) available on its public website at *https://infomemo.theocc.com/infomemos?number=47509.*

[18] *See https://www.theocc.com/market-data/market-data-reports/series-and-trading-data/position-limits.*

[19] *See* Exchange Rule 307(e).

[20] Apple Inc. Form 10–Q for the Quarterly Period Ended June 25, 2022, states that 16,070,752,000 shares of common stock were issued and outstanding as of July 15, 2022.

[21] *See e.g.,* Cboe Exchange Rule 8.30; Box Exchange Rule 3120, Nasdaq Phlx, Options 9, Section 13; Nasdaq ISE, Options 9, Section 13; NYSE Arca 6.8–O; and NYSE American Rule 904.

Date and Ending Position Limit, to alert the industry participants to position limit changes. Therefore, the Exchange believes that its proposal is designed to promote just and equitable principles of trade and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to transactions in securities.

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 does not believe that the proposed rule change will impose any burden on intra-market competition as the rules of the Exchange apply equally to all Members of the Exchange and all Members of the Exchange are required to adhere to the position limits established by the Exchange's rules.

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition as the proposal is not competitive in nature. The Exchange believes that all option exchanges will adopt substantively similar proposals for establishing position limits for underlying securities that undergo a stock split or reverse stock split, such that the Exchange's proposal would benefit competition.

For these reasons, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2023–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2023–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–MIAX–2023–19 and should be submitted on or before May 30, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09684 Filed 5–5–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–481, OMB Control No. 3235–0538]

Submission for OMB Review; Comment Request; Extension: Form ADV–H

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Form ADV–H under the Investment Advisers Act of 1940.'' Form ADV–H (17 CFR 279.3) under the Investment Advisers Act of 1940 (''Advisers Act'') is the application that investment advisers use to request a hardship exemption from making Advisers Act filings electronically with the Investment Adviser Registration Depository (''IARD'').

There are two types of hardship exemptions from making Advisers Act filings through IARD: a temporary hardship exemption and a continuing hardship exemption. Advisers Act rule 203–3 (17 CFR 275.203–3) sets forth requirements for both temporary hardship exemptions and continuing hardship exemptions for advisers registered or registering with the Commission. Advisers Act rule 204–4(e) (17 CFR 275.204–4(e)) sets forth requirements for temporary hardship exemptions for exempt reporting advisers.

A temporary hardship exemption is available to advisers registered or registering with the Commission, as well as exempt reporting advisers, if the adviser has unanticipated technical difficulties that prevent it from submitting a filing to the IARD system. To apply for a temporary hardship exemption, the adviser must file Form

[22] 17 CFR 200.30–3(a)(12).

ADV–H in paper format no later than one business day after the subject filing was due, and submit the subject filing electronically through IARD no later than seven business days after the subject filing was due. The temporary hardship exemption is granted when the adviser files the completed Form ADV–H.

A continuing hardship exemption provides an exemption from electronic filing for no more than one year. It is available to certain advisers registered or registering with the Commission; it is not available to exempt reporting advisers. Such adviser must be a small business and be able to demonstrate that the electronic filing requirements are prohibitively burdensome or expensive. To apply for a continuing hardship exemption, an adviser must file Form ADV–H at least ten business days before a filing is due. The Commission will grant or deny the application within ten business days after the adviser files Form ADV–H. If the Commission approves the application, the adviser may submit filings to FINRA in paper format for the period of time for which the exemption is granted.

The purpose of the collection of information is to enable the Commission to process requests for temporary hardship exemptions and to determine whether to grant a continuing hardship exemption from the requirement for advisers to make Advisers Act filings electronically through IARD.

Respondents are investment advisers registered or registering with the Commission, as well as exempt reporting advisers. Based on our experience and data, we estimate that there are 20,926 respondents, consisting of 15,414 registered investment advisers and 5,512 exempt reporting advisers. Of those respondents, we estimate that we would receive one response annually, and each response would take approximately one hour to complete. Therefore, we estimate an annual aggregate burden of one hour for this collection of information.

The collection of information does not require recordkeeping or records retention. The collection of information requirements are mandatory. The information collected is a filing with the Commission, and is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by June 7, 2023 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: May 2, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09674 Filed 5–5–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97417; File No. SR–PEARL–2023–18]

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 To Modify Certain Connectivity and Port Fees

May 2, 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 20, 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 fee schedule (the ''Fee Schedule'') applicable to MIAX Pearl Equities, an equities trading facility, to amend certain connectivity and port fees.[3]

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 proposes to amend the Fee Schedule to amend fees for: (1) the 1 gigabit (''Gb'') and 10Gb ultra-low latency (''ULL'') fiber connections for Equity Members[4] and non-Members; (2) the Financial Information Exchange (''FIX'') Ports,[5] and the MIAX Express Orders Interface (''MEO'') Ports.[6] The Exchange adopted connectivity and port fees in September 2020,[7] and has not changed those fees since they were adopted. Since that time, the Exchange experienced ongoing increases in expenses, particularly internal expenses.[8] As discussed more fully below, the Exchange recently calculated increased annual aggregate costs of $18,331,650 for providing 1Gb and 10Gb ULL connectivity combined and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] All references to the ''Exchange'' in this filing refer to MIAX Pearl Equities. Any references to the options trading facility of MIAX PEARL, LLC will specifically be referred to as ''MIAX Pearl Options.''

[4] The term ''Equity Member'' means a Member authorized by the Exchange to transact business on MIAX PEARL Equities. *See* Exchange Rule 1901.

[5] ''FIX Order Interface'' or ''FOI'' means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 2614. *See* the Definitions section of the Fee Schedule.

[6] Each MEO interface will have one Full Service Port (''FSP'') and one Purge Port. ''Full Service Port'' or ''FSP'' means an MEO port that supports all MEO order input message types. *See* the Definitions section of the Fee Schedule.

[7] *See* Securities Exchange Act Release No. 90651 (December 11, 2020), 85 FR 81971 (December 17, 2020) (SR–PEARL–2020–33).

[8] For example, the New York Stock Exchange, Inc.'s (''NYSE'') Secure Financial Transaction Infrastructure (''SFTI'') network, which contributes to the Exchange's connectivity cost, increased its fees by approximately 9% since 2021. Similarly, since 2021, the Exchange, and its affiliates, experienced an increase in data center costs of approximately 17% and an increase in hardware and software costs of approximately 19%. These percentages are based on the Exchange's actual 2021 and proposed 2023 budgets.

$3,951,993 for providing FIX and MEO Ports.[9]

Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection with nanosecond granularity, and continuous improvements in network performance with the goal of improving the subscriber's experience. The costs associated with maintaining and enhancing a state-of-the-art network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those increased costs by amending fees for connectivity and port services. Subscribers expect the Exchange to provide this level of support so they continue to receive the performance they expect. This differentiates the Exchange from its competitors.

The Exchange now proposes to amend the Fee Schedule to amend the fees for 1Gb connectivity, 10Gb ULL connectivity and FIX and MEO Ports in order to recoup ongoing costs and increased expenses set forth below in the Exchange's cost analysis. The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The Exchange initially filed the proposal on December 30, 2022 (SR–PEARL–2022–61) (the ''Initial Proposal'').[10] On February 23, 2023, the Exchange withdrew the Initial Proposal and replaced it with a revised proposal (SR–PEARL–2023–06) (the ''Second Proposal'').[11] On April 20, 2023, the Exchange withdrew the Second Proposal and replaced it with this revised proposal (SR–PEARL–2023–18).

The Exchange previously included a cost analysis in the Initial Proposal. As described more fully below, the Exchange provides an updated cost analysis that includes, among other things, additional descriptions of how the Exchange allocated costs among it and its affiliated exchanges (separately among MIAX Pearl Options and MIAX Pearl Equities, MIAX,[12] and MIAX Emerald,[13] together with MIAX and MIAX Pearl Options, the ''affiliated markets'') to ensure no cost was allocated more than once, as well as additional detail supporting its cost allocation processes and explanations as to why a cost allocation in this proposal may differ from the same cost allocation in a similar proposal submitted by one of its affiliated exchanges. Although the baseline cost analysis used to justify the proposed fees was made in the Initial Proposal, the fees themselves have not changed since the Initial Proposal and the Exchange still proposes fees that are intended to cover the Exchange's cost of providing 1Gb and 10Gb ULL connectivity and FIX and MEO Ports.

* * * * *

Starting in 2017, following the United States Court of Appeals for the District of Columbia's *Susquehanna Decision*[14] and various other developments, the Commission began to undertake a heightened review of exchange filings, including non-transaction fee filings that was substantially and materially different from it prior review process (hereinafter referred to as the ''Revised Review Process''). In the *Susquehanna Decision,* the D.C. Circuit Court stated that the Commission could not maintain a practice of ''unquestioning reliance'' on claims made by a self-regulatory organization (''SRO'') in the course of filing a rule or fee change with the Commission.[15] Then, on October 16, 2018, the Commission issued an opinion in *Securities Industry and Financial Markets Association* finding that exchanges failed both to establish that the challenged fees were constrained by significant competitive forces and that these fees were consistent with the Act.[16] On that same day, the Commission issued an order remanding to various exchanges and national market system (''NMS'') plans challenges to over 400 rule changes and plan amendments that were asserted in 57 applications for review (the ''Remand Order'').[17] The Remand Order directed the exchanges to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [18] The Commission denied requests by various exchanges and plan participants for reconsideration of the Remand Order.[19] However, the Commission did extend the deadlines in the Remand Order ''so that they d[id] not begin to run until the resolution of the appeal of the SIFMA Decision in the D.C. Circuit and the issuance of the court's mandate.'' [20] Both the Remand Order and the Order Denying Reconsideration were appealed to the D.C. Circuit.

While the above appeal to the D.C. Circuit was pending, on March 29, 2019, the Commission issued an order disapproving a proposed fee change by BOX Exchange LLC (''BOX'') to establish connectivity fees (the ''BOX Order''), which significantly increased the level of information needed for the Commission to believe that an exchange's filing satisfied its obligations under the Act with respect to changing a fee.[21] Despite approving hundreds of access fee filings in the years prior to the BOX Order (described further below) utilizing a ''market-based'' test, the Commission changed course and disapproved BOX's proposal to begin charging connectivity at one-fourth the rate of competing exchanges' pricing.

Also while the above appeal was pending, on May 21, 2019, the Commission Staff issued guidance ''to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act.'' [22] In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by

[9] For the avoidance of doubt, all references to costs in this filing, including the cost categories discussed below, refer to costs incurred by MIAX Pearl Equities only and not MIAX Pearl Options, the options trading facility.

[10] *See* Securities Exchange Act Release No. 96631 (January 10, 2023), 88 FR 2671 (January 17, 2023) (SR–PEARL–2022–61).

[11] *See* Securities Exchange Act Release No. 97077 (March 8, 2023), 88 FR 15746 (March 14, 2023) (SR–PEARL–2023–06).

[12] The term ''MIAX'' means Miami International Securities Exchange, LLC. *See* Exchange Rule 100.

[13] The term ''MIAX Emerald'' means MIAX Emerald, LLC. *See* Exchange Rule 100.

[14] *See Susquehanna International Group, LLP* v. *Securities & Exchange Commission,* 866 F.3d 442 (D.C. Circuit 2017) (the ''Susquehanna Decision'').

[15] *Id.*

[16] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84432, 2018 WL 5023228 (October 16, 2018) (the ''SIFMA Decision'').

[17] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). *See* 15 U.S.C. 78k–1, 78s; *see also* Rule 608(d) of Regulation NMS, 17 CFR 242.608(d) (asserted as an alternative basis of jurisdiction in some applications).

[18] *Id.* at page 2.

[19] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 85802, 2019 WL 2022819 (May 7, 2019) (the ''Order Denying Reconsideration'').

[20] Order Denying Reconsideration, 2019 WL 2022819, at *13.

[21] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04) (Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network). The Commission noted in the BOX Order that it ''historically applied a 'market-based' test in its assessment of market data fees, which [the Commission] believe[s] present similar issues as the connectivity fees proposed herein.'' *Id.* at page 16. Despite this admission, the Commission disapproved BOX's proposal to begin charging $5,000 per month for 10Gb connections (while allowing legacy exchanges to charge rates equal to 3–4 times that amount utilizing ''market-based'' fee filings from years prior).

[22] See Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Staff Guidance'').

significant competitive forces.'' [23] The Staff Guidance also states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [24]

Following the BOX Order and Staff Guidance, on August 6, 2020, the D.C. Circuit vacated the Commission's SIFMA Decision in *NASDAQ Stock Market, LLC* v. *SEC* [25] and remanded for further proceedings consistent with its opinion.[26] That same day, the D.C. Circuit issued an order remanding the Remand Order to the Commission for reconsideration in light of *NASDAQ.* The court noted that the Remand Order required the exchanges and NMS plan participants to consider the challenges that the Commission had remanded in light of the SIFMA Decision. The D.C. Circuit concluded that because the SIFMA Decision ''has now been vacated, the basis for the [Remand Order] has evaporated.'' [27] Accordingly, on August 7, 2020, the Commission vacated the Remand Order and ordered the parties to file briefs addressing whether the holding in *NASDAQ* v. *SEC* that Exchange Act section 19(d) does not permit challenges to generally applicable fee rules requiring dismissal of the challenges the Commission previously remanded.[28] The Commission further invited ''the parties to submit briefing stating whether the challenges asserted in the applications for review . . . should be dismissed, and specifically identifying any challenge that they contend should not be dismissed pursuant to the holding of *Nasdaq* v. *SEC.*'' [29] Without resolving the above issues, on October 5, 2020, the Commission issued an order granting SIFMA and Bloomberg's request to withdraw their applications for review and dismissed the proceedings.[30]

As a result of the Commission's loss of the *NASDAQ vs. SEC* case noted above, the Commission never followed through with its intention to subject the over 400 fee filings to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [31] As such, all of those fees remained in place and amounted to a baseline set of fees for those exchanges that had the benefit of getting their fees in place before the Commission Staff's fee review process materially changed. The net result of this history and lack of resolution in the D.C. Circuit Court resulted in an uneven competitive landscape where the Commission subjects all new non-transaction fee filings to the new Revised Review Process, while allowing the previously challenged fee filings, mostly submitted by incumbent exchanges prior to 2019, to remain in effect and not subject to the ''record'' or ''review'' earlier intended by the Commission.

While the Exchange appreciates that the Staff Guidance articulates an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, the practical effect of the Revised Review Process, Staff Guidance, and the Commission's related practice of continuous suspension of new fee filings, is anti-competitive, discriminatory, and has put in place an un-level playing field, which has negatively impacted smaller, nascent, non-legacy exchanges (''non-legacy exchanges''), while favoring larger, incumbent, entrenched, legacy exchanges (''legacy exchanges'').[32] The legacy exchanges all established a significantly higher baseline for access and market data fees prior to the Revised Review Process. From 2011 until the issuance of the Staff Guidance in 2019, national securities exchanges filed, and the Commission Staff did not abrogate or suspend (allowing such fees to become effective), at least 92 filings [33] to amend exchange connectivity or port fees (or similar access fees). The support for each of those filings was a simple statement by the relevant exchange that the fees were constrained by competitive forces.[34] These fees remain in effect today.

The net result is that the non-legacy exchanges are effectively now blocked by the Commission Staff from adopting or increasing fees to amounts comparable to the legacy exchanges (which were not subject to the Revised Review Process and Staff Guidance), despite providing enhanced disclosures and rationale to support their proposed fee changes that far exceed any such support provided by legacy exchanges. Simply put, legacy exchanges were able to increase their non-transaction fees during an extended period in which the Commission applied a ''market-based'' test that only relied upon the assumed presence of significant competitive forces, while exchanges today are subject to a cost-based test requiring extensive cost and revenue disclosures, a process that is complex, inconsistently applied, and rarely results in a successful outcome, *i.e.,* non-suspension. The Revised Review Process and Staff Guidance changed decades-long Commission Staff standards for review, resulting in unfair discrimination and placing an undue burden on inter-market competition between legacy exchanges and non-legacy exchanges.

Commission Staff now require exchange filings, including from non-legacy exchanges such as the Exchange, to provide detailed cost-based analysis

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[23] *Id.*

[24] *Id.*

[25] *NASDAQ Stock Mkt., LLC* v. *SEC,* No 18–1324, —Fed. App'x—, 2020 WL 3406123 (D.C. Cir. June 5, 2020). The court's mandate was issued on August 6, 2020.

[26] *Nasdaq* v. *SEC,* 961 F.3d 421, at 424, 431 (D.C. Cir. 2020). The court's mandate issued on August 6, 2020. The D.C. Circuit held that Exchange Act ''section 19(d) is not available as a means to challenge the reasonableness of generally-applicable fee rules.'' *Id.* The court held that ''for a fee rule to be challengeable under section 19(d), it must, at a minimum, be targeted at specific individuals or entities.'' *Id.* Thus, the court held that ''section 19(d) is not an available means to challenge the fees at issue'' in the SIFMA Decision. *Id.*

[27] *Id.* at *2; *see also id.* (''[T]he sole purpose of the challenged remand has disappeared.'').

[28] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 89504, 2020 WL 4569089 (August 7, 2020) (the ''Order Vacating Prior Order and Requesting Additional Briefs'').

[29] *Id.*

[30] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 90087 (October 5, 2020).

[31] *See supra* note 26, at page 2.

[32] Commission Chair Gary Gensler recently reiterated the Commission's mandate to ensure competition in the equities markets. *See* ''Statement on Minimum Price Increments, Access Fee Caps, Round Lots, and Odd-Lots'', by Chair Gary Gensler, dated December 14, 2022 (stating ''[i]n 1975, Congress tasked the Securities and Exchange Commission with responsibility to facilitate the establishment of the national market system and enhance competition in the securities markets, including the equity markets'' (emphasis added)). In that same statement, Chair Gary Gensler cited the five objectives laid out by Congress in 11A of the Exchange Act (15 U.S.C. 78k–1), including ensuring ''fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets. . . .'' (emphasis added). *Id.* at note 1. *See also* Securities Acts Amendments of 1975, *available at https://www.govtrack.us/congress/bills/94/s249.*

[33] This timeframe also includes challenges to over 400 rule filings by SIFMA and Bloomberg discussed above. *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). Those filings were left to stand, while at the same time, blocking newer exchanges from the ability to establish competitive access and market data fees. *See The Nasdaq Stock Market, LLC* v. *SEC,* Case No. 18–1292 (D.C. Cir. June 5, 2020). The expectation at the time of the litigation was that the 400 rule flings challenged by SIFMA and Bloomberg would need to be justified under revised review standards.

[34] *See, e.g.,* Securities Exchange Act Release Nos. 74417 (March 3, 2015), 80 FR 12534 (March 9, 2015) (SR–ISE–2015–06); 83016 (April 9, 2018), 83 FR 16157 (April 13, 2018) (SR–PHLX–2018–26); 70285 (August 29, 2013), 78 FR 54697 (September 5, 2013) (SR–NYSEMKT–2013–71); 76373 (November 5, 2015), 80 FR 70024 (November 12, 2015) (SR–NYSEMKT–2015–90); 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEARCA–2016–172).

in place of competition-based arguments to support such changes. However, even with the added detailed cost and expense disclosures, the Commission Staff continues to either suspend such filings and institute disapproval proceedings, or put the exchanges in the unenviable position of having to repeatedly withdraw and re-file with additional detail in order to continue to charge those fees.[35] By impeding any path forward for non-legacy exchanges to establish commensurate non-transaction fees, or by failing to provide any alternative means for smaller markets to establish ''fee parity'' with legacy exchanges, the Commission is stifling competition: non-legacy exchanges are, in effect, being deprived of the revenue necessary to compete on a level playing field with legacy exchanges. This is particularly harmful, given that the costs to maintain exchange systems and operations continue to increase.

The Commission Staff's change in position impedes the ability of non-legacy exchanges to raise revenue to invest in their systems to compete with the legacy exchanges who already enjoy disproportionate non-transaction fee based revenue. For example, the Cboe Exchange, Inc. (''Cboe'') reported ''access and capacity fee'' revenue of $70,893,000 for 2020[36] and $80,383,000 for 2021.[37] Cboe C2 Exchange, Inc. (''C2'') reported ''access and capacity fee'' revenue of $19,016,000 for 2020[38] and $22,843,000 for 2021.[39] Cboe BZX Exchange, Inc. (''BZX'') reported ''access and capacity fee'' revenue of $38,387,000 for 2020[40] and $44,800,000 for 2021.[41] Cboe EDGX Exchange, Inc. (''EDGX'') reported ''access and capacity fee'' revenue of $26,126,000 for 2020[42] and $30,687,000 for 2021.[43] For 2021, the affiliated Cboe, C2, BZX, and EDGX (the four largest exchanges of the Cboe exchange group) reported $178,712,000 in ''access and capacity fees'' in 2021. NASDAQ Phlx, LLC (''NASDAQ Phlx'') reported ''Trade Management Services'' revenue of $20,817,000 for 2019.[44] The Exchange notes it is unable to compare ''access fee'' revenues with NASDAQ Phlx (or other affiliated NASDAQ exchanges) because after 2019, the ''Trade Management Services'' line item was bundled into a much larger line item in PHLX's Form 1, simply titled ''Market services.''[45]

The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages. First, legacy exchanges are able to use their additional non-transaction revenue for investments in infrastructure, vast marketing and advertising on major media outlets,[46] new products and other innovations. Second, higher non-transaction fees provide the legacy exchanges with greater flexibility to lower their transaction fees (or use the revenue from the higher non-transaction fees to subsidize transaction fee rates), which are more immediately impactful in competition for order flow and market share, given the variable nature of this cost on member firms. The prohibition of a reasonable path forward denies the Exchange (and other non-legacy exchanges) this flexibility, eliminates the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share with legacy exchanges. While one could debate whether the pricing of non-transaction fees are subject to the same market forces as transaction fees, there is little doubt that subjecting one exchange to a materially different standard than that historically applied to legacy exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

While the Commission has clearly noted that the Staff Guidance is merely guidance and ''is not a rule, regulation or statement of the . . . Commission . . . the Commission has neither approved nor disapproved its content . . .'',[47] this is not the reality experienced by exchanges such as MIAX Pearl. As such, non-legacy exchanges are forced to rely on an opaque cost-based justification standard. However, because the Staff Guidance is devoid of detail on what must be contained in cost-based justification, this standard is nearly impossible to meet despite repeated good-faith efforts by the Exchange to provide substantial amount of cost-related details. For example, MIAX Pearl Options has attempted to increase similar fees using a cost-based justification numerous times, having submitted over six filings.[48] However, despite providing 100+ page filings describing in extensive detail its costs associated with providing the services described in the filings, Commission Staff continues to suspend such filings, with the rationale that the Exchange has not provided sufficient detail of its costs and without ever being precise about what additional data points are required. The Commission Staff appears to be interpreting the reasonableness standard set forth in section 6(b)(4) of the Act[49] in a manner that is not possible to achieve. This essentially nullifies the cost-based approach for exchanges as a legitimate alternative as laid out in the Staff Guidance. By refusing to accept a reasonable cost-based argument to justify non-transaction fees (in addition to refusing to accept a competition-based argument

[35] For example, the options exchange affiliates of MIAX Pearl Equities, MIAX, MIAX Pearl Options, and MIAX Emerald, have filed, and subsequently withdrawn, various forms of connectivity and port fee changes at least seven (7) times since August 2021. Each of the proposals contained hundreds of cost and revenue disclosures never previously disclosed by legacy exchanges in their access and market data fee filings prior to 2019.

[36] According to Cboe's 2021 Form 1 Amendment, access and capacity fees represent fees assessed for the opportunity to trade, including fees for trading-related functionality. *See* Cboe 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[37] *See* Cboe 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001155.pdf.*

[38] *See* C2 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000469.pdf.*

[39] *See* C2 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001156.pdf.*

[40] *See* BZX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[41] *See* BZX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001152.pdf.*

[42] *See* EDGX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000467.pdf.*

[43] *See* EDGX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001154.pdf.*

[44] According to PHLX, ''Trade Management Services'' includes ''a wide variety of alternatives for connectivity to and accessing [the PHLX] markets for a fee. These participants are charged monthly fees for connectivity and support in accordance with [PHLX's] published fee schedules.'' *See* PHLX 2020 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2001/20012246.pdf.*

[45] *See* PHLX Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000475.pdf.* The Exchanges notes that this type of Form 1 accounting appears to be designed to obfuscate the true financials of such exchanges and has the effect of perpetuating fee and revenue advantages of legacy exchanges.

[46] *See, e.g., CNBC Debuts New Set on NYSE Floor, available at https://www.cnbc.com/id/46517876.*

[47] *See supra* note 22, at note 1.

[48] *See, e.g.,* Securities Exchange Act Release Nos. 92798 (August 27, 2021), 86 FR 49360 (September 2, 2021) (SR–PEARL–2021–33); 92644 (August 11, 2021), 86 FR 46055 (August 17, 2021) (SR–PEARL–2021–36); 93162 (September 28, 2021), 86 FR 54739 (October 4, 2021) (SR–PEARL–2021–45); 93556 (November 10, 2021), 86 FR 64235 (November 17, 2021) (SR–PEARL–2021–53); 93774 (December 14, 2021), 86 FR 71952 (December 20, 2021) (SR–PEARL–2021–57); 93894 (January 4, 2022), 87 FR 1203 (January 10, 2022) (SR–PEARL–2021–58); 94258 (February 15, 2022), 87 FR 9659 (February 22, 2022) (SR–PEARL–2022–03); 94286 (February 18, 2022), 87 FR 10860 (February 25, 2022) (SR–PEARL–2022–04); 94721 (April 14, 2022), 87 FR 23573 (April 20, 2022) (SR–PEARL–2022–11); 94722 (April 14, 2022), 87 FR 23660 (April 20, 2022) (SR–PEARL–2022–12); 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR–PEARL–2022–18).

[49] 15 U.S.C. 78f(b)(4).

as described above), or by failing to provide the detail required to achieve that standard, the Commission Staff is effectively preventing non-legacy exchanges from making any non-transaction fee changes, which benefits the legacy exchanges and is anticompetitive to the non-legacy exchanges. This does not meet the fairness standard under the Act and is discriminatory.

Because of the un-level playing field created by the Revised Review Process and Staff Guidance, the Exchange believes that the Commission Staff, at this point, should either (a) provide sufficient clarity on how its cost-based standard can be met, including a clear and exhaustive articulation of required data and its views on acceptable margins,[50] to the extent that this is pertinent; (b) establish a framework to provide for commensurate non-transaction based fees among competing exchanges to ensure fee parity; [51] or (c) accept that certain competition-based arguments are applicable given the linkage between non-transaction fees and transaction fees, especially where non-transaction fees among exchanges are based upon disparate standards of review, lack parity, and impede fair competition. Considering the absence of any such framework or clarity, the Exchange believes that the Commission does not have a reasonable basis to deny the Exchange this change in fees, where the proposed change would result in fees meaningfully lower than comparable fees at competing exchanges and where the associated non-transaction revenue is meaningfully lower than competing exchanges.

In light of the above, disapproval of this would not meet the fairness standard under the Act, would be discriminatory and place a substantial burden on competition. The Exchange would be uniquely disadvantaged by not being able to increase its access fees to comparable levels (or lower levels than current market rates) to those of other exchanges for connectivity. If the Commission Staff were to disapprove this proposal, that action, and not market forces, would substantially affect whether the Exchange can be successful in its competition with other exchanges. Disapproval of this filing could also be viewed as an arbitrary and capricious decision should the Commission Staff continue to ignore its past treatment of non-transaction fee filings before implementation of the Revised Review Process and Staff Guidance and refuse to allow such filings to be approved despite significantly enhanced arguments and cost disclosures.[52]

Lastly, the Exchange notes that the Commission Staff has allowed similar fee increases by other exchanges to remain in effect by publishing those filings for comment and allowing the exchange to withdraw and re-file numerous times.[53] Recently, the Commission Staff has not afforded the Exchange the same flexibility.[54] This again is evidence that the Commission Staff is not treating non-transaction fee filings in a consistent manner and is holding exchanges to different levels of scrutiny in reviewing filings.

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[50] To the extent that the cost-based standard includes Commission Staff making determinations as to the appropriateness of certain profit margins, the Exchange believes that Staff should be clear as to what they determine is an appropriate profit margin.

[51] In light of the arguments above regarding disparate standards of review for historical legacy non-transaction fees and current non-transaction fees for non-legacy exchanges, a fee parity alternative would be one possible way to avoid the current unfair and discriminatory effect of the Staff Guidance and Revised Review Process. *See, e.g., CSA Staff Consultation Paper 21–401, Real-Time Market Data Fees, available at https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/Policy2/21401_Market_Data_Fee_CSA_Staff_Consulation_Paper.pdf.*

[52] The Exchange's costs have clearly increased and continue to increase, particularly regarding capital expenditures, as well as employee benefits provided by third parties (*e.g.,* healthcare and insurance). Yet, practically no fee change proposed by the Exchange to cover its ever-increasing costs has been acceptable to the Commission Staff since 2021. The only other fair and reasonable alternative would be to require the numerous fee filings unquestioningly approved before the Staff Guidance and Revised Review Process to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review,'' and to ensure a comparable review process with the Exchange's filing.

[53] *See, e.g.,* Securities Exchange Act Release Nos. 93937 (January 10, 2022), 87 FR 2466 (January 14, 2022) (SR–MEMX–2021–22); 94419 (March 15, 2022), 87 FR 16046 (March 21, 2022) (SR–MEMX–2022–02); SR–MEMX–2022–12 (withdrawn before being noticed); 94924 (May 16, 2022), 87 FR 31026 (May 20, 2022) (SR–MEMX–2022–13); 95299 (July 15, 2022), 87 FR 43563 (July 21, 2022) (SR–MEMX–2022–17); SR–MEMX–2022–24 (withdrawn before being noticed); 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26); 94901 (May 12, 2022), 87 FR 30305 (May 18, 2022) (SR–MRX–2022–04); SR–MRX–2022–06 (withdrawn before being noticed); 95262 (July 12, 2022), 87 FR 42780 (July 18, 2022) (SR–MRX–2022–09); 95710 (September 8, 2022), 87 FR 56464 (September 14, 2022) (SR–MRX–2022–12); 96046 (October 12, 2022), 87 FR 63119 (October 18, 2022) (SR–MRX–2022–20); 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26); *and* 96430 (December 1, 2022), 87 FR 75083 (December 7, 2022) (SR–MEMX–2022–32).

[54] *See* Securities Exchange Act Release Nos. 94721 (April 14, 2022), 87 FR 23573 (April 20, 2022) (SR–PEARL–2022–11) *and* 94722 (April 14, 2022), 87 FR 23660 (April 20, 2022) (SR–PEARL–2022–12).

1Gb and 10Gb ULL Connectivity Fee Change

Sections 2a) and b) of the Fee Schedule describe network connectivity fees for the 1Gb ULL and 10Gb ULL fiber connections, which are charged to both Equity Members and non-Members for connectivity to the Exchange's primary and secondary facilities. The Exchange offers its Equity Members the ability to connect to the Exchange in order to transmit orders to and receive information from the Exchange. Equity Members can also choose to connect to the Exchange indirectly through physical connectivity maintained by a third-party extranet. Extranet physical connections may provide access to one or multiple Equity Members on a single connection. The number of physical connections assigned to each User [55] as of March 31, 2023, ranges from one to thirteen, depending on the scope and scale of the Equity Member's trading activity on the Exchange as determined by the Equity Member, including the Equity Member's determination of the need for redundant connectivity. The Exchange notes that 40% of its Equity Members do not maintain a physical connection directly with the Exchange in the Primary Data Center (though many such Equity Members have connectivity through a third-party provider) and another 46% have either one or two physical ports to connect to the Exchange in the Primary Data Center. Thus, only a limited number of Equity Members, 14%, maintain three or more physical ports to connect to the Exchange in the Primary Data Center.

In order to partially cover the continuous increase in aggregate costs of providing physical connectivity to Equity Members and non-Equity Members, as described below, the Exchange proposes to amend the monthly connectivity fees as follows: (a) increase the 1Gb ULL connection from $1,000 to $2,500; and (b) increase the 10Gb ULL connection from $3,500 to $8,000.[56]

[55] The term ''User'' shall mean any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Exchange Rule 2602. *See* Exchange Rule 1901.

[56] The Exchange notes that while its proposed fee of $8,000 per 10Gb ULL connection is higher than MEMX's $6,000 monthly fee for its xNet Physical Connection, MEMX does not offer any other physical connectivity, such as a 1Gb connection, for a lower fee. *See* Securities Exchange Act Release No. 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26). *See* MEMX Fee Schedule, Connectivity and Application Sessions, *available at https://info.memxtrading.com/fee-schedule/* (last visited April 18, 2023).

FIX and MEO Ports

Similar to other exchanges, the Exchange offers its Equity Members application sessions, also known as ports, for order entry and receipt of trade execution reports and order messages. Equity Members can also choose to connect to the Exchange indirectly through a session maintained by a third-party service bureau. Service bureau sessions may provide access to one or multiple Equity Members on a single session. The number of sessions assigned to each User as of April 18, 2023, ranges from one to more than 100, depending on the scope and scale of the Equity Member's trading activity on the Exchange (either through a direct connection or through a service bureau) as determined by the Equity Member. For example, by using multiple sessions, Equity Members can segregate order flow from different internal desks, business lines, or customers. The Exchange does not impose any minimum or maximum requirements for how many application sessions an Equity Member or service bureau can maintain, and does not propose to impose any minimum or maximum session requirements for its Equity Members or their service bureaus.

Section 2)d), Port Fees, of the Fee Schedule describes fees for access and services used by Equity Members and non-Members. The Exchange provides the following types of ports: (i) FIX Ports, which allow Equity Members to send orders and other messages using the FIX protocol; and (ii) MEO Ports, which allow Equity Members order entry capabilities to all Exchange matching engines.

The Exchange operates a primary and secondary data center as well as a disaster recovery center. Each Port provides access to all Exchange data centers for a single fee. The Exchange currently provides the first twenty-five (25) FIX and MEO Ports free of charge and absorbed all associated costs since the launch of MIAX Pearl Equities. The Exchange charges the following separate monthly fees for FIX and MEO Ports: $450 for ports 26–50, $400 for ports 51–75, $350 for ports 76–100, and $300 for ports 101 and higher. The Exchange now proposes to provide the first five (5) FIX or MEO Ports free of charge, then charge a flat rate of $450 per port for port six (6) and above.[57]

Implementation

The proposed fee changes are immediately effective.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with section 6(b) of the Act[58] in general, and furthers the objectives of section 6(b)(4) of the Act[59] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Equity Members and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposed fees further the objectives of section 6(b)(5) of the Act[60] in that they are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes under the Revised Review Process and as set forth in recent Staff Guidance. Based on both the BOX Order[61] and the Staff Guidance,[62] the Exchange believes that the proposed fees are consistent with the Act because they are: (i) reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Staff Guidance; and (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Exchange believes that exchanges, in setting fees of all types, should meet high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.''[63] The Staff Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.''[64] In the Staff Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, . . . , specific information, including quantitative information, should be provided to support that argument.''[65]

The proposed fees are reasonable because they promote parity among exchange pricing for access, which promotes competition, including in the Exchanges' ability to competitively price transaction fees, invest in infrastructure, new products and other innovations, all while allowing the Exchange to begin to recover its costs to provide dedicated access via 1Gb and 10Gb ULL connectivity as well as FIX and MEO Ports. As discussed above, the Revised Review Process and Staff Guidance have created an uneven playing field between legacy and non-legacy exchanges by severely restricting non-legacy exchanges from being able to increase non-transaction relates fees to provide them with additional necessary revenue to better compete with legacy exchanges, which largely set fees prior to the Revised Review Process. The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages: (i) additional non-transaction revenue that may be used to fund areas other than the non-transaction service related to the fee, such as investments in infrastructure, advertising, new products and other innovations; and (ii) greater flexibility to lower their transaction fees by using the revenue from the higher non-transaction fees to subsidize transaction fee rates. The latter is more immediately impactful in competition for order flow and market share, given the variable nature of this cost on Equity Member firms. The absence of a reasonable path

[57] The Exchange notes that the proposed fee of $450 per port equals the amount charged by MEMX for MEMX's application sessions (order entry and drop copy ports), but MEMX does not offer any ports free of charge. *See* MEMX Fee Schedule, Connectivity and Application Sessions, *available at https://info.memxtrading.com/fee-schedule/* (last visited April 18, 202). *See* Securities Exchange Act Release No. 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26). Unlike MEMX and other exchanges, the Exchange also continues to provide FXD Ports (*i.e.,* Drop Copy Ports) free of charge.

[58] 15 U.S.C. 78f(b).

[59] 15 U.S.C. 78f(b)(4).

[60] 15 U.S.C. 78f(b)(5).

[61] *See supra* note 21.

[62] *See supra* note 22.

[63] *Id.*

[64] *Id.*

[65] *Id.*

forward to increase non-transaction fees to comparable (or lower rates) limits the Exchange's flexibility to, among other things, make additional investments in infrastructure and advertising, diminishes the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share. Again, while one could debate whether the pricing of non-transaction fees are subject to the same market forces as transaction fees, there is little doubt that subjecting one exchange to a materially different standard than that applied to other exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

The Proposed Fees Ensure Parity Among Exchange Access Fees, Which Promotes Competition

The Exchange commenced operations in September 2020 and adopted its initial fee schedule, with 1Gb ULL connectivity set at $1,000, 10Gb ULL connectivity fees set at $3,500, and provided the first twenty-five (25) FIX and MEO Ports for free.[66] As a new exchange entrant, the Exchange chose to offer such services at a discounted rate or free of charge to encourage market participants to trade on the Exchange and experience, among things, the quality of the Exchange's technology and trading functionality. This practice is not uncommon. New exchanges often do not charge fees or charge lower fees for certain services such as memberships/trading permits to attract order flow to an exchange, and later amend their fees to reflect the true value of those services, absorbing all costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives before increasing non-transaction fees encourages market entry and fee parity, which promotes competition among exchanges. It also enables new exchanges to mature their markets and allow market participants to trade on the new exchanges without fees serving as a potential barrier to attracting memberships and order flow.[67]

The Exchange has not amended any of its non-transaction fees since its launch in September 2022. The Exchange balanced business and competitive concerns with the need to financially compete with the larger incumbent exchanges that charge higher fees for similar connectivity and use that revenue to invest in their technology and other service offerings.

The proposed changes to the Fee Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces, which constrains its pricing determinations for transaction fees as well as non-transaction fees. The fact that the market for order flow is competitive has 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 order-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 possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [68]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, 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.'' [69]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' '' [70] As a result, and as evidenced above, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [71] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [72] In the Revised Review Process and Staff Guidance, Commission Staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.'' [73]

The Exchange believes the competing exchanges' connectivity and port fees are useful examples of alternative approaches to providing and charging for access and demonstrating how such fees are competitively set and constrained. To that end, the Exchange believes the proposed fees are competitive and reasonable because the proposed fees are similar to or less than fees charged for similar connectivity and port access provided by other exchanges with comparable market shares. As such, the Exchange believes that denying its ability to institute fees that are closer to parity with legacy exchanges, in effect, impedes its ability to compete, including in its pricing of transaction fees and ability to invest in competitive infrastructure and other offerings.

The following table shows how the Exchange's proposed fees remain

[66] *See supra* note 7.

[67] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) (stating, ''[t]he Exchange established this lower (when compared to other options exchanges in the industry) Participant Fee in order to encourage market participants to become Participants of BOX. . .''). *See also* Securities Exchange Act Release No. 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (SR–MEMX–2020–10) (proposing to adopt the initial fee schedule and stating that ''[u]nder the initial proposed Fee Schedule, the Exchange proposes to make clear that it does not charge any fees for membership, market data products, physical connectivity or application sessions.''). MEMX's market share has increased and recently proposed to adopt numerous non-transaction fees, including fees for membership, market data, and connectivity. *See* Securities Exchange Act Release Nos. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19) (proposing to adopt membership fees); 96430 (December 1, 2022), 87 FR 75083 (December 7, 2022) (SR–MEMX–2022–32) *and* 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26) (proposing to adopt fees for connectivity). *See also, e.g.,* Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR–NYSENAT–2020–05), *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf* (initiating market data fees for the NYSE National exchange after initially setting such fees at zero).

[68] *See NetCoalition,* 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[69] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[70] *See NetCoalition,* 615 F.3d at 534–35; see also H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[71] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR–NYSEArca–2006–21).

[72] *Id.*

[73] *See* Staff Guidance, *supra* note 22.

similar to or less than fees charged for similar connectivity and port access provided by other exchanges with similar market share. Each of the market data rates in place at competing exchanges were filed with the Commission for immediate effectiveness and remain in place today.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
MIAX Pearl Equities(as proposed) (market share of 1.54% for the month of March 2023)[74].	1Gb ULL connection	$2,500.
	10Gb ULL connection	$8,000.
	FIX and MEO Ports	1–5 ports: FREE 6 ports or more: $450 per port.
	FXD Ports (*i.e.,* Drop Copy Ports	FREE.
MEMX[75] (market share of 3.12% for the month of March 2023)[76]	1Gb connection	Not available.
	xNet Physical connection	$6,000 per connection.
	Order Entry Ports	$450 per port.
	Drop Copy Ports	$450 per port.
NASDAQ PSX LLC (“PSX”)[77] (market share of 0.48% for the month of March 2023)[78].	1Gb connection	$2,500 per connection (plus $1,500 installation fee).
	10Gb connection	$7,500 per connection (plus $1,500 installation fee).
	Order Entry Ports	$400 per port.
	Drop Copy Ports	$400 per port.
NASDAQ BX LLC (“BX”)[79] (market share of 0.37% for the month of March 2023)[80].	1Gb Ultra connection	$2,500 per connection (plus $1,500 installation fee).
	10Gb Ultra connection	$15,000 (plus $1,500 installation fee).
	Order Entry Ports	$500 per port.
	Drop Copy Ports	$500 per port.

