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Presidential Documents

Title 3—

The President

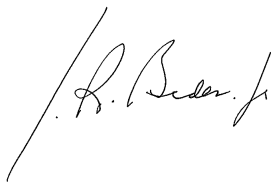
Memorandum of April 13, 2022

Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the FAA to direct the drawdown of up to an aggregate value of $800 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, April 13, 2022

[FR Doc. 2022–08536
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Billing code 4710–10–P

Rules and Regulations

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DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2013–BT–STD–0030]

RIN 1904–AD01

Energy Conservation Program: Energy Conservation Standards for Commercial Packaged Boilers; Response to United States Court of Appeals for the District of Columbia Circuit Remand in American Public Gas Association v. United States Department of Energy

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

ACTION: Final rule; supplemental response to comments.

SUMMARY: On January 10, 2020, a final rule amending energy conservation standards for commercial packaged boilers was published in the **Federal Register**. The American Public Gas Association, Air-conditioning, Heating, and Refrigeration Institute, and Spire Inc. filed petitions for review of the final rule in the United States Courts of Appeals for the District of Columbia Circuit (''D.C. Circuit''), Fourth Circuit, and Eight Circuit, respectively. These petitions were consolidated in the D.C. Circuit. In its January 18, 2022, opinion, the D.C. Circuit remanded the final rule to the Department of Energy (''DOE'') to supplement its responses to the following three issues raised during the public comment period: The random assignment of boilers to buildings, forecasted fuel prices, and estimated burner operating hours. This document provides additional explanation regarding these three issues.

DATES: This supplemental response to comments document is effective April 20, 2022. The effective date of the final rule was March 10, 2020. Compliance with the amended standards established for commercial packaged boilers in that final rule is required on and after January 10, 2023.

ADDRESSES: *Docket:* The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *www.regulations.gov/docket/EERE-2013-BT-STD-0030.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Ms. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 597–6737. Email: *Julia.Hegarty@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

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I. Overview

In its January 18, 2022, opinion, the United States Court of Appeals for the District of Columbia Circuit remanded to the Department of Energy (''DOE'') the final rule, *Energy Conservation Program: Energy Conservation Standards for Commercial Packaged Boilers,* EERE–2013–BT–STD–0030. *See American Public Gas Association* v. *United States Department of Energy,* No. 20–1068 (Jan. 18, 2022), 2022 WL 151923. In its opinion, the court determined that DOE failed to provide meaningful responses to comments with respect to three distinct issues related to the modeling used during the rulemaking proceeding: (1) The random assignment of boilers to buildings; (2) forecasted fuel prices; and (3) estimated burner operating hours. As a result, the court concluded that DOE failed to adequately explain why the rule satisfies the applicable clear and convincing evidence standard. To afford DOE the opportunity to cure these ''failures to explain,'' the court remanded the final rule to DOE for the agency to take appropriate remedial action within 90 days. In this document, DOE provides further explanation addressing the three issues the court identified.

II. Background

The American Society of Heating, Refrigerating, and Air-Conditioning Engineers (''ASHRAE'') Standard 90.1 (ASHRAE Standard 90.1), ''Energy Standard for Buildings Except Low-Rise Residential Buildings,'' sets industry energy efficiency levels for, among other things, commercial packaged boilers (''CPBs''). The Energy Policy and Conservation Act (''EPCA'') directs that if ASHRAE amends Standard 90.1, DOE must adopt amended standards at the new ASHRAE efficiency level, unless DOE determines, supported by clear and convincing evidence, that adoption of a more stringent level would produce significant additional conservation of energy and would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) Under EPCA, DOE must also review energy efficiency standards for CPBs every six years and determine, based on clear and convincing evidence, whether adoption of a more stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(C)) In determining whether a proposed standard is economically justified, EPCA requires DOE to consider the following seven factors: (1) Economic impacts on manufacturers and consumers; (2) changes in total installation and operating costs for the covered product, *i.e.,* life-cycle costs; (3) total energy savings; (4) any likely

decrease in a product's utility or performance; (5) impacts on competition as determined by the Attorney General; (6) need for national energy conversation; and (7) other factors DOE considers relevant. (42 U.S.C. 6313(a)(6)(B)(ii))

As ASHRAE has not amended the standards for CPBs since 2007,[1] DOE initiated the required 6-year lookback review in 2013.[2] DOE proposed amended standards for CPBs in a notice of proposed rulemaking published on March 24, 2016. 81 FR 15836. Subsequently, DOE issued a final rule amending standards for CPBs that was published on January 10, 2020. 85 FR 1592 (''January 2020 Final Rule'').

III. Supplemental Response to Comments

In response to the remand in *American Public Gas Association* v. *United States Department of Energy,* the following discussion supplements the January 2020 Final Rule explanation of and response to comments regarding the assignment of boiler efficiencies to buildings, forecasted fuel prices, and estimated burner operating hours. The following discussion provides additional detail of the analyses presented in the final technical support document (''TSD'') accompanying the January 2020 Final Rule.

A. Random Assignment of Boiler Efficiency to Buildings

DOE's initial response to stakeholders regarding the assignment of boiler efficiencies to buildings in the Monte Carlo model used to calculate life-cycle cost (''LCC'') changes is in section IV.F.11 of the January 2020 Final Rule. 85 FR 1592, 1637–1638.

The LCC calculates, at the consumer level, the discounted savings in operating costs (less maintenance and repair costs) throughout the estimated life of the covered equipment, compared to any increase in the installed cost for the equipment likely to result directly from the imposition of the standard. In conducting the LCC analysis, DOE first forecasts equipment shipments in the absence of new or amended standards (''no-new-standards case''), including the distribution of equipment efficiency across all consumers. To estimate the impact that new or amended standards would have on LCC (and energy savings), DOE then uses a ''roll-up'' scenario, which takes into consideration the same market failures as in the no-new-standards scenario, as discussed further below, to determine what changes will occur under the new standards. A roll-up scenario assumes that equipment efficiencies in the no-new-standards case, which do not meet the standard level under consideration, would ''roll up'' to the lowest efficiency required to meet the new efficiency standard level. For example, the January 2020 Final Rule established a minimum thermal efficiency of 84 percent for small gas-fired hot water CPBs (the product class with the largest number of shipments). But DOE estimates that in 2020 approximately 81.3 percent of the market for small gas-fired hot water CPBs already meets this minimum thermal efficiency.[3] As a result, DOE's analysis rolls up only the remaining 18.7 percent of the market, comprised of the least-efficient CPBs available, to the new minimum thermal efficiency of 84%. This roll-up in efficiencies results in the projected LCC and energy savings from the amended standard by forcing the less than 20% segment of the market that purchases lower efficiency CPBs to purchase a more-efficient, minimally compliant CPB. Consumers already purchasing higher efficiency equipment, more than 80% of the market in this example, are not impacted by a new or amended standard set at a lower efficiency level and, as a result, do not account for any of the LCC or energy savings projected to result from the amended rule.

To conduct its LCC analysis, DOE has developed spreadsheet models combined with a commercially available program (*i.e.,* Crystal Ball). This allows DOE to explicitly model both the uncertainty and the variability in the inputs to the model using Monte Carlo simulation and probability distributions. The LCC results are displayed as distributions of impacts compared to the baseline conditions. Results are based on 10,000 samples per Monte Carlo simulation run.