There is no requirement, regulatory or otherwise, that any broker-dealer connect to and access any (or all of) the available equity exchanges. Market participants may choose to become a member of one or more equities exchanges based on the market participant's assessment of the business opportunity relative to the costs of the Exchange. With this, there is elasticity of demand for exchange membership. As an example, one Market Maker of MIAX Pearl Options terminated their membership effective January 1, 2023 as a direct result of the proposed fee changes to the MIAX Pearl Options fee schedule.

It is not a requirement for market participants to become members of all equities exchanges, in fact, certain market participants conduct an equities business as a member of only one market.[81] A very small number of market participants choose to become a member of all sixteen (16) equities exchanges. Most firms that actively trade on equities markets are not currently Equity Members of the Exchange and do not purchase connectivity or port services at the Exchange. Connectivity and ports are only available to Equity Members or service bureaus, and only an Equity Member may utilize a port.[82]

BOX recently noted in a proposal to amend their own trading permit fees that of the 62 market making firms that are registered as Market Makers across Cboe, MIAX, and BOX, 42 firms access only one of the three exchanges.[83] For equities, the Exchange currently has 45 Equity Members. Also, MEMX noted in a January 2022 filing that it had only 66 members, and, based on publicly available information regarding a sample of the Exchange's competitors, NYSE has 142 members, Cboe BZX has 140 members, and Investors Exchange LLC (“IEX”) has 133 members.[84] For options, the Exchange and its affiliates, MIAX and MIAX Emerald, have a total of 47 members. Of those 47 total members, 35 are members of all three affiliated exchanges, four (4) are members of only two (2) affiliated exchanges, and eight (8) are members of only one affiliated exchange. The Exchange believes that significant differences in membership numbers describes by the Exchange, BOX, and MEMX demonstrate that firms can, and do, select which exchanges they wish to access, and, accordingly, exchanges must take competitive considerations into account when setting fees for such access. The Exchange also notes that no firm is an Equity Member of the Exchange only. The above data evidences that a broker-dealer need not have direct connectivity to all exchanges, let alone the Exchange and its affiliates, and broker-dealers may elect to do so based on their own

[74] *See* Market at a Glance, *available at https://www.miaxoptions.com/.*

[75] *See* MEMX Fee Schedule, Connectivity and Application Sessions, *available at https://info.memxtrading.com/fee-schedule/.*

[76] *See supra* note 74.

[77] *See* PSX Pricing Schedule, *available at https://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing; and* PSX Rules, General 8: Connectivity, Section 2, Direct Connectivity.

[78] *See supra* note 74.

[79] *See* BX Pricing Schedule, *available at https://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing; and BX Rules*, General 8: Connectivity, Section 2, Direct Connectivity.

[80] *See supra* note 74.

[81] BOX recently adopted an electronic market maker trading permit fee. *See* Securities Exchange Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17). In that proposal, BOX stated that, ‘‘. . . it is not aware of any reason why Market Makers could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such Market Maker, did not make business or economic sense for such Market Maker to access such exchange. [BOX] again notes that no market makers are required by rule, regulation, or competitive forces to be a Market Maker on [BOX].’’ Also in 2022, MEMX established a monthly membership fee. *See* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19). In that proposal, MEMX reasoned that that there is value in becoming a member of the exchange and stated that it believed that the proposed membership fee ‘‘is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange’’ and that ‘‘neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange.’’

[82] Service Bureaus may obtain ports on behalf of Equity Members.

[83] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17).

[84] *See* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19).

business decisions and need to directly access each exchange's liquidity pool.

Not only is there not an actual regulatory requirement to connect to every equities exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the broker-dealer membership analysis of exchanges discussed above. Indeed, broker-dealers choose if and how to access a particular exchange and because it is a choice, the Exchange must set reasonable pricing, otherwise prospective members would not connect and existing members would disconnect from the Exchange. The decision to become a member of an exchange, is complex, and not solely based on the non-transactional costs assessed by an exchange. As noted herein, specific factors include, but are not limited to: (i) an exchange's available liquidity in equities securities; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. Becoming a member of the exchange does not ''lock'' a potential member into a market or diminish the overall competition for exchange services.

In lieu of becoming a member at each exchange, a market participant may join one exchange and elect to have their orders routed in the event that a better price is available on an away market. Nothing in the Order Protection Rule requires a firm to become an Equity Member at—or establish connectivity to—the Exchange.[85] If the Exchange is not at the NBBO, the Exchange will route an order to any away market that is at the NBBO to ensure that the order was executed at a superior price and prevent a trade-through.[86]

With respect to the submission of orders, Equity Members may also choose not to purchase any connection at all from the Exchange, and instead rely on the port of a third party to submit an order. For example, a third-party broker-dealer Equity Member of the Exchange may be utilized by a retail investor to submit orders into an Exchange. An institutional investor may utilize a broker-dealer, a service bureau,[87] or request sponsored access [88] through a member of an exchange in order to submit a trade directly to an equities exchange.[89] A market participant may either pay the costs associated with becoming a member of an exchange or, in the alternative, a market participant may elect to pay commissions to a broker-dealer, pay fees to a service bureau to submit trades, or pay a member to sponsor the market participant in order to submit trades directly to an exchange.

Non-Member third-parties, such as service bureaus and extranets, resell the Exchange's connectivity. This indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange's connectivity fees), which alternative is already being used by non-Equity Members and further constrains the price that the Exchange is able to charge for connectivity and other access fees to its market. The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity. Unlike other exchanges, the Exchange also does not currently assess fees on third-party resellers on a per customer basis (*i.e.,* fees based on the number of firms that connect to the Exchange indirectly via the third-party).[90] Indeed, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own.[91] Particularly, in the event that a market participant views the Exchange's direct connectivity and access fees as more or less attractive than competing markets, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to the Exchange and connect instead to one or more of the other 15 equities markets. Accordingly, the Exchange believes that the proposed fees are fair and reasonable and constrained by competitive forces.

The Exchange is obligated to regulate its Equity Members and secure access to its environment. To properly regulate its Equity Members and secure the trading environment, the Exchange takes measures to ensure access is monitored and maintained with various controls. Connectivity and ports are methods utilized by the Exchange to grant Equity Members secure access to communicate with the Exchange and exercise trading rights. When a market participant elects to be an Equity Member, and is approved for membership by the Exchange, the Equity Member is granted trading rights to enter orders and/or quotes into Exchange through secure connections.

Again, there is no legal or regulatory requirement that a market participant become an Equity Member of the Exchange, or, if it is an Equity Member, to purchase connectivity beyond the one connection that is necessary to quote or submit orders on the Exchange. Equity Members may freely choose to rely on one or many connections, depending on their business model. This is again evidenced by the fact that one MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023 as a direct result of the proposed connectivity and port fee changes on MIAX Pearl Options. If a market participant chooses to become an Equity Member, they may then choose to purchase connectivity beyond the one connection that is necessary to quote or submit orders on the Exchange. Members may freely choose to rely on one or many connections, depending on their business model.

Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create

[85] *See* 17 CFR 242.611.

[86] Equity Members may elect to not route their orders by utilizing the Do Not Route or Post Only order type instructions. *See* Exchange Rule 2614(c)(1) and (2).

[87] Service Bureaus provide access to market participants to submit and execute orders on an exchange. On the Exchange, a Service Bureau may be an Equity Member. Some Equity Members utilize a Service Bureau for connectivity and that Service Bureau may not be an Equity Member. Some market participants utilize a Service Bureau who is an Equity Member to submit orders.

[88] Sponsored Access is an arrangement whereby an Equity Member permits its customers to enter orders into an exchange's system that bypass the Equity Member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third-party technology provider.

[89] This may include utilizing a floor broker and submitting the trade to an equities trading floor.

[90] *See, e.g.,* Nasdaq Price List—U.S. Direct Connection and Extranet Fees, *available at,* US Direct-Extranet Connection (*nasdaqtrader.com*); *and* Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); *and* 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114).

[91] The Exchange notes that resellers, such as SFTI, are not required to publicize, let alone justify or file with the Commission their fees, and as such could charge the market participant any fees it deems appropriate (including connectivity fees higher than the Exchange's connectivity fees), even if such fees would otherwise be considered potentially unreasonable or uncompetitive fees.

an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

In proposing to charge fees for connectivity services, the Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and transparently assessing the impact on Equity Members—both generally and in relation to other Equity Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Equity Members and competition among Equity Members in general. The Exchange believes that this level of diligence and transparency is called for by the requirements of section 19(b)(1) under the Act,[92] and Rule 19b–4 thereunder,[93] with respect to the types of information SROs should provide when filing fee changes, and section 6(b) of the Act,[94] which requires, among other things, that exchange fees be reasonable and equitably allocated,[95] not designed to permit unfair discrimination,[96] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[97] This rule change proposal addresses those requirements, and the analysis and data in each of the sections that follow are designed to clearly and comprehensively show how they are met.[98] The Exchange reiterates that the legacy exchanges with whom the Exchange vigorously competes for order flow and market share, were not subject to any such diligence or transparency in setting their baseline non-transaction fees, most of which were put in place before the Revised Review Process and Staff Guidance.

As detailed below, the Exchange recently calculated its aggregate annual costs for providing physical 1Gb and 10Gb ULL connectivity to the Exchange at $18,331,650 combined ($17,726,799 for 10Gb ULL connectivity and $604,851 for 1Gb connectivity) (or approximately $1,527,637 per month for combined connectivity costs, rounded to the nearest dollar when dividing the combined annual cost by 12 months). The Exchange also recently calculated its aggregate annual costs for providing FIX and MEO Ports at $3,951,993 combined ($911,998 for FIX Ports and $3,039,995 for MEO Ports) (or approximately $329,333 per month for combined FIX and MEO Port costs, rounded to the nearest dollar when dividing the combined annual cost by 12 months). In order to cover a portion of the aggregate costs of providing connectivity to its Users (both Equity Members and non-Equity Members [99]) going forward, as described below, the Exchange proposes to modify its Fee Schedule as described above.

In 2020, the Exchange completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis'').[100] The Cost Analysis required a detailed analysis of the Exchange's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services, physical connectivity, and port access (which provide order entry, cancellation and modification functionality, risk functionality, the ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (''cost drivers'').

As an initial step, the Exchange determined the total cost for the Exchange and the affiliated markets. That total cost was then divided among the Exchange and each of its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (*e.g.,* price time or pro-rata), which may impact message traffic, individual system architectures that impact platform size,[101] storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time. This will result in different allocation percentages among the Exchange and its affiliated markets. Meanwhile this allocation methodology ensures that no portion of any cost was allocated twice or double-counted between the Exchange and its affiliated markets.

Next, the Exchange adopted an allocation methodology with thoughtful and consistently applied principles to guide how much of a particular cost amount allocated to the Exchange pursuant to the above methodology should be allocated within the Exchange to each core service. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (62%), with smaller allocations to FIX Ports (1.2%) and MEO Ports (3.8%), and the remainder to the provision of transaction execution, membership services and market data services (33%). This next level of the allocation methodology at the individual exchange level also took into account a number of factors similar to those set forth under the first allocation methodology described above, to determine the appropriate allocation to connectivity or market data versus what is to be allocated to providing other services. The allocation methodology was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an estimated allocation of each cost driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity

[92] 15 U.S.C. 78s(b)(1).

[93] 17 CFR 240.19b–4.

[94] 15 U.S.C. 78f(b).

[95] 15 U.S.C. 78f(b)(4).

[96] 15 U.S.C. 78f(b)(5).

[97] 15 U.S.C. 78f(b)(8).

[98] *See* Staff Guidance, *supra* note 22.

[99] Types of market participants that obtain connectivity services from the Exchange but are not Equity Members include service bureaus and extranets. Service bureaus offer technology-based services to other companies for a fee, including order entry services, and thus, may access application sessions on behalf of one or more Equity Members. Extranets offer physical connectivity services to Equity Members and non-Equity Members.

[100] The Exchange frequently updates it Cost Analysis as strategic initiatives change, costs increase or decrease, and market participant needs and trading activity changes. The Exchange's most recent Cost Analysis was conducted ahead of this filing.

[101] For example, MIAX Pearl Equities maintains 24 matching engines, MIAX Pearl Options maintains 12 matching engines, MIAX maintains 24 matching engines and MIAX Emerald maintains 12 matching engines.

and port services, membership fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Equity Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; many Equity Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange's costs, the Exchange's methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges' interdependent costs, the Exchange is left with its best efforts attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange's extensive updated Cost Analysis, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of connectivity services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of connectivity services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity services. In turn, the Exchange allocated certain costs more to physical connectivity and others to ports, while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, the Exchange estimates that the cost drivers to provide 1Gb and10Gb ULL connectivity, as well as FIX and MEO Ports, result in an aggregate combined monthly cost of $1,856,970, as further detailed below.

Lastly, the Exchange notes that, based on: (i) the total expense amounts contained in this filing (which are 2023 projected expenses), and (ii) the total expense amounts contained in the related MIAX Pearl Options filing (also 2023 projected expenses), MIAX PEARL, LLC's total costs have increased at a greater rate over the last three years than the total costs of MIAX PEARL, LLC's affiliated exchanges, MIAX and MIAX Emerald. This is also reflected in the total costs reported in MIAX PEARL, LLC's Form 1 filings over the last three years, when comparing MIAX PEARL, LLC to MIAX PEARL, LLC's affiliated exchanges, MIAX and MIAX Emerald. This is primarily because that MIAX PEARL, LLC operates two markets, one for options and one for equities, while MIAX and MIAX Emerald each operate only one market. This is also due to higher current expense for MIAX PEARL, LLC for 2022 and 2023, due to a hardware refresh (*i.e.,* replacing old hardware with new equipment) for MIAX Pearl Options, as well as higher costs associated with MIAX Pearl Equities due to greater development efforts to grow that newer marketplace, all of which are discussed in more detail below. MIAX PEARL, LLC confirms that there is no double counting of expenses between the options and equities platform of MIAX PEARL, LLC; the greater expense amounts of MIAX PEARL, LLC (relative to its affiliated exchanges, MIAX and MIAX Emerald) is solely attributed to the unique factors of MIAX PEARL, LLC discussed above.

Costs Related to Offering Physical 1Gb and 10Gb ULL Connectivity

The following charts detail the individual line-item costs considered by the Exchange to be related to offering physical dedicated 1Gb and 10Gb ULL connectivity via an unshared network as well as the percentage of the Exchange's overall costs that such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 47.6% of its overall Human Resources cost to offering physical 1Gb and 10Gb ULL connectivity).

10GB ULL CONNECTIVITY

Cost drivers	Annual cost [102]	Monthly cost [103]	% of all
Human Resources	$5,936,741	$494,728	46.1
Connectivity (external fees, cabling, switches, etc.)	69,451	5,788	60
Internet Services, including External Market Data	1,818,808	151,567	72.5
Data Center	1,052,797	87,733	60
Hardware and Software Maintenance and Licenses	642,112	53,509	58
Depreciation	3,448,206	287,351	73.6
Allocated Shared Expenses	4,758,684	396,557	48.6
Total	17,726,799	1,477,233	54

1GB ULL CONNECTIVITY

Cost drivers	Annual cost [104]	Monthly cost [105]	% of all
Human Resources	$202,566	$16,880	1.6
Connectivity (external fees, cabling, switches, etc.)	2,370	197	2.0
Internet Services, including External Market Data	62,059	5,172	2.5
Data Center	35,922	2,993	2.0
Hardware and Software Maintenance and Licenses	21,909	1,826	2.0
Depreciation	117,655	9,805	2.5
Allocated Shared Expenses	162,370	13,531	1.7

1GB ULL CONNECTIVITY—Continued

Cost drivers	Annual cost [104]	Monthly cost [105]	% of all
Total	604,851	50,404	1.8

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering physical 1Gb and 10Gb ULL connectivity. The Exchange notes that some of its cost allocation percentages for certain categories of expense differ when compared to the same categories of expense described by the Exchange's affiliates in their similar proposed fee changes for connectivity and ports. This is because the Exchange's cost allocation methodology utilizes the actual projected costs of the Exchange (which are specific to the Exchange, and are independent of the costs projected and utilized by the Exchange's affiliates) to determine its actual costs. The Exchange provides additional explanation below (including the reason for the deviation) where the Exchange considers such deviation in allocations to be more than *de minimis.*

Human Resources

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include providing and maintaining physical connectivity and performance thereof (primarily the Exchange's network infrastructure team, which spends most of their time performing functions necessary to provide physical connectivity) and for which the Exchange allocated percentages of 58% for 10Gb ULL connectivity and 2.0% for 1Gb connectivity of each employee's time assigned to the Exchange based on the above-described allocation methodology. The Exchange also allocated Human Resources costs to provide physical connectivity to a limited subset of personnel with ancillary functions related to establishing and maintaining such connectivity (such as information security and finance personnel), for which the Exchange allocated cost on an employee-by-employee basis (*i.e.,* only including those personnel who do support functions related to providing physical connectivity) and then applied a smaller allocation to such employees (less than 37%). The Exchange notes that it and its affiliated markets have 184 employees and each department leader has direct knowledge of the time spent by those spent by each employee with respect to the various tasks necessary to operate the Exchange. Specifically, twice a year and as needed with additional new hires and new project initiatives, in consultation with each employee, managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine that market's individual Human Resources expense. Then, again in consultation with each employee, managers and department heads assign a percentage of each employee's time allocated to the Exchange into buckets including, network connectivity, ports, market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing physical connectivity, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing physical connectivity. This includes personnel from the following Exchange departments that are predominately involved in providing 1Gb and 10Gb ULL connectivity: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. The Exchange notes that senior level executives were only allocated Human Resources costs to the extent the Exchange believed they are involved in overseeing tasks related to providing physical connectivity. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Lastly, the Exchange notes that the above allocation for 10Gb ULL connectivity is greater than its affiliate options exchanges by more than a *de minimis* amount as MIAX Pearl Equities allocated 46.1% of its Human Resources expense towards 10Gb ULL connectivity, while MIAX, MIAX Pearl Options and MIAX Emerald allocated 25%, 26.3% and 28%, respectively, to the same category of expense. This difference is due to meaningfully more current and anticipated business and technology initiatives dedicated to MIAX Pearl Equities than its affiliate options exchanges at the time of this filing. These initiatives include: enhancements to routing options, expanding the available order types, adding direct market data connectivity to competing exchanges, and adopting additional risk controls.[106] MIAX Pearl Equities is a relatively new market (launched in September of 2020), and, as a result, more personnel are allocated to work on various business initiatives and enhancements to help the market grow, add new functionality, and expand its product offerings. These

[102] The Annual Cost includes figures rounded to the nearest dollar.

[103] The Monthly Cost was determined by dividing the Annual Cost for each line item by twelve (12) months and rounding up or down to the nearest dollar.

[104] *See supra* note 102.

[105] *See supra* note 103.

[106] *See, e.g.,* Securities Exchange Act Release Nos. 94301 (February 23, 2022), 87 FR 11739 (March 2, 2022) (SR–PEARL–2022–06) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 2617(b) To Adopt Two New Routing Options, and To Make Related Changes and Clarifications to Rules 2614(a)(2)(B) and 2617(b)(2)); 94851 (May 4, 2022), 87 FR 28077 (May 10, 2022) (SR–PEARL–2022–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Exchange Rule 532, Order Price Protection Mechanisms and Risk Controls); 95298 (July 15, 2022), 87 FR 43579 (July 21, 2022) (SR–PEARL–2022–29) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC To Amend the Route to Primary Auction Routing Option Under Exchange Rule 2617(b)(5)(B)); 95679 (September 6, 2022), 87 FR 55866 (September 12, 2022) (SR–PEARL–2022–34) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 2614, Orders and Order Instructions, To Adopt the Primary Peg Order Type); 96205 (November 1, 2022), 87 FR 67080 (November 7, 2022) (SR–PEARL–2022–43) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 2614, Orders and Order Instructions and Rule 2618, Risk Settings and Trading Risk Metrics To Enhance Existing Risk Controls); 96905 (February 13, 2023), 88 FR 10391 (February 17, 2023) (SR–PEARL–2023–03) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 2618 To Add Optional Risk Control Settings); 97236 (March 31, 2023), 88 FR 20597 (April 6, 2023) (SR–PEARL–2023–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rules 2617 and 2626 Regarding Retail Orders Routed Pursuant to the Route to Primary Auction Routing Option).

technology changes directly impact the Exchange's interface specifications and matching engine which, in turn, impacts connectivity by requiring additional coding, testing, and other updates necessary to accommodate the above initiatives.

Connectivity and Internet Services

The Connectivity cost includes external fees paid to connect to other exchanges and third parties, cabling and switches required to operate the Exchange. The Connectivity line-item is more narrowly focused on technology used to complete connections to the Exchange and to connect to external markets. The Exchange notes that its connectivity to external markets is required in order to receive market data to run the Exchange's matching engine and basic operations compliant with existing regulations, primarily Regulation NMS.

The Exchange relies on various connectivity and content service providers for connectivity and data feeds for the entire U.S. equities industry, as well as content, connectivity, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 1Gb and 10Gb ULL connectivity. Specifically, the Exchange utilizes connectivity and content service providers to connect to other national securities exchanges, the NASDAQ UTP and CTA/CQ Plans, and to receive market data from other exchanges and market data providers. The Exchange understands that these service providers provide services to most, if not all, of the other U.S. exchanges and other market participants. Connectivity and market data provided these service providers is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity. Without these services providers, the Exchange would not be able to connect to other national securities exchanges, market data providers, or the NASDAQ UTP and CTA/CQ Plans and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its connectivity and content service provider expense and recoups that expense, in part, by charging for 1Gb and 10Gb ULL connectivity.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment (such as dedicated space, security services, cooling and power). The Exchange notes that it does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties. The Exchange has allocated a high percentage of the Data Center cost (62%) to physical 1Gb and 10Gb ULL connectivity because the third-party data centers and the Exchange's physical equipment contained therein is the most direct cost in providing physical access to the Exchange. In other words, for the Exchange to operate in a dedicated space with connectivity of participants to a physical trading platform, the data centers are a very tangible cost, and in turn, if the Exchange did not maintain such a presence then physical connectivity would be of no value to market participants.

External Market Data

External Market Data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange included External Market Data fees to the provision of physical connectivity as such market data is necessary here to offer certain services related to such connectivity, such as certain risk checks that are performed prior to execution, and checking for other conditions (*e.g.,* limit order price protection, trading collars). This allocation was included as part of the Internet Services cost described above.[107] Thus, as market data from other Exchanges is consumed at the matching engine level, (to which physical connectivity provides access to) in order to validate orders before additional entering the matching engine or being executed, the Exchange believes it is reasonable to allocate a small amount of such costs to 10Gb ULL connectivity.

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer physical connectivity to the Exchange.[108] The Exchange notes that this allocation is greater than MIAX and MIAX Emerald options exchanges by more than a *de minimis* amount as MIAX Pearl Equities allocated 58% of its Hardware and Software Maintenance and License expense towards 10Gb ULL connectivity, while MIAX and MIAX Emerald allocated 49.8% and 50.9%, respectively, to the same category of expense. MIAX Pearl Options allocated a higher percentage of the same category of expense (58.6%) towards its Hardware and Software Maintenance and License expense for 10Gb ULL connectivity, which MIAX Pearl Options explains in its own proposal to amend its 10Gb ULL connectivity fees. This difference in allocation is because MIAX Pearl Equities maintains software licenses that are unique to its trading platform and used only for the trading of equity securities. The cost for these licenses cannot be shared with MIAX Pearl Equities' affiliated options markets because each of those platforms trade only options, not equities. MIAX Pearl Equities' affiliates are able to share the cost of many of their software licenses among the multiple options platforms (thus lowering the cost to each individual options platform), whereas MIAX Pearl Equites cannot share such cost and, therefore, bears the entire cost.

Monthly Depreciation

All physical assets and software, which also includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. As noted above, the Exchange allocated 73.6% of all depreciation costs to providing physical 10Gb ULL connectivity and 2.5% of all depreciation costs to providing 1Gb connectivity. The Exchange notes, however, that it did not allocate depreciation costs for any depreciated software necessary to operate the Exchange to physical connectivity, as

[107] This allocation may differ from MIAX Pearl Options due to the different amount of proprietary market data feeds the Exchange purchases for its options and equities trading platforms. For options, the Exchange primarily relies on data purchased from OPRA. For equities, the Exchange does not solely rely on data purchased from the consolidated tape plans (*e.g.,* Nasdaq UTP, CTA, and CQ plans), but rather purchases multiple proprietary market data feeds from other equities exchanges. *See, e.g.,* Exchange Rule 2613 (setting forth the data feeds the Exchange subscribes to for each equities exchange and trading center).

[108] This expense may be greater than the Exchange's affiliated markets, specifically MIAX and MIAX Emerald, because, unlike MIAX and MIAX Emerald, MIAX Pearl Equities and MIAX Pearl Options both maintain an additional gateway to accommodate their Members' and Equity Members' access and connectivity needs. This added gateway contributes to the difference in allocations between MIAX Pearl Equities and MIAX Pearl Options and MIAX and MIAX Emerald.

such software does not impact the provision of physical connectivity. The Exchange also notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost.

Lastly, the Exchange notes that this allocation is greater than its affiliate options exchanges by more than a *de minimis* amount as MIAX Pearl Equities allocated 73.6% of its Depreciation expense towards 10Gb ULL connectivity, while MIAX, MIAX Pearl Options and MIAX Emerald allocated 61.6%, 58.2% and 63.8%, respectively, to the same category of expense. This is due to MIAX Pearl Equities being a newer market and having newer physical assets and software subject to depreciation than its affiliate options exchanges. The Exchange's affiliate options exchanges are older markets that have more software and equipment that have been fully depreciated when compared to the newer software and hardware currently being depreciated by MIAX Pearl Equities at higher rates.

Allocated Shared Expenses

Finally, a limited portion of general shared expenses was allocated to overall physical connectivity costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide physical connectivity. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange notes that the cost of paying directors to serve on its Board of Directors is also included in the Exchange's general shared expenses.[109] The Exchange notes that the 50% allocation of general shared expenses for physical connectivity is higher than that allocated to general shared expenses for FIX and MEO Ports based on its allocation methodology that weighted costs attributable to each Core Service based on an understanding of each area. While physical connectivity has several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Centers, as described above), FIX and MEO Ports do not require as many broad or indirect resources as other Core Services. The total monthly cost for 10Gb ULL connectivity of $1,477,233 was divided by the number of physical 10Gb ULL connections the Exchange maintained at the time that proposed pricing was determined (90), to arrive at a cost of approximately $16,414 per month, per physical 10Gb ULL connection. The total monthly cost for 1Gb connectivity of $50,404 was divided by the number of physical 1Gb connections the Exchange maintained at the time that proposed pricing was determined (8), to arrive at a cost of approximately $6,301 per month, per physical 1Gb connection.

Costs Related to Offering FIX and MEO Ports

The following chart details the individual line-item costs considered by the Exchange to be related to offering FIX and MEO Ports as well as the percentage of the Exchange's overall costs such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 22.4% of its overall Human Resources cost to offering FIX and MEO Ports).

FIX PORTS

Cost drivers	Annual cost [110]	Monthly cost [111]	Percent of all
Human Resources	$665,726	$55,476	5.2
Connectivity (external fees, cabling, switches, etc.)	535	45	0.5
Internet Services, including External Market Data	11,574	965	0.5
Data Center	20,262	1,689	1.2
Hardware and Software Maintenance and Licenses	5,108	426	0.5
Depreciation	92,114	7,676	2.0
Allocated Shared Expenses	116,679	9,723	1.2
Total	911,998	76,000	2.8

MEO PORTS

Cost drivers	Annual cost [112]	Monthly cost [113]	Percent of all
Human Resources	$2,219,088	$184,924	17.2
Connectivity (external fees, cabling, switches, etc.)	1,782	149	1.5
Internet Services, including External Market Data	38,582	3,215	1.5
Data Center	67,538	5,628	3.8
Hardware and Software Maintenance and Licenses	17,026	1,419	1.5

[109] The Exchange notes that MEMX allocated a precise amount of 10% of the overall cost for directors to providing physical connectivity. The Exchange does not calculate its expenses at that granular a level. Instead, director costs are included as part of the overall general allocation.

[110] *See supra* note 102 (describing rounding of Annual Costs).

[111] *See supra* note 103 (describing rounding of Monthly Costs based on annual costs).

[112] *See supra* note 102 (describing rounding of Annual Costs). The Exchange notes that costs to provide MEO Ports are higher than the Exchange's costs to provide FIX Ports because it is more expensive to maintain and support the MEO network due to its high performance capabilities and supporting infrastructure (including employee support). The MEO interface is a customizable binary interface that the Exchange developed in-house and maintains on its own. The FIX interface is the industry standard for simple order entry, which requires less development, maintenance, and support than the MEO interface. The MEO interface provides best-in-class system throughput and capacity. Users of MEO Ports, which are primarily Equity Market Makers, consume the most bandwidth and resources of the network via MEO Ports. To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers, resulting in greater cost to provide and maintain MEO ports.

[113] *See supra* note 103 (describing rounding of Monthly Costs based on annual costs).

MEO PORTS—Continued

Cost drivers	Annual cost [112]	Monthly cost [113]	Percent of all
Depreciation	307,048	25,587	6.6
Allocated Shared Expenses	388,931	32,411	4.0
Total	3,039,995	253,333	9.3

Human Resources

With respect to FIX and MEO Ports, the Exchange calculated Human Resources cost by taking an allocation of employee time for employees whose functions include providing FIX and MEO Ports and maintaining performance thereof (including a broader range of employees such as technical operations personnel, market operations personnel, and software engineering personnel) as well as a limited subset of personnel with ancillary functions related to maintaining such connectivity (such as sales, membership, and finance personnel). Just as described above for 10Gb ULL connectivity, the estimates of Human Resources cost were again determined by consulting with department leaders, determining which employees are involved in tasks related to providing application sessions and maintaining performance thereof, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing application sessions and maintaining performance thereof. This includes personnel from the following Exchange departments that are predominately involved in providing FIX and MEO Ports: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. The Exchange notes that senior level executives were only allocated Human Resources costs to the extent the Exchange believed they are involved in overseeing tasks related to providing application sessions and maintaining performance thereof. The Human Resources cost was again calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Lastly, the Exchange notes that the Human Resource allocation for MEO Ports is greater than its Human Resource allocation for FIX Ports by more than a *de minimis* amount as MIAX Pearl Equities allocated 5.2% of its Human Resource expense towards FIX Ports and 17.2% of its Human Resource expense towards MEO Ports. This is because the MEO interface is a customized binary interface that the Exchange developed in-house and maintains on its own. The FIX interface is the industry standard for simple order entry which requires less development, maintenance, and support than the MEO interface. The MEO interface is performance oriented and designed to meet the needs of more latency sensitive Equity Members. Due to the in-house development of the MEO interface, the Exchange was required to expend more internal personnel to support the MEO interface than the FIX interface. Because of the materially higher cost associated with maintaining and supporting MEO Ports versus FIX Ports, the Exchange allocates a materially higher percentage of Human Resource expense to MEO Ports versus FIX Ports, which is a less complex, standardized solution.

Connectivity and Internet Services

The Connectivity cost includes external fees paid to connect to other exchanges, cabling and switches, as described above. For purposes of FIX and MEO Ports, the Exchange also includes a portion of its costs related to External Market Data, as described below.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs (the Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties).

External Market Data

External Market Data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange included External Market Data fees to the provision of application sessions as such market data is also necessary here (in addition to physical connectivity) to offer certain services related to such sessions, such as validating orders on entry against the national best bid and national best offer and checking for other conditions (*e.g.,* whether a symbol is halted or subject to a short sale circuit breaker). This allocation was included as part of the internet Services cost described above.[114] Thus, as market data from other Exchanges is consumed at the application session level in order to validate orders before additional processing occurs with respect to such orders, the Exchange believes it is reasonable to allocate a small amount of such costs to application sessions.

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to monitor the health of the order entry services provided by the Exchange, as described above.

Monthly Depreciation

All physical assets and software, which also includes assets used for testing and monitoring of order entry infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which is owned by the Exchange and some of which is leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange allocated 8.6% of all depreciation costs to providing FIX and MEO Ports. In contrast to physical connectivity, described above, the Exchange did allocate depreciation costs for depreciated software necessary to operate the Exchange to FIX and MEO Ports because such software is related to

[114] This allocation may differ from MIAX Pearl Options due to the different amount of proprietary market data feeds the Exchange purchases for its options and equities trading platforms. MIAX Pearl Options primarily relies on data purchased from OPRA. MIAX Pearl Equities does not solely rely on data purchased from the consolidated tape plans (*e.g.,* Nasdaq UTP, CTA, and CQ plans), but rather purchases multiple proprietary market data feeds from other equities exchanges. *See, e.g.,* Exchange Rule 2613 (setting forth the data feeds the Exchange subscribes to for each equities exchange and trading center). The Exchange separately notes that MEMX separately allocated 7.5% of its external market data costs to providing physical connectivity.

the provision of such connectivity. The Exchange also notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost.

Lastly, the Exchange notes that the Depreciation allocation for MEO Ports is greater than the Depreciation allocation for FIX Ports by more than a *de minimis* amount as MIAX Pearl Equities allocated 2.00% of its Depreciation expense towards FIX Ports and 6.60% of its Depreciation expense towards MEO Ports. As discussed above, this is because the MEO interface is a customized binary interface that the Exchange developed in-house and maintains on its own. The FIX interface is the industry standard for simple order entry which requires less development, maintenance, and support than the MEO interface. The Exchange maintains more dedicated hardware per port for the MEO interface compared to the FIX interface; MEO Ports sit on their own core server, whereas for the FIX interface, three (3) to five (5) connections may go onto a single server. As a result, the MEO interface is supported by more dedicated in-house hardware and software than the FIX interface that is subject to depreciation. Thus, there is a greater amount of equipment supporting the MEO interface than the FIX interface, resulting in higher depreciation costs than the FIX interface.

Allocated Shared Expenses

Finally, a limited portion of general shared expenses was allocated to overall FIX and MEO Ports costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide application sessions. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange again notes that the cost of paying directors to serve on its Board of Directors is included in the calculation of Allocated Shared Expenses, and thus a portion of such overall cost amounting to less than 20% of the overall cost for directors was allocated to providing FIX and MEO Ports. The Exchange notes that the 5.2% allocation of general shared expenses for FIX and MEO Ports is lower than that allocated to general shared expenses for physical connectivity based on its allocation methodology that weighted costs attributable to each Core Service based on an understanding of each area. While FIX and MEO Ports have several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Centers, as described above), 1Gb and 10Gb ULL connectivity requires a broader level of support from Exchange personnel in different areas, which in turn leads to a broader general level of cost to the Exchange. The total monthly cost for FIX Ports of $76,000 was divided by the number of FIX Ports the Exchange maintained at the time that proposed pricing was determined (142), to arrive at a cost of approximately $535 per month, per FIX Port (rounded to the nearest dollar when dividing the approximate monthly cost by the number of FIX Ports). The total monthly cost for MEO Ports of $253,333 was divided by the number of MEO Ports the Exchange maintained at the time that proposed pricing was determined (336), to arrive at a cost of approximately $754 per month, per MEO Port (rounded to the nearest dollar when dividing the approximate monthly cost by the number of MEO Ports).

Lastly, the Exchange notes that the Allocated Shared Expense allocation for MEO Ports is greater than the same allocation for FIX Ports by more than a *de minimis* amount as MIAX Pearl Equities allocated 1.20% of its Allocated Shared Expense towards FIX Ports and 4.00% of its Allocated Shared Expense towards MEO Ports. As discussed above, this is because the MEO interface is a customized binary interface that the Exchange developed in-house and maintains on its own. The FIX interface is the industry standard for simple order entry which requires less development, maintenance, and support than the MEO interface. The MEO interface is performance oriented and designed to meet the needs of more latency sensitive Equity Members. This required more internal personnel and resources to support than the FIX interface. Because of the materially higher cost associated with maintaining and supporting MEO Ports versus FIX Ports, the Exchange allocates a materially higher percentage of Allocated Shared expense to MEO Ports versus FIX Ports.

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core services (including physical connectivity or FIX and MEO Ports) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal and the filings the Exchange submitted proposing fees for proprietary data feeds offered by the Exchange. For instance, in calculating the Human Resources expenses to be allocated to physical connections based upon the above described methodology, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a high percentage of the cost of such personnel (60%) to 1Gb and 10Gb ULL connectivity given their focus on functions necessary to provide physical connections. The salaries of those same personnel were allocated only 25% to FIX and MEO Ports and the remaining 15% was allocated to transactions and market data. The Exchange did not allocate any other Human Resources expense for providing physical connections to any other employee group, outside of a smaller allocation of 37% for 1Gb and 10Gb ULL connectivity of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel. In contrast, the Exchange allocated much smaller percentages of costs (less than 21%) across a wider range of personnel groups in order to allocate Human Resources costs to providing FIX and MEO Ports. This is because a much wider range of personnel are involved in functions necessary to offer, monitor and maintain FIX and MEO Ports but the tasks necessary to do so are not a primary or full-time function.

In total, the Exchange allocated 47.6% of its personnel costs to providing physical connections and 22.4% of its personnel costs to providing FIX and MEO Ports, for a total allocation of 70% Human Resources expense to provide these specific connectivity services. In turn, the Exchange allocated the remaining 30% of its Human Resources expense to membership (less than 1%) and transactions and market data (9.5%). Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including physical

connections and FIX and MEO Ports, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide connectivity services to its Equity Members and non-Equity Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing connectivity services, but instead allocated approximately 85% of the Exchange's overall depreciation and amortization expense to connectivity services (76.185% attributed to 1Gb and 10Gb ULL physical connections and 8.6% to FIX and MEO Ports). The Exchange allocated the remaining depreciation and amortization expense (approximately 15%) toward the cost of providing transaction services, membership services and market data.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. The Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from connectivity, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity and/or FIX and MEO Ports or in obtaining new clients that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

The Exchange notes that the Cost Analysis is based on the Exchange's 2023 fiscal year of operations and projections. It is possible however that such costs will either decrease or increase. To the extent the Exchange sees growth in use of connectivity services it will receive additional revenue to offset future cost increases.

However, if use of connectivity services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange would propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Projected Revenue

The proposed fees will allow the Exchange to cover certain costs incurred by the Exchange associated with providing and maintaining necessary hardware and other network infrastructure as well as network monitoring and support services; without such hardware, infrastructure, monitoring and support the Exchange would be unable to provide the connectivity services. Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection(s). The above cost, namely those associated with hardware, software, and human capital, enable the Exchange to measure network performance with nanosecond granularity. These same costs are also associated with time and money spent seeking to continuously improve the network performance, improving the subscriber's experience, based on monitoring and analysis activity. The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by amending fees for connectivity services. Subscribers, particularly those of 10Gb ULL connectivity, expect the Exchange to provide this level of support to connectivity so they continue to receive the performance they expect. This differentiates the Exchange from its competitors. As detailed above, the Exchange has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue.

- The Exchange's Cost Analysis estimates the annual cost to provide 10Gb ULL connectivity services at $17,726,799. Based on current 10Gb ULL connectivity services usage, the Exchange would generate annual revenue of approximately $9,144,000. This represents a negative margin when compared to the cost of providing 10Gb ULL connectivity services, which will decrease over time.[115]
- The Exchange's Cost Analysis estimates the annual cost to provide 1Gb connectivity services at $604,851. Based on current 1Gb connectivity services usage, the Exchange would generate annual revenue of approximately $312,000. This represents a negative margin when compared to the cost of providing 1Gb connectivity services, which will decrease over time.[116]
- The Exchange's Cost Analysis estimates the annual cost to provide FIX Port services at $911,998. Based on current FIX Port services usage, the Exchange would generate annual revenue of approximately $388,800. This represents a negative margin when compared to the cost of providing FIX Port services, which will decrease over time.[117]
- The Exchange's Cost Analysis estimates the annual cost to provide MEO Port services at $3,039,995. Based on current MEO Port services usage, the Exchange would generate annual revenue of approximately $1,296,000. This represents a negative margin when compared to the cost of providing MEO Port services, which will decrease over time.[118]

Even if the Exchange earns those amounts or incrementally more, the Exchange believes the proposed fees are

[115] Assuming the U.S. inflation rate continues at its current rate, the Exchange believes that the projected profit margins in this proposal will decrease; however, the Exchange cannot predict with any certainty whether the U.S. inflation rate will continue at its current rate or its impact on the Exchange's future profits or losses. *See, e.g., https://www.usinflationcalculator.com/inflation/current-inflation-rates/* (last visited April 18, 2023).

[116] *Id.*

[117] *Id.*

[118] *Id.*

fair and reasonable because they will not result in excessive pricing that deviates from that of other exchanges or supra-competitive profit, when comparing the total expense of the Exchange associated with providing 1Gb and 10Gb ULL connectivity and FIX and MEO Port services versus the total projected revenue of the Exchange associated with those services. In fact, the Exchange will generate negative margins on those connectivity and port services even with the proposed fees.

* * * * *

MIAX Pearl Equities has operated at a cumulative net annual loss since it launched operations in 2020.[119] The Exchange has operated at a net loss due to a number of factors, one of which is choosing to forgo revenue by offering certain products, such as connectivity, at lower rates than other exchanges to attract order flow and encourage market participants to experience the high determinism, low latency, and resiliency of the Exchange's trading systems. The Exchange should not now be penalized for seeking to raise its fees in light of necessary technology changes and its increased costs after offering such products as discounted prices. Therefore, the Exchange believes the proposed fees are reasonable because they are based on both relative costs to the Exchange to provide dedicated 1Gb and 10Gb ULL connectivity as well as FIX and MEO Ports, the extent to which the product drives the Exchange's overall costs and the relative value of the product, as well as the Exchange's objective to make access to its Systems broadly available to market participants. The Exchange also believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup the Exchange's costs of providing dedicated 1Gb and 10Gb ULL connectivity as well as FIX and MEO Ports.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent customer activity actually produces the revenue estimated. As a competitor in the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such projections will be realized. For instance, in order to generate the revenue expected from 1Gb and 10Gb ULL connectivity as well as FIX and MEO Ports, the Exchange will have to be successful in retaining existing clients that wish to utilize 1Gb and 10Gb ULL connectivity as well as FIX and MEO Ports and/or obtaining new clients that will purchase such access. To the extent the Exchange is successful in encouraging new clients, the Exchange does not believe it should be penalized for such success. To the extent the Exchange has mispriced and experiences a net loss in clients, the Exchange could experience a net reduction in revenue. While the Exchange believes in transparency around costs and potential revenue, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted.

The Exchange is part of a holding company that operates four exchange markets and, therefore, the Exchange and its affiliated markets must allocate shared costs across all of those markets accordingly, pursuant to the above-described allocation methodology. In contrast, the Investors Exchange LLC (''IEX'') and MEMX, which are currently each operating only one exchange, in their recent non-transaction fee filings can allocate the entire amount of that same cost to a single exchange. This can result in lower profit margins for the non-transaction fees proposed by IEX and MEMX because the single allocated cost does not experience the efficiencies and synergies associated with shared costs across multiple platforms. The Exchange and its affiliated markets must share a single cost, which results in cost efficiencies that cause a broader gap between the allocated cost amount and projected revenue, even though the fee levels being proposed are lower or similar to competing markets (as described above). To the extent that the application of a cost-based standard results in Commission Staff making determinations as to the appropriateness of certain profit margins, the Commission Staff must consider whether the proposed fee level is comparable to, or on parity with, the same fee charged by competing exchanges and how different cost allocation methodologies (such as across multiple markets) may result in different profit margins for comparable fee levels. If it is the case that the Commission Staff is making determinations as to appropriate profit margins, the Exchange believes that Staff should be clear to all market participants as to what they determine is an appropriate profit margin and should apply such determinations consistently and, in the case of certain legacy exchanges, retroactively, if such standards are to avoid having a discriminatory effect.

Further, the proposal reflects the Exchange's efforts to control its costs, which the Exchange does on an ongoing basis as a matter of good business practice. A potential profit margin should not be judged alone based on its size, but is also indicative of costs management and whether the ultimate fee reflects the value of the services provided. For example, a profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling its costs, but not excessive where on another exchange where that exchange is charging comparable fees but has a lower profit margin due to higher costs. Doing so could have the perverse effect of not incentivizing cost control where higher costs alone could be used to justify fees increases.

The Proposed Pricing Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that the proposed fees are reasonable, fair, equitable, and not unfairly discriminatory because they are designed to align fees with services provided and will apply equally to all subscribers.

1Gb and 10Gb ULL Connectivity

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity and port alternatives, as the users of 10Gb ULL connections consume substantially more bandwidth and network resources than users of 1Gb ULL connection. Specifically, the Exchange notes that 10Gb ULL connection users account for more than 99% of message traffic over the network, driving other costs that are linked to capacity utilization, as described above, while the users of the 1Gb ULL connections account for less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have the same business needs for the high-performance network as 10Gb ULL users.

The Exchange's high-performance network and supporting infrastructure (including employee support), provides unparalleled system throughput with the network ability to support access to several distinct equities markets. To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network

[119] The Exchange has incurred a cumulative loss of $79 million since its inception in 2020. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000461.pdf.*

consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages to satisfy its record keeping requirements under the Exchange Act.[120] Thus, as the number of messages an entity increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb ULL users pay for the vast majority of the shared network resources from which all market participants' benefit.

FIX and MEO Ports

To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. Billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the Exchange Act.[121] Thus, as the number of connections an Equity Member has increases, the related pull on Exchange resources also increases. The Exchange sought to design the proposed pricing structure to set the amount of the fees to relate to the number of connections a firm purchases, while continuing to provide the first five (5) ports for free. The more connections purchased by an Equity Member likely results in greater expenditure of Exchange resources and increased cost to the Exchange. The Exchange further believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory because, for the flat fee, the Exchange provides each Equity Member their first five (5) ports for free, unlike other equity exchanges referenced above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing 1Gb and10Gb ULL connectivity as well as FIX and MEO Ports at below market rates to market participants since the Exchange launched operations. As described above, the Exchange has operated at a cumulative net annual loss since it launched operations in 2020 [122] due to providing a low-cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very lower fee, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low-cost exchange alternative to the industry, which resulted in lower initial revenues. Examples of this are 1Gb and 10Gb ULL connectivity as well as FIX and MEO Ports, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other equity exchanges.

Further, the Exchange does not believe that the proposed fee increase for the 1Gb or 10Gb ULL connection change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. The proposed fees would apply uniformly to all market participants regardless of the number of connections they choose to purchase. The proposed fees do not favor certain categories of market participants in a manner that would impose an undue burden on competition.

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, Exchange personnel has been informally discussing potential fees for connectivity services with a diverse group of market participants that are connected to the Exchange (including large and small firms, firms with large connectivity service footprints and small connectivity service footprints, as well as extranets and service bureaus) for several months leading up to that time. The Exchange does not believe the proposed fees for connectivity services would negatively impact the ability of Equity Members, non-Equity Members (extranets or service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers to compete with other market participants or that they are placed at a disadvantage.

The Exchange does anticipate, however, that some market participants may reduce or discontinue use of connectivity services provided directly by the Exchange in response to the proposed fees. In fact, as mentioned above, one MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership on January 1, 2023 as a direct result of the proposed fee changes for that market.[123] The Exchange does not believe that the proposed fees for connectivity services place certain market participants at a relative disadvantage to other market participants because the proposed connectivity pricing is associated with relative usage of the Exchange by each market participant and does not impose

[120] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[121] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[122] *See supra* note 119.

[123] The Exchange acknowledges that IEX included in its proposal to adopt market data fees after offering market data for free an analysis of what its projected revenue would be if all of its existing customers continued to subscribe versus what its projected revenue would be if a limited number of customers subscribed due to the new fees. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945 (April 13, 2022) (SR–IEX–2022–02). MEMX did not include a similar analysis in either of its recent non-transaction fee proposals. *See, e.g., supra* note 53. The Exchange does not believe a similar analysis would be useful here because it is amending existing fees, not proposing to charge a new fee where existing subscribers may terminate connections because they are no longer enjoying the service at no cost. In addition, despite the potential for existing subscribers to terminate connections due to the proposal, the Exchange anticipates its number of subscribers to remain generally static, resulting in an immaterial difference between a best case and worst case scenario.

a barrier to entry to smaller participants. The Exchange believes its proposed pricing is reasonable and, when coupled with the availability of third-party providers that also offer connectivity solutions, that participation on the Exchange is affordable for all market participants, including smaller trading firms. As described above, the connectivity services purchased by market participants typically increase based on their additional message traffic and/or the complexity of their operations. The market participants that utilize more connectivity services typically utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the proposed fees for connectivity services do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed connectivity fees reflects the network resources consumed by the various size of market participants and the costs to the Exchange of providing such connectivity services.

Inter-Market Competition

The Exchange also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, market participants are not forced to connect to all exchanges. There is no reason to believe that our proposed price increase will harm another exchange's ability to compete. There are other markets of which market participants may connect to trade equities at higher rates than the Exchange's. There is also a range of alternative strategies, including routing to the exchange through another participant or market center or accessing the Exchange indirectly. Market participants are free to choose which exchange or reseller to use to satisfy their business needs. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

* * * * *

In conclusion, as discussed thoroughly above, the Exchange regrettably believes that the application of the Revised Review Process and Staff Guidance has adversely affected inter-market competition among legacy and non-legacy exchanges by impeding the ability of non-legacy exchanges to adopt or increase fees for their market data and access services (including connectivity and port products and services) that are on parity or commensurate with fee levels previously established by legacy exchanges. Since the adoption of the Revised Review Process and Staff Guidance, and even more so recently, it has become extraordinarily difficult to adopt or increase fees to generate revenue necessary to invest in systems, provide innovative trading products and solutions, and improve competitive standing to the benefit of non-legacy exchanges' market participants. Although the Staff Guidance served an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, it has also negatively impacted non-legacy exchanges in particular in their efforts to adopt or increase fees that would enable them to more fairly compete with legacy exchanges, despite providing enhanced disclosures and rationale under both competitive and cost basis approaches provided for by the Revised Review Process and Staff Guidance to support their proposed fee changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received one comment letter on the Initial Proposal and one comment letter on the Second Proposal from the same commenter.[124] In their letters, the sole commenter seeks to incorporate comments submitted on previous Exchange proposals to which the Exchange has previously responded. To the extent the sole commenter has attempted to raise new issues in its letters, the Exchange believes those issues are not germane to this proposal in particular, but rather raise larger issues with the current environment surrounding exchange non-transaction fee proposals that should be addressed by the Commission through rule making, or Congress, more holistically and not through an individual exchange fee filing. Among other things, the commenter is requesting additional data and information that is both opaque and a moving target and would constitute a level of disclosure materially over and above that provided by any competitor exchanges.

[124] *See* letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023 *and* letter from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023.

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,[125] and Rule 19b–4(f)(2) [126] 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2023–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2023–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://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

[125] 15 U.S.C. 78s(b)(3)(A)(ii).

[126] 17 CFR 240.19b–4(f)(2).

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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–PEARL–2023–18 and should be submitted on or before May 30, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[127]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09679 Filed 5–5–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97422; File No. SR–EMERALD–2023–12]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX Emerald, LLC To Amend the Fee Schedule To Modify Certain Connectivity and Port Fees

May 2, 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 20, 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 certain connectivity and port fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV 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 as follows: (1) increase the fees for a 10 gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection for Members[3] and non-Members; and (2) adopt a tiered-pricing structure for Limited Service MIAX Emerald Express Interface (''MEI'') Ports[4] available to Market Makers.[5] The Exchange last increased the fees for both 10Gb ULL fiber connections and Limited Service MEI Ports beginning with a series of filings on October 1, 2020 (with the final filing made on March 24, 2021).[6] Prior to that fee change, the Exchange provided Limited Service MEI Ports for $50 per port, after the first two Limited Service MEI Ports that are provided free of charge, and the Exchange incurred all the costs associated to provide those first two Limited Service MEI Ports since it commenced operations in March 2019. The Exchange then increased the fee by $50 to a modest $100 fee per Limited Service MEI Port and increased the fee for 10Gb ULL fiber connections from $6,000 to $10,000 per month.

Also, in that fee change, the Exchange adopted fees for providing five different types of ports for the first time. These ports were FIX Ports, MEI Ports, Clearing Trade Drop Ports, FIX Drop Copy Ports, and Purge Ports.[7] Again, the Exchange absorbed all costs associated with providing these ports since its launch in March 2019. As explained in that filing, expenditures, as well as research and development (''R&D'') in numerous areas resulted in a material increase in expense to the Exchange and were the primary drivers for that proposed fee change. In that filing, the Exchange allocated a total of $9.3 million in expenses to providing 10Gb ULL fiber connectivity, additional Limited Service MEI Ports, FIX Ports, MEI Ports, Clearing Trade Drop Ports, FIX Drop Copy Ports, and Purge Ports.[8]

Since the time of 2021 increase discussed above, the Exchange experienced ongoing increases in expenses, particularly internal expenses.[9] As discussed more fully below, the Exchange recently calculated increased annual aggregate costs of $11,361,586 for providing 10Gb ULL connectivity and $1,779,066 for providing Limited Service MEI Ports.

Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection with nanosecond granularity, and continuous improvements in network performance with the goal of improving the subscriber's experience. The costs associated with maintaining and enhancing a state-of-the-art network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those increased costs by amending fees for connectivity services. Subscribers expect the Exchange to provide this level of support so they continue to receive the performance

[127] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] The MIAX Emerald Express Interface (''MEI'') is a connection to the MIAX Emerald System that enables Market Makers to submit simple and complex electronic quotes to MIAX Emerald. *See* the Definitions Section of the Fee Schedule.

[5] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[6] *See* Securities Exchange Act Release Nos. 91460 (April 1, 2021), 86 FR 18349 (April 8, 2021) (SR–EMERALD–2021–11); 90184 (October 14, 2020), 85 FR 66636 (October 20, 2020) (SR–EMERALD–2020–12); 90600 (December 8, 2020), 85 FR 80831 (December 14, 2020) (SR–EMERALD–2020–17); 91032 (February 1, 2021), 86 FR 8428 (February 5, 2021) (SR–EMERALD–2021–02); *and* 91200 (February 24, 2021), 86 FR 12221 (March 2, 2021) (SR–EMERALD–2021–07).

[7] *See id.* for a description of each of these ports.

[8] *Id.*

[9] For example, the New York Stock Exchange, Inc.'s (''NYSE'') Secure Financial Transaction Infrastructure (''SFTI'') network, which contributes to the Exchange's connectivity cost, increased its fees by approximately 9% since 2021. Similarly, since 2021, the Exchange, and its affiliates, experienced an increase in data center costs of approximately 17% and an increase in hardware and software costs of approximately 19%. These percentages are based on the Exchange's actual 2021 and proposed 2023 budgets.

they expect. This differentiates the Exchange from its competitors.

The Exchange now proposes to amend the Fee Schedule to amend the fees for 10Gb ULL connectivity and Limited Service MEI Ports in order to recoup ongoing costs and increase in expenses set forth below in the Exchange's cost analysis. The Exchange initially filed this proposal on December 30, 2022 as SR–EMERALD–2022–38. On January 9, 2023, the Exchange withdrew SR–EMERALD–2022–38 and resubmitted this proposal as SR–EMERALD–2023–01 (the ''Initial Proposal'').[10] On, February 23, 2023, the Exchange withdrew the Initial Proposal and replaced it with a revised proposal (SR–EMERALD–2023–05) (the ''Second Proposal'').[11] On April 20, 2023, the Exchange withdrew the Second Proposal and replaced it with this revised proposal (SR–EMERALD–2023–12).

The Exchange previously included a cost analysis in the Initial Proposal. As described more fully below, the Exchange provides an updated cost analysis that includes, among other things, additional descriptions of how the Exchange allocated costs among it and its affiliated exchanges (MIAX PEARL, LLC (''MIAX Pearl'') (separately among MIAX Pearl Options and MIAX Pearl Equities) and MIAX[12] (together with MIAX Pearl Options and MIAX Pearl Equities, the ''affiliated markets'')) to ensure no cost was allocated more than once, as well as additional detail supporting its cost allocation processes and explanations as to why a cost allocation in this proposal may differ from the same cost allocation in a similar proposal submitted by one of its affiliated exchanges. Although the baseline cost analysis used to justify the proposed fees was made in the Initial Proposal and Second Proposal, the fees themselves have not changed since the Initial Proposal or Second Proposal and the Exchange still proposes fees that are intended to cover the Exchange's cost of providing 10Gb ULL connectivity and Limited Service MEI Ports with a reasonable mark-up over those costs.

* * * * *

Starting in 2017, following the United States Court of Appeals for the District of Columbia's *Susquehanna Decision*[13] and various other developments, the Commission began to undertake a heightened review of exchange filings, including non-transaction fee filings that was substantially and materially different from it prior review process (hereinafter referred to as the ''Revised Review Process''). In the *Susquehanna Decision,* the D.C. Circuit Court stated that the Commission could not maintain a practice of ''unquestioning reliance'' on claims made by a self-regulatory organization (''SRO'') in the course of filing a rule or fee change with the Commission.[14] Then, on October 16, 2018, the Commission issued an opinion in *Securities Industry and Financial Markets Association* finding that exchanges failed both to establish that the challenged fees were constrained by significant competitive forces and that these fees were consistent with the Act.[15] On that same day, the Commission issued an order remanding to various exchanges and national market system (''NMS'') plans challenges to over 400 rule changes and plan amendments that were asserted in 57 applications for review (the ''Remand Order'').[16] The Remand Order directed the exchanges to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.''[17] The Commission denied requests by various exchanges and plan participants for reconsideration of the Remand Order.[18] However, the Commission did extend the deadlines in the Remand Order ''so that they d[id] not begin to run until the resolution of the appeal of the SIFMA Decision in the D.C. Circuit and the issuance of the court's mandate.''[19] Both the Remand Order and the Order Denying Reconsideration were appealed to the D.C. Circuit.

While the above appeal to the D.C. Circuit was pending, on March 29, 2019, the Commission issued an order disapproving a proposed fee change by BOX Exchange LLC (''BOX'') to establish connectivity fees (the ''BOX Order''), which significantly increased the level of information needed for the Commission to believe that an exchange's filing satisfied its obligations under the Act with respect to changing a fee.[20] Despite approving hundreds of access fee filings in the years prior to the BOX Order (described further below) utilizing a ''market-based'' test, the Commission changed course and disapproved BOX's proposal to begin charging connectivity at one-fourth the rate of competing exchanges' pricing.

Also while the above appeal was pending, on May 21, 2019, the Commission Staff issued guidance ''to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act.''[21] In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.''[22] The Staff Guidance also states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.''[23]

Following the BOX Order and Staff Guidance, on August 6, 2020, the D.C. Circuit vacated the Commission's SIFMA Decision in *NASDAQ Stock Market, LLC* v. *SEC*[24] and remanded for further proceedings consistent with its

[10] *See* Securities Exchange Act Release No. 96628 (January 10, 2023), 88 FR 2651 (January 17, 2023) (SR–EMERALD–2023–01).

[11] *See* Securities Exchange Act Release No. 97079 (March 8, 2023), 88 FR 15764 (March 14, 2023) (SR–EMERALD–2023–05).

[12] The term ''MIAX'' means Miami International Securities Exchange, LLC. *See* Exchange Rule 100.

[13] *See Susquehanna International Group, LLP* v. *Securities & Exchange Commission,* 866 F.3d 442 (D.C. Circuit 2017) (the ''Susquehanna Decision'').

[14] *Id.*

[15] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84432, 2018 WL 5023228 (October 16, 2018) (the ''SIFMA Decision'').

[16] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). *See* 15 U.S.C. 78k–1, 78s; *see also* Rule 608(d) of Regulation NMS, 17 CFR 242.608(d) (asserted as an alternative basis of jurisdiction in some applications).

[17] *Id.* at page 2.

[18] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 85802, 2019 WL 2022819 (May 7, 2019) (the ''Order Denying Reconsideration'').

[19] Order Denying Reconsideration, 2019 WL 2022819, at *13.

[20] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04) (Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network). The Commission noted in the BOX Order that it ''historically applied a 'market-based' test in its assessment of market data fees, which [the Commission] believe[s] present similar issues as the connectivity fees proposed herein.'' *Id.* at page 16. Despite this admission, the Commission disapproved BOX's proposal to begin charging $5,000 per month for 10Gb connections (while allowing legacy exchanges to charge rates equal to 3–4 times that amount utilizing ''market-based'' fee filings from years prior).

[21] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), *available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Staff Guidance'').

[22] *Id.*

[23] *Id.*

[24] *NASDAQ Stock Mkt., LLC* v. *SEC,* No 18–1324,—Fed. App'x,—2020 WL 3406123 (D.C. Cir. June 5, 2020). The court's mandate was issued on August 6, 2020.

opinion.[25] That same day, the D.C. Circuit issued an order remanding the Remand Order to the Commission for reconsideration in light of *NASDAQ.* The court noted that the Remand Order required the exchanges and NMS plan participants to consider the challenges that the Commission had remanded in light of the SIFMA Decision. The D.C. Circuit concluded that because the SIFMA Decision ''has now been vacated, the basis for the [Remand Order] has evaporated.'' [26] Accordingly, on August 7, 2020, the Commission vacated the Remand Order and ordered the parties to file briefs addressing whether the holding in *NASDAQ* v. *SEC* that Exchange Act section 19(d) does not permit challenges to generally applicable fee rules requiring dismissal of the challenges the Commission previously remanded.[27] The Commission further invited ''the parties to submit briefing stating whether the challenges asserted in the applications for review . . . should be dismissed, and specifically identifying any challenge that they contend should not be dismissed pursuant to the holding of *Nasdaq* v. *SEC.*'' [28] Without resolving the above issues, on October 5, 2020, the Commission issued an order granting SIFMA and Bloomberg's request to withdraw their applications for review and dismissed the proceedings.[29]

As a result of the Commission's loss of the *NASDAQ vs. SEC* case noted above, the Commission never followed through with its intention to subject the over 400 fee filings to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [30] As such, all of those fees remained in place and amounted to a baseline set of fees for those exchanges that had the benefit of getting their fees in place before the Commission Staff's fee review process materially changed. The net result of this history and lack of resolution in the D.C. Circuit Court resulted in an uneven competitive landscape where the Commission subjects all new non-transaction fee filings to the new Revised Review Process, while allowing the previously challenged fee filings, mostly submitted by incumbent exchanges prior to 2019, to remain in effect and not subject to the ''record'' or ''review'' earlier intended by the Commission.

While the Exchange appreciates that the Staff Guidance articulates an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, the practical effect of the Revised Review Process, Staff Guidance, and the Commission's related practice of continuous suspension of new fee filings, is anti-competitive, discriminatory, and has put in place an un-level playing field, which has negatively impacted smaller, nascent, non-legacy exchanges (''non-legacy exchanges''), while favoring larger, incumbent, entrenched, legacy exchanges (''legacy exchanges'').[31] The legacy exchanges all established a significantly higher baseline for access and market data fees prior to the Revised Review Process. From 2011 until the issuance of the Staff Guidance in 2019, national securities exchanges filed, and the Commission Staff did not abrogate or suspend (allowing such fees to become effective), at least 92 filings [32] to amend exchange connectivity or port fees (or similar access fees). The support for each of those filings was a simple statement by the relevant exchange that the fees were constrained by competitive forces.[33] These fees remain in effect today.

The net result is that the non-legacy exchanges are effectively now blocked by the Commission Staff from adopting or increasing fees to amounts comparable to the legacy exchanges (which were not subject to the Revised Review Process and Staff Guidance), despite providing enhanced disclosures and rationale to support their proposed fee changes that far exceed any such support provided by legacy exchanges. Simply put, legacy exchanges were able to increase their non-transaction fees during an extended period in which the Commission applied a ''market-based'' test that only relied upon the assumed presence of significant competitive forces, while exchanges today are subject to a cost-based test requiring extensive cost and revenue disclosures, a process that is complex, inconsistently applied, and rarely results in a successful outcome, *i.e.,* non-suspension. The Revised Review Process and Staff Guidance changed decades-long Commission Staff standards for review, resulting in unfair discrimination and placing an undue burden on inter-market competition between legacy exchanges and non-legacy exchanges.

Commission Staff now require exchange filings, including from non-legacy exchanges such as the Exchange, to provide detailed cost-based analysis in place of competition-based arguments to support such changes. However, even with the added detailed cost and expense disclosures, the Commission Staff continues to either suspend such filings and institute disapproval proceedings, or put the exchanges in the unenviable position of having to repeatedly withdraw and re-file with additional detail in order to continue to charge those fees.[34] By impeding any path forward for non-legacy exchanges to establish commensurate non-

[25] *Nasdaq* v. *SEC,* 961 F.3d 421, at 424, 431 (D.C. Cir. 2020). The court's mandate issued on August 6, 2020. The D.C. Circuit held that Exchange Act ''section 19(d) is not available as a means to challenge the reasonableness of generally-applicable fee rules.'' *Id.* The court held that ''for a fee rule to be challengeable under section 19(d), it must, at a minimum, be targeted at specific individuals or entities.'' *Id.* Thus, the court held that ''section 19(d) is not an available means to challenge the fees at issue'' in the SIFMA Decision. *Id.*

[26] *Id.* at *2; see also *id.* (''[T]he sole purpose of the challenged remand has disappeared.'').

[27] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 89504, 2020 WL 4569089 (August 7, 2020) (the ''Order Vacating Prior Order and Requesting Additional Briefs'').

[28] *Id.*

[29] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 90087 (October 5, 2020).

[30] *See supra* note 25, at page 2.

[31] Commission Chair Gary Gensler recently reiterated the Commission's mandate to ensure competition in the equities markets. *See* ''Statement on Minimum Price Increments, Access Fee Caps, Round Lots, and Odd-Lots'', by Chair Gary Gensler, dated December 14, 2022 (stating ''[i]n 1975, Congress tasked the Securities and Exchange Commission with responsibility to facilitate the establishment of the national market system and *enhance competition in the securities markets, including the equity markets*'' (*emphasis added*)). In that same statement, Chair Gary Gensler cited the five objectives laid out by Congress in 11A of the Exchange Act (15 U.S.C. 78k–1), including ensuring ''fair competition among brokers and dealers, among exchange markets, and *between exchange markets* and markets other than exchange markets. . . .'' (*emphasis added*). *Id.* at note 1. *See also* Securities Acts Amendments of 1975, *available at https://www.govtrack.us/congress/bills/94/s249.*

[32] This timeframe also includes challenges to over 400 rule filings by SIFMA and Bloomberg discussed above. *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). Those filings were left to stand, while at the same time, blocking newer exchanges from the ability to establish competitive access and market data fees. *See The Nasdaq Stock Market, LLC* v. *SEC,* Case No. 18–1292 (D.C. Cir. June 5, 2020). The expectation at the time of the litigation was that the 400 rule flings challenged by SIFMA and Bloomberg would need to be justified under revised review standards.

[33] *See, e.g.,* Securities Exchange Act Release Nos. 74417 (March 3, 2015), 80 FR 12534 (March 9, 2015) (SR–ISE–2015–06); 83016 (April 9, 2018), 83 FR 16157 (April 13, 2018) (SR–PHLX–2018–26); 70285 (August 29, 2013), 78 FR 54697 (September 5, 2013) (SR–NYSEMKT–2013–71); 76373 (November 5, 2015), 80 FR 70024 (November 12, 2015) (SR–NYSEMKT–2015–90); 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEARCA–2016–172).

[34] The Exchange has filed, and subsequently withdrawn, various forms of this proposed fee numerous times since August 2021 with each proposal containing hundreds of cost and revenue disclosures never previously disclosed by legacy exchanges in their access and market data fee filings prior to 2019.

transaction fees, or by failing to provide any alternative means for smaller markets to establish ''fee parity'' with legacy exchanges, the Commission is stifling competition: non-legacy exchanges are, in effect, being deprived of the revenue necessary to compete on a level playing field with legacy exchanges. This is particularly harmful, given that the costs to maintain exchange systems and operations continue to increase. The Commission Staff's change in position impedes the ability of non-legacy exchanges to raise revenue to invest in their systems to compete with the legacy exchanges who already enjoy disproportionate non-transaction fee based revenue. For example, the Cboe Exchange, Inc. (''Cboe'') reported ''access and capacity fee'' revenue of $70,893,000 for 2020 [35] and $80,383,000 for 2021. [36] Cboe C2 Exchange, Inc. (''C2'') reported ''access and capacity fee'' revenue of $19,016,000 for 2020 [37] and $22,843,000 for 2021. [38] Cboe BZX Exchange, Inc. (''BZX'') reported ''access and capacity fee'' revenue of $38,387,000 for 2020 [39] and $44,800,000 for 2021. [40] Cboe EDGX Exchange, Inc. (''EDGX'') reported ''access and capacity fee'' revenue of $26,126,000 for 2020 [41] and $30,687,000 for 2021. [42] For 2021, the affiliated Cboe, C2, BZX, and EDGX (the four largest exchanges of the Cboe exchange group) reported $178,712,000 in ''access and capacity fees'' in 2021. NASDAQ Phlx, LLC (''NASDAQ Phlx'') reported ''Trade Management Services'' revenue of $20,817,000 for 2019.[43] The Exchange notes it is unable to compare ''access fee'' revenues with NASDAQ Phlx (or other affiliated NASDAQ exchanges) because after 2019, the ''Trade Management Services'' line item was bundled into a much larger line item in PHLX's Form 1, simply titled ''Market services.'' [44]

The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages. First, legacy exchanges are able to use their additional non-transaction revenue for investments in infrastructure, vast marketing and advertising on major media outlets,[45] new products and other innovations. Second, higher non-transaction fees provide the legacy exchanges with greater flexibility to lower their transaction fees (or use the revenue from the higher non-transaction fees to subsidize transaction fee rates), which are more immediately impactful in competition for order flow and market share, given the variable nature of this cost on member firms. The prohibition of a reasonable path forward denies the Exchange (and other non-legacy exchanges) this flexibility, eliminates the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share with legacy exchanges. While one could debate whether the pricing of non-transaction fees are subject to the same market forces as transaction fees, there is little doubt that subjecting one exchange to a materially different standard than that historically applied to legacy exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

While the Commission has clearly noted that the Staff Guidance is merely guidance and ''is not a rule, regulation or statement of the . . . Commission . . . the Commission has neither approved nor disapproved its content . . .'',[46] this is not the reality experienced by exchanges such as MIAX Emerald. As such, non-legacy exchanges are forced to rely on an opaque cost-based justification standard. However, because the Staff Guidance is devoid of detail on what must be contained in cost-based justification, this standard is nearly impossible to meet despite repeated good-faith efforts by the Exchange to provide substantial amount of cost-related details. For example, the Exchange has attempted to increase fees using a cost-based justification numerous times, having submitted over six filings.[47] However, despite providing 100+ page filings describing in extensive detail its costs associated with providing the services described in the filings, Commission Staff continues to suspend such filings, with the rationale that the Exchange has not provided sufficient detail of its costs and without ever being precise about what additional data points are required. The Commission Staff appears to be interpreting the reasonableness standard set forth in section 6(b)(4) of the Act [48] in a manner that is not possible to achieve. This essentially nullifies the cost-based approach for exchanges as a legitimate alternative as laid out in the Staff Guidance. By refusing to accept a reasonable cost-based argument to justify non-transaction fees (in addition to refusing to accept a competition-based argument as described above), or by failing to provide the detail required to achieve that standard, the Commission Staff is effectively preventing non-legacy exchanges from making any non-transaction fee changes, which benefits the legacy exchanges and is anticompetitive to the non-legacy exchanges. This does not meet the fairness standard under the Act and is discriminatory.

Because of the un-level playing field created by the Revised Review Process and Staff Guidance, the Exchange believes that the Commission Staff, at this point, should either (a) provide sufficient clarity on how its cost-based

[35] According to Cboe's 2021 Form 1 Amendment, access and capacity fees represent fees assessed for the opportunity to trade, including fees for trading-related functionality. *See* Cboe 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[36] *See* Cboe 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001155.pdf.*

[37] *See* C2 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000469.pdf.*

[38] *See* C2 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001156.pdf.*

[39] *See* BZX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[40] *See* BZX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001152.pdf.*

[41] *See* EDGX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000467.pdf.*

[42] *See* EDGX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001154.pdf.*

[43] According to PHLX, ''Trade Management Services'' includes ''a wide variety of alternatives for connectivity to and accessing [the PHLX] markets for a fee. These participants are charged monthly fees for connectivity and support in accordance with [PHLX's] published fee schedules.'' *See* PHLX 2020 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2001/20012246.pdf.*

[44] *See* PHLX Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000475.pdf.* The Exchange notes that this type of Form 1 accounting appears to be designed to obfuscate the true financials of such exchanges and has the effect of perpetuating fee and revenue advantages of legacy exchanges.

[45] *See, e.g., CNBC Debuts New Set on NYSE Floor, available at https://www.cnbc.com/id/46517876.*

[46] *See supra* note 21, at note 1.

[47] *See* Securities Exchange Act Release Nos. 94889 (May 11, 2022), 87 FR 29928 (May 17, 2022) (SR–EMERALD–2022–19); 94718 (April 14, 2022), 87 FR 23633 (April 20, 2022) (SR–EMERALD–2022–15); 94717 (April 14, 2022), 87 FR 23648 (April 20, 2022) (SR–EMERALD–2022–13); 94260 (February 15, 2022), 87 FR 9695 (February 22, 2022) (SR–EMERALD–2022–05); 94257 (February 15, 2022), 87 FR 9678 (February 22, 2022) (SR–EMERALD–2022–04); 93772 (December 14, 2021), 86 FR 71965 (December 20, 2021) (SR–EMERALD–2021–43); 93776 (December 14, 2021), 86 FR 71983 (December 20, 2021) (SR–EMERALD–2021–42); 93188 (September 29, 2021), 86 FR 55052 (October 5, 2021) (SR–EMERALD–2021–31); (SR–EMERALD–2021–30) (withdrawn without being noticed by the Commission); 93166 (September 28, 2021), 86 FR 54760 (October 4, 2021) (SR–EMERALD–2021–29); 92662 (August 13, 2021), 86 FR 46726 (August 19, 2021) (SR–EMERALD–2021–25); 92645 (August 11, 2021), 86 FR 46048 (August 17, 2021) (SR–EMERALD–2021–23).

[48] 15 U.S.C. 78f(b)(4).

standard can be met, including a clear and exhaustive articulation of required data and its views on acceptable margins,[49] to the extent that this is pertinent; (b) establish a framework to provide for commensurate non-transaction based fees among competing exchanges to ensure fee parity; [50] or (c) accept that certain competition-based arguments are applicable given the linkage between non-transaction fees and transaction fees, especially where non-transaction fees among exchanges are based upon disparate standards of review, lack parity, and impede fair competition. Considering the absence of any such framework or clarity, the Exchange believes that the Commission does not have a reasonable basis to deny the Exchange this change in fees, where the proposed change would result in fees meaningfully lower than comparable fees at competing exchanges and where the associated non-transaction revenue is meaningfully lower than competing exchanges.

In light of the above, disapproval of this would not meet the fairness standard under the Act, would be discriminatory and places a substantial burden on competition. The Exchange would be uniquely disadvantaged by not being able to increase its access fees to comparable levels (or lower levels than current market rates) to those of other options exchanges for connectivity. If the Commission Staff were to disapprove this proposal, that action, and not market forces, would substantially affect whether the Exchange can be successful in its competition with other options exchanges. Disapproval of this filing could also be viewed as an arbitrary and capricious decision should the Commission Staff continue to ignore its past treatment of non-transaction fee filings before implementation of the Revised Review Process and Staff Guidance and refuse to allow such filings to be approved despite significantly enhanced arguments and cost disclosures.[51]

Lastly, the Exchange notes that the Commission Staff has allowed similar fee increases by other exchanges to remain in effect by publishing those filings for comment and allowing the exchange to withdraw and re-file numerous times.[52] Recently, the Commission Staff has not afforded the Exchange the same flexibility.[53] This again is evidence that the Commission Staff is not treating non-transaction fee filings in a consistent manner and is holding exchanges to different levels of scrutiny in reviewing filings.

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10Gb ULL Connectivity Fee Change

The Exchange proposes to amend the Fee Schedule to increase the fees for Members and non-Members to access the Exchange's system networks [54] via a 10Gb ULL fiber connection. Specifically, the Exchange proposes to amend sections (5)(a)–(b) of the Fee Schedule to increase the 10Gb ULL connectivity fee for Members and non-Members from $10,000 per month to $13,500 per month (''10Gb ULL Fee'').[55]

The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the primary and secondary facilities in any month the Member or non-Member is credentialed to use any of the Exchange APIs or market data feeds in the production environment. The Exchange will continue to pro-rate the fees when a Member or non-Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the Member or non-Member has been credentialed to utilize any of the Exchange APIs or market data feeds in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate.

Limited Service MEI Ports

Background

The Exchange also proposes to amend section (5)(d) of the Fee Schedule to adopt a tiered-pricing structure for Limited Service MEI Ports available to Market Makers. The Exchange allocates two (2) Full Service MEI Ports [56] and two (2) Limited Service MEI Ports [57] per matching engine [58] to which each

[49] To the extent that the cost-based standard includes Commission Staff making determinations as to the appropriateness of certain profit margins, the Exchange believes that Staff should be clear as to what they determine is an appropriate profit margin.

[50] In light of the arguments above regarding disparate standards of review for historical legacy non-transaction fees and current non-transaction fees for non-legacy exchanges, a fee parity alternative would be one possible way to avoid the current unfair and discriminatory effect of the Staff Guidance and Revised Review Process. *See, e.g., CSA Staff Consultation Paper 21–401, Real-Time Market Data Fees, available at https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/Policy2/21401_Market_Data_Fee_CSA_Staff_Consultation_Paper.pdf.*

[51] The Exchange's costs have clearly increased and continue to increase, particularly regarding capital expenditures, as well as employee benefits provided by third parties (*e.g.,* healthcare and insurance). Yet, practically no fee change proposed by the Exchange to cover its ever-increasing costs has been acceptable to the Commission Staff since 2021. The only other fair and reasonable alternative would be to require the numerous fee filings unquestioningly approved before the Staff Guidance and Revised Review Process to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review,'' and to ensure a comparable review process with the Exchange's filing.

[52] *See, e.g.,* Securities Exchange Act Release Nos. 93937 (January 10, 2022), 87 FR 2466 (January 14, 2022) (SR–MEMX–2021–22); 94419 (March 15, 2022), 87 FR 16046 (March 21, 2022) (SR–MEMX–2022–02); SR–MEMX–2022–12 (withdrawn before being noticed); 94924 (May 16, 2022), 87 FR 31026 (May 20, 2022) (SR–MEMX–2022–13); 95299 (July 15, 2022), 87 FR 43563 (July 21, 2022) (SR–MEMX–2022–17); SR–MEMX–2022–24 (withdrawn before being noticed); 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26); 94901 (May 12, 2022), 87 FR 30305 (May 18, 2022) (SR–MRX–2022–04); SR–MRX–2022–06 (withdrawn before being noticed); 95262 (July 12, 2022), 87 FR 42780 (July 18, 2022) (SR–MRX–2022–09); 95710 (September 8, 2022), 87 FR 56464 (September 14, 2022) (SR–MRX–2022–12); 96046 (October 12, 2022), 87 FR 63119 (October 18, 2022) (SR–MRX–2022–20); 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26); *and* 96430 (December 1, 2022), 87 FR 75083 (December 7, 2022) (SR–MEMX–2022–32).

[53] *See* Securities Exchange Act Release Nos. 94889 (May 11, 2022), 87 FR 29928 (May 17, 2022) (SR–EMERALD–2022–19); 94718 (April 14, 2022), 87 FR 23633 (April 20, 2022) (SR–EMERALD–2022–15).

[54] The Exchange's system networks consist of the Exchange's extranet, internal network, and external network.

[55] Market participants that purchase additional 10Gb ULL connections as a result of this change will not be subject to the Exchange's Member Network Connectivity Testing and Certification Fee under Section (4)(c) of the Exchange's fee schedule. *See* Section (4)(c) of the Exchange's fee schedule *available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_10192022.pdf* (providing that ''Network Connectivity Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. Member Network Connectivity Testing and Certification Fees will not be assessed for testing and certification of connectivity to the Exchange's Disaster Recovery Facility.'').

[56] The term ''Full Service MEI Ports'' means a port which provides Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX Emerald System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per Matching Engine. *See* the Definitions Section of the Fee Schedule.

[57] The term ''Limited Service MEI Ports'' means a port which provides Market Makers with the ability to send simple and complex eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX Emerald System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per Matching Engine. *See* the Definitions Section of the Fee Schedule.

[58] The term ''Matching Engine'' means a part of the MIAX Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option

Market Maker connects. Market Makers may also request additional Limited Service MEI Ports for each matching engine to which they connect. The Full Service MEI Ports and Limited Service MEI Ports all include access to the Exchange's primary and secondary data centers and its disaster recovery center. Market Makers may request additional Limited Service MEI Ports. Currently, Market Makers are assessed a $100 monthly fee for each Limited Service MEI Port for each matching engine above the first two Limited Service MEI Ports that are included for free.

Limited Service MEI Port Fee Changes

The Exchange now proposes to move from a flat monthly fee per Limited Service MEI Port for each matching engine to a tiered-pricing structure for Limited Service MEI Ports for each matching engine under which the monthly fee would vary depending on the number of Limited Service MEI Ports each Market Maker elects to purchase. Specifically, the Exchange will continue to provide the first and second Limited Service MEI Ports for each matching engine free of charge. For Limited Service MEI Ports, the Exchange proposes to adopt the following tiered-pricing structure: (i) the third and fourth Limited Service MEI Ports for each matching engine will increase from the current flat monthly fee of $100 to $200 per port; (ii) the fifth and sixth Limited Service MEI Ports for each matching engine will increase from the current flat monthly fee of $100 to $300 per port; and (iii) the seventh or more Limited Service MEI Ports will increase from the current monthly flat fee of $100 to $400 per port.[59] The Exchange believes a tiered-pricing structure will encourage Market Makers to be more efficient when determining how to connect to the Exchange. This should also enable the Exchange to better monitor and provide access to the Exchange's network to ensure sufficient capacity and headroom in the System[60] in accordance with its fair access requirements under section 6(b)(5) of the Act.[61]

The Exchange offers various types of ports with differing prices because each port accomplishes different tasks, are suited to different types of Members, and consume varying capacity amounts of the network. For instance, Market Makers who take the maximum amount of Limited Service MEI Ports account for approximately greater than 99% of message traffic over the network, while Market Makers with fewer Limited Service MEI Ports account for approximately less than 1% of message traffic over the network. In the Exchange's experience, Market Makers who only utilize the two free Limited Service MEI Ports do not have a business need for the high performance network solutions required by Market Makers who take the maximum amount of Limited Service MEI Ports. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 18 million quote messages per second. Based on November 2022 trading results, on an average day, the Exchange handles over approximately 6.9 billion quotes, and more than 146 billion quotes over the entire month. Of that total, Market Makers with the maximum amount of Limited Service MEI Ports generated over 4 billion quotes, and Market Makers who utilized the two free Limited Service MEI Ports generated approximately 1.6 billion quotes. Also for November 2022, Market Makers who utilized 7 to 9 Limited Service MEI ports submitted an average of 1,264,703,600 quotes per day. To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of its surveillance program and to satisfy its record keeping requirements under the Exchange Act.[62] Thus, as the number of connections a Market Maker has increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. The Exchange sought to design the proposed tiered-pricing structure to set the amount of the fees to relate to the number of connections a firm purchases. The more connections purchased by a Market Maker likely results in greater expenditure of Exchange resources and increased cost to the Exchange. With this in mind, the Exchange proposes no fee or lower fees for those Market Makers who receive fewer Limited Service MEI Ports since those Market Makers generally tend to send the least amount of orders and messages over those connections. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that Market Makers who take the most Limited Service MEI Ports pay for the vast majority of the shared network resources from which all Member and non-Member users benefit, but is designed and maintained from a capacity standpoint to specifically handle the message rate and performance requirements of those Market Makers.