As discussed in the January 2020 Final Rule[4] and the accompanying TSD,[5] to develop the no-new-standards case, DOE assembled data on the share of models in each equipment class, separated by draft type,[6] based on the Air-Conditioning, Heating and Refrigeration Institute (''AHRI'') certification directory and on shipments data submitted by AHRI for small gas-fired hot water (''SGHW'') and large gas-fired hot water (''LGHW'') equipment classes broken down by efficiency. DOE utilized these data to develop the no-new-standards case efficiency distribution for each CPB equipment class. The efficiency distribution developed by DOE for each product class resulted in a shipment-weighted average efficiency that was consistent with the shipment-weighted values submitted by AHRI. This efficiency distribution was then used in assigning the efficiencies of installed CPBs under the no-new standards case.

To conduct the Monte Carlo simulation for the LCC analysis of a given product class in which the efficiencies of installed models are forecast over the analysis period, DOE developed a building sample from the Energy Information Administration's (''EIA'') 2012 Commercial Building Energy Consumption Survey (''CBECS 2012'')[7] and the 2009 Residential Energy Consumption Survey (''RECS 2009'').[8] CBECS is a national sample survey that collects information on the stock of U.S. commercial buildings, including their energy-related building characteristics and energy usage data (consumption and expenditures). Commercial buildings include all buildings in which at least half of the floorspace is used for a purpose that is not residential, industrial, or agricultural. Similarly, RECS is a nationally representative sample of housing units that collects energy characteristics on the housing unit, usage patterns, and household demographics. This information is combined with data from energy suppliers to these homes to estimate energy costs and usage for heating, cooling, appliances and other end uses.

Each building in the sample was then assigned a boiler efficiency sampled from the no-new-standards case efficiency distribution for the appropriate equipment class. DOE was not able to assign a CPB efficiency to a building in the no-new-standards case based on building characteristics, since CBECS 2012 and RECS 2009 did not provide enough information to distinguish installed boilers by

[1] DOE adopted the 2007 ASHRAE standards in a final rule published on July 22, 2009. 74 FR 36312.

[2] DOE initiated the rulemaking process with a preliminary framework document that was published on September 3, 2013. 78 FR 54197.

[3] *See* appendix 8H of the final rule TSD.

[4] 85 FR 1592, 1635–1636.

[5] *See* section 8.2.2.9 of chapter 8 of the final rule TSD, and appendix 8H of the final rule TSD.

[6] The regulations for commercial packaged boilers prior to the January 2020 Final Rule listed 10 equipment classes with corresponding energy efficiency standards for each. 10 CFR 431.87; January 2019 edition. These equipment classes were based on (1) size (rated input), (2) heating media (hot water or steam), and (3) type of fuel used (oil or gas). Commercial packaged boilers are further classified according to draft type (*i.e.,* the means by which combustion gases are moved through the unit's stack.).

[7] EIA, 2012 Commercial Building Energy Consumption Survey, *www.eia.gov/consumption/commercial/* (Last accessed January 20, 2022).

[8] EIA, 2009 Residential Energy Consumption Survey, *www.eia.gov/consumption/residential/* (Last accessed January 20, 2022).

application type, distribution system, or return water temperature, and there were no shipments data disaggregating boiler efficiency by region or other criteria. The efficiency of a boiler was assigned based on the forecasted efficiency distribution (which is constrained by the shipment and model data collected by DOE and submitted by AHRI) and accounts for consumers that are already purchasing efficient CPBs.[9]

For example, as previously discussed, the January 2020 Final Rule established a minimum thermal efficiency of 84 percent for small gas-fired hot water CPBs (the product class with the largest number of shipments), but DOE estimates that in 2020 approximately 81.3 percent of the market for small gas-fired hot water CPBs already meets this minimum thermal efficiency and thus will not be impacted by the final rule. The assignment of CPB efficiency in the LCC accounts for this distribution (*e.g.,* as models with at least an 84 percent efficiency represent approximately 81.3 percent of the market, there was an 81.3-percent chance that a building would be assigned a boiler with an 84 percent efficiency or higher).

As noted in the January 2020 Final Rule, AHRI and Burnham Holdings commented that the random assignment of no-new-standards case efficiencies (sampled from the developed efficiency distribution) in the LCC model is not correct, as this inherently assumes that the purchasers do not pay attention to costs and benefits in a world without standards. 85 FR 1592, 1637–1638. Instead, AHRI proposed an alternate approach that assigned the highest boiler efficiencies to scenarios involving the shortest payback periods. 85 FR 1592, 1637. In other words, AHRI assumed there were no market failures affecting consumer boiler purchases.

While DOE acknowledges that economic factors may play a role when building owners or builders decide on what type of boiler to install, assignment of boiler efficiency for a given installation, based solely on economic measures such as life-cycle cost or simple payback period, most likely would not fully and accurately reflect actual real-world installations. There are a number of commercial sector market failures discussed in the economics literature, including a number of case studies, that illustrate how purchasing decisions with respect to energy efficiency are likely to not be completely correlated with energy use, as described below. DOE noted some of these market failures affecting purchasing decisions in sections IV.F.11 and VI.A of the January 2020 Final Rule, such as information asymmetry and the high costs of gathering and analyzing relevant information, the misaligned incentives between building owners (or landlords) and building operators, and the external benefits of improved energy efficiency (such as climate and health benefits) not captured by users of the equipment. 85 FR 1592, 1638, 1676. DOE also noted these same market failures in the March 2016 notice of proposed rulemaking. 81 FR 15836, 15913. The following discussion further expands on these market failures impacting the commercial sector and supplements DOE's discussion from the January 2020 Final Rule. Additionally, DOE has since become aware of several case studies and sources of data specific to the commercial packaged boiler market that support DOE's conclusion regarding the existence of market failures and DOE's assignment of boiler efficiency in the no-new-standards case. These case studies and sources of data further supplement and expand upon DOE's conclusion in the January 2020 Final Rule that an assignment of boiler efficiency based solely on calculated payback, without consideration of these market failures, ''reflects an overly optimistic and unrealistic working market'' and ''may unreasonably bias the results.'' 85 FR 1592, 1637.

There are several market failures or barriers that affect energy decisions generally. Some of those that affect the commercial sector specifically are detailed below. However, more generally, there are several behavioral factors that can influence the purchasing decisions of complicated multi-attribute products, such as boilers. For example, consumers (or decision makers in an organization) are highly influenced by choice architecture, defined as the framing of the decision, the surrounding circumstances of the purchase, the alternatives available, and how they're presented for any given choice scenario.[10] The same consumer or decision maker may make different choices depending on the characteristics of the decision context (*e.g.,* the timing of the purchase, competing demands for funds), which have nothing to do with the characteristics of the alternatives themselves or their prices. Consumers or decision makers also face a variety of other behavioral phenomena including loss aversion, sensitivity to information salience, and other forms of bounded rationality.[11] Thaler, who won the Nobel Prize in Economics in 2017 for his contributions to behavioral economics, and Sunstein point out that these behavioral factors are strongest when the decisions are complex and infrequent, when feedback on the decision is muted and slow, and when there is a high degree of information asymmetry.[12] These characteristics describe almost all purchasing situations of appliances and equipment, including CPBs. The installation of a new or replacement CPB in a commercial building is a complex, technical decision involving many actors and is done very infrequently, as evidenced by the CPB mean lifetime of nearly 25 years. 85 FR 1592, 1634. Additionally, it would take at least one full heating season for any impacts on operating costs to be fully apparent. Further, if the purchaser of the CPB is not the entity paying the energy costs (*e.g.,* a building owner and tenant), there may be little to no feedback on the purchase. These behavioral factors are in addition to the more specific market failures described as follows.

It is often assumed that because commercial and industrial customers are businesses that have trained or experienced individuals making decisions regarding investments in cost-saving measures, some of the commonly observed market failures present in the general population of residential customers should not be as prevalent in a commercial setting. However, there are many characteristics of organizational structure and historic circumstance in commercial settings that can lead to underinvestment in energy efficiency.