The Exchange proposes to increase its monthly Limited Service MEI Port fees to recover a portion of the costs associated with directly accessing the Exchange.

Implementation

The proposed fee changes are immediately effective.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with section 6(b) of the Act[63] in general, and furthers the objectives of section 6(b)(4) of the Act[64] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposed fees further the objectives of section

classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. *See* the Definitions Section of the Fee Schedule.

[59] As noted in the Fee Schedule, Market Makers will continue to be limited to fourteen Limited Service MEI Ports per Matching Engine. The Exchange also proposes to make a ministerial clarifying change to remove the defined term ''Additional Limited Service MEI Ports'' as a result of moving to a tiered pricing structure where the first two Limited Service MEI Ports continue to be provided free of charge. The Exchange proposes to make a related change to add the term ''Limited Service MEI Ports'' after the word ''fourteen'' in the Fee Schedule.

[60] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[61] *See* 15 U.S.C. 78f(b). The Exchange may offer access on terms that are not unfairly discriminatory among its Members, and ensure sufficient capacity and headroom in the System. The Exchange monitors the System's performance and makes adjustments to its System based on market conditions and Member demand.

[62] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[63] 15 U.S.C. 78f(b).

[64] 15 U.S.C. 78f(b)(4).

6(b)(5) of the Act [65] in that they are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes under the Revised Review Process and as set forth in recent Staff Guidance. Based on both the BOX Order [66] and the Staff Guidance,[67] the Exchange believes that the proposed fees are consistent with the Act because they are: (i) reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Staff Guidance; and (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Exchange believes that exchanges, in setting fees of all types, should meet high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [68] The Staff Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [69] In the Staff Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, . . . , specific information, including quantitative information, should be provided to support that argument.'' [70]

The proposed fees are reasonable because they promote parity among exchange pricing for access, which promotes competition, including in the Exchanges' ability to competitively price transaction fees, invest in infrastructure, new products and other innovations, all while allowing the Exchange to recover its costs to provide dedicated access via 10Gb ULL connectivity and Limited Service MEI Ports. As discussed above, the Revised Review Process and Staff Guidance have created an uneven playing field between legacy and non-legacy exchanges by severely restricting non-legacy exchanges from being able to increase non-transaction relates fees to provide them with additional necessary revenue to better compete with legacy exchanges, which largely set fees prior to the Revised Review Process. The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages: (i) additional non-transaction revenue that may be used to fund areas other than the non-transaction service related to the fee, such as investments in infrastructure, advertising, new products and other innovations; and (ii) greater flexibility to lower their transaction fees by using the revenue from the higher non-transaction fees to subsidize transaction fee rates. The latter is more immediately impactful in competition for order flow and market share, given the variable nature of this cost on Member firms. The absence of a reasonable path forward to increase non-transaction fees to comparable (or lower rates) limits the Exchange's flexibility to, among other things, make additional investments in infrastructure and advertising, diminishes the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share. Again, while one could debate whether the pricing of non-transaction fees are subject to the same market forces as transaction fees, there is little doubt that subjecting one exchange to a materially different standard than that applied to other exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

The Proposed Fees Ensure Parity Among Exchange Access Fees, Which Promotes Competition

The Exchange initially adopted a fee of $50 per port, after the first two Limited Service MEI Ports that are provided free of charge, and the Exchange incurred all the costs associated to provide those first two Limited Service MEI Ports since it commenced operations in March 2019. At that same time, the Exchange only charged $6,000 per month for each 10Gb ULL connection. As a new exchange entrant, the Exchange chose to offer connectivity and ports at very low fees to encourage market participants to trade on the Exchange and experience, among things, the quality of the Exchange's technology and trading functionality. This practice is not uncommon. New exchanges often do not charge fees or charge lower fees for certain services such as memberships/trading permits to attract order flow to an exchange, and later amend their fees to reflect the true value of those services, absorbing all costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives before increasing non-transaction fees encourages market entry and fee parity, which promotes competition among exchanges. It also enables new

[65] 15 U.S.C. 78f(b)(5).

[66] *See supra* note 20.

[67] *See supra* note 21.

[68] *Id.*

[69] *Id.*

[70] *Id.*

exchanges to mature their markets and allow market participants to trade on the new exchanges without fees serving as a potential barrier to attracting memberships and order flow.[71]

Later in 2020, as the Exchange's market share increased,[72] the Exchange then increased the fee by $50 to a modest $100 fee per Limited Service MEI Port and increased the fee for 10Gb ULL fiber connections from $6,000 to $10,000 per month.[73] The Exchange balanced business and competitive concerns with the need to financially compete with the larger incumbent exchanges that charge higher fees for similar connectivity and use that revenue to invest in their technology and other service offerings.

The proposed changes to the Fee Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces, which constrains its pricing determinations for transaction fees as well as non-transaction fees. The fact that the market for order flow is competitive has 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 order-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 possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [74]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, 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.'' [75]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' '' [76] As a result, and as evidenced above, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [77] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [78] In the Revised Review Process and Staff Guidance, Commission Staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.'' [79]

The Exchange believes the competing exchanges' 10Gb connectivity and port fees are useful examples of alternative approaches to providing and charging for access and demonstrating how such fees are competitively set and constrained. To that end, the Exchange believes the proposed fees are competitive and reasonable because the proposed fees are similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with comparable market shares. As such, the Exchange believes that denying its ability to institute fees that allow the Exchange to recoup its costs and some margin in a manner that is closer to parity with legacy exchanges, in effect, impedes its ability to compete, including in its pricing of transaction fees and ability to invest in competitive infrastructure and other offerings.

The following table shows how the Exchange's proposed fees remain similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with similar market share. Each of the market data rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
MIAX Emerald (as proposed) (equity options market share of 3.27% for the month of March 2023) [80]	10Gb ULL connection	$13,500.
	Limited Service MEI Ports ..	1–2 ports: FREE (not changed in this proposal); 3–4 ports: $200 each; 5–6 ports: $300 each; 7 or more ports: $400 each.

[71] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) (stating, ''[t]he Exchange established this lower (when compared to other options exchanges in the industry) Participant Fee in order to encourage market participants to become Participants of BOX . . .''). *See also* Securities Exchange Act Release No. 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (SR–MEMX–2020–10) (proposing to adopt the initial fee schedule and stating that ''[u]nder the initial proposed Fee Schedule, the Exchange proposes to make clear that it does not charge any fees for membership, market data products, physical connectivity or application sessions.''). MEMX's market share has increased and recently proposed to adopt numerous non-transaction fees, including fees for membership, market data, and connectivity. *See* Securities Exchange Act Release Nos. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19) (proposing to adopt membership fees); 96430 (December 1, 2022), 87 FR 75083 (December 7, 2022) (SR–MEMX–2022–32) *and* 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26) (proposing to adopt fees for connectivity). *See also, e.g.,* Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR–NYSENAT–2020–05), *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf* (initiating market data fees for the NYSE National exchange after initially setting such fees at zero).

[72] The Exchange experienced a monthly average trading volume of 3.43% for the month of October 2020. *See* Market at a Glance, *available at www.miaxoptions.com.*

[73] *See* Securities Exchange Act Release Nos. 91460 (April 1, 2021), 86 FR 18349 (April 8, 2021) (SR–EMERALD–2021–11); 90184 (October 14, 2020), 85 FR 66636 (October 20, 2020) (SR–EMERALD–2020–12); 90600 (December 8, 2020), 85 FR 80831 (December 14, 2020) (SR–EMERALD–2020–17); 91032 (February 1, 2021), 86 FR 8428 (February 5, 2021) (SR–EMERALD–2021–02); *and* 91200 (February 24, 2021), 86 FR 12221 (March 2, 2021) (SR–EMERALD–2021–07).

[74] *See NetCoalition,* 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[75] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[76] *See NetCoalition,* 615 F.3d at 534–35; see also H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[77] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR–NYSEArca–2006–21).

[78] *Id.*

[79] *See* Staff Guidance, *supra* note 21.

[80] *See supra* note 72.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
NASDAQ[81] (equity options market share of 7.51% for the month of March 2023)[82]	10Gb Ultra fiber connection	$15,000 per connection.
	SQF Port	1–5 ports: $1,500 per port; 6–20 ports: $1,000 per port; 21 or more ports: $500 per port.
NASDAQ ISE LLC (''ISE'')[83] (equity options market share of 5.91% for the month of March 2023)[84]	10Gb Ultra fiber connection	$15,000 per connection.
	SQF Port[85]	$1,100 per port.
NYSE American LLC (''NYSE American'')[86] (equity options market share of 7.50% for the month of March 2023)[87]	10Gb LX LCN connection	$22,000 per connection.
	Order/Quote Entry Port	1–40 Ports: $450 per port; 41 or more Ports: $150 per port.
NASDAQ GEMX, LLC (''GEMX'')[88] (equity options market share of 2.00% for the month of March 2023)[89]	10Gb Ultra connection	$15,000 per connection.
	SQF Port	$1,250 per port.

There is no requirement, regulatory or otherwise, that any broker-dealer connect to and access any (or all of) the available options exchanges. Market participants may choose to become a member of one or more options exchanges based on the market participant's assessment of the business opportunity relative to the costs of the Exchange. With this, there is elasticity of demand for exchange membership. As an example, the Exchange's affiliate, MIAX Pearl Options, experienced a decrease in membership as the result of similar fees proposed herein. One MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023, as a direct result of the proposed connectivity and port fee changes on MIAX Pearl Options.

It is not a requirement for market participants to become members of all options exchanges, in fact, certain market participants conduct an options business as a member of only one options market.[90] A very small number of market participants choose to become a member of all sixteen options exchanges. Most firms that actively trade on options markets are not currently Members of the Exchange and do not purchase connectivity or port services at the Exchange. Connectivity and ports are only available to Members or service bureaus, and only a Member may utilize a port.[91]

One other exchange recently noted in a proposal to amend their own trading permit fees that of the 62 market making firms that are registered as Market Makers across Cboe, MIAX, and BOX, 42 firms access only one of the three exchanges.[92] The Exchange and its affiliates, MIAX Pearl and MIAX, have a total of 47 members. Of those 47 total members, 35 are members of all three affiliated exchanges, four are members of only two (2) affiliated exchanges, and eight (8) are members of only one affiliated exchange. The Exchange also notes that no firm is a Member of the Exchange only. The above data evidences that a broker-dealer need not have direct connectivity to all options exchanges, let alone the Exchange and its two affiliates, and broker-dealers may elect to do so based on their own business decisions and need to directly access each exchange's liquidity pool.

Not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the broker-dealer membership analysis of the options exchanges discussed above. As noted above, this is evidenced by the fact that one MIAX Options Pearl Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023 as a direct result of the proposed connectivity and port fee changes on MIAX Pearl Options (which are similar to the changes proposed herein). Indeed, broker-dealers choose if and how to access a particular exchange and because it is a choice, the Exchange must set reasonable pricing, otherwise prospective members would not connect and existing members would disconnect from the Exchange. The decision to become a member of an exchange, particularly for registered market makers, is complex, and not solely based on the non-transactional costs assessed by an exchange. As noted herein, specific factors include, but are not limited to: (i) an exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. Becoming a member of the exchange does not ''lock'' a potential member into a market or diminish the overall competition for exchange services.

In lieu of becoming a member at each options exchange, a market participant may join one exchange and elect to have their orders routed in the event that a better price is available on an away market. Nothing in the Order Protection Rule requires a firm to become a Member at—or establish connectivity

[81] *See* NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services *and* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.

[82] *See supra* note 72.

[83] *See* ISE Pricing Schedule, Options 7, Section 7, Connectivity Fees *and* ISE Rules, General 8: Connectivity.

[84] *See supra* note 72.

[85] Similar to the Exchange's MEI Ports, SQF ports are primarily utilized by Market Makers.

[86] *See* NYSE American Options Fee Schedule, Section V.A. Port Fees *and* Section V.B. Co-Location Fees.

[87] *See supra* note 72.

[88] *See* GEMX Pricing Schedule, Options 7, Section 6, Connectivity Fees *and* GEMX Rules, General 8: Connectivity.

[89] *See supra* note 72.

[90] BOX recently adopted an electronic market maker trading permit fee. *See* Securities Exchange Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17). In that proposal, BOX stated that, ''. . . it is not aware of any reason why Market Makers could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such Market Maker, did not make business or economic sense for such Market Maker to access such exchange. [BOX] again notes that no market makers are required by rule, regulation, or competitive forces to be a Market Maker on [BOX].'' Also in 2022, MEMX established a monthly membership fee. *See* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19). In that proposal, MEMX reasoned that that there is value in becoming a member of the exchange and stated that it believed that the proposed membership fee ''is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange'' and that ''neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange.''

[91] Service Bureaus may obtain ports on behalf of Members.

[92] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees). The Exchange believes that BOX's observation demonstrates that market making firms can, and do, select which exchanges they wish to access, and, accordingly, options exchanges must take competitive considerations into account when setting fees for such access.

to—the Exchange.[93] If the Exchange is not at the NBBO, the Exchange will route an order to any away market that is at the NBBO to ensure that the order was executed at a superior price and prevent a trade-through.[94]

With respect to the submission of orders, Members may also choose not to purchase any connection at all from the Exchange, and instead rely on the port of a third party to submit an order. For example, a third-party broker-dealer Member of the Exchange may be utilized by a retail investor to submit orders into an Exchange. An institutional investor may utilize a broker-dealer, a service bureau,[95] or request sponsored access [96] through a member of an exchange in order to submit a trade directly to an options exchange.[97] A market participant may either pay the costs associated with becoming a member of an exchange or, in the alternative, a market participant may elect to pay commissions to a broker-dealer, pay fees to a service bureau to submit trades, or pay a member to sponsor the market participant in order to submit trades directly to an exchange.

Non-Member third-parties, such as service bureaus and extranets, resell the Exchange's connectivity. This indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange's connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity and other access fees to its market. The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity. Unlike other exchanges, the Exchange also does not currently assess fees on third-party resellers on a per customer basis (*i.e.,* fees based on the number of firms that connect to the Exchange indirectly via the third-party).[98] Indeed, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own.[99] Particularly, in the event that a market participant views the Exchange's direct connectivity and access fees as more or less attractive than competing markets, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to the Exchange and connect instead to one or more of the other 16 options markets. Accordingly, the Exchange believes that the proposed fees are fair and reasonable and constrained by competitive forces.

The Exchange is obligated to regulate its Members and secure access to its environment. In order to properly regulate its Members and secure the trading environment, the Exchange takes measures to ensure access is monitored and maintained with various controls. Connectivity and ports are methods utilized by the Exchange to grant Members secure access to communicate with the Exchange and exercise trading rights. When a market participant elects to be a Member, and is approved for membership by the Exchange, the Member is granted trading rights to enter orders and/or quotes into Exchange through secure connections.

Again, there is no legal or regulatory requirement that a market participant become a Member of the Exchange. This is again evidenced by the fact that one MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023 as a direct result of the proposed connectivity and port fee changes on MIAX Pearl Options. If a market participant chooses to become a Member, they may then choose to purchase connectivity beyond the one connection that is necessary to quote or submit orders on the Exchange. Members may freely choose to rely on one or many connections, depending on their business model.

Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

In proposing to charge fees for connectivity services, the Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and transparently assessing the impact on Members—both generally and in relation to other Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange believes that this level of diligence and transparency is called for by the requirements of section 19(b)(1) under the Act,[100] and Rule 19b–4 thereunder,[101] with respect to the types of information SROs should provide when filing fee changes, and section 6(b) of the Act,[102] which requires, among other things, that exchange fees be reasonable and equitably allocated,[103] not designed to permit unfair discrimination,[104] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[105] This rule change proposal addresses those requirements, and the analysis and data in each of the sections that follow are designed to clearly and comprehensively show how they are met.[106] The Exchange reiterates that the legacy exchanges with whom the Exchange vigorously competes for order flow and market share, were not subject to any such diligence or transparency in

[93] *See* Options Order Protection and Locked/Crossed Market Plan (August 14, 2009), *available at https://www.theocc.com/getmedia/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/options_order_protection_plan.pdf.*

[94] Members may elect to not route their orders by utilizing the Do Not Route order type. *See* Exchange Rule 516(g).

[95] Service Bureaus provide access to market participants to submit and execute orders on an exchange. On the Exchange, a Service Bureau may be a Member. Some Members utilize a Service Bureau for connectivity and that Service Bureau may not be a Member. Some market participants utilize a Service Bureau who is a Member to submit orders.

[96] Sponsored Access is an arrangement whereby a Member permits its customers to enter orders into an exchange's system that bypass the Member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third-party technology provider.

[97] This may include utilizing a floor broker and submitting the trade to one of the five options trading floors.

[98] *See, e.g.,* Nasdaq Price List—U.S. Direct Connection and Extranet Fees, *available at,* U.S. Direct-Extranet Connection (*nasdaqtrader.com*); *and* Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); *and* 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114).

[99] The Exchange notes that resellers, such as SFTI, are not required to publicize, let alone justify or file with the Commission their fees, and as such could charge the market participant any fees it deems appropriate (including connectivity fees higher than the Exchange's connectivity fees), even if such fees would otherwise be considered potentially unreasonable or uncompetitive fees.

[100] 15 U.S.C. 78s(b)(1).

[101] 17 CFR 240.19b–4.

[102] 15 U.S.C. 78f(b).

[103] 15 U.S.C. 78f(b)(4).

[104] 15 U.S.C. 78f(b)(5).

[105] 15 U.S.C. 78f(b)(8).

[106] *See* Staff Guidance, *supra* note 21.

setting their baseline non-transaction fees, most of which were put in place before the Revised Review Process and Staff Guidance.

As detailed below, the Exchange recently calculated its aggregate annual costs for providing physical 10Gb ULL connectivity to the Exchange at $11,361,586 (or approximately $946,799 per month, rounded to the nearest dollar when dividing the annual cost by 12 months) and its aggregate annual costs for providing Limited Service MEI Ports at $1,799,066 (or approximately $148,255 per month, rounded to the nearest dollar when dividing the annual cost by 12 months). In order to cover the aggregate costs of providing connectivity to its Users (both Members and non-Members [107]) going forward and to make a modest profit, as described below, the Exchange proposes to modify its Fee Schedule to charge a fee of $13,500 per month for each physical 10Gb ULL connection. The Exchange also proposes to modify its Fee Schedule to charge tiered rates for additional Limited Service MEI Ports.

In 2020, the Exchange completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis'').[108] The Cost Analysis required a detailed analysis of the Exchange's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services, physical connectivity, and port access (which provide order entry, cancellation and modification functionality, risk functionality, the ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (''cost drivers'').

As an initial step, the Exchange determined the total cost for the Exchange and the affiliated markets). That total cost was then divided among the Exchange and each of its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (*e.g.,* price time or pro-rata), which may impact message traffic, individual system architectures that impact platform size,[109] storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time. This will result in different allocation percentages among the Exchange and its affiliated markets. Meanwhile this allocation methodology ensures that no portion of any cost was allocated twice or double-counted between the Exchange and its affiliated markets.

Next, the Exchange adopted an allocation methodology with thoughtful and consistently applied principles to guide how much of a particular cost amount allocated to the Exchange pursuant to the above methodology should be allocated within the Exchange to each core service. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical 1Gb and 10Gb ULL connectivity (62%), with smaller allocations to all ports (10%), and the remainder to the provision of transaction execution, membership services and market data services (28%). This next level of the allocation methodology at the individual exchange level also took into account a number of factors similar to those set forth under the first allocation methodology described above, to determine the appropriate allocation to connectivity or market data versus what is to be allocated to providing other services. The allocation methodology was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an estimated allocation of each cost driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity and port services, membership fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; many Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange's costs, the Exchange's methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges' interdependent costs, the Exchange will continue to be left with its best efforts to attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange's extensive updated Cost Analysis, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of connectivity services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of connectivity services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity services. In turn, the Exchange allocated certain costs more to physical connectivity and others to ports, while certain costs were

[107] Types of market participants that obtain connectivity services from the Exchange but are not Members include service bureaus and extranets. Service bureaus offer technology-based services to other companies for a fee, including order entry services, and thus, may access Limited Service MEI Ports on behalf of one or more Members. Extranets offer physical connectivity services to Members and non-Members.

[108] The Exchange frequently updates it Cost Analysis as strategic initiatives change, costs increase or decrease, and market participant needs and trading activity changes. The Exchange's most recent Cost Analysis was conducted ahead of this filing.

[109] For example, the Exchange maintains 12 matching engines, MIAX Pearl Options maintains 12 matching engines, MIAX Pearl Equities maintains 24 matching engines, and MIAX maintains 24 matching engines.

only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, the Exchange estimates that the cost drivers to provide 10Gb ULL connectivity and Limited Service MEI Port services, including both physical 10Gb connections and Limited Service MEI Ports, result in an aggregate monthly cost of approximately $1,095,054 (utilizing the rounded numbers when dividing the annual cost for 10Gb ULL connectivity and annual cost for Limited Service MEI Ports by 12 months, then adding both numbers together), as further detailed below.

Costs Related to Offering Physical 10Gb ULL Connectivity

The following chart details the individual line-item costs considered by the Exchange to be related to offering physical dedicated 10Gb ULL connectivity via an unshared network as well as the percentage of the Exchange's overall costs that such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 28.1% of its overall Human Resources cost to offering physical connectivity).

Cost drivers	Annual cost [110]	Monthly cost [111]	Percent of all
Human Resources	$3,520,856	$293,405	28
Connectivity (external fees, cabling, switches, etc.)	71,675	5,973	61.9
Internet Services, including External Market Data	373,249	31,104	84.8
Data Center	752,545	62,712	61.9
Hardware and Software Maintenance and Licenses	666,208	55,517	50.9
Depreciation	1,929,118	160,760	63.8
Allocated Shared Expenses	4,047,935	337,328	51.3
Total	11,361,586	946,799	42.8

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering physical 10Gb ULL connectivity. The Exchange notes that some of its cost allocation percentages for certain categories of expense differ when compared to the same categories of expense described by the Exchange's affiliates in their similar proposed fee changes for connectivity and ports. This is because the Exchange's cost allocation methodology utilizes the actual projected costs of the Exchange (which are specific to the Exchange, and are independent of the costs projected and utilized by the Exchange's affiliates) to determine its actual costs. The Exchange provides additional explanation below (including the reason for the deviation) where the Exchange considers such deviation in allocations to be non *de minimis.*

Human Resources

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include providing and maintaining physical connectivity and performance thereof (primarily the Exchange's network infrastructure team, which spends most of their time performing functions necessary to provide physical connectivity) and for which the Exchange allocated a percentage of 42.4% of each employee's time assigned to the Exchange based on the above-described allocation methodology. The Exchange also allocated Human Resources costs to provide physical connectivity to a limited subset of personnel with ancillary functions related to establishing and maintaining such connectivity (such as information security and finance personnel), for which the Exchange allocated cost on an employee-by-employee basis (*i.e.,* only including those personnel who do support functions related to providing physical connectivity) and then applied a smaller allocation to such employees (less than 20%). The Exchange notes that it and its affiliated markets have 184 employees and each department leader has direct knowledge of the time spent by those spent by each employee with respect to the various tasks necessary to operate the Exchange. Specifically, twice a year and as needed with additional new hires and new project initiatives, in consultation with employees as needed, managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine that market's individual Human Resources expense. Then, again managers and department heads assign a percentage of each employee's time allocated to the Exchange into buckets including network connectivity, ports, market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing physical connectivity, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing physical connectivity. This includes personnel from the following Exchange departments that are predominately involved in providing 1Gb and 10Gb ULL connectivity: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. The Exchange notes that senior level executives were only allocated Human Resources costs to the extent the Exchange believed they are involved in overseeing tasks related to providing physical connectivity. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity and Internet Services

The Connectivity cost includes external fees paid to connect to other exchanges and third parties, cabling and switches required to operate the Exchange. The Connectivity line-item is more narrowly focused on technology used to complete connections to the Exchange and to connect to external markets. The Exchange notes that its connectivity to external markets is required in order to receive market data

[110] The Annual Cost includes figures rounded to the nearest dollar.

[111] The Monthly Cost was determined by dividing the Annual Cost for each line item by twelve (12) months and rounding up or down to the nearest dollar.

to run the Exchange's matching engine and basic operations compliant with existing regulations, primarily Regulation NMS.

The Exchange relies on various connectivity and content service providers for connectivity and data feeds for the entire U.S. options industry, as well as content, connectivity, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity. Specifically, the Exchange utilizes connectivity and content service providers to connect to other national securities exchanges, the Options Price Reporting Authority (''OPRA''), and to receive market data from other exchanges and market data providers. The Exchange understands that these service providers provide services to most, if not all, of the other U.S. exchanges and other market participants. Connectivity and market data provided these service providers is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity. Without these services providers, the Exchange would not be able to connect to other national securities exchanges, market data providers, or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its connectivity and content service provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

Lastly, the Exchange notes that this allocation percentage appears to be greater than its affiliates by more than a *de minimis* amount as MIAX Emerald allocated 84.8% of its Internet Services, including External Market Data expense towards 10Gb ULL connectivity, while MIAX, MIAX Pearl Options and MIAX Pearl Equities allocated 73.3%, 73.3% and 72.5%, respectively, to the same category of expense. However, the Exchange believes that this is not, in dollar amounts, a non *de minimis* difference. This is because the total dollar amount of expense covered by this expense category is relatively small. Thus, non *de minimis* differences in total amounts create the appearance of non *de minimis* differences in allocation percentages when compared across markets. For instance, despite the *non de minimis* difference in cost allocation percentages for the Internet Services, including External Market Data cost driver across the Exchange and its affiliates' platforms, the actual dollar amount difference is approximately only $44,000.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment (such as dedicated space, security services, cooling and power). The Exchange notes that it does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties. The Exchange has allocated a high percentage of the Data Center cost (61.9%) to physical 10Gb ULL connectivity because the third-party data centers and the Exchange's physical equipment contained therein is the most direct cost in providing physical access to the Exchange. In other words, for the Exchange to operate in a dedicated space with connectivity of participants to a physical trading platform, the data centers are a very tangible cost, and in turn, if the Exchange did not maintain such a presence then physical connectivity would be of no value to market participants.

External Market Data

External Market Data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange included External Market Data fees to the provision of 10Gb ULL connectivity as such market data is necessary here to offer certain services related to such connectivity, such as certain risk checks that are performed prior to execution, and checking for other conditions (*e.g.,* re-pricing of orders to avoid lock or crossed markets, trading collars). This allocation was included as part of the Internet Services cost described above. Thus, as market data from other exchanges is consumed at the matching engine level, (to which 10Gb ULL connectivity provides access to) in order to validate orders before additional entering the matching engine or being executed, the Exchange believes it is reasonable to allocate a small amount of such costs to 10Gb ULL connectivity.

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer physical connectivity to the Exchange.[112]

Monthly Depreciation

All physical assets and software, which also includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. As noted above, the Exchange allocated 63.8% of all depreciation costs to providing physical 10Gb ULL connectivity. The Exchange notes, however, that it did not allocate depreciation costs for any depreciated software necessary to operate the Exchange to physical connectivity, as such software does not impact the provision of physical connectivity. The Exchange also notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost.

Allocated Shared Expenses

Finally, a limited portion of general shared expenses was allocated to overall physical connectivity costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide physical connectivity. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange notes that the cost of paying directors to serve on its Board of Directors is also included in the Exchange's general shared expenses.[113] The Exchange notes that the 51.3%

[112] This expense may be less than the Exchange's affiliated markets, specifically MIAX Pearl, because, unlike the Exchange, MIAX Pearl (the options and equities markets) maintains an additional gateway to accommodate its member's access and connectivity needs. This added gateway contributes to the difference in allocations between the Exchange and MIAX Pearl.

[113] The Exchange notes that MEMX allocated a precise amount of 10% of the overall cost for directors to providing physical connectivity. The Exchange does not calculate is expenses at that granular a level. Instead, director costs are included as part of the overall general allocation.

allocation of general shared expenses for physical 10Gb ULL connectivity is higher than that allocated to general shared expenses for Limited Service MEI Ports based on its allocation methodology that weighted costs attributable to each Core Service based on an understanding of each area. While physical connectivity has several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Centers, as described above), Limited Service MEI Ports do not require as many broad or indirect resources as other Core Services. The total monthly cost for 10Gb ULL connectivity of $946,799 was divided by the number of physical 10Gb ULL connections the Exchange maintained at the time that proposed pricing was determined (102), to arrive at a cost of approximately $9,282 per month, per physical 10Gb ULL connection.

Costs Related to Offering Limited Service MEI Ports

The following chart details the individual line-item costs considered by the Exchange to be related to offering Limited Service MEO Ports as well as the percentage of the Exchange's overall costs such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 5.9% of its overall Human Resources cost to offering Limited Service MEI Ports).

Cost drivers	Annual cost [114]	Monthly cost [115]	Percent of all
Human Resources	$737,784	$61,482	5.9
Connectivity (external fees, cabling, switches, etc.)	3,713	309	3.2
Internet Services	14,102	1,175	3.2
Data Center	55,686	4,641	4.6
Hardware and Software Maintenance and Licenses	41,951	3,496	3.2
Depreciation	112,694	9,391	3.7
Allocated Shared Expenses	813,136	67,761	10.3
Total	1,779,066	148,255	6.7

The Exchange notes that some of its cost allocation percentages for certain categories of expense differ when compared to the same categories of expense described by the Exchange's affiliates in their similar proposed fee changes for connectivity and ports. This is because the Exchange's cost allocation methodology utilizes the actual projected costs of the Exchange (which are specific to the Exchange, and are independent of the costs projected and utilized by the Exchange's affiliates) to determine its actual costs. The Exchange provides additional explanation below (including the reason for the deviation) where the Exchange considers such deviation in allocations to be non *de minimis.*

Human Resources

With respect to Limited Service MEI Ports, the Exchange calculated Human Resources cost by taking an allocation of employee time for employees whose functions include providing Limited Service MEI Ports and maintaining performance thereof (including a broader range of employees such as technical operations personnel, market operations personnel, and software engineering personnel) as well as a limited subset of personnel with ancillary functions related to maintaining such connectivity (such as sales, membership, and finance personnel). Just as described above for 10Gb ULL connectivity, the estimates of Human Resources cost were again determined by consulting with department leaders, determining which employees are involved in tasks related to providing Limited Service MEI Ports and maintaining performance thereof, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing Limited Service MEI Ports and maintaining performance thereof. The Exchange notes that senior level executives were only allocated Human Resources costs to the extent the Exchange believed they are involved in overseeing tasks related to providing Limited Service MEI Ports and maintaining performance thereof. This includes personnel from the following Exchange departments that are predominately involved in providing 1Gb and 10Gb ULL connectivity: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. The Human Resources cost was again calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity and Internet Services

The Connectivity cost includes external fees paid to connect to other exchanges, cabling and switches, as described above. For purposes of Limited Service MEI Ports, the Exchange also includes a portion of its costs related to External Market Data, as described below.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs (the Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties).

External Market Data

External Market Data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange included External Market Data fees to the provision of Limited Service MEI Ports as such market data is necessary to offer certain services related to such sessions, such as validating orders on entry against the national best bid and national best offer and checking for other conditions (*e.g.,* whether a symbol is halted). This allocation was included as part of the Internet Services cost described above.[116] Thus, as market data from other Exchanges is consumed at the Limited Service MEI Port level in order to validate orders before additional processing occurs with respect to such orders, the Exchange believes it is

[114] *See supra* note 110 (describing rounding of Annual Costs).

[115] *See supra* note 111 (describing rounding of Monthly Costs based on Annual Costs).

[116] The Exchange notes that MEMX separately allocated 7.5% of its external market data costs to providing physical connectivity.

reasonable to allocate a small amount of such costs to Limited Service MEI Ports.

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to monitor the health of the order entry services provided by the Exchange, as described above.

Monthly Depreciation

All physical assets and software, which also includes assets used for testing and monitoring of order entry infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which is owned by the Exchange and some of which is leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange allocated 3.7% of all depreciation costs to providing Limited Service MEI Ports. In contrast to physical connectivity, described above, the Exchange did allocate depreciation costs for depreciated software necessary to operate the Exchange to Limited Service MEI Ports because such software is related to the provision of such connectivity. The Exchange also notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost.

Allocated Shared Expenses

Finally, a limited portion of general shared expenses was allocated to overall Limited Service MEI Ports costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide Limited Service MEI Ports. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange again notes that the cost of paying directors to serve on its Board of Directors is included in the calculation of Allocated Shared Expenses, and thus a portion of such overall cost amounting to less than 11% of the overall cost for directors was allocated to providing Limited Service MEI Ports. The Exchange notes that the 10.3% allocation of general shared expenses for Limited Service MEI Ports is lower than that allocated to general shared expenses for physical connectivity based on its allocation methodology that weighted costs attributable to each Core Service based on an understanding of each area. While Limited Service MEI Ports have several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Centers, as described above), 10Gb ULL connectivity requires a broader level of support from Exchange personnel in different areas, which in turn leads to a broader general level of cost to the Exchange. The total monthly cost of $148,255 was divided by the number of chargeable Limited Service MEI Ports (excluding the two free Limited Service MEI Ports per matching engine that each Member receives) the Exchange maintained at the time that proposed pricing was determined (706), to arrive at a cost of approximately $210 per month, per charged Limited Service MEI Port.

Lastly, the Exchange notes that this allocation is greater than its affiliate, MIAX Pearl Options, by more than a *de minimis* amount as MIAX Emerald allocated 10.3% of its Allocated Shared Expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 3.6% to its Full Service MEO Ports (Bulk and Single) for the same category of expense. The allocation percentages set forth above differ because they correspond with the number of applicable ports utilized on each exchange. For March 2023, MIAX Market Makers utilized 1,782 Limited Service MEI ports and MIAX Emerald Market Makers utilized 1,028 Limited Service MEI Ports. When compared to Full Service Port (Bulk and Single) usage, for March 2023, MIAX Pearl Options Members utilized only 432 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX Emerald, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options which has a lower port count.

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core services (including physical connectivity or Limited Service MEI Ports) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal and the filings the Exchange submitted proposing fees for proprietary data feeds offered by the Exchange. For instance, in calculating the Human Resources expenses to be allocated to physical connections based upon the above described methodology, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a high percentage of the cost of such personnel (42.4%) given their focus on functions necessary to provide physical connections. The salaries of those same personnel were allocated only 8.0% to Limited Service MEI Ports and the remaining 49.6% was allocated to 1Gb connectivity, other port services, transaction services, membership services and market data. The Exchange did not allocate any other Human Resources expense for providing physical connections to any other employee group, outside of a smaller allocation of 19.8% for 10Gb ULL connectivity or 19.9% for the entire network, of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel. In contrast, the Exchange allocated much smaller percentages of costs (5% or less) across a wider range of personnel groups in order to allocate Human Resources costs to providing Limited Service MEI Ports. This is because a much wider range of personnel are involved in functions necessary to offer, monitor and maintain Limited Service MEI Ports but the tasks necessary to do so are not a primary or full-time function.

In total, the Exchange allocated 28.1% of its personnel costs to providing physical connections and 5.9% of its personnel costs to providing Limited Service MEI Ports, for a total allocation of 34% Human Resources expense to provide these specific connectivity services. In turn, the Exchange allocated the remaining 66% of its Human Resources expense to membership services, transaction services, other port services and market data. Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all

core services, including physical connections and Limited Service MEI Ports, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide connectivity services to its Members and non-Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing connectivity services, but instead allocated approximately 67.5% of the Exchange's overall depreciation and amortization expense to connectivity services (63.8% attributed to 10Gb ULL physical connections and 3.7% to Limited Service MEI Ports). The Exchange allocated the remaining depreciation and amortization expense (approximately 32.5%) toward the cost of providing transaction services, membership services, other port services and market data.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. The Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from connectivity, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity and/or Limited Service MEI Ports or in obtaining new clients that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

The Exchange notes that the Cost Analysis is based on the Exchange's 2023 fiscal year of operations and projections. It is possible however that such costs will either decrease or increase. To the extent the Exchange sees growth in use of connectivity services it will receive additional revenue to offset future cost increases.

However, if use of connectivity services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange would propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Projected Revenue

The proposed fees will allow the Exchange to cover certain costs incurred by the Exchange associated with providing and maintaining necessary hardware and other network infrastructure as well as network monitoring and support services; without such hardware, infrastructure, monitoring and support the Exchange would be unable to provide the connectivity services. Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection(s). The above cost, namely those associated with hardware, software, and human capital, enable the Exchange to measure network performance with nanosecond granularity. These same costs are also associated with time and money spent seeking to continuously improve the network performance, improving the subscriber's experience, based on monitoring and analysis activity. The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by amending fees for connectivity services. Subscribers, particularly those of 10Gb ULL connectivity, expect the Exchange to provide this level of support to connectivity so they continue to receive the performance they expect. This differentiates the Exchange from its competitors. As detailed above, the Exchange has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue.

The Exchange's Cost Analysis estimates the annual cost to provide 10Gb ULL connectivity services at $11,361,586. Based on current 10Gb ULL connectivity services usage, the Exchange would generate annual revenue of approximately $16,524,000. This represents a modest profit of 31% when compared to the cost of providing 10Gb ULL connectivity services which will decrease over time.[117] The Exchange's Cost Analysis estimates the annual cost to provide Limited Service MEI Port services at $1,779,066. Based on current Limited Service MEI Port services usage, the Exchange would generate annual revenue of approximately $2,809,200. This represents an estimated profit margin of 37% when compared to the cost of providing Limited Service MEI Port services, which will decrease over time.[118] Even if the Exchange earns those amounts or incrementally more or less, the Exchange believes the proposed fees are fair and reasonable because they will not result in pricing that deviates from that of other exchanges or supra-competitive profit, when comparing the total expense of the Exchange associated with providing 10Gb ULL connectivity and Limited Service MEI Port services versus the total projected revenue of the Exchange associated with network 10Gb ULL connectivity and Limited Service MEI Port services.

* * * * *

The Exchange has operated at a cumulative net annual loss since it

[117] Assuming the U.S. inflation rate continues at its current rate, the Exchange believes that the projected profit margins in this proposal will decrease; however, the Exchange cannot predict with any certainty whether the U.S. inflation rate will continue at its current rate or its impact on the Exchange's future profits or losses. *See, e.g., https://www.usinflationcalculator.com/inflation/current-inflation-rates/* (last visited April 18, 2023).

[118] *Id.*

launched operations in 2019.[119] The Exchange has operated at a net loss due to a number of factors, one of which is choosing to forgo revenue by offering certain products, such as connectivity, at lower rates than other options exchanges to attract order flow and encourage market participants to experience the high determinism, low latency, and resiliency of the Exchange's trading systems. The Exchange should not now be penalized for seeking to raise its fees in light of necessary technology changes and its increased costs after offering such products as discounted prices. Therefore, the Exchange believes the proposed fees are reasonable because they are based on both relative costs to the Exchange to provide dedicated 10Gb ULL connectivity and Limited Service MEI Ports, the extent to which the product drives the Exchange's overall costs and the relative value of the product, as well as the Exchange's objective to make access to its Systems broadly available to market participants. The Exchange also believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup the Exchange's costs of providing dedicated 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent customer activity actually produces the revenue estimated. As a competitor in the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such projections will be realized. For instance, in order to generate the revenue expected from 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange will have to be successful in retaining existing clients that wish to utilize 10Gb ULL connectivity and Limited Service MEI Ports and/or obtaining new clients that will purchase such access. To the extent the Exchange is successful in encouraging new clients to utilize 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange does not believe it should be penalized for such success. To the extent the Exchange has mispriced and experiences a net loss in clients, the Exchange could experience a net reduction in revenue. While the Exchange believes in transparency around costs and potential revenue, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted.

The Exchange is owned by a holding company that is the parent company of four exchange markets and, therefore, the Exchange and its affiliated markets must allocate shared costs across all of those markets accordingly, pursuant to the above-described allocation methodology. In contrast, the Investors Exchange LLC (''IEX'') and MEMX, which are currently each operating only one exchange, in their recent non-transaction fee filings can allocate the entire amount of that same cost to a single exchange. This can result in lower profit margins for the non-transaction fees proposed by IEX and MEMX because the single allocated cost does not experience the efficiencies and synergies associated with shared costs across multiple platforms. The Exchange and its affiliated markets must share a single cost, which results in cost efficiencies that cause a broader gap between the allocated cost amount and projected revenue, even though the fee levels being proposed are lower or similar to competing markets (as described above). To the extent that the application of a cost-based standard results in Commission Staff making determinations as to the appropriateness of certain profit margins, the Commission Staff must consider whether the proposed fee level is comparable to, or on parity with, the same fee charged by competing exchanges and how different cost allocation methodologies (such as across multiple markets) may result in different profit margins for comparable fee levels. If it is the case that the Commission Staff is making determinations as to appropriate profit margins, the Exchange believes that Staff should be clear to all market participants as to what they determine is an appropriate profit margin and should apply such determinations consistently and, in the case of certain legacy exchanges, retroactively, if such standards are to avoid having a discriminatory effect.

Further, the proposal reflects the Exchange's efforts to control its costs, which the Exchange does on an ongoing basis as a matter of good business practice. A potential profit margin should not be judged alone based on its size, but is also indicative of costs management and whether the ultimate fee reflects the value of the services provided. For example, a profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling its costs, but not excessive where on another exchange where that exchange is charging comparable fees but has a lower profit margin due to higher costs. Doing so could have the perverse effect of not incentivizing cost control where higher costs alone could be used to justify fees increases.

The Proposed Pricing Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that the proposed fees are reasonable, fair, equitable, and not unfairly discriminatory because they are designed to align fees with services provided and will apply equally to all subscribers.

10Gb ULL Connectivity

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity and port alternatives, as the users of 10Gb ULL connections consume substantially more bandwidth and network resources than users of 1Gb ULL connection. Specifically, the Exchange notes that 10Gb ULL connection users account for more than 99% of message traffic over the network, driving other costs that are linked to capacity utilization, as described above, while the users of the 1Gb ULL connections account for less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have the same business needs for the high-performance network as 10Gb ULL users.

The Exchange's high-performance network and supporting infrastructure (including employee support), provides unparalleled system throughput with the network ability to support access to several distinct options markets. To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages to satisfy its record keeping requirements under the Exchange Act.[120] Thus, as the number of messages

[119] The Exchange has incurred a cumulative loss of $9 million since its inception in 2019. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed June 29, 2022, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001164.pdf.*

[120] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities

an entity increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb ULL users pay for the vast majority of the shared network resources from which all market participants' benefit.

Limited Service MEI Ports

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity alternatives, as the users of the Limited Service MEI Ports consume the most bandwidth and resources of the network. Specifically, like above for the 10Gb ULL connectivity, the Exchange notes that the Market Makers who take the maximum amount of Limited Service MEI Ports account for approximately greater than 99% of message traffic over the network, while Market Makers with fewer Limited Service MEI Ports account for approximately less than 1% of message traffic over the network. In the Exchange's experience, Market Makers who only utilize the two free Limited Service MEI Ports do not have a business need for the high performance network solutions required by Market Makers who take the maximum amount of Limited Service MEI Ports. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 18 million quote messages per second. Based on November 2022 trading results, on an average day, the Exchange handles over approximately 6.9 billion quotes, and more than 146 billion quotes over the entire month. Of that total, Market Makers with the maximum amount of Limited Service MEI Ports generate over 4 billion quotes, and Market Makers who utilize the two free Limited Service MEI Ports generate approximately 1.6 billion quotes. Also for November 2022, Market Makers who utilized 7 to 9 Limited Service MEI ports submitted an average of 1,264,703,600 quotes per day. To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the Exchange Act.[121] Thus, as the number of connections a Market Maker has increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. The Exchange sought to design the proposed tiered-pricing structure to set the amount of the fees to relate to the number of connections a firm purchases. The more connections purchased by a Market Maker likely results in greater expenditure of Exchange resources and increased cost to the Exchange. With this in mind, the Exchange proposes no fee or lower fees for those Market Makers who receive fewer Limited Service MEI Ports since those Market Makers generally tend to send the least amount of orders and messages over those connections. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that Market Makers who take the most Limited Service MEI Ports pay for the vast majority of the shared network resources from which all Member and non-Member users benefit, but is designed and maintained from a capacity standpoint to specifically handle the message rate and performance requirements of those Market Makers.

To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. Billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the Exchange Act.[122] Thus, as the number of connections a Market Maker has increases, the related pull on Exchange resources also increases. The Exchange sought to design the proposed tiered-pricing structure to set the amount of the fees to relate to the number of connections a firm purchases. The more connections purchased by a Market Maker likely results in greater expenditure of Exchange resources and increased cost to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing 10Gb ULL connectivity and Limited Service MEI Ports at below market rates to market participants since the Exchange launched operations. As described above, the Exchange operated at a cumulative net annual loss since its launch in 2019 [123] due to providing a low-cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very lower fee, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low-cost exchange alternative to the options industry, which resulted in lower initial revenues. Examples of this are 10Gb ULL connectivity and Limited Service MEI Ports, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Further, the Exchange does not believe that the proposed fee increase

associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[121] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[122] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[123] *See supra* note 119.

for the 10Gb ULL connection change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. As is the case with the current proposed flat fee, the proposed fee would apply uniformly to all market participants regardless of the number of connections they choose to purchase. The proposed fee does not favor certain categories of market participants in a manner that would impose an undue burden on competition.

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, Exchange personnel has been informally discussing potential fees for connectivity services with a diverse group of market participants that are connected to the Exchange (including large and small firms, firms with large connectivity service footprints and small connectivity service footprints, as well as extranets and service bureaus) for several months leading up to that time. The Exchange does not believe the proposed fees for connectivity services would negatively impact the ability of Members, non-Members (extranets or service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers to compete with other market participants or that they are placed at a disadvantage.

The Exchange does anticipate, however, that some market participants may reduce or discontinue use of connectivity services provided directly by the Exchange in response to the proposed fees. In fact, as mentioned above, one MIAX Pearl Market Maker terminated their MIAX Pearl membership on January 1, 2023 as a direct result of the similar proposed fee changes by MIAX Pearl.[124] The Exchange does not believe that the proposed fees for connectivity services place certain market participants at a relative disadvantage to other market participants because the proposed connectivity pricing is associated with relative usage of the Exchange by each market participant and does not impose a barrier to entry to smaller participants. The Exchange believes its proposed pricing is reasonable and, when coupled with the availability of third-party providers that also offer connectivity solutions, that participation on the Exchange is affordable for all market participants, including smaller trading firms. As described above, the connectivity services purchased by market participants typically increase based on their additional message traffic and/or the complexity of their operations. The market participants that utilize more connectivity services typically utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the proposed fees for connectivity services do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed connectivity fees reflects the network resources consumed by the various size of market participants and the costs to the Exchange of providing such connectivity services.

Inter-Market Competition

The Exchange also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, options market participants are not forced to connect to all options exchanges. There is no reason to believe that our proposed price increase will harm another exchange's ability to compete. There are other options markets of which market participants may connect to trade options at higher rates than the Exchange's. There is also a range of alternative strategies, including routing to the exchange through another participant or market center or accessing the Exchange indirectly. Market participants are free to choose which exchange or reseller to use to satisfy their business needs. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

* * * * *

In conclusion, as discussed thoroughly above, the Exchange regrettably believes that the application of the Revised Review Process and Staff Guidance has adversely affected inter-market competition among legacy and non-legacy exchanges by impeding the ability of non-legacy exchanges to adopt or increase fees for their market data and access services (including connectivity and port products and services) that are on parity or commensurate with fee levels previously established by legacy exchanges. Since the adoption of the Revised Review Process and Staff Guidance, and even more so recently, it has become extraordinarily difficult to adopt or increase fees to generate revenue necessary to invest in systems, provide innovative trading products and solutions, and improve competitive standing to the benefit of non-legacy exchanges' market participants. Although the Staff Guidance served an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, it has also negatively impacted non-legacy exchanges in particular in their efforts to adopt or increase fees that would enable them to more fairly compete with legacy exchanges, despite providing enhanced disclosures and rationale under both competitive and cost basis approaches provided for by the Revised Review Process and Staff Guidance to support their proposed fee changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received one comment letter on the Initial Proposal and one comment letter on the Second Proposal from the same commenter.[125] In their letters, the sole commenter seeks to incorporate comments submitted on previous Exchange proposals to which the Exchange has previously responded. To the extent the sole commenter has attempted to raise new issues in its letters, the Exchange believes those issues are not germane to this proposal in particular, but rather raise larger issues with the current environment surrounding exchange non-transaction fee proposals that should be addressed by the Commission through rule making, or Congress, more holistically and not through an individual exchange fee filing. Among other things, the commenter is requesting additional data

[124] The Exchange acknowledges that IEX included in its proposal to adopt market data fees after offering market data for free an analysis of what its projected revenue would be if all of its existing customers continued to subscribe versus what its projected revenue would be if a limited number of customers subscribed due to the new fees. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945 (April 13, 2022) (SR–IEX–2022–02). MEMX did not include a similar analysis in either of its recent non-transaction fee proposals. *See, e.g., supra* note 52. The Exchange does not believe a similar analysis would be useful here because it is amending existing fees, not proposing to charge a new fee where existing subscribers may terminate connections because they are no longer enjoying the service at no cost.

[125] *See* letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023 *and* letter from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023.

and information that is both opaque and a moving target and would constitute a level of disclosure materially over and above that provided by any competitor exchanges.

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,[126] and Rule 19b–4(f)(2)[127] 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2023–12 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–2023–12. 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 (*https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–EMERALD–2023–12 and should be submitted on or before May 30, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[128]

Sherry R. Haywood,

Assistant Secretary.

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[126] 15 U.S.C. 78s(b)(3)(A)(ii).

[127] 17 CFR 240.19b–4(f)(2).

[128] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97416; File No. SR–Phlx–2023–14]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 4 Regarding Qualified Contingent Cross Growth Tier Rebate

May 2, 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 20, 2023, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx's Pricing Schedule at Options 7, Section 4, ''Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY).'' [3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx proposes to amend its Pricing Schedule at Options 7, Section 4, ''Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY).'' Specifically, Phlx proposes to amend its Qualified Contingent Cross (''QCC'') Growth Tier Rebate, in Section B of Options 7, Section 4, to sunset the QCC Growth Tier Rebate. The QCC Growth Tier Rebate will be available through July 31, 2023.

Today, the Exchange offers a QCC Growth Tier Rebate to encourage Phlx members and member organizations to transact a greater number of QCC Orders on Phlx. In order to qualify for the QCC Growth Tier Rebate, a member's or member organization's total floor transaction,[4] and electronic QCC Orders

[3] On April 20, 2023 the Exchange withdrew SR–Phlx–2023–12 and replaced it with the instant rule change.

[4] The term ''floor transaction'' is a transaction that is effected in open outcry on the Exchange's trading floor. *See* Phlx Options 7, Section 1(c). Of note, the term ''floor transaction'' is more broadly defined than the term ''Open Outcry Floor Transaction''

Continued

and Floor QCC Orders volume (''QCC transaction volume'') must exceed 12,500,000 contracts in a given month. In addition to the aforementioned criteria, the member's or member organization's respective Phlx House Account [5] must execute QCC transaction volume of 250,000 or more contracts in excess of the member's or member organization's QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 250,000 or more contracts in a given month.

The Exchange also offers an alternative qualification to achieve the QCC Growth Tier Rebate. A member's or member organization's Open Outcry Floor Transaction volume [6] in a given month must exceed 500,000 contracts. In addition to the aforementioned criteria, a member's or member organization's respective Phlx House Account must execute QCC transaction volume of 2,500,000 or more contracts in excess of the member's or member organization's QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 2,500,000 or more contracts in a given month.

Today, the Exchange pays a $0.20 per contract QCC Growth Tier Rebate on a QCC Order comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. Further, the Exchange pays a $0.26 per contract QCC Growth Tier Rebate on a QCC Order comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. The Exchange pays the QCC Growth Tier Rebate on all qualifying executed electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30I [sic], except where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional; (iii) Professional-to-Professional; or (iv) a dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions (as defined in Options 7, Section 4). Finally, members and member organizations are entitled to one QCC Rebate in a given month, either the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both.

At this time, the Exchange proposes to sunset the QCC Growth Tier Rebate. The QCC Growth Tier Rebate will be available through July 31, 2023.[7] Despite only offering this program for 6 months, the Exchange believes that it will continue to encourage members and member organizations to earn larger QCC rebates by executing a larger amount of floor transactions, QCC transaction volume, and Open Outcry Floor Transaction volume on Phlx's trading floor.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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, while adopting a series of steps to improve the current market model, 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.'' [10]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [11] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[12] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [13]

Further, ''[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 order-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 possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .'' [14] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange's proposal to sunset the QCC Growth Tier Rebate is reasonable because the Exchange believes that despite only offering this program for 6 months, the rebate will continue to encourage members and member organizations to earn larger QCC rebates by executing a larger amount of floor transactions, QCC transaction volume, and Open Outcry Floor Transaction volume on Phlx's trading floor during the remaining months of the program. The Exchange believes the rebate will continue to incentivize members and member organizations to engage in substantial amounts of trading activity which would serve to bring additional open outcry liquidity to the trading floor and additional QCC Order Flow to Phlx. Also, this incentive should continue to encourage members and member organizations to commence sending such order flow to Phlx for the

which is discussed herein and is a subset of the term ''floor transaction''.

[5] Each Phlx member or member organization is required to establish one Phlx House Account with the Exchange's Membership Department. Only one Phlx House Account is required to transact business on Phlx. The Exchange assesses a $50.00 a month account fee for this account as provided for within Options 7, Section 8A. A Phlx member or member organization has the option of acquiring multiple Phlx House Accounts depending on a member's or member organization's business model and how they elect to organize their business.

[6] The term ''Open Outcry Floor Transaction'' includes all transactions executed in open outcry on Phlx's trading floor except: (1) dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions as defined in this Options 7, Section 4; (2) Cabinet Transactions as defined in Options 8, Section 33; and (3) Customer-to-Customer transactions.

[7] The QCC Growth Tier Rebate will be available through the close of business on July 31, 2023 but would not be available thereafter. For example, as of August 1, 2023 the Exchange would no longer offer the QCC Growth Tier Rebate.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[11] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[12] *See NetCoalition,* at 534–535.

[13] *Id.* at 537.

[14] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

opportunity to earn this rebate until the program expires.

The Exchange's proposal to sunset the QCC Growth Tier Rebate is equitable and not unfairly discriminatory because all members and member organizations will be subject to the program during the 6 months it is offered. The Exchange would no longer offer the rebate to any member or member organization after the sunset date. Additionally, the Exchange's proposal to establish a QCC Growth Tier Rebate is equitable and not unfairly discriminatory because any member or member organization may qualify for this rebate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-Market Competition

The proposed amendments do not impose an undue burden on intra-market competition. In terms of intra-market competition, the Exchange's proposal to sunset the QCC Growth Tier Rebate does not impose an undue burden on competition because all members and member organizations will be subject to the program during the 6 months it is offered. The Exchange would no longer offer the rebate to any member or member organization after the sunset date. Additionally, the Exchange's proposal to establish a QCC Growth Tier Rebate is equitable and not unfairly discriminatory because any member or member organization may qualify for this rebate.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2023–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2023–14. 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 (*https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–Phlx–2023–14 and should be submitted on or before May 30, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09678 Filed 5–5–23; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97418; File No. SR–BOX–2023–12]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility To Establish a Monthly Dividend Strategy Fee Cap for Dividend Strategy Qualified Open Outcry Orders

May 2, 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 May 1, 2023, BOX Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule to establish a monthly dividend strategy fee cap for dividend strategy Qualified Open Outcry (''QOO'') Orders on the BOX Options Market LLC (''BOX'') options facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *https://rules.boxexchange.com/rulefilings.*

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 BOX Fee Schedule to establish a monthly dividend strategy fee cap for dividend strategy Qualified Open Outcry (''QOO'') Orders. Specifically, the Exchange is proposing to: (1) rename Section V.D to Section V.D.1; (2) add Section V.D.2; and (3) to establish a monthly dividend strategy fee cap for dividend strategy QOO Orders.

Currently, the transaction fees for QOO Orders, including Strategy [5] QOO Orders, are detailed in Section V of the BOX Fee Schedule. Specifically, Broker Dealer QOO transactions are assessed $0.25 per contract and Market Maker QOO transactions are assessed $0.35 per contract. Public Customers and Broker Dealers facilitating a Public Customer are assessed $0.00. Professional Customers are assessed $0.10 per contract.[6] Additionally, Floor Brokers are eligible for a rebate for QOO Orders presented on the Trading Floor.[7] The rebate does not apply to Public Customer executions, executions subject to the Strategy QOO Order Fee Cap and Rebate, discussed below, or Broker Dealer executions where the Broker Dealer is facilitating a Public Customer.

Currently, to further incentivize Participants to execute strategy QOO transactions on BOX, BOX offers the Strategy QOO Order Fee Cap and Rebate in Section V.D of its Fee Schedule.[8] Specifically, the manual transaction fees for certain Strategy QOO Orders are capped on a daily basis. Short stock interest, long stock interest, merger, reversal, conversion, jelly roll, and box spread strategies executed on the same trading day are capped at $500 per day per customer. Further, dividend strategies executed on the same trading day in the same options class are capped at $1,000 per day per customer. In addition to the fee caps detailed above, on each trading day, Floor Brokers are eligible to receive a $500 rebate per customer for presenting certain Strategy QOO Orders on the Trading Floor. The rebate is applied once the $500 fee cap, per customer, for all short stock interest, long stock interest, merger, reversal, conversion, jelly roll, and box spread strategies is met. For dividend strategies, the rebate of $500 per customer is applied once the $1,000 fee cap, per customer, is met.[9]

The Exchange now proposes to: (1) rename Section V.D to Section V.D.1; (2) add Section V.D.2; and (3) to establish a monthly dividend strategy QOO Order fee cap. The Exchange proposes to add Section V.D.2 in order to separate dividend strategy fee caps and rebates from short stock interest, long stock interest, merger, reversal, conversion, jelly roll, and box spread strategy fee caps and rebates. Specifically, the references to dividend strategies in current Section V.D will be removed and added to proposed Section V.D.2 and what remains of current Section V.D will be renamed Section V.D.1. As such, proposed Section V.D.2 will include the dividend strategy provisions moved from current Section V.D and will establish a new monthly fee cap for dividend strategy QOO Orders. Specifically, under this proposal, dividend strategies executed in the same month will be capped at $65,000 per month per customer. Manual transaction fees for dividend strategies will continue to be capped at $1,000 per day per options class per customer. The monthly cap for dividend strategies will be applied to manual transaction fees for dividend strategies executed in the same month per customer. Floor Brokers will not be eligible to receive a $500 daily rebate for dividend strategies once the monthly cap is met.

The Exchange notes that all Strategy QOO and dividend strategy transactions will continue to count toward Market Maker and Public Customer monthly executed volume on BOX, as detailed in Section IV.A.1 (Tiered Volume Rebate for Non-Auction Transactions) of the BOX Fee Schedule.

The Exchange notes that the proposed change is designed to compete with another monthly fee cap for strategy orders.[10] Therefore, the Exchange

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Strategy orders are defined as one of the following: A ''short stock interest strategy'' is defined as a transaction done to achieve a short stock interest arbitrage involving the purchase, sale, and exercise of in-the-money options of the same class. A ''long stock interest strategy'' is defined as a transaction done to achieve long stock involving the purchase, sale, and exercise of in-the-money options of the same class. A ''merger strategy'' is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.,* cash or stock. A ''reversal strategy'' is established by combining a short security position with a short put and a long call position that shares the same strike and expiration. A ''conversion strategy'' is established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration. A ''jelly roll strategy'' is created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position. A ''box spread strategy'' is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively. A ''dividend strategy'' is defined as a transaction done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. *See* BOX Fee Schedule, notes 30 and 36.

[6] *See* BOX Fee Schedule, Section V.A, ''Manual Transaction Fees''.

[7] *See* BOX Fee Schedule, Section V.C, ''QOO Order Rebate''.

[8] *See* BOX Fee Schedule, Section V.D, ''Strategy QOO Order Fee Cap and Rebate''.

[9] *Id.*

[10] *See* Nasdaq PHLX LLC (''PHLX'') Options 7, Section 4 (providing that dividend strategies, among others, per member organization's combined executions in a month when trading in its own proprietary accounts qualify for a $65,000 monthly cap if the buy and sell side of a transaction originates either from the PHLX Trading Floor or as a Floor Qualified Contingent Cross Order). The

believes the proposed change may further incentivize Participants to direct dividend strategy order volume to the BOX Trading Floor.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 18% of the market share and currently the Exchange represents only approximately 5% of the market share.[12] 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.'' [13] As stated above, the Exchange 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. The proposed fee changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to BOX, in particular dividend strategy QOO Orders.

The Exchange believes the proposed change is reasonable, equitable, and not unfairly discriminatory as there is another exchange with a similar monthly fee cap for strategy orders [14] and the proposed fee cap is uniformly applicable to all Participants. The Exchange also believes the proposed change would further incentivize Participants to execute dividend strategy QOO Orders on BOX and may encourage Participants to aggregate all types of strategy orders at BOX as a primary execution venue. The Exchange believes that Participants may consolidate different order types for execution on a single exchange because it increases the volume counted towards volume-based fee incentives, such as, the Tiered Volume Rebate for Non-Auction Transactions in Section IV.A.1., of the BOX Fee Schedule, which provides Market Makers and Public Customers with incentives to achieve certain volume thresholds on BOX.[15] To the extent that the proposed change attracts more dividend strategy orders to BOX, this increased order flow may make BOX a more competitive venue for order execution.

The Exchange also believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated differently, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow. The Exchange believes the proposed change is a reasonable attempt to effectively compete for manual dividend strategy orders. The Exchange believes that the proposed change may encourage Participants to execute dividend strategy orders on BOX and, in turn, may increase the depth of the market to the benefit of all market participants. The Exchange notes that Participants may avail themselves of the proposed dividend strategy order pricing on BOX or they can opt for similar offerings at another exchange.[16]

The Exchange believes that not allowing Floor Brokers to be eligible to receive a daily $500 rebate for dividend strategies once the monthly cap is met is reasonable, equitable and not unfairly discriminatory because, as proposed, this limitation applies to all Floor Brokers equally and a fee is not assessed for transactions once the monthly cap is met. As such, the Exchange believes that Participants do not require additional incentives to execute these transactions on BOX once the monthly cap is met.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposed change is designed to attract additional order flow to BOX. The Exchange believes that the proposed change could further incentivize market participants to direct their dividend strategy orders to BOX. As noted herein, the proposed monthly cap for dividend strategy fees would be applicable to all similarly situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among Participants on BOX.

Further, the Exchange also does not believe that the proposed fees will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act because, as noted above, another competing options exchange currently has a similar fee cap in place in connection with strategy orders.[17] Because competitors are free to modify their own fees or fee caps in response to competing exchanges, the Exchange believes that the degree to which changes in this market may impose any burden on competition is limited. Further, the Exchange believes that the proposed change could promote competition between BOX and other execution venues, including those that currently offer similar strategy order fees or fee caps. Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

Exchange notes that PHLX's monthly fee cap applies to dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategies, while this proposal applies only to dividend strategies.

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] *See* Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (February 13, 2023), available at *https://markets.cboe.com/us/options/market_statistics/*.

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[14] *See supra* note 10.

[15] *See* BOX Fee Schedule, Section IV.A.1, ''Tiered Volume Rebate for Non-Auction Transactions''.

[16] *See supra* note 10.

[17] *Id.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [18] and Rule 19b–4(f)(2) thereunder,[19] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2023–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2023–12. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to File Number SR–BOX–2023–12, and should be submitted on or before May 30, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09680 Filed 5–5–23; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 240.19b–4(f)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97423; File No. SR–MSRB–2023–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend MSRB Rule G–27 To Further Extend the Current Regulatory Relief for Remote Office Inspections Through June 30, 2024 and Amend MSRB Rule G–16 To Delete Temporary Relief for the Initiation of Periodic Compliance Examinations of Dealers by the Examining Authorities

May 2, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 27, 2023, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change to (i) amend Supplementary Material .01, Temporary Relief for Completing Office Inspections, of MSRB Rule G–27, on Supervision, to further extend the current regulatory relief and permit brokers, dealers and municipal securities dealers (each, individually ''dealer'' and collectively ''dealers'') to conduct office inspections due to be completed during calendar year 2023 remotely through December 31, 2023, and office inspections due to be completed during calendar year 2024 remotely through June 30, 2024; and (ii) delete Supplementary Material .01, Temporary Relief for Completing Periodic Compliance Examination, of MSRB Rule G–16, on periodic compliance examinations, which provided temporary relief for the initiation of periodic compliance examinations of dealers by registered securities associations [3] and appropriate regulatory agencies [4] (collectively, the ''examining authorities'') (collectively the ''proposed rule change''). The MSRB has designated the proposed rule change as constituting a ''noncontroversial'' rule change under section 19(b)(3)(A) [5] of the Act and Rule 19b–4(f)(6) [6] thereunder, which renders the proposal effective upon receipt of this filing by the Commission. The MSRB proposes an operative date of July 1, 2023.

The text of the proposed rule change is available on the MSRB's website at *https://msrb.org/2023-SEC-Filings,* at

[3] Section 15B(c)(7)(A)(i) of the Exchange Act provides that periodic examinations of municipal securities brokers and municipal securities dealers shall be conducted by a registered securities association, in the case of municipal securities brokers and municipal securities dealers that are members of such association. The Financial Industry Regulatory Authority (''FINRA'') is currently the only registered securities association. *See https://www.sec.gov/rules/sro.shtml.*

[4] Pursuant to section 15B(c)(7)(A)(ii) of the Exchange Act, municipal securities brokers and municipal securities dealers who are not members of a registered securities association shall be examined by their appropriate regulatory agency. The term ''appropriate regulatory agency'' when used with respect to municipal securities dealers means, in part, the Office of the Comptroller of the Currency (''OCC''), the Board of Governors of the Federal Reserve System (''FRB''), and the Federal Deposit Insurance Corporation (''FDIC''). *See* 15 U.S.C. 78c(a)(34)(A). The Commission also has the authority to examine all registered municipal securities dealers if the Commission deems it necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Exchange Act. *See* 15 U.S.C. 78q(b)(1).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

the MSRB'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 MSRB 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 MSRB 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 MSRB has continued to monitor the impact of the coronavirus disease on municipal market participants and how dealers' operations and business models have evolved during the public health crisis. The MSRB previously filed proposed rule changes for immediate effectiveness with the SEC in April 2020,[7] in December 2020,[8] in October 2021,[9] in March 2022,[10] and in November 2022 [11] (''April 2020 relief,'' ''December 2020 relief,'' ''October 2021 relief,'' ''March 2022 relief,'' and ''November 2022 relief,'' respectively). In connection with the April 2020 relief, the MSRB provided an extension of time for dealers to complete certain supervisory obligations, including, among other things, that office inspections due to be conducted during calendar year 2020 could be conducted by March 31, 2021, but with the expectation that dealers would conduct their inspections on-site. The December 2020 relief provided dealers with the option to conduct their office inspections remotely that were due to be completed by March 31, 2021 (for calendar year 2020) and those for calendar year 2021, subject to certain conditions. The October 2021 relief provided an additional extension of time permitting dealers to continue to conduct office inspections remotely through June 30, 2022, for their office inspections that were due to be completed for calendar year 2022.[12] The March 2022 relief allowed for dealers to complete office inspections, due to be completed during calendar year 2022, remotely through December 31, 2022. The November 2022 relief allowed for dealers to conduct office inspections, due to be completed during calendar year 2023, remotely through June 30, 2023.

The MSRB understands that a large number of firms have implemented a hybrid work environment in which particular business functions continue to be de-centralized. Therefore, the November 2022 relief was intended to allow dealers time to address ongoing challenges related to variations of telework arrangements.[13] The MSRB believes that an additional extension allowing dealers to conduct office inspections remotely through the first half of the calendar year (June 30, 2024), would provide dealers with the necessary time to continue to assess the current and future state of work and evolve their current supervisory practices to better support an integrated hybrid work environment.

Relatedly, in October 2022, FINRA submitted a proposed rule filing with the SEC to extend its remote office inspection relief through the earlier of the effective date of its proposed remote office inspection pilot program,[14] if approved, or the end of calendar year 2023.[15] The MSRB believes the extension of time through the first half of the calendar year (June 30, 2024), will afford the industry time, including the MSRB, to better assess the impact of FINRA's open rulemaking initiative pending with the Commission, and provide greater regulatory certainty as to the length of time dealers can operate under the current regulatory relief to aid dealers' ability to plan for the coming year.

To that end, the MSRB is proposing amendments to Supplementary Material .01 of MSRB Rule G–27. Specifically, the proposed amendments to Supplementary Material .01 of MSRB Rule G–27 would allow dealers to satisfy their office inspection obligations by permitting dealers to conduct office inspections, due to be completed in calendar year 2023, remotely for the remainder of calendar year 2023, as well as allow dealers to conduct calendar year 2024 office inspections remotely through June 30, 2024.[16]

The conditions required to be met for dealers to avail themselves of the option to conduct office inspections remotely would remain unchanged under Rule G–27. However, amendments are being proposed to paragraphs (a) and (d) of Supplementary Material .01 to reflect the additional extension of time under the proposed rule change. Pursuant to paragraphs (b)–(d) of Supplementary Material .01 of MSRB Rule G–27, as currently effective, dealers electing to conduct their office inspections remotely must (i) amend or supplement their written supervisory procedures as appropriate to provide for remote inspections that are reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable Board rules; (ii) use remote office inspections as part of an effective supervisory system, which would include the ongoing review of activities and functions occurring at all offices and locations whether or not the dealer conducts inspections remotely; and (iii) make and maintain a centralized record for each of the calendar years 2020, 2021, 2022, and for calendar year 2023 through June 30, 2023, separately identifying all offices or locations that had inspections that were conducted remotely; and any offices or locations for which the dealer determined to impose additional supervisory procedures or more frequent monitoring as provided for under paragraph (c) of Supplementary Material .01, of MSRB Rule G–27. Thus, under the proposed

[7] *See* Exchange Act Release No. 88694 (April 20, 2020), 85 FR 23088 (April 24, 2020) (File No. SR–MSRB–2020–01).

[8] *See* Exchange Act Release No. 90621 (December 9, 2020), 85 FR 81254 (December 15, 2020) (File No. SR–MSRB–2020–09).

[9] *See* Exchange Act Release No. 93435 (October 27, 2021), 86 FR 60522 (November 2, 2021) (File No. SR–MSRB–2021–06).

[10] *See* Exchange Act Release No. 94383 (March 9, 2022), 87 FR 14596 (March 15, 2022) (File No. SR–MSRB–2022–01).

[11] *See* Exchange Act Release No. 96346 (November 17, 2022), 87 FR 71719 (November 23, 2022) (File No. SR–MSRB–2022–08).

[12] The MSRB noted in the October 2021 relief that it would continue to monitor the effectiveness of remote office inspections on dealers' overall supervisory systems and would consider more long-term regulatory initiatives that align with and promote the evolving ways dealers are doing business and supervising the activities of a dealer and its associated persons. *See* Exchange Act Release No. 93435 (October 27, 2021), 86 FR 60522 (November 2, 2021) (File No. SR–MSRB–2021–06). The MSRB is still undertaking such review.

[13] *See* Exchange Act Release No. 96346 (November 17, 2022), 87 FR 71719 (November 23, 2022) (File No. SR–MSRB–2022–08).

[14] *See* Exchange Act Release No. 95452 (August 9, 2022), 87 FR 50144 (August 15, 2022) (File No. SR–FINRA–2022–021). FINRA proposes to amend FINRA Rule 3110, on supervision, to adopt a voluntary, three-year remote inspection pilot program to allow FINRA member firms to elect to conduct inspections of some or all of a firm's branch offices and locations remotely without an on-site visit to such office or location, subject to specified terms and conditions.

[15] *See* Exchange Act Release No. 96241 (November 4, 2022), 87 FR 67969 (November 10, 2022) (File No. SR–FINRA–2022–030).

[16] As the MSRB has noted in the past, pursuant to Rule G–27(g)(ii)(A)(7), a temporary location established in response to the implementation of a business continuity plan is not deemed an office for purposes of complying with the office inspection obligations, under MSRB Rule G–27. *See supra* note 7.

rule change, the dates within paragraphs (a) and (d) of Supplementary Material .01, of MSRB Rule G–27, would be revised to include the remainder of calendar year 2023 and calendar year 2024 through June 30, 2024, for conducting remote office inspections and with respect to the related documentation requirement for dealers that elect to conduct their inspections remotely.

The proposed rule change also deletes Supplementary Material .01, Temporary Relief for Completing Periodic Compliance Examinations, of MSRB Rule G–16, on periodic compliance examination, that provided temporary relief for completing periodic examinations of dealers by registered securities associations and appropriate regulatory agencies.[17] Supplementary Material .01, of MSRB Rule G–16, currently provides that any examination initiated between January 1, 2020 and March 31, 2021 is deemed to have occurred in calendar year 2020. As that time period has since passed and the Supplementary Material is no longer relevant, the proposed rule change deletes this Supplementary Material in order to streamline the rule.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Exchange Act,[18] which provides that the MSRB's rules shall 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 municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is designed to provide dealers additional time to comply with certain obligations under MSRB rules for a temporary period of time and greater regulatory certainty as to the length of time dealers can operate under the current regulatory relief to aid dealers' ability to plan for the coming year. The proposed rule change does not relieve dealers from compliance with their core regulatory obligations to establish and maintain a system to supervise the activities of each of their associated persons that is reasonably designed to achieve compliance with applicable rules and regulations, and with applicable MSRB rules, which serve to protect investors, municipal entities, obligated persons, and the public interest. The MSRB believes that an additional extension affording dealers the option to conduct remote inspections, due to be completed in calendar year 2023, as well as the option to conduct remote office inspections, due to be completed in calendar year 2024, for the first half of the calendar year (June 30, 2024), is a prudent regulatory approach. This approach will allow dealers time to continue to adapt their supervisory practices to long-term hybrid work arrangements while continuing to serve the important investor protection and public interest objectives of the inspection obligations. Lastly, the proposed rule change also will alleviate some of the operational challenges dealers may be experiencing, which will allow them to more effectively allocate resources to the operations that facilitate transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products.[19]

The proposed rule change to remove outdated references to the regulatory relief that is no longer applicable would ensure that rule provisions are clear, accurate, and streamlined, thereby facilitating compliance and promoting just and equitable principles of trade by clarifying the regulatory obligations under MSRB rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act requires that MSRB rules be designed not to impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[20] In fact, the MSRB does not believe that the proposed rule change will have any burden on competition because the proposed rule change treats all dealers equally in that all dealers have the option to elect to conduct remote inspections remotely through June 30, 2024. The goal of the proposed rule change is to grant additional time for dealers to focus their time on the establishment and integration of long-term hybrid work arrangements—recognizing the use of a remote work force and transformative technology to decentralize functions—while also balancing the regulatory obligation to establish office inspection schedules for the first half of 2024 and meet their office inspection obligations, under Supplementary Material .01 of Rule G–27. The temporary relief afforded does not alter dealers' underlying obligations under Rule G–27 and with applicable MSRB rules that directly serve investor protection.

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 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[21] and Rule 19b–4(f)(6)[22] 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.

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2023–04 on the subject line.

[17] *See* Exchange Act Release No. 90621 (December 9, 2020), 85 FR 81254 (December 15, 2020) (File No. SR–MSRB–2020–09).

[18] 15 U.S.C. 78*o*–4(b)(2)(C).

[19] The proposed rule change only creates the option for dealers to conduct office inspections remotely through June 30, 2024. With that in mind, dealers should consider whether, under their particular operating conditions, electing to conduct the required office inspections remotely would be reasonable under facts and circumstances.

[20] 15 U.S.C. 78*o*–4(b)(2)(C).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2023–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://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 MSRB. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–MSRB–2023–04 and should be submitted on or before May 30, 2023.

For the Commission, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09686 Filed 5–5–23; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97419; File No. SR–MIAX–2023–18]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule To Modify Certain Connectivity and Port Fees

May 2, 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 20, 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 certain connectivity and port fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule as follows: (1) increase the fees for a 10 gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection for Members[3] and non-Members; and (2) amend the fees for Limited Service MIAX Express Interface (''MEI'') Ports[4] available to Market Makers.[5] The Exchange and its affiliate, MIAX PEARL, LLC (''MIAX Pearl'') operated 10Gb ULL connectivity (for MIAX Pearl's options market) on a single shared network that provided access to both exchanges via a single 10Gb ULL connection. The Exchange last increased fees for 10Gb ULL connections from $9,300 to $10,000 per month on January 1, 2021.[6] At the same time, MIAX Pearl also increased its 10Gb ULL connectivity fee from $9,300 to $10,000 per month.[7] The Exchange and MIAX Pearl shared a combined cost analysis in those filings due to the single shared 10Gb ULL connectivity network for both exchanges. In those filings, the Exchange and MIAX Pearl allocated a combined total of $17.9 million in expenses to providing 10Gb ULL connectivity.[8]

Beginning in late January 2023, the Exchange also recently determined a substantial operational need to no longer operate 10Gb ULL connectivity on a single shared network with MIAX Pearl. The Exchange bifurcated 10Gb ULL connectivity due to ever-increasing capacity constraints and to enable it to continue to satisfy the anticipated access needs for Members and other market participants.[9] Since the time of

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] MIAX Express Interface is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX. *See* Fee Schedule, note 26.

[5] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* Exchange Rule 100.

[6] *See* Securities Exchange Act Release No. 90980 (January 25, 2021), 86 FR 7602 (January 29, 2021) (SR–MIAX–2021–02).

[7] *See* Securities Exchange Act Release No. 90981 (January 25, 2021), 86 FR 7582 (January 29, 2021) (SR–PEARL–2021–01).

[8] *See id.*

[9] *See MIAX Options and MIAX Pearl Options—Announce planned network changes related to shared 10G ULL extranet,* issued August 12, 2022, *available at https://www.miaxoptions.com/alerts/2022/08/12/miax-options-and-miax-pearl-options-*

Continued

2021 increase discussed above, the Exchange experienced ongoing increases in expenses, particularly internal expenses.[10] As discussed more fully below, the Exchange recently calculated increased annual aggregate costs of $12,034,554 for providing 10Gb ULL connectivity on a single unshared network (an overall increase over its prior cost to provide 10Gb ULL connectivity on a shared network with MIAX Pearl) and $2,157,178 for providing Limited Service MEI Ports.

Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection with nanosecond granularity, and continuous improvements in network performance with the goal of improving the subscriber's experience. The costs associated with maintaining and enhancing a state-of-the-art network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those increased costs by amending fees for connectivity services. Subscribers expect the Exchange to provide this level of support so they continue to receive the performance they expect. This differentiates the Exchange from its competitors.

The Exchange now proposes to amend the Fee Schedule to amend the fees for 10Gb ULL connectivity and Limited Service MEI Ports in order to recoup cost related to bifurcating 10Gb connectivity to the Exchange and MIAX Pearl as well as the ongoing costs and increase in expenses set forth below in the Exchange's cost analysis.[11] The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The Exchange initially filed the proposal on December 30, 2022 (SR–MIAX–2022–50) (the ''Initial Proposal'').[12] On February 23, 2023, the Exchange withdrew the Initial Proposal and replaced it with a revised proposal (SR–MIAX–2023–08) (the ''Second Proposal'').[13] On April 20, 2023, the Exchange withdrew the Second Proposal and replaced it with this revised proposal (SR–MIAX–2023–18).

The Exchange previously included a cost analysis in the Initial Proposal and Second Proposal. As described more fully below, the Exchange provides an updated cost analysis that includes, among other things, additional descriptions of how the Exchange allocated costs among it and its affiliated exchanges (MIAX Pearl (separately among MIAX Pearl Options and MIAX Pearl Equities) and MIAX Emerald [14] (together with MIAX Pearl Options and MIAX Pearl Equities, the ''affiliated markets'')) to ensure no cost was allocated more than once, as well as additional detail supporting its cost allocation processes and explanations as to why a cost allocation in this proposal may differ from the same cost allocation in a similar proposal submitted by one of its affiliated exchanges. Although the baseline cost analysis used to justify the proposed fees was made in the Initial Proposal and Second Proposal, the fees themselves have not changed since the Initial Proposal or Second Proposal and the Exchange still proposes fees that are intended to cover the Exchange's cost of providing 10Gb ULL connectivity and Limited Service MEI Ports with a reasonable mark-up over those costs.

* * * * *

Starting in 2017, following the United States Court of Appeals for the District of Columbia's *Susquehanna Decision* [15] and various other developments, the Commission began to undertake a heightened review of exchange filings, including non-transaction fee filings that was substantially and materially different from it prior review process (hereinafter referred to as the ''Revised Review Process''). In the *Susquehanna Decision,* the D.C. Circuit Court stated that the Commission could not maintain a practice of ''unquestioning reliance'' on claims made by a self-regulatory organization (''SRO'') in the course of filing a rule or fee change with the Commission.[16] Then, on October 16, 2018, the Commission issued an opinion in *Securities Industry and Financial Markets Association* finding that exchanges failed both to establish that the challenged fees were constrained by significant competitive forces and that these fees were consistent with the Act.[17] On that same day, the Commission issued an order remanding to various exchanges and national market system (''NMS'') plans challenges to over 400 rule changes and plan amendments that were asserted in 57 applications for review (the ''Remand Order'').[18] The Remand Order directed the exchanges to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [19] The Commission denied requests by various exchanges and plan participants for reconsideration of the Remand Order.[20] However, the Commission did extend the deadlines in the Remand Order ''so that they d[id] not begin to run until the resolution of the appeal of the SIFMA Decision in the D.C. Circuit and the issuance of the court's mandate.'' [21] Both the Remand Order and the Order Denying Reconsideration were appealed to the D.C. Circuit.