First, a recognized problem in commercial settings is the principal-agent problem, where the building owner (or building developer) selects the equipment and the tenant (or subsequent building owner) pays for energy costs.[13] [14] Indeed, more than a

[9] Appendix 8H of the final rule TSD shows the no-new-standards case efficiency distributions for all product classes.

[10] Thaler, R.H., Sunstein, C.R., and Balz, J.P. (2014). ''Choice Architecture'' in *The Behavioral Foundations of Public Policy,* Eldar Shafir (ed).

[11] Thaler, R.H., and Bernartzi, S. (2004). ''Save More Tomorrow: Using Behavioral Economics in Increase Employee Savings,'' *Journal of Political Economy* 112(1), S164–S187. *See also* Klemick, H., et al. (2015) ''Heavy-Duty Trucking and the Energy Efficiency Paradox: Evidence from Focus Groups and Interviews,'' *Transportation Research Part A: Policy & Practice,* 77, 154–166. (providing evidence that loss aversion and other market failures can affect otherwise profit-maximizing firms).

[12] Thaler, R.H., and Sunstein, C.R. (2008). Nudge: Improving Decisions on Health, Wealth, and Happiness. New Haven, CT: Yale University Press.

[13] Vernon, D., and Meier, A. (2012). ''Identification and quantification of principal-agent problems affecting energy efficiency investments and use decisions in the trucking industry,'' *Energy Policy,* 49, 266–273.

[14] Blum, H. and Sathaye, J. (2010). ''Quantitative Analysis of the Principal-Agent Problem in

Continued

quarter of commercial buildings with a boiler in the CBECS 2012 sample are occupied at least in part by a tenant, not the building owner (indicating that, in DOE's experience, the building owner likely is not responsible for paying energy costs). Additionally, some commercial buildings have multiple tenants. There are other similar misaligned incentives embedded in the organizational structure within a given firm or business that can impact the choice of a CPB. For example, if one department or individual within an organization is responsible for capital expenditures (and therefore equipment selection) while a separate department or individual is responsible for paying the energy bills, a market failure similar to the principal-agent problem can result.[15] Additionally, managers may have other responsibilities and often have other incentives besides operating cost minimization, such as satisfying shareholder expectations, which can sometimes be focused on short-term returns.[16] Decision-making related to commercial buildings is highly complex and involves gathering information from and for a variety of different market actors. It is common to see conflicting goals across various actors within the same organization as well as information asymmetries between market actors in the energy efficiency context in commercial building construction.[17]

Second, the nature of the organizational structure and design can influence priorities for capital budgeting, resulting in choices that do not necessarily maximize profitability.[18] Even factors as simple as unmotivated staff or lack of priority-setting and/or a lack of a long-term energy strategy can have a sizable effect on the likelihood that an energy efficient investment will be undertaken.[19] U.S. tax rules for commercial buildings may incentivize lower capital expenditures, since capital costs must be depreciated over many years, whereas operating costs can be fully deducted from taxable income or passed through directly to building tenants.[20]

Third, there are asymmetric information and other potential market failures in financial markets in general, which can affect decisions by firms with regard to their choice among alternative investment options, with energy efficiency being one such option.[21] Asymmetric information in financial markets is particularly pronounced with regard to energy efficiency investments.[22] There is a dearth of information about risk and volatility related to energy efficiency investments, and energy efficiency investment metrics may not be as visible to investment managers,[23] which can bias firms towards more certain or familiar options. This market failure results not because the returns from energy efficiency as an investment are inherently riskier, but because information about the risk itself tends not to be available in the same way it is for other types of investment, like stocks or bonds. In some cases energy efficiency is not a formal investment category used by financial managers, and if there is a formal category for energy efficiency within the investment portfolio options assessed by financial managers, they are seen as weakly strategic and not seen as likely to increase competitive advantage.[24] This information asymmetry extends to commercial investors, lenders, and real-estate financing, which is biased against new and perhaps unfamiliar technology (even though it may be economically beneficial).[25] Another market failure known as the first-mover disadvantage can exacerbate this bias against adopting new technologies, as the successful integration of new technology in a particular context by one actor generates information about cost-savings, and other actors in the market can then benefit from that information by following suit; yet because the first to adopt a new technology bears the risk but cannot keep to themselves all the informational benefits, firms may

Commercial Buildings in the U.S.: Focus on Central Space Heating and Cooling,'' Lawrence Berkeley National Laboratory, LBNL–3557E. (Available at: *escholarship.org/uc/item/6p1525mg*) (Last accessed January 20, 2022).

[15] Prindle, B., Sathaye, J., Murtishaw, S., Crossley, D., Watt, G., Hughes, J., and de Visser, E. (2007). ''Quantifying the effects of market failures in the end-use of energy,'' Final Draft Report Prepared for International Energy Agency. (Available from International Energy Agency, Head of Publications Service, 9 rue de la Federation, 75739 Paris, Cedex 15 France).

[16] Bushee, B.J. (1998). ''The influence of institutional investors on myopic R&D investment behavior,'' *Accounting Review,* 305–333.

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[17] International Energy Agency (IEA). (2007). Mind the Gap: Quantifying Principal-Agent Problems in Energy Efficiency. OECD Pub. (Available at: *www.iea.org/reports/mind-the-gap*) (Last accessed January 20, 2022)

[18] DeCanio, S.J. (1994). ''Agency and control problems in US corporations: the case of energy-efficient investment projects,'' *Journal of the Economics of Business,* 1(1), 105–124.

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[19] Rohdin, P., and Thollander, P. (2006). ''Barriers to and driving forces for energy efficiency in the non-energy intensive manufacturing industry in Sweden,'' *Energy,* 31(12), 1836–1844.

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[24] Cooremans, C. (2012). ''Investment in energy efficiency: do the characteristics of investments matter?'' *Energy Efficiency,* 5(4), 497–518.

[25] Lovins 1992, op. cit.

The Atmospheric Fund. (2017). Money on the table: Why investors miss out on the energy efficiency market. (Available at: *taf.ca/publications/money-table-investors-energy-efficiency-market/*) (Last accessed January 20, 2022).

inefficiently underinvest in new technologies.[26]

In sum, the commercial and industrial sectors face many market failures that can result in an under-investment in energy efficiency. This means that discount rates implied by hurdle rates [27] and required payback periods of many firms are higher than the appropriate cost of capital for the investment.[28] The preceding arguments for the existence of market failures in the commercial and industrial sectors are corroborated by empirical evidence. One study in particular showed evidence of substantial gains in energy efficiency that could have been achieved without negative repercussions on profitability, but the investments had not been undertaken by firms.[29] The study found that multiple organizational and institutional factors caused firms to require shorter payback periods and higher returns than the cost of capital for alternative investments of similar risk. Another study demonstrated similar results with firms requiring very short payback periods of 1–2 years in order to adopt energy-saving projects, implying hurdle rates of 50 to 100 percent, despite the potential economic benefits.[30] A number of other case studies similarly demonstrate the existence of market failures preventing the adoption of energy-efficient technologies in a variety of commercial sectors around the world, including office buildings,[31] supermarkets,[32] and the electric motor market.[33]

The existence of market failures in the commercial and industrial sectors is well supported by the economics literature and by a number of case studies. If DOE developed an efficiency distribution that assigned boiler efficiency in the no-new-standards case solely according to energy use or economic considerations such as life-cycle cost or payback period, the resulting distribution of efficiencies within the building sample would not reflect any of the market failures or behavioral factors above. DOE thus concludes such a distribution would not be representative of the CPB market. Further, even if a specific building/organization is not subject to the market failures above, the purchasing decision of CPB efficiency can be highly complex and influenced by a number of factors not captured by the building characteristics available in the CBECS or RECS samples. These factors can lead to building owners choosing a CPB efficiency that deviates from the efficiency predicted using only energy use or economic considerations such as life-cycle cost or payback period (as calculated using the information from CBECS 2012 or RECS 2009).

DOE notes that EIA's Annual Energy Outlook [34] (''AEO'') is another energy use model that implicitly includes market failures in the commercial sector. In particular, the commercial demand module [35] includes behavioral rules regarding capital purchases such that in replacement and retrofit decisions, there is a strong bias in favor of equipment of the same technology (*e.g.,* boiler efficiency) despite the potential economic benefit of choosing other technology options. Additionally, the module assumes a distribution of time preferences regarding current versus future expenditures. For space heating, approximately half of the total commercial floorspace is assigned one of the two highest time preference premiums. This translates into very high discount rates (and hurdle rates) and represents floorspace for which equipment with the lowest capital cost will almost always be purchased without consideration of operating costs. DOE's assumptions regarding market failures are therefore consistent with other prominent energy consumption models.

Although the January 2020 rulemaking record sufficiently supports DOE's approach, DOE conducted an additional search after the January 2020 Final Rule was issued for documentation of actual recent gas-fired commercial hot water boiler installations that included efficiency details, to further supplement DOE's conclusions that market failures cause consumers to base purchasing decisions on factors other than minimizing payback periods.[36] This additional documentation, as discussed in more detail below, further reinforces the validity of DOE's approach to assigning boiler efficiencies in the January 2020 Final Rule.

First, DOE obtained data from the Federal Energy Management Program (''FEMP'') [37] on commercial gas-fired hot water boiler installations in government buildings from 2000 to 2013. DOE divided the data into the same North and Rest of Country regions [38] as considered in the 2007 residential furnace final rule. 72 FR 65136, 65146–65147 (Nov. 19, 2007).

[26] Blumstein, C. and Taylor, M. (2013). Rethinking the Energy-Efficiency Gap: Producers, Intermediaries, and Innovation. Energy Institute at Haas Working Paper 243. (Available at: *haas.berkeley.edu/wp-content/uploads/WP243.pdf*) (Last accessed April 6, 2022).

[27] A hurdle rate is the minimum rate of return on a project or investment required by an organization or investor. It is determined by assessing capital costs, operating costs, and an estimate of risks and opportunities.

[28] DeCanio 1994, op. cit.

[29] DeCanio, S.J. (1998). ''The Efficiency Paradox: Bureaucratic and Organizational Barriers to Profitable Energy-Saving Investments,'' *Energy Policy,* 26(5), 441–454.

[30] Andersen, S.T., and Newell, R.G. (2004). ''Information programs for technology adoption: the case of energy-efficiency audits,'' *Resource and Energy Economics,* 26, 27–50.

[31] Prindle 2007, op. cit.

Howarth, R.B., Haddad, B.M., and Paton, B. (2000). ''The economics of energy efficiency: insights from voluntary participation programs,'' *Energy Policy,* 28, 477–486.

[32] Klemick, H., Kopits, E., Wolverton, A. (2017). ''Potential Barriers to Improving Energy Efficiency in Commercial Buildings: The Case of Supermarket Refrigeration,'' *Journal of Benefit-Cost Analysis,* 8(1), 115–145.

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[34] EIA, Annual Energy Outlook, *www.eia.gov/outlooks/aeo/* (Last accessed January 25, 2022).

[35] For further details, see: *www.eia.gov/outlooks/aeo/assumptions/pdf/commercial.pdf* (Last accessed January 25, 2022).

[36] DOE issued the January 2020 Final Rule in December 2016. In accordance with the error correction process in 10 CFR 430.5, DOE did not immediately submit the rule to the **Federal Register** for publication in order to allow the public and DOE the opportunity to identify any errors in the regulatory text. Following litigation in the Ninth Circuit, *see Natural Res. Def. Council, Inc.* v. *Perry,* 940 F.3d 1072 (9th Cir. 2019), the Department submitted the rule that was issued in December 2016 to the **Federal Register** for publication in December 2019. The rule was subsequently published on January 10, 2020.

[37] Prior to 2014, FEMP had separate minimum energy efficiency designations for condensing and non-condensing gas-fired commercial hot water boilers, meaning that under Federal requirements for procuring energy efficient equipment the initial decision of whether to install a condensing or non-condensing unit was left to the Federal agency. (Available at *web.archive.org/web/20130114025912/http://www1.eere.energy.gov:80/femp/technologies/eep_boilers.html*) (Last accessed January 20, 2022). Since 2014, FEMP mandates condensing gas-fired commercial hot water boilers, except when an agency demonstrates that selecting the FEMP designated efficiency level may not be cost effective. (Available at: *energy.gov/eere/femp/federal-energy-management-program*) (Last accessed January 20, 2022).

[38] The Northern region comprises states with population-weighted heating degree days (HDD) equal to or greater than 5,000. This includes Alaska, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. Rest of Country region comprises states with population-weighted HDD less than 5,000. This includes Alabama, Arizona, Arkansas, California, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, Nevada, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and the District of Columbia.

One might expect that highly efficient condensing boilers would be more common in colder climates. However, these data show that in warm climates in the Rest of Country states, including California, Texas, Oklahoma, Hawaii, and others, condensing boilers, which are generally more efficient, were typically installed (95 percent of buildings had a condensing boiler installation out of 60 buildings, with one building installing both condensing and non-condensing boilers). In contrast, in colder climates in the North, including West Virginia, New Jersey, Washington, and others, non-condensing boilers, which are generally less efficient, are not uncommon (47 percent of buildings had a non-condensing boiler installation out of 19 buildings).[39] DOE acknowledges that condensing fractions are likely higher for the buildings in the FEMP data during this time period compared to other commercial buildings due to Federal mandates and management goals related to energy efficiency and conservation. DOE also acknowledges the small sample size of buildings with CPB installations obtained from FEMP. However, using economic criteria based on energy use or payback period alone, one might not predict that non-condensing gas-fired boilers would be more likely installed in colder climates. These real-world installations are indicative of complex decision-making.

DOE also gathered recent installation data and case studies for areas within the North region that demonstrate a significant fraction of installations are for non-condensing commercial boilers. Data on building permits from Milwaukee[40] indicate that there are many installations of gas-fired non-condensing hot water boilers in a very cold climate (46 percent of buildings had a non-condensing boiler installed out of 50 remodeled buildings).[41] [42] In a study in Massachusetts, interviewed manufacturers stated that they expect the market for non-condensing boilers to persist for some replacement situations.[43] In a study of 105 multifamily buildings in Minnesota (ranging in size from 5 units to over 50 units), 85 percent of buildings with a gas-fired boiler have a non-condensing gas boiler despite the cold climate.[44] These studies indicate that a cold climate (and therefore a large heating load) does not necessarily mean that high-efficiency boilers will predominate. Additionally, in the case of an emergency replacement (*e.g.,* a boiler failing in the middle of winter), buildings are likely to adopt a familiar ''like-for-like'' replacement with the same technology. If the existing technology is non-condensing, then these emergency replacements are likely to be non-condensing as well, even in a cold climate.

Finally, DOE also examined the data available in Northwest Energy Efficiency Alliance's 2019 Commercial Building Stock Assessment ''CBSA''), published in May 2020.[45] The CBSA is a regional study characterizing the energy consumption and building characteristics of commercial buildings throughout the Northwest region of the country. The study consists of detailed site visits to 932 commercial buildings across 12 building types and includes on-site assessments, building staff interviews, and utility submission of energy consumption data. The rated boiler efficiency is a key variable captured by CBSA, with efficiencies of installed boilers ranging from below 80 percent to 97 percent. For gas-fired hot water boilers, an efficiency of 85 percent and below is generally considered to be non-condensing.