While the above appeal to the D.C. Circuit was pending, on March 29, 2019, the Commission issued an order disapproving a proposed fee change by BOX Exchange LLC (''BOX'') to establish connectivity fees (the ''BOX Order''), which significantly increased the level of information needed for the Commission to believe that an exchange's filing satisfied its obligations under the Act with respect to changing a fee.[22] Despite approving hundreds of

announce-planned-network-changes-related-0. The Exchange will continue to provide access to both the Exchange and MIAX Pearl over a single shared 1Gb connection. *See* Securities Exchange Act Release Nos. 96553 (December 20, 2022), 87 FR 79379 (December 27, 2022) (SR–PEARL–2022–60); 96545 (December 20, 2022) 87 FR 79393 (December 27, 2022) (SR–MIAX–2022–48).

[10] For example, the New York Stock Exchange, Inc.'s (''NYSE'') Secure Financial Transaction Infrastructure (''SFTI'') network, which contributes to the Exchange's connectivity cost, increased its fees by approximately 9% since 2021. Similarly, since 2021, the Exchange, and its affiliates, experienced an increase in data center costs of approximately 17% and an increase in hardware and software costs of approximately 19%. These percentages are based on the Exchange's actual 2021 and proposed 2023 budgets.

[11] The Exchange notes that MIAX Pearl Options will make a similar filing to increase its 10Gb ULL connectivity fees.

[12] *See* Securities Exchange Act Release No. 96629 (January 10, 2023), 88 FR 2729 (January 17, 2023) (SR–MIAX–2022–50).

[13] *See* Securities Exchange Act Release No. 97081 (March 8, 2023), 88 FR 15782 (March 14, 2023) (SR–MIAX–2023–08).

[14] The term ''MIAX Emerald'' means MIAX Emerald, LLC. *See* Exchange Rule 100.

[15] *See Susquehanna International Group, LLP* v. *Securities & Exchange Commission,* 866 F.3d 442 (D.C. Circuit 2017) (the ''Susquehanna Decision'').

[16] *Id.*

[17] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84432, 2018 WL 5023228 (October 16, 2018) (the ''SIFMA Decision'').

[18] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). *See* 15 U.S.C. 78k–1, 78s; *see also* Rule 608(d) of Regulation NMS, 17 CFR 242.608(d) (asserted as an alternative basis of jurisdiction in some applications).

[19] *Id.* at page 2.

[20] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 85802, 2019 WL 2022819 (May 7, 2019) (the ''Order Denying Reconsideration'').

[21] Order Denying Reconsideration, 2019 WL 2022819, at *13.

[22] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04) (Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network). The Commission noted in the BOX Order that it ''historically applied a 'market-based' test in its

access fee filings in the years prior to the BOX Order (described further below) utilizing a ''market-based'' test, the Commission changed course and disapproved BOX's proposal to begin charging connectivity at one-fourth the rate of competing exchanges' pricing.

Also while the above appeal was pending, on May 21, 2019, the Commission Staff issued guidance ''to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act.'' [23] In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [24] The Staff Guidance also states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [25]

Following the BOX Order and Staff Guidance, on August 6, 2020, the D.C. Circuit vacated the Commission's SIFMA Decision in *NASDAQ Stock Market, LLC v. SEC* [26] and remanded for further proceedings consistent with its opinion.[27] That same day, the D.C. Circuit issued an order remanding the Remand Order to the Commission for reconsideration in light of *NASDAQ.* The court noted that the Remand Order required the exchanges and NMS plan participants to consider the challenges that the Commission had remanded in light of the SIFMA Decision. The D.C. Circuit concluded that because the SIFMA Decision ''has now been vacated, the basis for the [Remand Order] has evaporated.'' [28] Accordingly, on August 7, 2020, the Commission vacated the Remand Order and ordered the parties to file briefs addressing whether the holding in *NASDAQ* v. *SEC* that Exchange Act section 19(d) does not permit challenges to generally applicable fee rules requiring dismissal of the challenges the Commission previously remanded.[29] The Commission further invited ''the parties to submit briefing stating whether the challenges asserted in the applications for review . . . should be dismissed, and specifically identifying any challenge that they contend should not be dismissed pursuant to the holding of *Nasdaq v. SEC.*'' [30] Without resolving the above issues, on October 5, 2020, the Commission issued an order granting SIFMA and Bloomberg's request to withdraw their applications for review and dismissed the proceedings.[31]

As a result of the Commission's loss of the *NASDAQ* vs. *SEC* case noted above, the Commission never followed through with its intention to subject the over 400 fee filings to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [32] As such, all of those fees remained in place and amounted to a baseline set of fees for those exchanges that had the benefit of getting their fees in place before the Commission Staff's fee review process materially changed. The net result of this history and lack of resolution in the D.C. Circuit Court resulted in an uneven competitive landscape where the Commission subjects all new non-transaction fee filings to the new Revised Review Process, while allowing the previously challenged fee filings, mostly submitted by incumbent exchanges prior to 2019, to remain in effect and not subject to the ''record'' or ''review'' earlier intended by the Commission.

While the Exchange appreciates that the Staff Guidance articulates an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, the practical effect of the Revised Review Process, Staff Guidance, and the Commission's related practice of continuous suspension of new fee filings, is anti-competitive, discriminatory, and has put in place an un-level playing field, which has negatively impacted smaller, nascent, non-legacy exchanges (''non-legacy exchanges''), while favoring larger, incumbent, entrenched, legacy exchanges (''legacy exchanges'').[33] The legacy exchanges all established a significantly higher baseline for access and market data fees prior to the Revised Review Process. From 2011 until the issuance of the Staff Guidance in 2019, national securities exchanges filed, and the Commission Staff did not abrogate or suspend (allowing such fees to become effective), at least 92 filings [34] to amend exchange connectivity or port fees (or similar access fees). The support for each of those filings was a simple statement by the relevant exchange that the fees were constrained by competitive forces.[35] These fees remain in effect today.

The net result is that the non-legacy exchanges are effectively now blocked by the Commission Staff from adopting or increasing fees to amounts

assessment of market data fees, which [the Commission] believe[s] present similar issues as the connectivity fees proposed herein.'' *Id.* at page 16. Despite this admission, the Commission disapproved BOX's proposal to begin charging $5,000 per month for 10Gb connections (while allowing legacy exchanges to charge rates equal to 3–4 times that amount utilizing ''market-based'' fee filings from years prior).

[23] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), *available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Staff Guidance'').

[24] *Id.*

[25] *Id.*

[26] *NASDAQ Stock Mkt., LLC* v. *SEC,* No 18–1324, — Fed. App'x —, 2020 WL 3406123 (D.C. Cir. June 5, 2020). The court's mandate was issued on August 6, 2020.

[27] *Nasdaq* v. *SEC,* 961 F.3d 421, at 424, 431 (D.C. Cir. 2020). The court's mandate issued on August 6, 2020. The D.C. Circuit held that Exchange Act ''section 19(d) is not available as a means to challenge the reasonableness of generally-applicable fee rules.'' *Id.* The court held that ''for a fee rule to be challengeable under section 19(d), it must, at a minimum, be targeted at specific individuals or entities.'' *Id.* Thus, the court held that ''section 19(d) is not an available means to challenge the fees at issue'' in the SIFMA Decision. *Id.*

[28] *Id.* at *2; see also *id.* (''[T]he sole purpose of the challenged remand has disappeared.'').

[29] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 89504, 2020 WL 4569089 (August 7, 2020) (the ''Order Vacating Prior Order and Requesting Additional Briefs'').

[30] *Id.*

[31] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 90087 (October 5, 2020).

[32] *See supra* note 27, at page 2.

[33] Commission Chair Gary Gensler recently reiterated the Commission's mandate to ensure competition in the equities markets. *See* ''Statement on Minimum Price Increments, Access Fee Caps, Round Lots, and Odd-Lots'', by Chair Gary Gensler, dated December 14, 2022 (stating ''[i]n 1975, Congress tasked the Securities and Exchange Commission with responsibility to facilitate the establishment of the national market system and *enhance competition in the securities markets, including the equity markets*'' (*emphasis added*)). In that same statement, Chair Gary Gensler cited the five objectives laid out by Congress in 11A of the Exchange Act (15 U.S.C. 78k–1), including ensuring ''fair competition among brokers and dealers, among exchange markets, and *between exchange markets* and markets other than exchange markets. . . .'' (*emphasis added*). *Id.* at note 1. *See also* Securities Acts Amendments of 1975, *available at https://www.govtrack.us/congress/bills/94/s249.*

[34] This timeframe also includes challenges to over 400 rule filings by SIFMA and Bloomberg discussed above. *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). Those filings were left to stand, while at the same time, blocking newer exchanges from the ability to establish competitive access and market data fees. *See The Nasdaq Stock Market, LLC* v. *SEC,* Case No. 18–1292 (D.C. Cir. June 5, 2020). The expectation at the time of the litigation was that the 400 rule flings challenged by SIFMA and Bloomberg would need to be justified under revised review standards.

[35] *See, e.g.,* Securities Exchange Act Release Nos. 74417 (March 3, 2015), 80 FR 12534 (March 9, 2015) (SR–ISE–2015–06); 83016 (April 9, 2018), 83 FR 16157 (April 13, 2018) (SR–PHLX–2018–26); 70285 (August 29, 2013), 78 FR 54697 (September 5, 2013) (SR–NYSEMKT–2013–71); 76373 (November 5, 2015), 80 FR 70024 (November 12, 2015) (SR–NYSEMKT–2015–90); 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEARCA–2016–172).

comparable to the legacy exchanges (which were not subject to the Revised Review Process and Staff Guidance), despite providing enhanced disclosures and rationale to support their proposed fee changes that far exceed any such support provided by legacy exchanges. Simply put, legacy exchanges were able to increase their non-transaction fees during an extended period in which the Commission applied a ''market-based'' test that only relied upon the assumed presence of significant competitive forces, while exchanges today are subject to a cost-based test requiring extensive cost and revenue disclosures, a process that is complex, inconsistently applied, and rarely results in a successful outcome, *i.e.,* non-suspension. The Revised Review Process and Staff Guidance changed decades-long Commission Staff standards for review, resulting in unfair discrimination and placing an undue burden on inter-market competition between legacy exchanges and non-legacy exchanges.

Commission Staff now require exchange filings, including from non-legacy exchanges such as the Exchange, to provide detailed cost-based analysis in place of competition-based arguments to support such changes. However, even with the added detailed cost and expense disclosures, the Commission Staff continues to either suspend such filings and institute disapproval proceedings, or put the exchanges in the unenviable position of having to repeatedly withdraw and re-file with additional detail in order to continue to charge those fees.[36] By impeding any path forward for non-legacy exchanges to establish commensurate non-transaction fees, or by failing to provide any alternative means for smaller markets to establish ''fee parity'' with legacy exchanges, the Commission is stifling competition: non-legacy exchanges are, in effect, being deprived of the revenue necessary to compete on a level playing field with legacy exchanges. This is particularly harmful, given that the costs to maintain exchange systems and operations continue to increase. The Commission Staff's change in position impedes the ability of non-legacy exchanges to raise revenue to invest in their systems to compete with the legacy exchanges who already enjoy disproportionate non-transaction fee-based revenue. For example, the Cboe Exchange, Inc. (''Cboe'') reported ''access and capacity fee'' revenue of $70,893,000 for 2020[37] and $80,383,000 for 2021.[38] Cboe C2 Exchange, Inc. (''C2'') reported ''access and capacity fee'' revenue of $19,016,000 for 2020[39] and $22,843,000 for 2021.[40] Cboe BZX Exchange, Inc. (''BZX'') reported ''access and capacity fee'' revenue of $38,387,000 for 2020[41] and $44,800,000 for 2021.[42] Cboe EDGX Exchange, Inc. (''EDGX'') reported ''access and capacity fee'' revenue of $26,126,000 for 2020[43] and $30,687,000 for 2021.[44] For 2021, the affiliated Cboe, C2, BZX, and EDGX (the four largest exchanges of the Cboe exchange group) reported $178,712,000 in ''access and capacity fees'' in 2021. NASDAQ Phlx, LLC (''NASDAQ Phlx'') reported ''Trade Management Services'' revenue of $20,817,000 for 2019.[45] The Exchange notes it is unable to compare ''access fee'' revenues with NASDAQ Phlx (or other affiliated NASDAQ exchanges) because after 2019, the ''Trade Management Services'' line item was bundled into a much larger line item in PHLX's Form 1, simply titled ''Market services.''[46]

The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages. First, legacy exchanges are able to use their additional non-transaction revenue for investments in infrastructure, vast marketing and advertising on major media outlets,[47] new products and other innovations. Second, higher non-transaction fees provide the legacy exchanges with greater flexibility to lower their transaction fees (or use the revenue from the higher non-transaction fees to subsidize transaction fee rates), which are more immediately impactful in competition for order flow and market share, given the variable nature of this cost on member firms. The prohibition of a reasonable path forward denies the Exchange (and other non-legacy exchanges) this flexibility, eliminates the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share with legacy exchanges. While one could debate whether the pricing of non-transaction fees are subject to the same market forces as transaction fees, there is little doubt that subjecting one exchange to a materially different standard than that historically applied to legacy exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

While the Commission has clearly noted that the Staff Guidance is merely guidance and ''is not a rule, regulation or statement of the . . . Commission . . . the Commission has neither approved nor disapproved its content . . .'',[48] this is not the reality experienced by exchanges such as MIAX. As such, non-legacy exchanges are forced to rely on an opaque cost-based justification standard. However, because the Staff Guidance is devoid of detail on what must be contained in cost-based justification, this standard is nearly impossible to meet despite repeated good-faith efforts by the Exchange to provide substantial amount of cost-related details. For example, the Exchange has attempted to increase fees using a cost-based justification numerous times, having submitted over six filings.[49] However, despite

[36] The Exchange has filed, and subsequently withdrawn, various forms of this proposed fee change numerous times since August 2021 with each proposal containing hundreds of cost and revenue disclosures never previously disclosed by legacy exchanges in their access and market data fee filings prior to 2019.

[37] According to Cboe's 2021 Form 1 Amendment, access and capacity fees represent fees assessed for the opportunity to trade, including fees for trading-related functionality. *See* Cboe 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[38] *See* Cboe 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001155.pdf.*

[39] *See* C2 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000469.pdf.*

[40] *See* C2 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001156.pdf.*

[41] *See* BZX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[42] *See* BZX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001152.pdf.*

[43] *See* EDGX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000467.pdf.*

[44] *See* EDGX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001154.pdf.*

[45] According to PHLX, ''Trade Management Services'' includes ''a wide variety of alternatives for connectivity to and accessing [the PHLX] markets for a fee. These participants are charged monthly fees for connectivity and support in accordance with [PHLX's] published fee schedules.'' *See* PHLX 2020 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2001/20012246.pdf.*

[46] *See* PHLX Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000475.pdf.* The Exchange notes that this type of Form 1 accounting appears to be designed to obfuscate the true financials of such exchanges and has the effect of perpetuating fee and revenue advantages of legacy exchanges.

[47] *See, e.g., CNBC Debuts New Set on NYSE Floor, available at https://www.cnbc.com/id/46517876.*

[48] *See supra* note 23, at note 1.

[49] *See* Securities Exchange Act Release Nos. 94890 (May 11, 2022), 87 FR 29945 (May 17, 2022) (SR–MIAX–2022–20); 94720 (April 14, 2022), 87 FR 23586 (April 20, 2022) (SR–MIAX–2022–16); 94719 (April 14, 2022), 87 FR 23600 (April 20, 2022) (SR–MIAX–2022–14); 94259 (February 15, 2022), 87 FR 9747 (February 22, 2022) (SR–MIAX–2022–08); 94256 (February 15, 2022), 87 FR9711 (February 22, 2022) (SR–MIAX–2022–07); 93771 (December 14, 2021), 86 FR 71940 (December 20, 2021) (SR–

providing 100+ page filings describing in extensive detail its costs associated with providing the services described in the filings, Commission Staff continues to suspend such filings, with the rationale that the Exchange has not provided sufficient detail of its costs and without ever being precise about what additional data points are required. The Commission Staff appears to be interpreting the reasonableness standard set forth in section 6(b)(4) of the Act [50] in a manner that is not possible to achieve. This essentially nullifies the cost-based approach for exchanges as a legitimate alternative as laid out in the Staff Guidance. By refusing to accept a reasonable cost-based argument to justify non-transaction fees (in addition to refusing to accept a competition-based argument as described above), or by failing to provide the detail required to achieve that standard, the Commission Staff is effectively preventing non-legacy exchanges from making any non-transaction fee changes, which benefits the legacy exchanges and is anticompetitive to the non-legacy exchanges. This does not meet the fairness standard under the Act and is discriminatory.

Because of the un-level playing field created by the Revised Review Process and Staff Guidance, the Exchange believes that the Commission Staff, at this point, should either (a) provide sufficient clarity on how its cost-based standard can be met, including a clear and exhaustive articulation of required data and its views on acceptable margins,[51] to the extent that this is pertinent; (b) establish a framework to provide for commensurate non-transaction based fees among competing exchanges to ensure fee parity; [52] or (c) accept that certain competition-based arguments are applicable given the linkage between non-transaction fees and transaction fees, especially where non-transaction fees among exchanges are based upon disparate standards of review, lack parity, and impede fair competition. Considering the absence of any such framework or clarity, the Exchange believes that the Commission does not have a reasonable basis to deny the Exchange this change in fees, where the proposed change would result in fees meaningfully lower than comparable fees at competing exchanges and where the associated non-transaction revenue is meaningfully lower than competing exchanges.

In light of the above, disapproval of this would not meet the fairness standard under the Act, would be discriminatory and places a substantial burden on competition. The Exchange would be uniquely disadvantaged by not being able to increase its access fees to comparable levels (or lower levels than current market rates) to those of other options exchanges for connectivity. If the Commission Staff were to disapprove this proposal, that action, and not market forces, would substantially affect whether the Exchange can be successful in its competition with other options exchanges. Disapproval of this filing could also be viewed as an arbitrary and capricious decision should the Commission Staff continue to ignore its past treatment of non-transaction fee filings before implementation of the Revised Review Process and Staff Guidance and refuse to allow such filings to be approved despite significantly enhanced arguments and cost disclosures.[53]

Lastly, the Exchange notes that the Commission Staff has allowed similar fee increases by other exchanges to remain in effect by publishing those filings for comment and allowing the exchange to withdraw and re-file numerous times.[54] Recently, the Commission Staff has not afforded the Exchange the same flexibility.[55] This again is evidence that the Commission Staff is not treating non-transaction fee filings in a consistent manner and is holding exchanges to different levels of scrutiny in reviewing filings.

* * * * *

10Gb ULL Connectivity Fee Change

The Exchange recently filed a proposal to no longer operate 10Gb connectivity to the Exchange on a single shared network with its affiliate, MIAX Pearl Options. This change is an operational necessity due to ever-increasing capacity constraints and to accommodate anticipated access needs for Members and other market participants.[56] This proposal: (i) sets forth the applicable fees for the bifurcated 10Gb ULL network; and (ii) removes provisions in the Fee Schedule that provides for a shared 10Gb ULL network; and (iii) specifies that market participants may continue to connect to both the Exchange and MIAX Pearl Options via the 1Gb network.

The Exchange bifurcated the Exchange and MIAX Pearl Options 10Gb ULL networks on January 23, 2023. The Exchange issued an alert on August 12, 2022 publicly announcing the planned network change and implementation plan and dates to provide market participants adequate time to prepare.[57] Upon bifurcation of the 10Gb ULL network, subscribers need to purchase separate connections to the Exchange and MIAX Pearl Options at the applicable rate. The Exchange's proposed amended rate for 10Gb ULL connectivity is described below. Prior to

MIAX–2021–60); 93775 (December 14, 2021), 86 FR 71996 (December 20, 2021) (SR–MIAX–2021–59); 93185 (September 29, 2021), 86 FR 55093 (October 5, 2021) (SR–MIAX–2021–43); 93165 (September 28, 2021), 86 FR 54750 (October 4, 2021) (SR–MIAX–2021–41); 92661 (August 13, 2021), 86 FR 46737 (August 19, 2021) (SR–MIAX–2021–37); 92643 (August 11, 2021), 86 FR 46034 (August 17, 2021) (SR–MIAX–2021–35).

[50] 15 U.S.C. 78f(b)(4).

[51] To the extent that the cost-based standard includes Commission Staff making determinations as to the appropriateness of certain profit margins, the Exchange believes that Staff should be clear as to what they determine is an appropriate profit margin.

[52] In light of the arguments above regarding disparate standards of review for historical legacy non-transaction fees and current non-transaction fees for non-legacy exchanges, a fee parity alternative would be one possible way to avoid the current unfair and discriminatory effect of the Staff Guidance and Revised Review Process. *See, e.g., CSA Staff Consultation Paper 21–401, Real-Time Market Data Fees, available at https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/Policy2/21401_Market_Data_Fee_CSA_Staff_Consulation_Paper.pdf.*

[53] The Exchange's costs have clearly increased and continue to increase, particularly regarding capital expenditures, as well as employee benefits provided by third parties (*e.g.,* healthcare and insurance). Yet, practically no fee change proposed by the Exchange to cover its ever-increasing costs has been acceptable to the Commission Staff since 2021. The only other fair and reasonable alternative would be to require the numerous fee filings unquestioningly approved before the Staff Guidance and Revised Review Process to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review,'' and to ensure a comparable review process with the Exchange's filing.

[54] *See, e.g.,* Securities Exchange Act Release Nos. 93937 (January 10, 2022), 87 FR 2466 (January 14, 2022) (SR–MEMX–2021–22); 94419 (March 15, 2022), 87 FR 16046 (March 21, 2022) (SR–MEMX–2022–02); SR–MEMX–2022–12 (withdrawn before being noticed); 94924 (May 16, 2022), 87 FR 31026 (May 20, 2022) (SR–MEMX–2022–13); 95299 (July 15, 2022), 87 FR 43563 (July 21, 2022) (SR–MEMX–2022–17); SR–MEMX–2022–24 (withdrawn before being noticed); 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26); 94901 (May 12, 2022), 87 FR 30305 (May 18, 2022) (SR–MRX–2022–04); SR–MRX–2022–06 (withdrawn before being noticed); 95262 (July 12, 2022), 87 FR 42780 (July 18, 2022) (SR–MRX–2022–09); 95710 (September 8, 2022), 87 FR 56464 (September 14, 2022) (SR–MRX–2022–12); 96046 (October 12, 2022), 87 FR 63119 (October 18, 2022) (SR–MRX–2022–20); 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26); *and* 96430 (December 1, 2022), 87 FR 75083 (December 7, 2022) (SR–MEMX–2022–32).

[55] *See* Securities Exchange Act Release Nos. 94719 (April 14, 2022), 87 FR 23600 (April 20, 2022) (SR–MIAX–2022–14) *and* 94720 (April 14, 2022), 87 FR 23586 (April 20, 2022) (SR–MIAX–2022–16).

[56] *See supra* note 9.

[57] *Id.*

the bifurcation of the 10Gb ULL networks, subscribers to 10Gb ULL connectivity would be able to connect to both the Exchange and MIAX Pearl Options at the applicable rate set forth below.

The Exchange, therefore, proposes to amend the Fee Schedule to increase the fees for Members and non-Members to access the Exchange's system networks [58] via a 10Gb ULL fiber connection and to specify that this fee is for a dedicated connection to the Exchange and no longer provides access to MIAX Pearl Options. Specifically, the Exchange proposes to amend Sections 5)a)-b) of the Fee Schedule to increase the 10Gb ULL connectivity fee for Members and non-Members from $10,000 per month to $13,500 per month (''10Gb ULL Fee'').[59] The Exchange also proposes to amend the Fee Schedule to reflect the bifurcation of the 10Gb ULL network and specify that only the 1Gb network provides access to both the Exchange and MIAX Pearl Options.

The Exchange proposes to make the following changes to reflect the bifurcated 10Gb ULL network for the Exchange and MIAX Pearl Options. The Exchange proposes to amend the explanatory paragraphs below the network connectivity fee tables in Sections 5)a)–b) of the Fee Schedule to specify that, with the bifurcated 10Gb ULL network, Members (and non-Members) utilizing the MENI to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and MIAX Pearl Options via a single, can only do so via a shared 1Gb connection.

The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the primary and secondary facilities in any month the Member or non-Member is credentialed to use any of the Exchange APIs or market data feeds in the production environment. The Exchange will continue to pro-rate the fees when a Member or non-Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the Member or non-Member has been credentialed to utilize any of the Exchange APIs or market data feeds in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate.

Limited Service MEI Ports

Background

The Exchange also proposes to amend Section 5)d) of the Fee Schedule to adopt a tiered-pricing structure for Limited Service MEI Ports available to Market Makers. The Exchange allocates two (2) Full Service MEI Ports [60] and two (2) Limited Service MEI Ports [61] per matching engine [62] to which each Market Maker connects. Market Makers may also request additional Limited Service MEI Ports for each matching engine to which they connect. The Full Service MEI Ports and Limited Service MEI Ports all include access to the Exchange's primary and secondary data centers and its disaster recovery center. Market Makers may request additional Limited Service MEI Ports. Currently, Market Makers are assessed a $100 monthly fee for each Limited Service MEI Port for each matching engine above the first two Limited Service MEI Ports that are included for free. This fee was unchanged since 2016.[63]

Limited Service MEI Port Fee Changes

The Exchange now proposes to move from a flat monthly fee per Limited Service MEI Port for each matching engine to a tiered-pricing structure for Limited Service MEI Ports for each matching engine under which the monthly fee would vary depending on the number of Limited Service MEI Ports each Market Maker elects to purchase. Specifically, the Exchange will continue to provide the first and second Limited Service MEI Ports for each matching engine free of charge. For Limited Service MEI Ports, the Exchange proposes to adopt the following tiered-pricing structure: (i) the third and fourth Limited Service MEI Ports for each matching engine will increase from the current flat monthly fee of $100 to $150 per port; (ii) the fifth and sixth Limited Service MEI Ports for each matching engine will increase from the current flat monthly fee of $100 to $200 per port; and (iii) the seventh or more Limited Service MEI Ports will increase from the current monthly flat fee of $100 to $250 per port. The Exchange believes a tiered-pricing structure will encourage Market Makers to be more efficient when determining how to connect to the Exchange. This should also enable the Exchange to better monitor and provide access to the Exchange's network to ensure sufficient capacity and headroom in the System [64] in accordance with its fair access requirements under section 6(b)(5) of the Act.[65]

The Exchange offers various types of ports with differing prices because each port accomplishes different tasks, are suited to different types of Members, and consume varying capacity amounts of the network. For instance, Market Makers who take the maximum amount of Limited Service MEI Ports account for approximately greater than 99% of message traffic over the network, while Market Makers with fewer Limited Service MEI Ports account for approximately less than 1% of message traffic over the network. In the Exchange's experience, Market Makers who only utilize the two free Limited Service MEI Ports do not have a business need for the high-performance network solutions required by Market Makers who take the maximum amount

[58] The Exchange's system networks consist of the Exchange's extranet, internal network, and external network.

[59] Market participants that purchase additional 10Gb ULL connections as a result of this change will not be subject to the Exchange's Member Network Connectivity Testing and Certification Fee under Section 4)c) of the Exchange's fee schedule. *See* Section 4)c) of the Exchange's fee schedule *available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_10192022.pdf* (providing that ''Network Connectivity Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. Member Network Connectivity Testing and Certification Fees will not be assessed for testing and certification of connectivity to the Exchange's Disaster Recovery Facility.'').

[60] Full Service MEI Ports provide Market Makers with the ability to send Market Maker quotes, eQuotes, and quote purge messages to the MIAX System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine. *See* Fee Schedule, Section 5)d)ii), note 27.

[61] Limited Service MEI Ports provide Market Makers with the ability to send eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per matching engine. *See* Fee Schedule, Section 5)d)ii), note 28.

[62] A ''matching engine'' is a part of the MIAX electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will be processed by one single matching engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines. *See* Fee Schedule, Section 5)d)ii), note 29.

[63] *See* Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR–MIAX–2016–47).

[64] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[65] *See* 15 U.S.C. 78f(b). The Exchange may offer access on terms that are not unfairly discriminatory among its Members, and ensure sufficient capacity and headroom in the System. The Exchange monitors the System's performance and makes adjustments to its System based on market conditions and Member demand.

of Limited Service MEI Ports. The Exchange's high-performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 18 million quote messages per second. Based on November 2022 trading results, on an average day, the Exchange handles over approximately 8.8 billion quotes, and more than 185 billion quotes over the entire month. Of that total, Market Makers with the maximum amount of Limited Service MEI Ports generated approximately 5 billion quotes, and Market Makers who utilized the two free Limited Service MEI Ports generated approximately 1.5 billion quotes. Also for November 2022, Market Makers who utilized 3 to 4 Limited Service MEI ports submitted an average of 1,152,654,133 quotes per day and Market Makers who utilized 5 to 9 Limited Service MEI ports submitted an average of 1,172,105,181 quotes per day. To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the Exchange Act.[66] Thus, as the number of connections a Market Maker has increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. The Exchange sought to design the proposed tiered-pricing structure to set the amount of the fees to relate to the number of connections a firm purchases. The more connections purchased by a Market Maker likely results in greater expenditure of Exchange resources and increased cost to the Exchange. With this in mind, the Exchange proposes no fee or lower fees for those Market Makers who receive fewer Limited Service MEI Ports since those Market Makers generally tend to send the least amount of orders and messages over those connections. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that Market Makers who take the most Limited Service MEI Ports pay for the vast majority of the shared network resources from which all Member and non-Member users benefit, but is designed and maintained from a capacity standpoint to specifically handle the message rate and performance requirements of those Market Makers.

The Exchange proposes to increase its monthly Limited Service MEI Port fees since it has not done so since 2016,[67] which is designed to recover a portion of the costs associated with directly accessing the Exchange.

Implementation. The proposed fee changes are immediately effective.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with section 6(b) of the Act[68] in general, and furthers the objectives of section 6(b)(4) of the Act[69] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposed fees further the objectives of section 6(b)(5) of the Act[70] in that they are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes under the Revised Review Process and as set forth in recent Staff Guidance. Based on both the BOX Order[71] and the Staff Guidance,[72] the Exchange believes that the proposed fees are consistent with the Act because they are: (i) reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Staff Guidance; and (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Exchange believes that exchanges, in setting fees of all types, should meet high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.''[73] The Staff Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.''[74] In the Staff Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, . . . , specific information, including quantitative information, should be provided to support that argument.''[75]

The proposed fees are reasonable because they promote parity among exchange pricing for access, which promotes competition, including in the Exchanges' ability to competitively price transaction fees, invest in infrastructure, new products and other innovations, all while allowing the Exchange to recover its costs to provide dedicated access via 10Gb ULL connectivity (driven by the bifurcation of the 10Gb ULL network) and Limited Service MEI Ports. As discussed above, the Revised Review Process and Staff Guidance have created an uneven playing field between legacy and non-legacy exchanges by severely restricting non-legacy exchanges from being able to increase non-transaction related fees to provide them with additional necessary revenue to better compete with legacy exchanges, which largely set fees prior to the Revised Review Process. The

[66] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[67] *See* Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR–MIAX–2016–47).

[68] 15 U.S.C. 78f(b).

[69] 15 U.S.C. 78f(b)(4).

[70] 15 U.S.C. 78f(b)(5).

[71] *See supra* note 22.

[72] *See supra* note 23.

[73] *Id.*

[74] *Id.*

[75] *Id.*

much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages: (i) additional non-transaction revenue that may be used to fund areas other than the non-transaction service related to the fee, such as investments in infrastructure, advertising, new products and other innovations; and (ii) greater flexibility to lower their transaction fees by using the revenue from the higher non-transaction fees to subsidize transaction fee rates. The latter is more immediately impactful in competition for order flow and market share, given the variable nature of this cost on Member firms. The absence of a reasonable path forward to increase non-transaction fees to comparable (or lower rates) limits the Exchange's flexibility to, among other things, make additional investments in infrastructure and advertising, diminishes the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share. Again, while one could debate whether the pricing of non-transaction fees are subject to the same market forces as transaction fees, there is little doubt that subjecting one exchange to a materially different standard than that applied to other exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

The Proposed Fees Ensure Parity Among Exchange Access Fees, Which Promotes Competition

The Exchange commenced operations in 2012 and adopted its initial fee schedule, with all connectivity and port fees set at $0.00 (the Exchange originally had a non-ULL 10Gb connectivity option, which it has since removed).[76] As a new exchange entrant, the Exchange chose to offer connectivity and ports free of charge to encourage market participants to trade on the Exchange and experience, among things, the quality of the Exchange's technology and trading functionality. This practice is not uncommon. New exchanges often do not charge fees or charge lower fees for certain services such as memberships/trading permits to attract order flow to an exchange, and later amend their fees to reflect the true value of those services, absorbing all costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives before increasing non-transaction fees encourages market entry and fee parity, which promotes competition among exchanges. It also enables new exchanges to mature their markets and allow market participants to trade on the new exchanges without fees serving as a potential barrier to attracting memberships and order flow.[77]

Later in 2013, as the Exchange's market share increased,[78] the Exchange adopted a nominal $10 fee for each additional Limited Service MEI Port.[79] The Exchange last increased the fees for its 10Gb ULL fiber connections from $9,300 to $10,000 per month on January 1, 2021.[80] The Exchange balanced business and competitive concerns with the need to financially compete with the larger incumbent exchanges that charge higher fees for similar connectivity and use that revenue to invest in their technology and other service offerings.

The proposed changes to the Fee Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces, which constrains its pricing determinations for transaction fees as well as non-transaction fees. The fact that the market for order flow is competitive has 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 order-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 possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [81]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, 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.'' [82]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' '' [83] As a result, and as evidenced above, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [84] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [85] In the Revised Review Process and Staff Guidance, Commission Staff indicated that they

[76] *See* Securities Exchange Act Release No. 68415 (December 12, 2012), 77 FR 74905 (December 18, 2012) (SR–MIAX–2012–01).

[77] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) (stating, ''[t]he Exchange established this lower (when compared to other options exchanges in the industry) Participant Fee in order to encourage market participants to become Participants of BOX . . .''). *See also* Securities Exchange Act Release No. 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (SR–MEMX–2020–10) (proposing to adopt the initial fee schedule and stating that ''[u]nder the initial proposed Fee Schedule, the Exchange proposes to make clear that it does not charge any fees for membership, market data products, physical connectivity or application sessions.''). MEMX's market share has increased and recently proposed to adopt numerous non-transaction fees, including fees for membership, market data, and connectivity. *See* Securities Exchange Act Release Nos. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19) (proposing to adopt membership fees); 96430 (December 1, 2022), 87 FR 75083 (December 7, 2022) (SR–MEMX–2022–32) *and* 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26) (proposing to adopt fees for connectivity). *See also, e.g.,* Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR–NYSENAT–2020–05), *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf* (initiating market data fees for the NYSE National exchange after initially setting such fees at zero).

[78] The Exchange experienced a monthly average equity options trading volume of 1.87% for the month of November 2013. *See* Market at a Glance, *available at www.miaxoptions.com.*

[79] *See* Securities Exchange Act Release No. 70903 (November 20, 2013), 78 FR 70615 (November 26, 2013) (SR–MIAX–2013–52).

[80] *See* Securities Exchange Act Release No. 90980 (January 25, 2021), 86 FR 7602 (January 29, 2021) (SR–MIAX–2021–02).

[81] *See NetCoalition,* 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[82] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[83] *See NetCoalition,* 615 F.3d at 534–35; see also H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[84] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR–NYSEArca–2006–21).

[85] *Id.*

would look at factors beyond the competitive environment, such as cost, only if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.'' [86]

The Exchange believes the competing exchanges' 10Gb connectivity and port fees are useful examples of alternative approaches to providing and charging for access and demonstrating how such fees are competitively set and constrained. To that end, the Exchange believes the proposed fees are competitive and reasonable because the proposed fees are similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with comparable market shares. As such, the Exchange believes that denying its ability to institute fees that allow us to recoup our costs and some margin in a manner that is closer to parity with legacy exchanges, in effect, impedes its ability to compete, including in its pricing of transaction fees and ability to invest in competitive infrastructure and other offerings.

The following table shows how the Exchange's proposed fees remain similar to or less than fees charged for similar connectivity and port access provided by other options exchanges with similar market share. Each of the market data rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

Exchange	Type of connection or port	Monthly fee (per connection or per port)
MIAX (as proposed) (equity options market share of 6.72% for the month of March 2023) [87].	10Gb ULL connection	$13,500.
	Limited Service MEI Ports ..	1–2 ports: FREE (not changed in this proposal); 3–4 ports: $150 each; 5–6 ports: $200 each; 7 or more ports: $250 each.
NASDAQ [88] (equity options market share of 7.51% for the month of March 2023) [89].	10Gb Ultra fiber connection	$15,000 per connection.
	SQF Port [90]	1–5 ports: $1,500 per port; 6–20 ports: $1,000 per port; 21 or more ports: $500 per port.
NASDAQ ISE LLC (''ISE'') [91] (equity options market share of 5.91% for the month of March 2023) [92].	10Gb Ultra fiber connection	$15,000 per connection.
	SQF Port	$1,100 per port.
NYSE American LLC (''NYSE American'') [93] (equity options market share of 7.50% for the month of March 2023) [94].	10Gb LX LCN connection	$22,000 per connection.
	Order/Quote Entry Port	1–40 ports: $450 per port; 41 or more ports: $150 per port.
NASDAQ GEMX, LLC (''GEMX'') [95] (equity options market share of 2.00% for the month of March 2023) [96].	10Gb Ultra connection	$15,000 per connection.
	SQF Port	$1,250 per port.

There is no requirement, regulatory or otherwise, that any broker-dealer connect to and access any (or all of) the available options exchanges. Market participants may choose to become a member of one or more options exchanges based on the market participant's assessment of the business opportunity relative to the costs of the Exchange. With this, there is elasticity of demand for exchange membership. As an example, the Exchange's affiliate, MIAX Pearl Options, experienced a decrease in membership as the result of similar fees proposed herein. One MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023, as a direct result of the proposed connectivity and port fee changes on MIAX Pearl Options.

It is not a requirement for market participants to become members of all options exchanges, in fact, certain market participants conduct an options business as a member of only one options market.[97] A very small number of market participants choose to become a member of all sixteen options exchanges. Most firms that actively trade on options markets are not currently Members of the Exchange and do not purchase connectivity or port services at the Exchange. Connectivity and ports are only available to Members or service bureaus, and only a Member may utilize a port.[98]

One other exchange recently noted in a proposal to amend their own trading permit fees that of the 62 market making firms that are registered as Market Makers across Cboe, MIAX, and BOX, 42 firms access only one of the three exchanges.[99] The Exchange and its affiliates, MIAX Pearl and MIAX Emerald, have a total of 47 members. Of those 47 total members, 35 are members of all three affiliated exchanges, four are

[86] *See supra* note 23.

[87] *See supra* note 78.

[88] *See* NASDAQ Pricing Schedule, Options 7, Section 3, Ports and Other Services *and* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.

[89] *See supra* note 78.

[90] Similar to the Exchange's MEI Ports, SQF ports are primarily utilized by Market Makers.

[91] *See* ISE Pricing Schedule, Options 7, Section 7, Connectivity Fees *and* ISE Rules, General 8: Connectivity.

[92] *See supra* note 78.

[93] *See* NYSE American Options Fee Schedule, Section V.A. Port Fees *and* Section V.B. Co-Location Fees.

[94] *See supra* note 78.

[95] *See* GEMX Pricing Schedule, Options 7, Section 6, Connectivity Fees *and* GEMX Rules, General 8: Connectivity.

[96] *See supra* note 78.

[97] BOX recently adopted an electronic market maker trading permit fee. *See* Securities Exchange Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17). In that proposal, BOX stated that, ''. . . it is not aware of any reason why Market Makers could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such Market Maker, did not make business or economic sense for such Market Maker to access such exchange. [BOX] again notes that no market makers are required by rule, regulation, or competitive forces to be a Market Maker on [BOX].'' Also in 2022, MEMX established a monthly membership fee. *See* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19). In that proposal, MEMX reasoned that that there is value in becoming a member of the exchange and stated that it believed that the proposed membership fee ''is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange'' and that ''neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange.''

[98] Service Bureaus may obtain ports on behalf of Members.

[99] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees). The Exchange believes that BOX's observation demonstrates that market making firms can, and do, select which exchanges they wish to access, and, accordingly, options exchanges must take competitive considerations into account when setting fees for such access.

members of only two (2) affiliated exchanges, and eight (8) are members of only one affiliated exchange. The Exchange also notes that no firm is a Member of the Exchange only. The above data evidences that a broker-dealer need not have direct connectivity to all options exchanges, let alone the Exchange and its two affiliates, and broker-dealers may elect to do so based on their own business decisions and need to directly access each exchange's liquidity pool.

Not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the broker-dealer membership analysis of the options exchanges discussed above. As noted above, this is evidenced by the fact that one MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023 as a direct result of the proposed connectivity and port fee changes on MIAX Pearl Options (which are similar to the changes proposed herein). Indeed, broker-dealers choose if and how to access a particular exchange and because it is a choice, the Exchange must set reasonable pricing, otherwise prospective members would not connect and existing members would disconnect from the Exchange. The decision to become a member of an exchange, particularly for registered market makers, is complex, and not solely based on the non-transactional costs assessed by an exchange. As noted herein, specific factors include, but are not limited to: (i) an exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. Becoming a member of the exchange does not ''lock'' a potential member into a market or diminish the overall competition for exchange services.

In lieu of becoming a member at each options exchange, a market participant may join one exchange and elect to have their orders routed in the event that a better price is available on an away market. Nothing in the Order Protection Rule requires a firm to become a Member at—or establish connectivity to—the Exchange.[100] If the Exchange is not at the NBBO, the Exchange will route an order to any away market that is at the NBBO to ensure that the order was executed at a superior price and prevent a trade-through.[101]

With respect to the submission of orders, Members may also choose not to purchase any connection at all from the Exchange, and instead rely on the port of a third party to submit an order. For example, a third-party broker-dealer Member of the Exchange may be utilized by a retail investor to submit orders into an Exchange. An institutional investor may utilize a broker-dealer, a service bureau,[102] or request sponsored access [103] through a member of an exchange in order to submit a trade directly to an options exchange.[104] A market participant may either pay the costs associated with becoming a member of an exchange or, in the alternative, a market participant may elect to pay commissions to a broker-dealer, pay fees to a service bureau to submit trades, or pay a member to sponsor the market participant in order to submit trades directly to an exchange.

Non-Member third-parties, such as service bureaus and extranets, resell the Exchange's connectivity. This indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange's connectivity fees), which alternative is already being used by non-Members and further constrains the price that the Exchange is able to charge for connectivity and other access fees to its market. The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity. Unlike other exchanges, the Exchange also does not currently assess fees on third-party resellers on a per customer basis (*i.e.,* fees based on the number of firms that connect to the Exchange indirectly via the third-party).[105] Indeed, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own.[106] Particularly, in the event that a market participant views the Exchange's direct connectivity and access fees as more or less attractive than competing markets, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to the Exchange and connect instead to one or more of the other 16 options markets. Accordingly, the Exchange believes that the proposed fees are fair and reasonable and constrained by competitive forces.

The Exchange is obligated to regulate its Members and secure access to its environment. In order to properly regulate its Members and secure the trading environment, the Exchange takes measures to ensure access is monitored and maintained with various controls. Connectivity and ports are methods utilized by the Exchange to grant Members secure access to communicate with the Exchange and exercise trading rights. When a market participant elects to be a Member, and is approved for membership by the Exchange, the Member is granted trading rights to enter orders and/or quotes into Exchange through secure connections.

Again, there is no legal or regulatory requirement that a market participant become a Member of the Exchange. This is again evidenced by the fact that one MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023 as a direct result of the proposed connectivity and port fee changes on MIAX Pearl Options. If a market participant chooses to become a Member, they may then choose to purchase connectivity beyond the one connection that is necessary to quote or submit orders on the Exchange. Members may freely choose to rely on one or many connections, depending on their business model.

[100] *See* Options Order Protection and Locked/Crossed Market Plan (August 14, 2009), *available at https://www.theocc.com/getmedia/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/options_order_protection_plan.pdf.*

[101] Members may elect to not route their orders by utilizing the Do Not Route order type. *See* Exchange Rule 516(g).

[102] Service Bureaus provide access to market participants to submit and execute orders on an exchange. On the Exchange, a Service Bureau may be a Member. Some Members utilize a Service Bureau for connectivity and that Service Bureau may not be a Member. Some market participants utilize a Service Bureau who is a Member to submit orders.

[103] Sponsored Access is an arrangement whereby a Member permits its customers to enter orders into an exchange's system that bypass the Member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third-party technology provider.

[104] This may include utilizing a floor broker and submitting the trade to one of the five options trading floors.

[105] *See, e.g.,* Nasdaq Price List—U.S. Direct Connection and Extranet Fees, *available at,* US Direct-Extranet Connection (*nasdaqtrader.com*); *and* Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); *and* 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114).

[106] The Exchange notes that resellers, such as SFTI, are not required to publicize, let alone justify or file with the Commission their fees, and as such could charge the market participant any fees it deems appropriate (including connectivity fees higher than the Exchange's connectivity fees), even if such fees would otherwise be considered potentially unreasonable or uncompetitive fees.

Bifurcation of 10Gb ULL Connectivity and Related Fees

The Exchange began to operate on a single shared network with MIAX Pearl Options when MIAX Pearl commenced operations as a national securities exchange on February 7, 2017.[107] The Exchange and MIAX Pearl Options have operated on a single shared network to provide Members with a single convenient set of access points for both exchanges. Both the Exchange and MIAX Pearl Options offer two methods of connectivity, 1Gb and 10Gb ULL connections. The 1Gb connection services are supported by a discrete set of switches providing 1Gb access ports to Members. The 10Gb ULL connection services are supported by a second and mutually exclusive set of switches providing 10Gb ULL access ports to Members. Previously, both the 1Gb and 10Gb ULL shared extranet ports allow Members to use one connection to access both exchanges, namely their trading platforms, market data systems, test systems, and disaster recovery facilities.

The Exchange stresses that bifurcating the 10Gb ULL connectivity between the Exchange and MIAX Pearl Options was not designed with the objective to generate an overall increase in access fee revenue. Rather, the proposed change was necessitated by 10Gb ULL connectivity experiencing a significant decrease in port availability mostly driven by connectivity demands of latency sensitive Members that seek to maintain multiple 10Gb ULL connections on every switch in the network. Operating two separate national securities exchanges on a single shared network provided certain benefits, such as streamlined connectivity to multiple exchanges, and simplified exchange infrastructure. However, doing so was no longer sustainable due to ever-increasing capacity constraints and current system limitations. The network is not an unlimited resource. As described more fully in the proposal to bifurcate the 10Gb ULL network,[108] the connectivity needs of Members and market participants has increased every year since the launch of MIAX Pearl Options and the operations of the Exchange and MIAX Pearl Options on a single shared 10Gb ULL network is no longer feasible. This required constant System expansion to meet Member demand for additional ports and 10Gb ULL connections has resulted in limited available System headroom, which eventually became operationally problematic for both the Exchange and its customers.

As stated above, the shared network is not an unlimited resource and its expansion was constrained by MIAX's and MIAX Pearl Options' ability to provide fair and equitable access to all market participants of both markets. Due to the ever-increasing connectivity demands, the Exchange found it necessary to bifurcate 10Gb ULL connectivity to the Exchange's and MIAX Pearl Options' Systems and networks to be able to continue to meet ongoing and future 10Gb ULL connectivity and access demands.[109]

Unlike the switches that provide 1Gb connectivity, the availability for additional 10Gb ULL connections on each switch had significantly decreased. This was mostly driven by the connectivity demands of latency sensitive Members (*e.g.,* Market Makers and liquidity removers) that sought to maintain connectivity across multiple 10Gb ULL switches. Based on the Exchange's experience, such Members did not typically use a shared 10Gb ULL connection to reach both the Exchange and MIAX Pearl Options due to related latency concerns. Instead, those Members maintain dedicated separate 10Gb ULL connections for the Exchange and separate dedicated 10Gb ULL connections for MIAX Pearl Options. This resulted in a much higher 10Gb ULL usage per switch by those Members on the shared 10Gb ULL network than would otherwise be needed if the Exchange and MIAX Pearl Options had their own dedicated 10Gb ULL networks. Separation of the Exchange and MIAX Pearl Options 10Gb ULL networks naturally lends itself to reduced 10Gb ULL port consumption on each switch and, therefore, increased 10Gb ULL port availability for current Members and new Members.

Prior to bifurcating the 10Gb ULL network, the Exchange and MIAX Pearl Options continued to add switches to meet ongoing demand for 10Gb ULL connectivity. That was no longer sustainable because simply adding additional switches to expand the current shared 10Gb ULL network would not adequately alleviate the issue of limited available port connectivity. While it would have resulted in a gain in overall port availability, the existing switches on the shared 10Gb ULL network in use would have continued to suffer from lack of port headroom given many latency sensitive Members' needs for a presence on each switch to reach both the Exchange and MIAX Pearl Options. This was because those latency sensitive Members sought to have a presence on each switch to maximize the probability of experiencing the best network performance. Those Members routinely decide to rebalance orders and/or messages over their various connections to ensure each connection is operating with maximum efficiency. Simply adding switches to the extranet would not have resolved the port availability needs on the shared 10Gb ULL network since many of the latency sensitive Members were unwilling to relocate their connections to a new switch due to the potential detrimental performance impact. As such, the impact of adding new switches and rebalancing ports would not have been effective or responsive to customer needs. The Exchange has found that ongoing and continued rebalancing once additional switches are added has had, and would have continued to have had, a diminishing return on increasing available 10Gb ULL connectivity.

Based on its experience and expertise, the Exchange found the most practical way to increase connectivity availability on its switches was to bifurcate the existing 10Gb ULL networks for the Exchange and MIAX Pearl Options by migrating the exchanges' connections from the shared network onto their own set of switches. Such changes accordingly necessitated a review of the Exchange's previous 10Gb ULL connectivity fees and related costs. The proposed fees are necessary to allow the Exchange to cover ongoing costs related to providing and maintaining such connectivity, described more fully below. The ever increasing connectivity demands that necessitated this change further support that the proposed fees are reasonable because this demand reflects that Members and non-Members believe they are getting value from the 10Gb ULL connections they purchase.

The Exchange announced on August 12, 2022 the planned network change and the January 23, 2023 implementation date to provide market participants adequate time to

[107] *See* Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (establishing MIAX Pearl Fee Schedule and establishing that the MENI can also be configured to provide network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facility of the MIAX Pearl's affiliate, MIAX, via a single, shared connection).

[108] *See* Securities Exchange Act Release Nos. 96553 (December 20, 2022), 87 FR 79379 (December 27, 2022) (SR–PEARL–2022–60); 96545 (December 20, 2022) 87 FR 79393 (December 27, 2022) (SR–MIAX–2022–48).

[109] Currently, the Exchange maintains sufficient headroom to meet ongoing and future requests for 1Gb connectivity. Therefore, the Exchange did not propose to alter 1Gb connectivity and continues to provide 1Gb connectivity over a shared network.

prepare.[110] Since August 12, 2022, the Exchange has worked with current 10Gb ULL subscribers to address their connectivity needs ahead of the January 23, 2023 date. Based on those interactions and subscriber feedback, the Exchange experienced a minimal net increase of approximately six (6) overall 10Gb ULL connectivity subscriptions across the Exchange and MIAX Pearl. This anticipated immaterial increase in overall connections reflect a minimal fee impact for all types of subscribers and reflects that subscribers elected to reallocate existing 10Gb ULL connectivity directly to the Exchange or MIAX Pearl Options, or choose to decrease or cease connectivity as a result of the change.

Should the Commission Staff disapprove such fees, it would effectively dictate how an exchange manages its technology and would hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval could also have the adverse effect of discouraging exchanges from optimizing its operations and deploying innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from covering its costs and monetizing operational enhancements, thus adversely impacting competition. Also, as noted above, the economic consequences of not being able to better establish fee parity with other exchanges for non-transaction fees hampers the Exchange's ability to compete on transaction fees.

Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

In proposing to charge fees for connectivity services, the Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and transparently assessing the impact on Members—both generally and in relation to other Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange believes that this level of diligence and transparency is called for by the requirements of section 19(b)(1) under the Act,[111] and Rule 19b–4 thereunder,[112] with respect to the types of information SROs should provide when filing fee changes, and section 6(b) of the Act,[113] which requires, among other things, that exchange fees be reasonable and equitably allocated,[114] not designed to permit unfair discrimination,[115] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[116] This rule change proposal addresses those requirements, and the analysis and data in each of the sections that follow are designed to clearly and comprehensively show how they are met.[117] The Exchange reiterates that the legacy exchanges with whom the Exchange vigorously competes for order flow and market share, were not subject to any such diligence or transparency in setting their baseline non-transaction fees, most of which were put in place before the Revised Review Process and Staff Guidance.

As detailed below, the Exchange recently calculated its aggregate annual costs for providing physical 10Gb ULL connectivity to the Exchange at $12,034,554 (or approximately $1,002,880 per month, rounded up to the nearest dollar when dividing the annual cost by 12 months) and its aggregate annual costs for providing Limited Service MEI Ports at $2,157,178 (or approximately $179,765 per month, rounded down to the nearest dollar when dividing the annual cost by 12 months). In order to cover the aggregate costs of providing connectivity to its Users (both Members and non-Members[118]) going forward and to make a modest profit, as described below, the Exchange proposes to modify its Fee Schedule to charge a fee of $13,500 per month for each physical 10Gb ULL connection and to remove language providing for a shared 10Gb ULL network between the Exchange and MIAX Pearl Options. The Exchange also proposes to modify its Fee Schedule to charge tiered rates for additional Limited Service MEI Ports.

In 2019, the Exchange completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis'').[119] The Cost Analysis required a detailed analysis of the Exchange's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services, physical connectivity, and port access (which provide order entry, cancellation and modification functionality, risk functionality, the ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (''cost drivers'').

As an initial step, the Exchange determined the total cost for the Exchange and the affiliated markets). That total cost was then divided among the Exchange and each of its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (*e.g.,* price time or pro-rata), which may impact message traffic, individual system architectures that impact platform size,[120] storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time. This will result in different allocation percentages among the Exchange and its affiliated markets. Meanwhile this allocation methodology ensures that no portion of any cost was allocated twice or double-counted

[110] *See supra* note 9.

[111] 15 U.S.C. 78s(b)(1).

[112] 17 CFR 240.19b–4.

[113] 15 U.S.C. 78f(b).

[114] 15 U.S.C. 78f(b)(4).

[115] 15 U.S.C. 78f(b)(5).

[116] 15 U.S.C. 78f(b)(8).

[117] *See supra* note 23.

[118] Types of market participants that obtain connectivity services from the Exchange but are not Members include service bureaus and extranets. Service bureaus offer technology-based services to other companies for a fee, including order entry services, and thus, may access Limited Service MEI Ports on behalf of one or more Members. Extranets offer physical connectivity services to Members and non-Members.

[119] The Exchange frequently updates it Cost Analysis as strategic initiatives change, costs increase or decrease, and market participant needs and trading activity changes. The Exchange's most recent Cost Analysis was conducted ahead of this filing.

[120] For example, the Exchange maintains 24 matching engines, MIAX Pearl Options maintains 12 matching engines, MIAX Pearl Equities maintains 24 matching engines, and MIAX Emerald maintains 12 matching engines.

between the Exchange and its affiliated markets.

Next, the Exchange adopted an allocation methodology with thoughtful and consistently applied principles to guide how much of a particular cost amount allocated to the Exchange pursuant to the above methodology should be allocated within the Exchange to each core service. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical 1Gb and 10Gb ULL connectivity (62%), with smaller allocations to all ports (15%), and the remainder to the provision of transaction execution, membership services and market data services (23%). This next level of the allocation methodology at the individual exchange level also took into account a number of factors similar to those set forth under the first allocation methodology described above, to determine the appropriate allocation to connectivity or market data versus what is to be allocated to providing other services. The allocation methodology was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an estimated allocation of each cost driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity and port services, membership fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; many Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and, the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange's costs, the Exchange's methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges' interdependent costs, the Exchange will continue to be left with its best efforts to attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange's extensive updated Cost Analysis, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of connectivity services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of connectivity services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity services. In turn, the Exchange allocated certain costs more to physical connectivity and others to ports, while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, the Exchange estimates that the cost drivers to provide 10Gb ULL connectivity and Limited Service MEI Port services, including both physical 10Gb connections and Limited Service MEI Ports, result in an aggregate monthly cost of approximately $1,182,645 (utilizing the rounded numbers when dividing the annual cost for 10Gb ULL connectivity and annual cost for Limited Service MEI Ports by 12 months, then adding both numbers together), as further detailed below.

Costs Related to Offering Physical 10Gb ULL Connectivity

The following chart details the individual line-item costs considered by the Exchange to be related to offering physical dedicated 10Gb ULL connectivity via an unshared network as well as the percentage of the Exchange's overall costs that such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 25.6% of its overall Human Resources cost to offering physical connectivity).

Cost drivers	Annual cost [121]	Monthly cost [122]	Percent of all
Human Resources	$3,867,297	$322,275	25
Connectivity (external fees, cabling, switches, etc.)	70,163	5,847	60.6
Internet Services, including External Market Data	424,584	35,382	73.3
Data Center	718,950	59,912	60.6
Hardware and Software Maintenance and Licenses	727,734	60,645	49.8
Depreciation	2,310,898	192,575	61.6
Allocated Shared Expenses	3,914,928	326,244	49.1
Total	12,034,554	1,002,880	39.4

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering physical 10Gb ULL connectivity. The Exchange notes that some of its cost allocation percentages for certain categories of expense differ when compared to the same categories of expense described by the Exchange's affiliates in their similar proposed fee changes for connectivity and ports. This is because the Exchange's cost

[121] The Annual Cost includes figures rounded to the nearest dollar.

[122] The Monthly Cost was determined by dividing the Annual Cost for each line item by twelve (12) months and rounding up or down to the nearest dollar.

allocation methodology utilizes the actual projected costs of the Exchange (which are specific to the Exchange, and are independent of the costs projected and utilized by the Exchange's affiliates) to determine its actual costs. The Exchange provides additional explanation below (including the reason for the deviation) where the Exchange considers such deviation in allocations to be non *de minimis.*

Human Resources

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include providing and maintaining physical connectivity and performance thereof (primarily the Exchange's network infrastructure team, which spends most of their time performing functions necessary to provide physical connectivity) and for which the Exchange allocated a percentage of 42% of each employee's time assigned to the Exchange based on the above-described allocation methodology. The Exchange also allocated Human Resources costs to provide physical connectivity to a limited subset of personnel with ancillary functions related to establishing and maintaining such connectivity (such as information security and finance personnel), for which the Exchange allocated cost on an employee-by-employee basis (*i.e.,* only including those personnel who do support functions related to providing physical connectivity) and then applied a smaller allocation to such employees (less than 18%). The Exchange notes that it and its affiliated markets have 184 employees and each department leader has direct knowledge of the time spent by those spent by each employee with respect to the various tasks necessary to operate the Exchange. Specifically, twice a year and as needed with additional new hires and new project initiatives, in consultation with employees as needed, managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine that market's individual Human Resources expense. Then, again managers and department heads assign a percentage of each employee's time allocated to the Exchange into buckets including network connectivity, ports, market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing physical connectivity, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing physical connectivity. This includes personnel from the following Exchange departments that are predominately involved in providing 1Gb and 10Gb ULL connectivity: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. The Exchange notes that senior level executives were only allocated Human Resources costs to the extent the Exchange believed they are involved in overseeing tasks related to providing physical connectivity. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity and Internet Services

The Connectivity cost includes external fees paid to connect to other exchanges and third parties, cabling and switches required to operate the Exchange. The Connectivity line-item is more narrowly focused on technology used to complete connections to the Exchange and to connect to external markets. The Exchange notes that its connectivity to external markets is required in order to receive market data to run the Exchange's matching engine and basic operations compliant with existing regulations, primarily Regulation NMS.

The Exchange relies on various connectivity and content service providers for connectivity and data feeds for the entire U.S. options industry, as well as content, connectivity, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity. Specifically, the Exchange utilizes connectivity and content service providers to connect to other national securities exchanges, the Options Price Reporting Authority (''OPRA''), and to receive market data from other exchanges and market data providers. The Exchange understands that these service providers provide services to most, if not all, of the other U.S. exchanges and other market participants. Connectivity and market data provided these service providers is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity. Without these services providers, the Exchange would not be able to connect to other national securities exchanges, market data providers, or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its connectivity and content service provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment (such as dedicated space, security services, cooling and power). The Exchange notes that it does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties. The Exchange has allocated a high percentage of the Data Center cost (60.6%) to physical 10Gb ULL connectivity because the third-party data centers and the Exchange's physical equipment contained therein is the most direct cost in providing physical access to the Exchange. In other words, for the Exchange to operate in a dedicated space with connectivity of participants to a physical trading platform, the data centers are a very tangible cost, and in turn, if the Exchange did not maintain such a presence then physical connectivity would be of no value to market participants.

External Market Data

External Market Data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange included External Market Data fees to the provision of 10Gb ULL connectivity as such market data is necessary here to offer certain services related to such connectivity, such as certain risk checks that are performed prior to execution, and checking for other conditions (*e.g.,* re-pricing of orders to avoid lock or crossed markets, trading collars). This allocation was included as part of the internet Services cost described above. Thus, as market data from other exchanges is consumed at the matching engine level, (to which 10Gb ULL connectivity provides access to) in order to validate orders before additional entering the matching engine

or being executed, the Exchange believes it is reasonable to allocate a small amount of such costs to 10Gb ULL connectivity.

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer physical connectivity to the Exchange.[123]

Monthly Depreciation

All physical assets and software, which also includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. As noted above, the Exchange allocated 61.6% of all depreciation costs to providing physical 10Gb ULL connectivity. The Exchange notes, however, that it did not allocate depreciation costs for any depreciated software necessary to operate the Exchange to physical connectivity, as such software does not impact the provision of physical connectivity. The Exchange also notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost.

Allocated Shared Expenses

Finally, a limited portion of general shared expenses was allocated to overall physical connectivity costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide physical connectivity. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange notes that the cost of paying directors to serve on its Board of Directors is also included in the Exchange's general shared expenses.[124] The Exchange notes that the 49.1% allocation of general shared expenses for physical 10Gb ULL connectivity is higher than that allocated to general shared expenses for Limited Service MEI Ports based on its allocation methodology that weighted costs attributable to each Core Service based on an understanding of each area. While physical connectivity has several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Centers, as described above), Limited Service MEI Ports do not require as many broad or indirect resources as other Core Services. The total monthly cost for 10Gb ULL connectivity of $1,002,880 was divided by the number of physical 10Gb ULL connections the Exchange maintained at the time that proposed pricing was determined (93), to arrive at a cost of approximately $10,784 per month, per physical 10Gb ULL connection.

Costs Related to Offering Limited Service MEI Ports

The following chart details the individual line-item costs considered by the Exchange to be related to offering Limited Service MEO Ports as well as the percentage of the Exchange's overall costs such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 5.8% of its overall Human Resources cost to offering Limited Service MEI Ports).

Cost drivers	Annual cost[125]	Monthly cost[126]	Percent of all
Human Resources	$898,480	$74,873	5.8
Connectivity (external fees, cabling, switches, etc.)	4,435	370	3.8
Internet Services, including External Market Data	41,601	3,467	7.2
Data Center	85,214	7,101	7.2
Hardware and Software Maintenance and Licenses	104,859	8,738	7.2
Depreciation	237,335	19,778	6.3
Allocated Shared Expenses	785,254	65,438	9.8
Total	2,157,178	179,765	7.1

The Exchange notes that some of its cost allocation percentages for certain categories of expense differ when compared to the same categories of expense described by the Exchange's affiliates in their similar proposed fee changes for connectivity and ports. This is because the Exchange's cost allocation methodology utilizes the actual projected costs of the Exchange (which are specific to the Exchange, and are independent of the costs projected and utilized by the Exchange's affiliates) to determine its actual costs. The Exchange provides additional explanation below (including the reason for the deviation) where the Exchange considers such deviation in allocations to be non *de minimis.*

Human Resources

With respect to Limited Service MEI Ports, the Exchange calculated Human Resources cost by taking an allocation of employee time for employees whose functions include providing Limited Service MEI Ports and maintaining performance thereof (including a broader range of employees such as technical operations personnel, market operations personnel, and software engineering personnel) as well as a limited subset of personnel with ancillary functions related to maintaining such connectivity (such as sales, membership, and finance

[123] This expense may be less than the Exchange's affiliated markets, specifically MIAX Pearl, because, unlike the Exchange, MIAX Pearl (the options and equities markets) maintains an additional gateway to accommodate its member's access and connectivity needs. This added gateway contributes to the difference in allocations between the Exchange and MIAX Pearl.

[124] The Exchange notes that MEMX allocated a precise amount of 10% of the overall cost for directors to providing physical connectivity. The Exchange does not calculate is expenses at that granular a level. Instead, director costs are included as part of the overall general allocation.

[125] *See supra* note 121 (describing rounding of Annual Costs).

[126] *See supra* note 122 (describing rounding of Monthly Costs based on Annual Costs).

personnel). Just as described above for 10Gb ULL connectivity, the estimates of Human Resources cost were again determined by consulting with department leaders, determining which employees are involved in tasks related to providing Limited Service MEI Ports and maintaining performance thereof, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing Limited Service MEI Ports and maintaining performance thereof. This includes personnel from the following Exchange departments that are predominately involved in providing 1Gb and 10Gb ULL connectivity: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. The Exchange notes that senior level executives were only allocated Human Resources costs to the extent the Exchange believed they are involved in overseeing tasks related to providing Limited Service MEI Ports and maintaining performance thereof. The Human Resources cost was again calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity and Internet Services

The Connectivity cost includes external fees paid to connect to other exchanges, cabling and switches, as described above. For purposes of Limited Service MEI Ports, the Exchange also includes a portion of its costs related to External Market Data, as described below.

The Exchange notes that this allocation is greater than its affiliate, MIAX Pearl Options, by more than a *de minimis* amount, as MIAX allocated 7.2% of its internet Services, Including External Market Data expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 1.4% to its Full Service MEO Ports for the same category of expense. The allocation percentages set forth above differ because they correspond with the number of applicable ports utilized on each exchange. For March 2023, MIAX Market Makers utilized 1,782 Limited Service MEI ports and MIAX Emerald Market Makers utilized 1,028 Limited Service MEI ports. When compared to Full Service Port (Bulk and Single) usage, for March 2023, MIAX Pearl Options Members utilized only 432 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options which has a lower port count.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs (the Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties).

External Market Data

External Market Data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange included External Market Data fees to the provision of Limited Service MEI Ports as such market data is also necessary here (in addition to physical connectivity) to offer certain services related to such ports, such as validating orders on entry against the national best bid and national best offer and checking for other conditions (*e.g.,* whether a symbol is halted). This allocation was included as part of the internet Services cost described above.[127] Thus, as market data from other Exchanges is consumed at the Limited Service MEI Port level in order to validate orders before additional processing occurs with respect to such orders, the Exchange believes it is reasonable to allocate a small amount of such costs to Limited Service MEI Ports.

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to monitor the health of the order entry services provided by the Exchange, as described above.

The Exchange notes that this allocation is greater than its affiliate, MIAX Pearl Options, by more than a *de minimis* amount, as MIAX allocated 7.2% of its Hardware and Software Maintenance and License expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 1.4% to its Full Service MEO Ports (Bulk and Single) for the same category of expense. The allocation percentages set forth above differ because they correspond with the number of applicable ports utilized on each exchange. For March 2023, MIAX Market Makers utilized 1,782 Limited Service MEI ports and MIAX Emerald Market Makers utilized 1,028 Limited Service MEI Ports. When compared to Full Service Port (Bulk and Single) usage, for March 2023, MIAX Pearl Options Members utilized only 432 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options, which has a lower port count.

Monthly Depreciation

All physical assets and software, which also includes assets used for testing and monitoring of order entry infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which is owned by the Exchange and some of which is leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange allocated 6.3% of all depreciation costs to providing Limited Service MEI Ports. In contrast to physical connectivity, described above, the Exchange did allocate depreciation costs for depreciated software necessary to operate the Exchange to Limited Service MEI Ports because such software is related to the provision of such connectivity. The Exchange also notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost.

Allocated Shared Expenses

Finally, a limited portion of general shared expenses was allocated to overall Limited Service MEI Ports costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide

[127] The Exchange notes that MEMX separately allocated 7.5% of its external market data costs to providing physical connectivity.

Limited Service MEI Ports. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange again notes that the cost of paying directors to serve on its Board of Directors is included in the calculation of Allocated Shared Expenses, and thus a portion of such overall cost amounting to less than 10% of the overall cost for directors was allocated to providing Limited Service MEI Ports. The Exchange notes that the 9.8% allocation of general shared expenses for Limited Service MEI Ports is lower than that allocated to general shared expenses for physical connectivity based on its allocation methodology that weighted costs attributable to each Core Service based on an understanding of each area. While Limited Service MEI Ports have several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Centers, as described above), 10Gb ULL connectivity requires a broader level of support from Exchange personnel in different areas, which in turn leads to a broader general level of cost to the Exchange. The total monthly cost of $179,765 was divided by the number of chargeable Limited Service MEI Ports (excluding the two free Limited Service MEI Ports per matching engine that each Member receives) the Exchange maintained at the time that proposed pricing was determined (1303), to arrive at a cost of approximately $138 per month, per charged Limited Service MEI Port.

Lastly, the Exchange notes that this allocation is greater than its affiliate, MIAX Pearl Options, by more than a *de minimis* amount as MIAX allocated 9.8% of its Allocated Shared Expense towards Limited Service MEI Ports, while MIAX Pearl Options allocated 3.6% to its Full Service MEO Ports (Bulk and Single) for the same category of expense. The allocation percentages set forth above differ because they correspond with the number of applicable ports utilized on each exchange. For March 2023, MIAX Market Makers utilized 1,782 Limited Service MEI Ports and MIAX Emerald Market Makers utilized 1,028 Limited Service MEI ports. When compared to Full Service Port (Bulk and Single) usage, for March 2023, MIAX Pearl Options Members utilized only 432 Full Service MEO Ports (Bulk and Single), far fewer than number of Limited Service MEI Ports utilized by Market Makers on MIAX, thus resulting in a smaller cost allocation. There is increased cost associated with supporting a higher number of ports (requiring more hardware and other technical infrastructure), thus the Exchange allocates a higher percentage of expense than MIAX Pearl Options which has a lower port count.

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core services (including physical connectivity or Limited Service MEI Ports) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal and the filings the Exchange submitted proposing fees for proprietary data feeds offered by the Exchange. For instance, in calculating the Human Resources expenses to be allocated to physical connections based upon the above described methodology, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a high percentage of the cost of such personnel (42%) given their focus on functions necessary to provide physical connections. The salaries of those same personnel were allocated only 8.4% to Limited Service MEI Ports and the remaining 49.6% was allocated to 1Gb connectivity, other port services, transaction services, membership services and market data. The Exchange did not allocate any other Human Resources expense for providing physical connections to any other employee group, outside of a smaller allocation of 17.8% for 10Gb ULL connectivity or 18.2% for the entire network, of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel. In contrast, the Exchange allocated much smaller percentages of costs (5% or less) across a wider range of personnel groups in order to allocate Human Resources costs to providing Limited Service MEI Ports. This is because a much wider range of personnel are involved in functions necessary to offer, monitor and maintain Limited Service MEI Ports but the tasks necessary to do so are not a primary or full-time function.

In total, the Exchange allocated 25.6% of its personnel costs to providing physical connections and 5.8% of its personnel costs to providing Limited Service MEI Ports, for a total allocation of 31.4% Human Resources expense to provide these specific connectivity services. In turn, the Exchange allocated the remaining 68.6% of its Human Resources expense to membership services, transaction services, other port services and market data. Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including physical connections and Limited Service MEI Ports, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide connectivity services to its Members and non-Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing connectivity services, but instead allocated approximately 67.9% of the Exchange's overall depreciation and amortization expense to connectivity services (61.6% attributed to 10Gb ULL physical connections and 6.3% to Limited Service MEI Ports). The Exchange allocated the remaining depreciation and amortization expense (approximately 32.1%) toward the cost of providing transaction services, membership services, other port services and market data.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. The Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from connectivity, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity and/or Limited Service MEI Ports or in obtaining new clients that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net

capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

The Exchange notes that the Cost Analysis is based on the Exchange's 2023 fiscal year of operations and projections. It is possible however that such costs will either decrease or increase. To the extent the Exchange sees growth in use of connectivity services it will receive additional revenue to offset future cost increases.

However, if use of connectivity services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange would propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Projected Revenue [128]

The proposed fees will allow the Exchange to cover certain costs incurred by the Exchange associated with providing and maintaining necessary hardware and other network infrastructure as well as network monitoring and support services; without such hardware, infrastructure, monitoring and support the Exchange would be unable to provide the connectivity services. Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection(s). The above cost, namely those associated with hardware, software, and human capital, enable the Exchange to measure network performance with nanosecond granularity. These same costs are also associated with time and money spent seeking to continuously improve the network performance, improving the subscriber's experience, based on monitoring and analysis activity. The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by amending fees for connectivity services. Subscribers, particularly those of 10Gb ULL connectivity, expect the Exchange to provide this level of support to connectivity so they continue to receive the performance they expect. This differentiates the Exchange from its competitors. As detailed above, the Exchange has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue.

The Exchange's Cost Analysis estimates the annual cost to provide 10Gb ULL connectivity services at $12,034,554. Based on current 10Gb ULL connectivity services usage, the Exchange would generate annual revenue of approximately $15,066,000. This represents a modest profit of 20% when compared to the cost of providing 10Gb ULL connectivity services, which will decrease over time.[129]

The Exchange's Cost Analysis estimates the annual cost to provide Limited Service MEI Port services at $2,157,178. Based on current Limited Service MEI Port services usage, the Exchange would generate annual revenue of approximately $3,300,600. This represents an estimated profit margin of 35% when compared to the cost of providing Limited Service MEI Port services, which will decrease over time.[130] The Exchange notes that the cost to provide Limited Service MEI Ports may be substantially higher than the cost for the Exchange's affiliate, MIAX Pearl Options, to provide Full Service MEO Ports due to the substantially larger number of Limited Service MEI Ports used by Exchange Members. For example, the Exchange's Members are currently allocated 1,645 Limited Service MEI Ports compared to only 19 Full Service MEO Ports (Bulk and Single combined) allocated to MIAX Pearl Options members.

Even if the Exchange earns those amounts or incrementally more or less, the Exchange believes the proposed fees are fair and reasonable because they will not result in pricing that deviates from that of other exchanges or supra-competitive profit, when comparing the total expense of the Exchange associated with providing 10Gb ULL connectivity and Limited Service MEI Port services versus the total projected revenue of the Exchange associated with network 10Gb ULL connectivity and Limited Service MEI Port services.

* * * * *

The Exchange has operated at a cumulative net annual loss since it launched operations in 2012.[131] The Exchange has operated at a net loss due to a number of factors, one of which is choosing to forgo revenue by offering certain products, such as connectivity, at lower rates than other options exchanges to attract order flow and encourage market participants to experience the high determinism, low latency, and resiliency of the Exchange's trading systems. The Exchange should not now be penalized for seeking to raise its fees in light of necessary technology changes and its increased costs after offering such products as discounted prices. Therefore, the Exchange believes the proposed fees are reasonable because they are based on both relative costs to the Exchange to provide dedicated 10Gb ULL connectivity and Limited Service MEI Ports, the extent to which the product drives the Exchange's overall costs and the relative value of the product, as well as the Exchange's objective to make access to its Systems broadly available to market participants. The Exchange

[128] For purposes of calculating revenue for 10Gb ULL connectivity, the Exchange used revenues for February 2023, the first full month for which it provided dedicated 10Gb ULL connectivity to the Exchange and ceased operating a shared 10Gb ULL network with MIAX Pearl Options.

[129] Assuming the U.S. inflation rate continues at its current rate, the Exchange believes that the projected profit margins in this proposal will decrease; however, the Exchange cannot predict with any certainty whether the U.S. inflation rate will continue at its current rate or its impact on the Exchange's future profits or losses. *See, e.g., https://www.usinflationcalculator.com/inflation/current-inflation-rates/* (last visited April 18, 2023).

[130] *Id.*

[131] The Exchange has incurred a cumulative loss of $121 million since its inception in 2012 through full year 2021. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed June 29, 2022, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001163.pdf.*

also believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup the Exchange's costs of providing dedicated 10Gb ULL connectivity and Limited Service MEI Ports.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent customer activity actually produces the revenue estimated. As a competitor in the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such projections will be realized. For instance, in order to generate the revenue expected from 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange will have to be successful in retaining existing clients that wish to utilize 10Gb ULL connectivity and Limited Service MEI Ports and/or obtaining new clients that will purchase such access. To the extent the Exchange is successful in encouraging new clients to utilize 10Gb ULL connectivity and Limited Service MEI Ports, the Exchange does not believe it should be penalized for such success. To the extent the Exchange has mispriced and experiences a net loss in clients, the Exchange could experience a net reduction in revenue. While the Exchange believes in transparency around costs and potential revenue, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted.

The Exchange is owned by a holding company that is the parent company of four exchange markets and, therefore, the Exchange and its affiliated markets must allocate shared costs across all of those markets accordingly, pursuant to the above-described allocation methodology. In contrast, the Investors Exchange LLC (''IEX'') and MEMX, which are currently each operating only one exchange, in their recent non-transaction fee filings can allocate the entire amount of that same cost to a single exchange. This can result in lower profit margins for the non-transaction fees proposed by IEX and MEMX because the single allocated cost does not experience the efficiencies and synergies associated with shared costs across multiple platforms. The Exchange and its affiliated markets must share a single cost, which results in cost efficiencies that cause a broader gap between the allocated cost amount and projected revenue, even though the fee levels being proposed are lower or similar to competing markets (as described above). To the extent that the application of a cost-based standard results in Commission Staff making determinations as to the appropriateness of certain profit margins, the Commission Staff must consider whether the proposed fee level is comparable to, or on parity with, the same fee charged by competing exchanges and how different cost allocation methodologies (such as across multiple markets) may result in different profit margins for comparable fee levels. If it is the case that the Commission Staff is making determinations as to appropriate profit margins, the Exchange believes that Staff should be clear to all market participants as to what they determine is an appropriate profit margin and should apply such determinations consistently and, in the case of certain legacy exchanges, retroactively, if such standards are to avoid having a discriminatory effect.

Further, the proposal reflects the Exchange's efforts to control its costs, which the Exchange does on an ongoing basis as a matter of good business practice. A potential profit margin should not be judged alone based on its size, but is also indicative of costs management and whether the ultimate fee reflects the value of the services provided. For example, a profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling its costs, but not excessive where on another exchange where that exchange is charging comparable fees but has a lower profit margin due to higher costs. Doing so could have the perverse effect of not incentivizing cost control where higher costs alone could be used to justify fees increases.

The Proposed Pricing Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that the proposed fees are reasonable, fair, equitable, and not unfairly discriminatory because they are designed to align fees with services provided and will apply equally to all subscribers.

10Gb ULL Connectivity

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity and port alternatives, as the users of 10Gb ULL connections consume substantially more bandwidth and network resources than users of 1Gb ULL connection. Specifically, the Exchange notes that 10Gb ULL connection users account for more than 99% of message traffic over the network, driving other costs that are linked to capacity utilization, as described above, while the users of the 1Gb ULL connections account for less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have the same business needs for the high-performance network as 10Gb ULL users.

The Exchange's high-performance network and supporting infrastructure (including employee support), provides unparalleled system throughput with the network ability to support access to several distinct options markets. To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages to satisfy its record keeping requirements under the Exchange Act.[132] Thus, as the number of messages an entity increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb ULL users pay for the vast majority of the shared network resources from which all market participants' benefit.

Limited Service MEI Ports

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity alternatives, as the users of the Limited Service MEI Ports consume the most bandwidth and resources of the network. Specifically, like above for the 10Gb ULL connectivity, the Exchange notes that the Market Makers who take the maximum amount of Limited Service MEI Ports account for approximately greater than 99% of message traffic over the network, while Market Makers with fewer Limited Service MEI Ports account for approximately less than 1% of message traffic over the network. In the

[132] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

Exchange's experience, Market Makers who only utilize the two free Limited Service MEI Ports do not have a business need for the high-performance network solutions required by Market Makers who take the maximum amount of Limited Service MEI Ports. The Exchange's high-performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 18 million quote messages per second. Based on November 2022 trading results, on an average day, the Exchange handles over approximately 8.8 billion quotes, and more than 185 billion quotes over the entire month. Of that total, Market Makers with the maximum amount of Limited Service MEI Ports generate approximately 5 billion quotes, and Market Makers who utilize the two free Limited Service MEI Ports generate approximately 1.5 billion quotes. Also for November 2022, Market Makers who utilized 3 to 4 Limited Service MEI ports submitted an average of 1,152,654,133 quotes per day and Market Makers who utilized 5 to 9 Limited Service MEI ports submitted an average of 1,172,105,181 quotes per day. To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the Exchange Act.[133] Thus, as the number of connections a Market Maker has increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. The Exchange sought to design the proposed tiered-pricing structure to set the amount of the fees to relate to the number of connections a firm purchases. The more connections purchased by a Market Maker likely results in greater expenditure of Exchange resources and increased cost to the Exchange. With this in mind, the Exchange proposes no fee or lower fees for those Market Makers who receive fewer Limited Service MEI Ports since those Market Makers generally tend to send the least amount of orders and messages over those connections. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that Market Makers who take the most Limited Service MEI Ports pay for the vast majority of the shared network resources from which all Member and non-Member users benefit, but is designed and maintained from a capacity standpoint to specifically handle the message rate and performance requirements of those Market Makers.

To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. Billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the Exchange Act.[134] Thus, as the number of connections a Market Maker has increases, the related pull on Exchange resources also increases. The Exchange sought to design the proposed tiered-pricing structure to set the amount of the fees to relate to the number of connections a firm purchases. The more connections purchased by a Market Maker likely results in greater expenditure of Exchange resources and increased cost to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing 10Gb ULL connectivity and Limited Service MEI Ports at below market rates to market participants since the Exchange launched operations. As described above, the Exchange has operated at a cumulative net annual loss since it launched operations in 2012 [135] due to providing a low-cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very lower fee, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low-cost exchange alternative to the options industry, which resulted in lower initial revenues. Examples of this are 10Gb ULL connectivity and Limited Service MEI Ports, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Further, the Exchange does not believe that the proposed fee increase for the 10Gb ULL connection change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. As is the case with the current proposed flat fee, the proposed fee would apply uniformly to all market participants regardless of the number of connections they choose to purchase. The proposed fee does not favor certain categories of market participants in a manner that would impose an undue burden on competition.