DOE specifically examined the subset of buildings with gas-fired, mechanical draft, hot water boilers whose function includes space heating. DOE limited the subset of buildings to those with a boiler input capacity equal to or greater than 300,000 Btu/h to match the CPB equipment class definitions. Building characteristics include the conditioned floor area and the annual, weather-normalized gas consumption in therms[46] (*i.e.,* normalized to the weather in a typical year). Some buildings have multiple identical boilers staged together into one system (with a boiler system input capacity equal to the sum of each individual boiler's input capacity).[47] Some buildings are served by multiple boiler systems, likely servicing different sections of the building. In these cases, the conditioned floor area and facility gas consumption were split evenly among the number of boiler systems for ease of comparison. In total this subset represents 53 boiler systems, although not every building includes a complete set of data. Table III.1 shows the number of boiler systems above and below a rated efficiency of 86 percent, across a number of different characteristics. For each characteristic, the sample is approximately divided into two similarly sized subsets, with an additional subset showing the extreme end of the distribution.

TABLE III.1—NUMBER OF BUILDINGS * IN CBSA BY BOILER EFFICIENCY ACROSS SELECTED CHARACTERISTICS

	Rated efficiency below 86 percent	Rated efficiency at or above 86 percent
conditioned floor area per boiler system		
<70,000 sq ft	9	14
≥70,000 sq ft	13	14
≥100,000 sq ft	5	6

[39] FEMP gas-fired hot water boiler building data (Available at: *www.regulations.gov/document/EERE-2013-BT-STD-0030-0101*).

[40] DOE examined building permit data from several jurisdictions in different states, however only the City of Milwaukee data contained the necessary information to determine boiler efficiency for individual permits.

[41] City of Milwaukee Land Management System. Boiler New Permit (10/24/2016–08/11/2017). (Available at: *aca-prod.accela.com/MILWAUKEE/Default.aspx*) (Last accessed January 20, 2022).

[42] Boiler model data was used to determine efficiency and type.

[43] DNV–GL. (2017). Gas Boiler Market Characterization Study Phase II—Final Report. (Available at: *ma-eeac.org/wp-content/uploads/Gas-Boiler-Market-Characterization-Study-Phase-II-Final-Report.pdf*) (Last accessed January 20, 2022).

[44] Minnesota Department of Commerce. (2013). Minnesota Multifamily Rental Characterization Study. (Available at: *slipstreaminc.org/sites/default/files/documents/research/minnesota-multifamily-rental-characterization-study.pdf*) (Last accessed January 20, 2022).

[45] The final report and all data files are available at: *neea.org/data/commercial-building-stock-assessments* (Last accessed January 25, 2022). The data file specific to boilers is *hydronic_systems-boilers.xlsx.*

[46] One therm is equal to 100,000 BTUs.

[47] Staging multiple boilers together may be desired in order to provide redundancy, or to manage average and peak heating loads.

TABLE III.1—NUMBER OF BUILDINGS * IN CBSA BY BOILER EFFICIENCY ACROSS SELECTED CHARACTERISTICS—Continued

	Rated efficiency below 86 percent	Rated efficiency at or above 86 percent
boiler system input capacity		
<2,500,000 Btu/h	10	17
≥2,500,000 Btu/h	14	12
≥5,000,000 Btu/h	8	6
annual, weather-normalized facility gas consumption per boiler system		
<35,000 therms	12	14
≥35,000 therms	11	14
≥100,000 therms	6	6

* Buildings with a gas-fired, hot water, mechanical draft boiler whose function includes space heating and with an input capacity equal to or greater than 300,000 Bth/h.

Across each characteristic, there is a lack of any strong correlation with the efficiency of the existing boiler system. Buildings with boilers servicing a larger conditioned floor area do not preferentially have higher efficiency boilers. The same is true for buildings with higher capacity boilers installed, and for buildings with higher annual gas consumption. Additionally, neither the buildings with the largest conditioned floor area, the buildings with the largest capacity boilers, nor the buildings with the highest annual weather-normalized gas consumption have a systematic preference for high efficiency boilers. Without the consideration of potential market failures, one would expect a correlation with boiler efficiency.[48]

These examples indicate that CPB purchasing decisions are most likely subject to several market failures. These decisions can be complex and are not always made based on total building energy use, life-cycle cost, or payback period estimates. The data show that condensing and non-condensing boilers are installed in a variety of building types and that the building characteristics do not correlate strongly with the existing boiler efficiency.

For these reasons, DOE selected a random assignment of CPB boiler efficiency (sampled from the developed efficiency distribution, which is consistent with the overall shipment-weighted efficiency data submitted by AHRI) as a more appropriate representation of the market than if that assignment was based on energy use or payback period only. DOE acknowledges that a random sampling from a distribution of boiler efficiency is an approximation of what takes place in the commercial boiler market. However, given the factors discussed in the preceding paragraphs, DOE explains that an approach that relied only on apparent cost-effectiveness criteria using the information available in the CBECS or RECS samples would lead to a more unrepresentative estimate of the potential impact on the CPB market from an energy conservation standard compared to DOE's current approach.

At the present time, there are insufficient data to analyze site-specific economics that take into account a multitude of technical and other non-economic decision-making criteria in the analyses, as well as model the effects of various market failures, on a building-by-building level. In the absence of such a model and the necessary supporting data, DOE concludes that using a random assignment sampled from the developed efficiency distributions (consistent with stakeholder-submitted data) is a reasonable approach, one that simulates behavior in the CPB market, where market failures result in purchasing decisions not being perfectly aligned with economic interests, more realistically than relying only on apparent cost-effectiveness criteria derived from the limited information in CBECS or RECS. DOE further emphasizes that its approach does not assume that all purchasers of CPBs make economically irrational decisions (*i.e.,* the lack of a correlation is not the same as a negative correlation). As part of the random assignment, some buildings with large heating loads will be assigned higher efficiency CPBs, and some buildings with particularly low heating loads will be assigned baseline CPBs, which aligns with the available data. By using this approach, DOE acknowledges the uncertainty inherent in the data and minimizes any bias in the analysis by using random assignment, as opposed to assuming certain market conditions that are unsupported given the available evidence.

Finally, even if DOE were to assume the random assignment approach produced some overstatement of the economic benefits of the new standards—because one were to conclude that even with all of those market failures there may be more strictly rational purchasers in the market than the random distribution accounts for—for all of the reasons discussed above any such overstatement would be small and would not alter DOE's conclusion that the revised standards are economically justified. That is particularly clear given that DOE considers numerous factors in addition to any savings to consumers. For instance, the January 2020 Final Rule is expected to result in cumulative emission reductions of 16 million metric tons of carbon dioxide and 41 thousand tons of nitrogen oxides, among other pollutants. The present monetized value of the nitrogen oxide emissions reduction, for example, is estimated to be $35 million at a 7-percent discount rate and $99 million at a 3-percent discount rate. 85 FR 1592, 1597. There are also many significant unquantified benefits from the Rule, including additional environmental and public health benefits. When considering these benefits together with the other statutory factors listed in 42 U.S.C. 6313(a)(6)(B)(ii), DOE has an abiding conviction that its determination that the benefits of the standard exceed its burdens, *i.e.,* the standard is economically justified, is highly probable to be true. As a result, DOE

[48] The 2019 CBSA also includes 7 buildings with a gas-fired, hot water, natural draft boiler system; 24 buildings with a gas-fired steam boiler system; and 5 buildings with an oil-fired, hot water boiler system. Of the 24 buildings with steam boilers, only 3 have boiler efficiencies greater than 85 percent. Only 1 building has a higher efficiency oil-fired boiler.

found clear and convincing evidence that the standard was economically justified.

B. Fuel Prices

DOE clarifies its response to stakeholders in section IV.F.4 of the January 2020 Final Rule regarding the estimation of energy prices in the LCC analysis. 85 FR 1592, 1631–32.

As described in the January 2020 Final Rule and final rule TSD, DOE developed marginal energy prices (electricity, natural gas, and fuel oil) for use in the LCC analysis.[49] A marginal energy price reflects the cost or benefit of adding or subtracting one additional unit of energy consumption. The starting point for the estimation of marginal energy prices is with publicly available average energy prices published by the EIA in various publications (Form 826 data, natural gas prices, and State Energy Data System).[50] These data are disaggregated by state and by month and can be aggregated into the same reportable domains used in RECS and census divisions used in CBECS. The price data by month allow DOE to separately estimate winter (heating season) and non-winter (cooling season) energy prices. The detailed breakdown of these average energy prices by fuel type, region, and month is available in appendix 8C of the final rule TSD.

EIA data additionally provides historical monthly energy consumption and total energy expenditures by state. By analyzing how total expenditures change with changes in energy consumption, DOE can estimate seasonal marginal energy price factors. These changes in expenditures are due to the marginal changes in energy consumption and exclude, for example, fixed costs, connection fees, and other surcharges. In a regression of total expenditures versus total energy consumption, the slope represents the marginal price. DOE used a 10-year average across the same regional divisions in either RECS or CBECS to determine seasonal marginal price factors in order to transform the average energy prices into marginal energy prices. The detailed breakdown of these marginal energy price factors by fuel type and region, for both winter and non-winter months, is available in appendix 8C of the final rule TSD.

These detailed estimates of marginal energy prices are then used in the LCC and NIA analyses. To project energy prices in future years, DOE relied on energy price projections from EIA's AEO to develop energy price indices over time and scaled marginal prices accordingly.

In response to the notice of proposed rulemaking published prior to the January 2020 Final Rule, DOE received comments on marginal energy prices and, in particular, on the accuracy of the marginal rates paid by larger load consumers. DOE noted that the Gas Associations (American Gas Association, American Public Gas Association) commented that the analysis should adjust the energy price calculation methodology using marginal prices to use a tariff-based approach to make the analysis more robust. Spire commented that DOE used erroneous utility marginal energy pricing and forecasts in its analysis resulting in overstated benefits, and that consumers with large loads do not pay the same marginal rates as an average commercial consumer. PG&E agreed with Spire that larger consumers pay less for utilities. And AHRI commented that the marginal gas rates do not accurately reflect what larger consumers pay. 85 FR 1592, 1632. DOE further acknowledged comments from Spire asserting that EIA data is completely inaccurate for its largest consumers and that transport rates are typically used, and from Phoenix Energy Management stating that the largest consumers also hedge gas prices by buying and selling futures and commenting that it is extremely difficult to figure out what the true cost of the energy is. *Id.*

Regarding the usage of EIA data and comparisons to tariff data, DOE emphasizes that the EIA data provide complete coverage of all utilities and all customers, including larger commercial and industrial utility customers that may have discounted energy prices. The actual rates paid by individual customers are captured and reflected in the EIA data and are averaged over all customers in a state. DOE has previously compared these two approaches for determining marginal energy price factors in the residential sector. In a September 2016 supplemental notice of proposed rulemaking for residential furnaces, DOE compared its marginal natural gas price approach using EIA data with marginal natural gas price factors determined from residential tariffs submitted by stakeholders. 81 FR 65719, 65784 (Sept. 23, 2016). The submitted tariffs represented only a small subset of utilities and states and were not nationally representative, but DOE found that its marginal price factors were generally comparable to those computed from the tariff data (averaging across rate tiers).[51] DOE noted that a full tariff-based analysis would require information on each household's total baseline gas consumption (to establish which rate tier is applicable) and how many customers are served by a utility on a given tariff. These data were not available in the public domain. By relying on EIA data, DOE noted, its marginal price factors represented all utilities and all states, averaging over all customers, and was therefore ''more representative of a large group of consumers with diverse baseline gas usage levels than an approach that uses only tariffs.'' 81 FR 65719, 65784. While the above comparative analysis was conducted for residential consumers, the general conclusions regarding the accuracy of EIA data relative to tariff data remain the same for commercial consumers. DOE uses EIA data for determining both residential and commercial electricity prices and the nature of the data is the same for both sectors. DOE further notes that not all operators of CPBs are larger load utility customers. As reflected in the building sample derived from CBECS 2012 and RECS 2009 data, there are a range of buildings with varying characteristics, including multi-family residential buildings, that operate CPBs. The buildings in the LCC sample have varying heating load, square footage, and boiler capacity. Operators of CPBs are varied, some large and some smaller, and thus the determination of the applicable marginal energy price should reflect the average operator of CPBs.

DOE's approach is based on the largest, most comprehensive, most granular national data sets on commercial energy prices that are publicly available from EIA. The data from EIA are the highest quality energy price data available to DOE. The resulting estimated marginal energy prices do represent an average across all commercial customers in a given region (state or group of states for RECS, census division for CBECS). Some customers may have a lower marginal energy price, while others may have a higher marginal energy price. With respect to large customers who may pay a lower

[49] *See* section IV.F.4 of the January 2020 Final Rule, sections 8.2.2.2 and 8.2.2.3 of chapter 8 of the final rule TSD, and appendix 8C of the final rule TSD.

[50] Form EIA–826 is now Form EIA–861M. Available at: *www.eia.gov/electricity/data/eia861m/* (Last accessed January 25, 2022).

Natural gas prices available at: *www.eia.gov/naturalgas/* (Last accessed January 25, 2022).

State Energy Data System available at: *www.eia.gov/state/seds/* (Last accessed January 25, 2022).

[51] *See* appendix 8E of the TSD for the 2016 supplemental notice of proposed rulemaking for residential furnaces for a direct comparison, available at: *www.regulations.gov/document/EERE-2014-BT-STD-0031-0217* (Last accessed January 25, 2022).

energy price, no tariffs were submitted to DOE during the rulemaking for analysis. Tariffs for individual non-residential customers can be very complex and generally depend on both total energy use and peak demand (especially for electricity). These tariffs vary significantly from one utility to another. While DOE was unable to identify data to provide a basis for determining a potentially lower price for larger commercial and industrial utility customers, either on a state-by-state basis or in a nationally representative manner, the historic data on which DOE did rely includes such discounts. The EIA data include both large non-residential customers with a potentially lower rate as well as more typical non-residential customers with a potentially higher rate. Thus, to the extent larger consumers of energy pay lower marginal rates, those lower rates are already incorporated into the EIA data, which would drive down EIA's marginal rates for all consumers. If DOE were to adjust downward the marginal energy price for a small subset of individual customers in the LCC Monte Carlo sample as suggested by commenters, it would also have to adjust upward the marginal energy price for all other customers in the sample to maintain the same marginal energy price averaged over all customers. Even assuming DOE could accomplish those adjustments in a reliable or accurate way, this upward adjustment in marginal energy price would affect the majority of buildings in the LCC sample. Operational cost savings would therefore both decrease and increase for different buildings in the LCC sample, yielding substantially the same overall average LCC savings result as DOE's current estimate.

In summary, DOE's current approach utilizes an estimate of marginal energy prices and captures the impact of actual utility rates paid by all customers, including those that enjoy lower marginal rates for whatever reason, in an aggregated fashion. Adjustments to this methodology are unlikely to change the average LCC results and therefore the conclusions of the January 2020 Final Rule are insensitive to this issue.