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, Exchange personnel has been informally discussing potential fees for connectivity services with a diverse group of market participants that are connected to the Exchange (including large and small firms, firms with large connectivity service footprints and small connectivity service footprints, as well as extranets and service bureaus)

[133] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[134] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[135] *See supra* note 131.

for several months leading up to that time. The Exchange does not believe the proposed fees for connectivity services would negatively impact the ability of Members, non-Members (extranets or service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers to compete with other market participants or that they are placed at a disadvantage.

The Exchange does anticipate, however, that some market participants may reduce or discontinue use of connectivity services provided directly by the Exchange in response to the proposed fees. In fact, as mentioned above, one MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership on January 1, 2023 as a direct result of the similar proposed fee changes by MIAX Pearl Options.[136] The Exchange does not believe that the proposed fees for connectivity services place certain market participants at a relative disadvantage to other market participants because the proposed connectivity pricing is associated with relative usage of the Exchange by each market participant and does not impose a barrier to entry to smaller participants. The Exchange believes its proposed pricing is reasonable and, when coupled with the availability of third-party providers that also offer connectivity solutions, that participation on the Exchange is affordable for all market participants, including smaller trading firms. As described above, the connectivity services purchased by market participants typically increase based on their additional message traffic and/or the complexity of their operations. The market participants that utilize more connectivity services typically utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the proposed fees for connectivity services do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed connectivity fees reflects the network resources consumed by the various size of market participants and the costs to the Exchange of providing such connectivity services.

Inter-Market Competition

The Exchange also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, options market participants are not forced to connect to all options exchanges. There is no reason to believe that our proposed price increase will harm another exchange's ability to compete. There are other options markets of which market participants may connect to trade options at higher rates than the Exchange's. There is also a range of alternative strategies, including routing to the exchange through another participant or market center or accessing the Exchange indirectly. Market participants are free to choose which exchange or reseller to use to satisfy their business needs. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange also believes that the proposed fees for 10Gb connectivity are appropriate and warranted in light of it bifurcating 10Gb connectivity between the Exchange and MIAX Pearl and would not impose any burden on competition because this is a technology driven change that would assist the Exchange in recovering costs related to providing dedicating 10Gb connectivity to the Exchange while enabling it to continue to meet current and anticipated demands for connectivity by its Members and other market participants. Separating its 10Gb network from MIAX Pearl Options would enable the Exchange to better compete with other exchanges by ensuring it can continue to provide adequate connectivity to existing and new Members, which may increase in ability to compete for order flow and deepen its liquidity pool, improving the overall quality of its market.

The proposed rates for 10Gb ULL connectivity are also driven by the Exchange's need to bifurcate its 10Gb ULL network shared with MIAX Pearl Options so that it can continue to meet current and anticipated connectivity demands of all market participants. Similarly, and also in connection with a technology change, Cboe Exchange, Inc. (''Cboe'') amended access and connectivity fees, including port fees.[137] Specifically, Cboe adopted certain logical ports to allow for the delivery and/or receipt of trading messages—*i.e.,* orders, accepts, cancels, transactions, etc. Cboe established tiered pricing for BOE and FIX logical ports, tiered pricing for BOE Bulk ports, and flat prices for DROP, Purge Ports, GRP Ports and Multicast PITCH/Top Spin Server Ports. Cboe argued in its fee proposal that the proposed pricing more closely aligned its access fees to those of its affiliated exchanges, and reasonably so, as the affiliated exchanges offer substantially similar connectivity and functionality and are on the same platform that Cboe migrated to.[138] Cboe also justified its proposal by stating that, ''. . . the Exchange believes substitutable products and services are in fact available to market participants, including, among other things, other options exchanges a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity and/or trading of any options product, including proprietary products, in the Over- the-Counter (OTC) markets.'' [139] Cboe stated in its proposal that,

> The rule structure for options exchanges are also fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements. Gone are the days when the retail brokerage firms (such as Fidelity, Schwab, and eTrade) were members of the options exchanges—they are not members of the Exchange or its affiliates, they do not purchase connectivity to the Exchange, and they do not purchase market data from the Exchange. Accordingly, not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the recent significant reduction in the number of

[136] The Exchange acknowledges that IEX included in its proposal to adopt market data fees after offering market data for free an analysis of what its projected revenue would be if all of its existing customers continued to subscribe versus what its projected revenue would be if a limited number of customers subscribed due to the new fees. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945 (April 13, 2022) (SR–IEX–2022–02). MEMX did not include a similar analysis in either of its recent non-transaction fee proposals. *See, e.g., supra* note 54. The Exchange does not believe a similar analysis would be useful here because it is amending existing fees, not proposing to charge a new fee where existing subscribers may terminate connections because they are no longer enjoying the service at no cost.

[137] *See* Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR–CBOE–2020–105). The Exchange notes that Cboe submitted this filing *after* the Staff Guidance and contained no cost-based justification.

[138] *Id.* at 71676.

[139] *Id.*

broker-dealers that are members of all options exchanges.[140]

The proposal also referenced the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''),[141] wherein the Commission discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models. The Commission acknowledged that, even if an exchange were to exit the marketplace due to its proposed fee-related change, it would not significantly impact competition in the market for exchange trading services because these markets are served by multiple competitors.[142] Further, the Commission explicitly stated that ''[c]onsequently, demand for these services in the event of the exit of a competitor is likely to be swiftly met by existing competitors.'' [143] Finally, the Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[144]

Cboe also filed to establish a monthly fee for Certification Logical Ports of $250 per Certification Logical Port.[145] Cboe reasoned that purchasing additional Certification Logical Ports, beyond the one Certification Logical Port per logical port type offered in the production environment free of charge, is voluntary and not required in order to participate in the production environment, including live production trading on the Exchange.[146]

In its statutory basis, Cboe justified the new port fee by stating that it believed the Certification Logical Port fee were reasonable because while such ports were no longer completely free, TPHs and non-TPHs would continue to be entitled to receive free of charge one Certification Logical Port for each type of logical port that is currently offered in the production environment.[147] Cboe noted that other exchanges assess similar fees and cited to NASDAQ LLC and MIAX.[148] Cboe also noted that the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.[149] Finally, similar proposals to adopt a Certification Logical Port monthly fee were filed by Cboe BYX Exchange, Inc.,[150] BZX,[151] and Cboe EDGA Exchange, Inc.[152]

The Cboe fee proposals described herein were filed subsequent to the D.C. Circuit decision in *Susquehanna Int'l Grp., LLC* v. *SEC,* 866 F.3d 442 (D.C. Cir. 2017), meaning that such fee filings were subject to the same (and current) standard for SEC review and approval as this proposal. In summary, the Exchange requests the Commission apply the same standard of review to this proposal which was applied to the various Cboe and Cboe affiliated markets' filings with respect to non-transaction fees. If the Commission were to apply a different standard of review to this proposal than it applied to other exchange fee filings it would create a burden on competition such that it would impair the Exchange's ability to make necessary technology driven changes, such as bifurcating its 10Gb ULL network, because it would be unable to monetize or recoup costs related to that change and compete with larger, non-legacy exchanges.

* * * * *

In conclusion, as discussed thoroughly above, the Exchange regrettably believes that the application of the Revised Review Process and Staff Guidance has adversely affected inter-market competition among legacy and non-legacy exchanges by impeding the ability of non-legacy exchanges to adopt or increase fees for their market data and access services (including connectivity and port products and services) that are on parity or commensurate with fee levels previously established by legacy exchanges. Since the adoption of the Revised Review Process and Staff Guidance, and even more so recently, it has become extraordinarily difficult to adopt or increase fees to generate revenue necessary to invest in systems, provide innovative trading products and solutions, and improve competitive standing to the benefit of non-legacy exchanges' market participants. Although the Staff Guidance served an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, it has also negatively impacted non-legacy exchanges in particular in their efforts to adopt or increase fees that would enable them to more fairly compete with legacy exchanges, despite providing enhanced disclosures and rationale under both competitive and cost basis approaches provided for by the Revised Review Process and Staff Guidance to support their proposed fee changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received one comment letter on the Initial Proposal and one comment letter on the Second Proposal from the same commenter.[153] In their letters, the sole commenter seeks to incorporate comments submitted on previous Exchange proposals to which the Exchange has previously responded. To the extent the sole commenter has attempted to raise new issues in its letters, the Exchange believes those issues are not germane to this proposal in particular, but rather raise larger issues with the current environment surrounding exchange non-transaction fee proposals that should be addressed by the Commission through rule making, or Congress, more holistically and not through an individual exchange fee filing. Among other things, the commenter is requesting additional data and information that is both opaque and a moving target and would constitute a level of disclosure materially over and above that provided by any competitor exchanges.

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[140] *Id.* at 71676.

[141] *See* Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19).

[142] *Id.*

[143] *Id.*

[144] *Id.*

[145] *See* Securities Exchange Act Release No. 94512 (March 24, 2002), 87 FR 18425 (March 30, 2022) (SR–Cboe–2022–011). Cboe offers BOE and FIX Logical Ports, BOE Bulk Logical Ports, DROP Logical Ports, Purge Ports, GRP Ports and Multicast PITCH/Top Spin Server Ports. For each type of the aforementioned logical ports that are used in the production environment, the Exchange also offers corresponding ports which provide Trading Permit Holders and non-TPHs access to the Exchange's certification environment to test proprietary systems and applications (*i.e.,* ''Certification Logical Ports'').

[146] *See* Securities Exchange Act Release No. 94512 (March 24, 2002), 87 FR 18425 (March 30, 2022) (SR–Cboe–2022–011).

[147] *Id.* at 18426.

[148] *Id.*

[149] *Id.*

[150] *See* Securities Exchange Act Release No. 94507 (March 24, 2002), 87 FR 18439 (March 30, 2022) (SR–CboeBYX–2022–004).

[151] *See* Securities Exchange Act Release No. 94511 (March 24, 2002), 87 FR 18411 (March 30, 2022) (SR–CboeBZX–2022–021).

[152] *See* Securities Exchange Act Release No. 94517 (March 25, 2002), 87 FR 18848 (March 31, 2022) (SR–CboeEDGA–2022–004).

[153] *See* letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023 *and* letter from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023.

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,[154] and Rule 19b–4(f)(2)[155] 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2023–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2023–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–MIAX–2023–18 and should be submitted on or before May 30, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[156]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09681 Filed 5–5–23; 8:45 am]

BILLING CODE 8011–01–P

[154] 15 U.S.C. 78s(b)(3)(A)(ii).

[155] 17 CFR 240.19b–4(f)(2).

[156] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17852 and #17853; CALIFORNIA Disaster Number CA–00380]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of California (FEMA–4699–DR), dated 04/03/2023.

Incident: Severe Winter Storms, Straight-line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 02/21/2023 and continuing.

DATES: Issued on 05/02/2023.

Physical Loan Application Deadline Date: 06/02/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/03/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of California, dated 04/03/2023, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Amador, Butte, Del Norte, Glenn, Inyo, Madera, Modoc, San Francisco, Santa Cruz.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–09715 Filed 5–5–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17842 and #17843; California Disaster Number CA–00376]

Presidential Declaration Amendment of a Major Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of California (FEMA–4699–DR), dated 04/03/2023.

Incident: Severe Winter Storms, Straight-line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 02/21/2023 and continuing.

DATES: Issued on 05/02/2023.

Physical Loan Application Deadline Date: 06/02/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/03/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of California, dated 04/03/2023, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Madera, Mendocino, Mono.

Contiguous Counties (Economic Injury Loans Only):

California: Glenn, Humboldt, Lake, Sonoma, Tehama, Trinity.

Nevada: Douglas, Esmeralda, Lyon, Mineral.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–09718 Filed 5–5–23; 8:45 am]

BILLING CODE 8026–09–P

STATE JUSTICE INSTITUTE

SJI Board of Directors Meeting, Notice

AGENCY: State Justice Institute.

ACTION: Notice of meeting.

SUMMARY: The purpose of this meeting is to consider grant applications for the 3rd quarter of FY 2023, and other business.

DATES: The SJI Board of Directors will be meeting on Monday, June 5, 2023 at 1:00 p.m. MT.

ADDRESSES: Supreme Court of Wyoming, 2301 Capitol Avenue, Room 237, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 12700 Fair Lakes Circle, Suite 340, Fairfax, VA 22033, 703–660–4979, *contact@sji.gov.*

(Authority: 42 U.S.C. 10702(f))

Jonathan D. Mattiello,

Executive Director.

[FR Doc. 2023–09677 Filed 5–5–23; 8:45 am]

BILLING CODE 6820–SC–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2023–0002]

Definition of Specialty Sugar in the Rules Concerning Allocation of the U.S. Refined Sugar Tariff-Rate Quota

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is requesting public comments on specific eligibility criteria in the definition of the term 'specialty sugar' in the regulations concerning issuance of specialty sugar certificates for the tariff-rate quota (TRQ) on imports of sugars, syrups, and molasses provided in the Harmonized Tariff Schedule of the United States (HTSUS) that was most recently amended by a final rule in 1996, and an interim final rule in 1990.

DATES: USTR must receive your written comments on or before July 7, 2023.

ADDRESSES: You should submit written comments through the Federal eRulemaking Portal: *http://www.regulations.gov.* The docket number for this rulemaking is USTR–2023–0002. Upon completion of processing, USTR will publicly post comments without change and will include any personal information you provide, such as your name, mailing address, email address, and telephone number. You can view copies of all comments by entering the docket number USTR–2023–0002 in the search field at *regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Erin Nicholson, Office of Agricultural Affairs, at 202–395–9419, or *Erin.H.Nicholson@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Department of Agriculture establishes the aggregate levels of the World Trade Organization (WTO) TRQ for refined sugars each fiscal year and may reserve a quantity for specialty sugar imports. This specialty sugar TRQ is administered globally on a first-come, first-served basis.

Pursuant to 19 U.S.C. 3601 and Presidential Proclamation 6763, USTR has the authority to promulgate regulations to administer the TRQs relating to certain agricultural products, including the sugar TRQs as defined in additional U.S. Note 5 to Chapter 17 of the HTSUS. USTR issued rules, codified at 15 CFR part 2011, subpart B, setting forth the terms and conditions under which certificates will be issued to U.S. importers for importing specialty sugars from source countries. For the purposes of subpart B, the term 'specialty sugar' is defined in section 2011.202(i).

The interim final rule published on October 4, 1990 (55 FR 40646), included in the last subparagraph of the definition of 'specialty sugar' (section 2011.202(j)(3)) the criterion that specialty sugar ''[r]equire no further refining, processing, or other preparation prior to consumption, other than incorporation as an ingredient in human food.'' In the final rule published on May 29, 1996 (61 FR 26783), USTR addressed certain amendments to the definition of 'specialty sugar,' including the addition of specific products to the list of eligible sugars and a provision for ''other sugars, as determined by the United States Trade Representative, that would be considered specialty sugar products within the normal commerce of the United States''. The final rule also made conforming changes to reflect updates to the HTSUS and redesignated the definition from section 2011.202(j) to section 2011.202(i) (61 FR at 26783–26784). The final rule did not clearly indicate whether the criterion in the last subparagraph was maintained or had been eliminated. However, this criterion was not reflected in the amended definition published in the CFR.

II. Input Requested

Some stakeholders have suggested that USTR amend the definition of specialty sugar at 15 CFR part 2011 to reflect the criterion that specialty sugar ''[r]equire no further refining, processing, or other preparation prior to consumption, other than incorporation as an ingredient in human food.'' In this regard, USTR seeks information from stakeholders on the following questions:

1. Please indicate whether you would support amending the specialty sugar definition to reflect this criterion as part of the definition of specialty sugar. Please explain the rationale for your position.

2. Are there current circumstances, including with respect to market dynamics, that would support USTR amending the specialty sugar definition to reflect this criterion? Please explain your answer.

3. How could the U.S. Government best enforce compliance with this criterion?

4. How would this criterion improve or harm the operation of the specialty sugar TRQ? Please explain your views.

5. How would this criterion impact U.S. imports of sugar, including any impacts on trade from particular supplying countries?

6. How would this criterion impact U.S. sugar prices, including prices for conventional sugars, organic sugars, raw sugars, refined sugars, or other sugar-containing products?

Greta Peisch,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2023–09722 Filed 5–5–23; 8:45 am]

BILLING CODE 3390–F3–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–1113]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aircraft Noise Certification Documents for International Operations

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 the Office of Management and Budget (OMB) approval to renew an information collection. The collection aids to make the aircraft noise certification information easily accessible to the flight crew and presentable upon request to the appropriate foreign officials for international airline operation of U.S. carriers. The information to be collected upholds the U.S. obligations under the Convention on International Civil Aviation and for which FAA policy comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. Thus the FAA has adopted ICAO's Standards and Recommended Practices as U.S. regulations as a means of compliance with Annex 16 and requires noise documentation be carried on board aircraft that leave the United States.

DATES: Written comments should be submitted by July 7, 2023.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Sandy Liu, 800 Independence Ave. SW, Washington, DC 20591, Attn: AEE–100.

By fax: 202–267–5594.

FOR FURTHER INFORMATION CONTACT: Sandy R. Liu by email at: *sandy.liu@faa.gov;* phone: 202–267–4748.

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. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0737.

Title: Aircraft Noise Certification Documents for International Operations.

Form Numbers: None. Reference: ICAO Annex 16, Vol.1—Aircraft Noise, Eighth edition (July 2017) Attachment G for format.

Type of Review: Renewal of an information collection.

Background: On March 2, 2010, the FAA published the final rule Notice No. 91–312, Aircraft Noise Certification Documents for International Operations (75 FR 9327). It requires operators that fly outside the United States, using aircraft subject to ICAO, Annex 16, Volume 1, to carry aircraft noise certification information on board the aircraft. This collection is needed to ensure consistent international compliance with the ICAO, Annex 16, Volume 1, Amendment 8 that requires certain noise information be carried on board the aircraft. This information must be easily accessible to the flight crew and presentable upon request to the appropriate foreign National Aviation Authority (NAA) officials. The collection is mandatory based on U.S. regulations and international standards.

Respondents: Operators of U.S. registered civil aircraft flying outside the United States.

Frequency: Estimated 75 airplanes per year.

Estimated Average Burden per Response: 25 minutes (0.42 hours) per airplane.

Estimated Total Annual Burden: $30 per airplane or cumulative total $2,250 per year for 75 airplanes affected.

Issued in Washington, DC, on May 2, 2023.

Sandy Liu,

Engineer, Noise Division, Office of Environment and Energy, Noise Division (AEE–100).

[FR Doc. 2023–09652 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–1114]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes

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 the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves the noise certification regulations for aircraft. This includes information collection requirements for the noise certification of subsonic aircraft—jet airplanes and subsonic transport category large airplanes, small propeller driven airplanes and rotorcraft. The information collected are the results of noise certification tests that demonstrate compliance. The original information collection was implemented to show compliance in accordance with the Aircraft Noise Abatement Act of 1968; that statute is now part of the overall codification of the FAA's regulatory authority over aircraft noise. The noise compliance report is used by the FAA in making a finding that the airplane is in noise compliance with the regulations. These compliance reports are required only once when an applicant wants to certificate an aircraft type. Without this data collection, the FAA would be unable to make the required noise certification compliance finding.

DATES: Written comments should be submitted by July 7, 2023.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Sandy Liu, Attn: AEE–100, 800 Independence Ave. SW, Washington, DC 20591.

By fax: 202–267–5594.

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. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Sandy Liu by email at: *sandy.liu@faa.gov;* phone: 202–267–4748.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0659.

Title: Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: The aircraft noise information collected are the results of noise certification tests that demonstrate compliance with 14 CFR part 36. The original information collection was implemented to show compliance in accordance with the Aircraft Noise Abatement Act of 1968; that statute is now part of the overall codification of the FAA's regulatory authority over aircraft noise in 49 U.S.C. 44715. For this renewal, the FAA proposes to maintain this PRA collection at 14 total noise certification projects per year. Each applicant's collected information is incorporated into a noise compliance report that is provided to and approved by the FAA. The noise compliance report is used by the FAA in making a finding that the airplane is in noise compliance with the regulations. These compliance reports are required only once when an applicant wants to certificate an aircraft type. Without this data collection, the FAA would be unable to make the required noise certification compliance finding.

Respondents: Aircraft manufacturer/applicant seeking type certification.

Frequency: Estimated 15 total applicants per year.

Estimated Average Burden per Response: Estimated 200 hours per applicant for the compliance report.

Estimated Total Annual Burden: $20,160 per applicant or cumulative total $302,400 per year for 15 applicants.

Issued in Washington, DC, on May 2, 2023.

Sandy Liu,

Engineer, Office of Environment and Energy, Noise Division (AEE–100).

[FR Doc. 2023–09668 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2023–0030]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on March 24, 2023, the Belt Railway Company of Chicago, in conjunction with the labor unions that represent its schedule employees (SMART–TD, BLET, ATDA, TCU, BRC Division of TCU–IAM, BMWED, BRS, IBEW, SMART–M, ARASA, IAM, and NCFO) (collectively, Petitioners), petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240 (Qualification and Certification of Locomotive Engineers) and part 242 (Qualification and Certification of Conductors). FRA assigned the petition Docket Number FRA–2023–0030.

Specifically, Petitioners request relief required to participate in FRA's Confidential Close Call Reporting System (C^{3}RS) Program. Petitioners seek to shield reporting employees and the railroad from mandatory punitive sanctions that would otherwise arise as provided in §§ 240.117(e)(1)–(4); 240.305(a)(1)–(4) and (a)(6); 240.307; 242.403(b), (c), (e)(1)–(4), (e)(6)–(11), (f)(1)–(2); and 242.407. The C^{3}RS Program encourages certified operating crew members to report close calls and protects the employees and the railroad from discipline or sanctions arising from the incidents reported per the C^{3}RS Implementing Memorandum of Understanding.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by July 7, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–09657 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2023–0029]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on March 21, 2023, Indiana Northeastern Railroad Company, in partnership with Little River Railroad, Inc. (Petitioners), petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240 (Qualification and Certification of Locomotive Engineers). FRA assigned the petition Docket Number FRA–2023–0029.

Specifically, Petitioners request relief from § 240.201(d), which requires that only certified persons operate locomotives and trains. The relief would allow noncertified persons to pay a fee and operate a locomotive as part of a ''throttle time'' program. In support of its petition, Petitioners note that the relief would only apply to persons participating in the program, and that participants would be 18 years of age or older and under the direct supervision of a certified and qualified locomotive

engineer. Further, all movements would take place during daylight hours and at restricted speed.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by July 7, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2023–09656 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2023–0018]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on February 13, 2023, the Little River Railroad (LRR) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 215 (Railroad Freight Car Safety Standards) and 224 (Reflectorization of Rail Freight Rolling Stock). FRA assigned the petition Docket Number FRA–2023–0018.

Specifically, LRR requested a special approval pursuant to 49 CFR 215.203, *Restricted cars,* for a total of 5 cars, comprised of 2 stock cars (LRR 82990 and LRR 83022) and 3 cabooses (LRR 2630, LRR 2623, and LRR 1976) that are more than 50 years from the date of original construction. LRR also requests relief from § 224.101, *General requirements,* to operate the cars in tourist/excursion service. In support of its request, LRR states that the cars will not be interchanged and will be operated at restricted speed/yard limits.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by July 7, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–09658 Filed 5–5–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form 706–GS(D–1)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 706–GS(D–1), Notification of Distribution From a Generation-Skipping Trust.

DATES: Written comments should be received on or before July 7, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include OMB Control No. 1545–1143 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Notification of Distribution from a Generation-Skipping Trust.

OMB Number: 1545–1143.

Form Number: 706–GS(D–1).

Abstract: Trustees use Form 706–GS(D–1) to report certain distributions from a trust that are subject to the

generation-skipping transfer (GST) tax. The skip person distributee uses the information to figure any GST tax due on the distribution. The IRS uses the information to verify that the tax has been properly computed.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 13,000.

Estimated Time per Respondent: 4.36 hours.

Estimated Total Annual Burden Hours: 56,680.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 2, 2023.

Jon R. Callahan,

Tax Analyst.

[FR Doc. 2023–09699 Filed 5–5–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Low Income Taxpayer Clinic Grant Program; Availability of 2024 Grant Application Package

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Solicitation of grant applications.

SUMMARY: This document contains a notice that the IRS has provided a grant opportunity in *www.grants.gov* for organizations interested in applying for a Low Income Taxpayer Clinic (LITC) matching grant. The IRS is authorized to award multi-year LITC grants not to exceed three years. (Organizations currently participating in the LITC grant program that are submitting a Non-Competing Continuation Request for continued funding for 2024 must do so electronically at *www.grantsolutions.gov*). Grants may be awarded for the development, expansion, or continuation of programs providing qualified services to eligible taxpayers. Grant funds may be awarded for start-up expenditures incurred by new clinics during 2024. The budget and the period of performance for the grant will be January 1, 2024—December 31, 2024. The application period runs from May 8, 2023, through June 26, 2023.

DATES: All applications and requests for continued funding for the 2024 grant year must be filed electronically by 11:59 p.m. (Eastern Time) on June 26, 2023. All organizations must use the funding number of TREAS–GRANTS–052024–001, and the Catalog of Federal Domestic Assistance program number is 21.008, see *www.sam.gov.* The IRS is scheduling two optional webinars, Session One on May 11, and Session Two on May 15, 2023, to cover the full application process. See *www.irs.gov/advocate/low-income-taxpayer-clinics* for complete details, including posted materials and any changes to the date and time.

FOR FURTHER INFORMATION CONTACT: Karen Tober at (202) 317–9590 (not a toll-free number) or by email at *karen.tober@irs.gov.* The IRS office that provides oversight of the LITC grant program is the LITC Program Office, located at: IRS, Taxpayer Advocate Service, LITC Grant Program Administration Office, TA:LITC, 1111 Constitution Avenue NW, Room 1034, Washington, DC 20224. Copies of the *2024 Grant Application Package and Guidelines,* IRS Publication 3319 (Rev. 5–2024), can be downloaded from the IRS internet site at *https://www.taxpayeradvocate.irs.gov/about-us/litc-grants/* or ordered by calling the IRS Distribution Center toll-free at 1–800–829–3676. See *https://youtu.be/6kRrjN-DNYQ* for a short video about the LITC Program. Note: To assist organizations in applying for funding, the ''Reminders and Tips for Completing Form 13424–M'' available at *https://www.taxpayeradvocate.irs.gov/about-us/litc-grants* will include instructions for which questions an organization should complete if requesting funding only for the English as a second language (ESL) Education Pilot Program described in this notice.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 26 U.S.C. 7526, the IRS will annually award up to $6,000,000 (unless otherwise provided by specific Congressional appropriation) to qualified organizations, subject to the limitations in the statute. For 2023, pursuant to the Consolidated Appropriations Act, 2023, Congress doubled both the overall LITC grant funding level from $13 million in FY 2022 to $26 million and the maximum amount that may be awarded to any clinic from $100,000 in FY 2022 to $200,000. See Public Law 117–328, Division E. The President's 2024 budget request includes a continuation of the overall LITC grant funding level at $26 million and the $200,000 per-clinic funding cap. In light of the President's budget proposal and the uncertain timeline for final congressional action, the IRS will allow applicants to request up to $200,000 for the 2024 grant year. The IRS will also continue the ESL Education Pilot Program that was rolled out as part of the February 2023 supplemental funding opportunity. See 88 FR 13864–13866 (March 6, 2023). If Congress ultimately does not continue the LITC Program's funding at $26 million and/or the increased per-clinic funding cap of $200,000, the IRS will adjust each grant recipient's award to reflect any limitations in place at that time. At least 90 percent of the taxpayers represented by the clinic must have incomes which do not exceed 250 percent of the poverty level as determined under criteria established by the Director of the Office of Management and Budget. See 88 FR 3424–25 (Jan. 19, 2023). In addition, the amount in controversy for the tax year to which the controversy relates generally cannot exceed the amount specified in Internal Revenue Code (IRC) section 7463 ($50,000) for eligibility for special small tax case

procedures in the United States Tax Court. IRC section 7526(c)(5) requires clinics to provide dollar-for-dollar matching funds, which may consist of funds from other sources or contributions of volunteer time. See IRS Pub. 3319 for additional details.

Mission Statement

Low Income Taxpayer Clinics ensure the fairness and integrity of the tax system for taxpayers who are low-income or ESL by providing *pro bono* representation on their behalf in tax disputes with the IRS; educating them about their rights and responsibilities as taxpayers; and identifying and advocating for issues that impact low-income and ESL taxpayers.

Expansion of the Type of Qualified Services an Organization Can Provide

IRC section 7526(b)(1)(A) authorizes the IRS to award grants to organizations that represent low-income taxpayers in controversies before the IRS or provide education to ESL taxpayers regarding their taxpayer rights and responsibilities. In recent years, the IRS has not awarded grants to organizations that solely refer taxpayers to other qualified representatives. Similarly, the IRS has required organizations receiving grants to provide both controversy representation and ESL education.

To achieve maximum access to justice for low-income and ESL taxpayers, the IRS has expanded the eligibility criteria for a grant by removing the requirement for eligible organizations to provide direct controversy representation. In addition, pursuant to the new ESL Education Pilot Program started in 2023 and continuing for 2024, a grant may be awarded to an organization to operate a program to inform ESL taxpayers about their taxpayer rights and responsibilities under the IRC without the requirement to also provide tax controversy representation to low-income taxpayers. See IRS Pub. 3319 for examples of what constitutes a ''clinic.''

Selection Consideration

Despite the IRS's efforts to foster parity in availability and accessibility in choosing organizations receiving LITC matching grants and the continued increase in clinic services nationwide, there remain communities that are underserved by clinics. The states of Hawaii, Montana, Nevada, and North Dakota, and the territory of Puerto Rico currently do not have an LITC. In addition, two states—Arizona and Florida—have only partial coverage. The uncovered counties in Florida are Baker, Bradford, Citrus, Clay, Columbia, Dixie, Duval, Flagler, Hamilton, Hemando, Lafayette, Madison, Nassau, St. Johns, Sumter, Suwannee, and Taylor. The uncovered counties in Arizona are Apache, Coconino, and Navajo.

Although each application for the 2024 grant year will be given due consideration, the IRS is especially interested in receiving applications from organizations providing services in these underserved geographic areas. For organizations that intend to refer low-income taxpayers in controversies with the IRS to other qualified representatives rather than providing representation directly to low-income taxpayers, priority will be given to established organizations that can help provide coverage to underserved geographic areas. For the ESL Education Pilot Program, special consideration will be given to established organizations with existing community partnerships that can swiftly implement and deliver services to the target audiences.

As in prior years, the IRS will consider a variety of factors in determining whether to award a grant, including: (1) the number of taxpayers who will be assisted by the organization, including the number of ESL taxpayers in that geographic area; (2) the existence of other LITCs assisting the same population of low-income and ESL taxpayers; (3) the quality of the program offered by the organization, including the qualifications of its administrators and qualified representatives, and its record in providing services to low-income taxpayers; (4) the quality of the organization, including the reasonableness of the proposed budget; (5) the organization's compliance with all Federal tax obligations (filing and payment); (6) the organization's compliance with all Federal nontax monetary obligations (filing and payment); (7) whether debarment or suspension (31 CFR part 19) applies or whether the organization is otherwise excluded from or ineligible for a Federal award; and (8) alternative funding sources available to the organization, including amounts received from other grants and contributors and the endowment and resources of the institution sponsoring the organization.

For programs where all or the majority of cases will be placed with volunteers, we will also consider the following: (1) the quality of the representatives (attorneys, certified public accountants, or enrolled agents who have agreed to accept taxpayer referrals from an LITC and provide representation or consultation services free of charge; and (2) the ability of the organization to monitor referrals and ensure that the *pro bono* representatives are handling the cases properly, including taking timely case actions and ensuring services are offered for free.

Applications and requests for continued funding that pass the eligibility screening process will then be subject to technical review. An organization submitting a request for continued funding for the second or third year of a multi-year grant will be required to submit an abbreviated Non-competing Continuation Request and will be subject to a streamlined screening process. Details regarding the scoring process can be found in Publication 3319. The final funding decisions are made by the National Taxpayer Advocate, unless recused. The costs of preparing and applying are the responsibility of each applicant. Applications may be released in response to Freedom of Information Act requests after any necessary redactions are made. Therefore, applicants must not include any individual taxpayer information. The IRS will notify each applicant in writing once funding decisions have been made.

Kim S. Stewart,

Deputy National Taxpayer Advocate.

[FR Doc. 2023–09698 Filed 5–5–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA), National Cemetery Administration (NCA).

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, notice is hereby given that VA is modifying the system of records titled, ''VA National Cemetery Pre-Need Eligibility Determination Records–VA'' (175VA41A). This system is used for the provision of VA burial and memorial benefits.

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified system of records 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.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005X6F), Washington, DC 20420. Comments should indicate that they are submitted in response to ''VA National Cemetery Pre-Need Eligibility Determination Records–VA'' (175VA41A). Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Cindy Merritt, National Cemetery Administration (NCA) Privacy Officer (43E), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, *Cindy.Merritt@va.gov,* (321) 200–7477 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: VA is amending the system of records by revising the Routine Uses of Records Maintained in the System; Policies and Practices for Retention and Disposal of Records; Record Access Procedures; Contesting Record Procedures; and Notification Procedures. VA is republishing the system notice in its entirety.

The Routine Use of Records Maintained in the System section is being amended to reflect the Departmental requirement additional routine uses to further clarify appropriate and necessary disclosures.

VA is proposing the following routine use disclosures of information to be maintained in the system: Congress; Data breach response and remediation, for VA; Data breach response and remediation, for another Federal agency; Law enforcement; DoJ, Litigation, Administrative Proceeding; Contractors; OPM; EEOC; FLRA; MSPB; NARA; Funeral Homes, for Arrangements; Federal Agencies, for Research; Federal Agencies, for Computer Matche; Federal Agencies, Courts, Litigants, for Litigation or Administrative Proceedings; Former Employee or Contractor, Representative, for EEOC; Former Employee or Contractor, Representative, for MSPB, OSC; and Governmental Agencies, Health Organizations, for Claimants' Benefits.

The Policies and Practices for Retention and Disposal of Records section is being amended to include a reference to the applicable records control schedule.

The Record Access Procedures and Contesting Record Procedures sections are being amended to refer the reader to the system manager instead of a specific address.

The previous language is being removed from the Notification Section. It is being replaced with: ''Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.''

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. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on March 29, 2023 for publication.

Dated: May 3, 2023.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

VA National Cemetery Pre-Need Eligibility Determination Records–VA (175VA41A).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the National Cemetery Scheduling Office (41B2), Suite 200, 4850 Lemay Ferry Road, St. Louis, MO, 63129.

SYSTEM MANAGER(S):

The Official maintaining this system of records and responsible for policies and procedures is Jay Dalrymple, Director, National Cemetery Scheduling Office (41B2), National Cemetery Scheduling Office, Suite 200, 4850 Lemay Ferry Road, St. Louis, MO 63129, telephone (314)728–0438, *jay.dalrymple@va.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 2402.

PURPOSE(S) OF THE SYSTEM:

This system is used for the provision of VA burial and memorial benefits; provision of information about VA burial and memorial benefits, including specific claims; determination of eligibility for burial in a VA national cemetery; disclosure of military service information upon request from VA funded State and Tribal Veterans cemeteries; coordination of committal services and interment upon request of families, funeral homes, and others of eligible decedents at VA national cemeteries; investigation of potential bars to benefits for an otherwise eligible individual. VA will maintain records and information associated with preneed claims in a recallable system for use at a claimant's time of death and upon receipt of a request for burial in a VA national cemetery for that claimant. Data may also be used at an aggregate non-personally identifiable level to track and evaluate memorial and burial benefit initiatives.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records contain information on Veterans; family members of Veterans; Members of the Armed Forces (Servicemembers); family members of Servicemembers; Reservists and Retirees (Active Duty, Reserves, or National Guard); and other VA customers (*e.g.,* attorneys, agents, Veterans Service Organizations, funeral directors, coroners, Missing in America Project (MIAP) volunteers, State and local governmental administrators); in addition to VA authorized users permitted by VA to access VA IT systems (*e.g.,* VA employees, VA contractors, VA registered volunteers).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include information submitted to VA by means of paper or online forms that respondents can mail or electronically transmit by fax or online submission for storage and retrieval in VA's secure filing and IT systems. Records may contain information, such as demographics and personal identifiers (*e.g.,* names, mailing addresses, email addresses, phone numbers, social security numbers, VA claim numbers and military service numbers); socioeconomic characteristics (*e.g.,* date of birth, place of birth, date of death, gender, marital records; health records; health related information, benefit related information); and military service information (*e.g.,* dates of active duty, dates of active duty for training, military service numbers, branch of service including Reserves or National Guard service, locations of service for National Guard, dates of entry, enlistment, or discharge, type and character of discharge, rank, awards, decorations, and other military history and information). Records may also include supporting documentation submitted to identify individuals submitting pre-need applications on behalf of claimants. Supporting documentation may include, but is not limited to the following items: VA Form 21–22 (Appointment of Veterans Service Organization as Claimant's

Representative); VA Form 21–22a (Appointment of Individual as Claimant's Representative) for an Authorized Attorney, or Agent; proof of prior written authorization, such as a durable power of attorney, or an affidavit establishing a caregiver relationship to the claimant (spousal, parent, other relative); and documentation showing the individual as the court-appointed representative authorized to act on behalf of as the claimant.

RECORD SOURCE CATEGORIES:

Records in this system are provided by Veterans; Veteran beneficiaries; members of the Armed Forces of the United States including Reserves and National Guard and their beneficiaries, as well as other individuals (such as funeral home directors) submitting pre-need eligibility determinations on behalf of claimants; and VA employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. *Congress:* To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. Data breach response and remediation, for VA: To appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records,· (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. *Data breach response and remediation, for another Federal agency:* To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. *Law Enforcement:* To a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

5. *DoJ, Litigation, Administrative Proceeding:* To the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her individual capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components, is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

6. *Contractors:* To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. *OPM:* To the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

8. *EEOC:* To the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

9. *FLRA:* To the Federal Labor Relations Authority (FLRA) in connection with the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised, matters before the Federal Service Impasses Panel, and the investigation of representation petitions and the conduct or supervision of representation elections.

10. *MSPB:* To the Merit Systems Protection Board (MSPB) in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

11. *NARA:* To the National Archives and Records Administration (NARA) in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

12. *Funeral Homes, for Arrangements:* To funeral directors or representatives of funeral homes for them to make necessary arrangements prior to and in anticipation of a Veteran's impending death.

13. *Federal Agencies, for Research:* To a Federal agency for the purpose of conducting research and data analysis to perform a statutory purpose of that Federal agency upon the written request of that agency.

14. *Federal Agencies, for Computer Matches:* To other federal agencies for the purpose of conducting computer matches to obtain information to determine or verify eligibility of Veterans receiving VA benefits or medical care under title 38.

15. *Federal Agencies, Courts, Litigants, for Litigation or Administrative Proceedings:* To another federal agency, court, or party in litigation before a court or in an administrative proceeding conducted by a Federal agency, when the government is a party to the judicial or administrative proceeding.

16. *Former Employee or Contractor, Representative, for EEOC:* To a former VA employee or contractor, as well as the authorized representative of a current or former employee or contractor of VA, in connection with investigations by the Equal Employment Opportunity Commission pertaining to alleged or possible discrimination practices, examinations of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

17. *Former Employee or Contractor, Representative, for MSPB, OSC:* To a former VA employee or contractor, as well as the authorized representative of a current or former employee or contractor of VA, in proceedings before the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies

of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as otherwise authorized by law.

18. *Governmental Agencies, Health Organizations, for Claimants' Benefits:* VA To Federal, state, and local government agencies and national health organizations as reasonably necessary to assist in the development of programs that will be beneficial to claimants, to protect their rights under law, and assure that they are receiving all benefits to which they are entitled.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are maintained in paper and electronic formats in the NCA National Cemetery Scheduling Office. Records are maintained on electronic storage media including magnetic tape, disk, and laser optical media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system are retrieved using name only; name and one or more numbers (service or social security); name and one or more criteria (*e.g.,* date of birth or dates of service); VA claim number; or other VA or NCA assigned identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, National Cemetery Administration Records Control Schedule, N1–15–99–4.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in the system are protected from unauthorized access through administrative, physical, and technical safeguards. Access to the hard copy and computerized records are restricted to authorized VA employees and VA contractors by means of PIV card and PIN, and/or passwords. Information security officers and system data stewards review and authorize data access requests. VA regulates data access with security software that authenticates users and requires individually unique codes and passwords. VA requires information security training for all staff and instructs staff on the responsibility each person has for safeguarding data confidentiality. Hard copy records are maintained in offices that are restricted by cypher locks during work hours and locked after duty hours with security camera surveillance of the office area and facility.

RECORD ACCESS PROCEDURES:

Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager in writing as indicated above, or may write or visit the VA facility location where they normally receive their care. A request for access to records must contain the requester's full name, address, telephone number, be signed by the requester, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records in this system pertaining to them should contact the system manager in writing as indicated above, or may write or visit the VA facility location where they normally receive their care. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None

HISTORY:

81 FR 54919 (August 16, 2016).

[FR Doc. 2023–09691 Filed 5–5–23; 8:45 am]

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Reader Aids

Federal Register

Vol. 88, No. 88

Monday, May 8, 2023

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At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List April 12, 2023

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