C. Burner Operating Hours

DOE clarifies its response to stakeholders in section IV.F.11 of the January 2020 Final Rule regarding the estimation of burner operating hours (''BOHs'') in the LCC analysis. 85 FR 1592, 1637.

BOHs are used to estimate energy consumption of elements other than the heating element (*e.g.,* electronic controls, fans). The BOHs are not used to estimate the amount of fuel consumed to meet a heating load but are the result of a separate heating load estimation and an assumed CPB capacity. Instead, heating load and the efficiency of the CPB are used to determine fuel consumption. As a result, CPBs with the same efficiency level, but different capacities will have different BOHs in meeting the same heating load. For example, in meeting a specific heating load a CPB with a lower capacity will have higher BOHs than a similarly efficient CPB with a higher capacity. The lower capacity CPB will burn fuel at a lower rate so it will need to be on longer to meet the heating load as compared to a larger capacity CPB, which will burn fuel at a higher rate. While the hours of operation differ between the CPBs of different capacities, the amount of fuel burned is the same (*i.e.,* the heating load and unit efficiency, not hours of operation, dictate fuel consumption). BOHs are therefore not a crucial component of determining operating costs in the LCC analysis. Operating costs are dominated by fuel consumption to meet the heating load, which as described in further detail below, is not dependent on any assumptions regarding BOHs.

A full discussion of boiler energy use and the determination of BOHs is available in chapter 7 and appendix 7B of the final rule TSD.[52] BOHs represent the amount of time the burner operates at full load. BOHs are not a primary input parameter separately estimated by DOE, but rather a derived quantity that is largely determined from the space heating fuel consumption reported in CBECS 2012 or RECS 2009. As described previously, CBECS and RECS are large, nationally representative surveys and the energy consumption and expenditure estimates are derived directly from utility billing data. CBECS and RECS data are the most robust energy consumption data for space heating available to DOE. CBECS and RECS form the basis of the LCC Monte Carlo sample for CPBs and both CBECS and RECS report space heating fuel consumption for each building in the surveys (determined from utility bill data). DOE estimated each building's heating load from this reported fuel consumption, coupled with estimates of the historical boiler efficiency, building shell efficiency, and adjustments for average climate conditions in each region.[53] BOHs are then calculated using the building heating load and the efficiency of the CPB of that building. BOHs are utilized to estimate auxiliary electricity consumption for the circulating pump, draft inducer (if applicable), igniter, and standby power.[54]

In the January 2020 Final Rule DOE included comments from AHRI in which AHRI posited that either due to DOE's sizing assumption and/or due to the use of the CBECS energy use data in the sample itself, the energy use model produced excessively high operating hours in some instances and that these distort the economic results; and that AHRI's consultant suggested that a more logical approach for estimating may be to use directly measured data or estimated load data. 85 FR 1592, 1637.

As discussed, DOE derived the BOHs from CBECS and RECS data. BOH values are determined from building heating loads, which are themselves derived from reported fuel consumption data taken form large, nationally representative surveys. DOE therefore has a high degree of confidence in the resulting building heating loads. The presence of high BOHs in some instances is not an indication of an error, but due to the representative boiler capacity assigned in that instance.[55] However, the building heating load and resulting fuel consumption are fixed and these are the primary determinant of operating costs. Furthermore, adjusting the BOHs downward in some instances would require adjusting upward the BOHs in other instances to maintain the same average capacity, yielding the substantially the same overall average LCC results.

Once each building's heating load is determined, DOE can estimate BOHs in both the no-new-standards case and all potential standards cases using the assigned boiler efficiency, boiler capacity, and the number of boilers assigned to each building, with adjustments made for estimated return water temperatures and part load operation.[56] BOHs are constrained in

[52] Figure 7.3.1 in chapter 7 of the final rule TSD provides an overview of the energy use methodology.

[53] *See* equation 7.4 in the final rule TSD. Equation 7.5 shows the adjustment to average climate conditions. *See* appendix 7B for the derivation of existing boiler efficiency in 2012 and 2009 (the sample years for CBECS and RECS).

[54] *See* equation 7.9 and section 7.3.3 of the final rule TSD.

[55] The engineering analysis and all downstream analyses utilize a representative capacity (or rated input) that aligns with the highest number of shipments. Using a representative capacity allows DOE to analyze certain equipment characteristics as a proxy for that equipment class. *See* section 5.2.1 in chapter 5 of the final rule TSD.

[56] *See* equation 7.3 in the final rule TSD. See appendix 7B for a detailed discussion of adjustments made for return water temperature and part-load operation.

the model to be, at most, 5,840 hours per year (two thirds of a year), although the vast majority of boilers have BOHs that are significantly lower than this maximum value.[57] For all but one product class, the median BOHs are below 1,000 hours. For context, 1,000 hours of operation represents approximately 8–9 hours per day for 4 months or 5–6 hours per day for 6 months. These median values are not unreasonable expectations for when the burner is on during the winter heating season in a commercial building, depending on the local climate. Furthermore, some commercial buildings may require heating for longer periods during the day during winter, including possibly 24 hours a day (*e.g.,* hospitals). BOHs of over 2000 hours represent one end of the distribution and only apply to a subset of buildings where heating loads are driven higher by climate, size, age, etc.; similarly, some buildings have BOHs under 500 hours, representing the other end of the distribution. Given that the median BOHs derived from the estimated building heating loads represent reasonable operating conditions, DOE therefore has no reason to suspect the building heating loads derived from CBECS and RECS are erroneous.

BOHs are inversely related to the number of boilers and overall boiler capacity assigned to each building. This means that in a building with multiple boilers, each individual boiler has fewer BOHs to meet the building heating load compared to another building with a similar building heating load with only a single boiler at the same capacity. The same is also true when comparing two single boilers of different capacity; the higher capacity boiler will have lower BOHs to meet the same building heating load. Larger capacity CPBs are typically installed in buildings with larger heating loads, but these loads are not necessarily proportional to the increase in CPB capacity. Therefore, it is not unusual for the larger capacity CPB equipment classes to have lower median BOHs in some instances.

Because BOHs are a derived quantity and not a primary input parameter, the estimated fuel consumption of each building in the LCC sample would be the same regardless of the assigned boiler capacity and number of boilers in a given building. BOHs do not affect the fuel consumption of the sample building. The annual fuel consumption in the no-new-standards and standards cases is largely set by the building heating load determined from CBECS or RECS, coupled with the assigned boiler efficiency. There may be individual buildings in the LCC sample at the extreme ends of the distribution with high or low BOHs due to the assigned boiler capacity. If, in the field, a larger capacity boiler (or multiple boilers) with the same efficiency were installed instead in that building, BOHs would go down but overall fuel consumption would remain the same to match the building heating load. Similarly, at the low end of the distribution, if a lower capacity boiler were installed in the field instead, BOHs would increase but fuel consumption would remain the same. The only impact of changes to BOHs would be with electricity consumption. Electricity consumption while the boiler is on would decrease with decreasing BOHs and increase with increasing BOHs; however, electricity consumption is a minor component of overall operating costs.[58] Adjustments to these BOHs at either end of the distribution would yield an overall average LCC savings result substantially the same as DOE's current estimate. In summary, higher and lower capacities may be present in the field (with correspondingly lower and higher BOHs), however the net result of any adjustments would be a minimal impact to average LCC savings and the percentage of negatively impacted consumers.

As an illustration of the small impact of electricity consumption adjustments, a small gas-fired hot water CPB at a thermal efficiency of 84 percent with a typical heating load has an estimated average annual fuel use of 863.7 million Btus per year (''MMBtu/yr'') and an estimated average annual electricity consumption of 683.5 kilowatt-hours per year (''kWh/yr'').[59] Assuming this CPB is in New England, with a commercial natural gas price of $10.56/MMBtu and a commercial electricity price of $0.15/kWh,[60] this results in an annual operating cost of $9,121 for natural gas and $103 for electricity. The electricity consumption of the auxiliary equipment and standby power accounts for approximately 1 percent of total energy costs. The difference in electricity consumption between efficiency levels is an even smaller fraction, compared to the difference in natural gas consumption between efficiency levels. Changes to BOHs both upward and downward would have a negligible impact on overall LCC savings results given that the fuel consumption is the dominant factor and it is determined by the heating load and assigned boiler efficiency. Therefore, the conclusions of the January 2020 Final Rule are insensitive to adjustments to BOHs.

IV. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the January 2020 Final Rule remain unchanged for this supplemental response to comments. These determinations are set forth in the January 2020 Final Rule. 85 FR 1592, 1676–1681. Because the rule was remanded without vacatur for further explanation, DOE was able to provide this explanation without opening another notice and comment period. *See Chamber of Commerce* v. *SEC,* 443 F.3d 890, 900 (D.C. Cir. 2006).

In the alternative, however, DOE finds that, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), there is good cause to not issue a separate notice to solicit public comment on the supplemental responses to comments contained in this document. This document does not change the determinations made by DOE in the January 2020 Final Rule, but is a supplement to that final rule, which already went through notice and comment. This document provides further explanation to the response to comments already provided. In addition, this supplement to the January 2020 Final Rule is issued pursuant to a court order directing DOE to provide supplemental responses to certain comments within 90 days. Issuing a separate notice to solicit public comment during that time period would be impracticable, unnecessary, and contrary to the public interest.

Signing Authority

This document of the Department of Energy was signed on April 14, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been

[57] Table 7B.2.8 in appendix 7B of the final rule TSD displays the distribution of BOHs for each CPB equipment class.

[58] The number of standby hours would increase with decreasing BOHs. Total standby electricity consumption (for those CPBs with standby power) would therefore increase, however this represents an even smaller fraction of total operating costs and would have a negligible impact on LCC results.

[59] *See* table 7.4.1 in chapter 7 of the final rule TSD.

[60] *See* section 8.2.2.2 in chapter 8 of the final rule TSD.

authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 15, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–08427 Filed 4–19–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31423; Amdt. No. 4004]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 20, 2022. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 20, 2022.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg 29 Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on April 1, 2022.

Thomas J Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, CFR part 97, (is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
19–May–22 ..	PA	Harrisburg	Capital City	2/0073	3/15/22	ILS OR LOC RWY 8, Amdt 12.
19–May–22 ..	PA	Harrisburg	Capital City	2/0075	3/15/22	RNAV (GPS) RWY 26, Orig-B.
19–May–22 ..	PA	Harrisburg	Capital City	2/0076	3/15/22	RNAV (GPS) RWY 8, Amdt 1.
19–May–22 ..	FL	Leesburg	Leesburg Intl	2/1133	3/14/22	RNAV (GPS) RWY 4, Amdt 1C.
19–May–22 ..	FL	Palatka	Palatka Muni—Lt Kay Larkin Fld.	2/1425	3/14/22	RNAV (GPS) RWY 27, Orig–B.
19–May–22 ..	FL	Palatka	Palatka Muni—Lt Kay Larkin Fld.	2/1427	3/14/22	RNAV (GPS) RWY 9, Orig–C.
19–May–22 ..	FL	Orlando	Kissimmee Gateway	2/1443	3/18/22	ILS OR LOC RWY 15, Amdt 1.
19–May–22 ..	FL	Orlando	Kissimmee Gateway	2/1445	3/18/22	RNAV (GPS) RWY 6, Orig–B.
19–May–22 ..	FL	Orlando	Kissimmee Gateway	2/1447	3/18/22	RNAV (GPS) RWY 15, Amdt 1.
19–May–22 ..	FL	Orlando	Kissimmee Gateway	2/1449	3/18/22	RNAV (GPS) RWY 33, Amdt 2B.
19–May–22 ..	FL	Leesburg	Leesburg Intl	2/1887	3/14/22	RNAV (GPS) RWY 13, Amdt 2C.
19–May–22 ..	FL	Leesburg	Leesburg Intl	2/1888	3/14/22	RNAV (GPS) RWY 31, Amdt 1C.
19–May–22 ..	TX	Fort Worth	Fort Worth Meacham Intl	2/1900	3/11/22	ILS OR LOC RWY 16, Amdt 8A.
19–May–22 ..	TX	Fort Worth	Fort Worth Meacham Intl	2/1901	3/11/22	RNAV (GPS) RWY 16, Amdt 1B.
19–May–22 ..	TX	Hearne	Hearne Muni	2/1902	3/14/22	RNAV (GPS) RWY 18, Orig–B.
19–May–22 ..	TX	Hearne	Hearne Muni	2/1903	3/14/22	RNAV (GPS) RWY 36, Orig–A.
19–May–22 ..	KY	Somerset	Lake Cumberland Rgnl	2/2096	3/14/22	RNAV (GPS) RWY 5, Orig.
19–May–22 ..	AK	Clarks Point	Clarks Point	2/2227	3/14/22	RNAV (GPS) RWY 18, Orig–B.
19–May–22 ..	AK	Juneau	Juneau Intl	2/2229	3/14/22	LDA X RWY 8, Amdt 12C.
19–May–22 ..	AK	Allakaket	Allakaket	2/2231	3/14/22	RNAV (GPS) RWY 5, Amdt 1B.
19–May–22 ..	AK	Allakaket	Allakaket	2/2233	3/14/22	RNAV (GPS) RWY 23, Amdt 1A.
19–May–22 ..	AK	Napakiak	Napakiak	2/2235	3/14/22	RNAV (GPS) RWY 16, Orig–A.
19–May–22 ..	AK	Napakiak	Napakiak	2/2237	3/14/22	RNAV (GPS) RWY 34, Orig–A.
19–May–22 ..	AK	Akiak	Akiak	2/2239	3/14/22	RNAV (GPS) RWY 3, Orig–C.
19–May–22 ..	AK	Akiak	Akiak	2/2241	3/14/22	RNAV (GPS) RWY 21, Orig–C.
19–May–22 ..	GA	St Simons Island	St Simons Island	2/2714	3/28/22	VOR RWY 4, Amdt 16B.
19–May–22 ..	FL	Okeechobee	Okeechobee County	2/3047	3/14/22	RNAV (GPS) RWY 32, Orig–D.
19–May–22 ..	FL	Okeechobee	Okeechobee County	2/3049	3/14/22	RNAV (GPS) RWY 23, Amdt 2B.
19–May–22 ..	FL	Okeechobee	Okeechobee County	2/3050	3/14/22	RNAV (GPS) RWY 14, Amdt 1B.
19–May–22 ..	FL	Okeechobee	Okeechobee County	2/3051	3/14/22	RNAV (GPS) RWY 5, Amdt 1B.
19–May–22 ..	IL	Galesburg	Galesburg Muni	2/3226	3/14/22	ILS OR LOC RWY 3, Amdt 11.
19–May–22 ..	IA	Atlantic	Atlantic Muni	2/3449	3/14/22	RNAV (GPS) RWY 2, Amdt 1B.
19–May–22 ..	IA	Atlantic	Atlantic Muni	2/3450	3/14/22	RNAV (GPS) RWY 20, Amdt 1B.
19–May–22 ..	NY	New York	New York Stewart Intl	2/3457	3/14/22	RNAV (GPS) RWY 16, Amdt 1E.
19–May–22 ..	TN	Knoxville	Mc Ghee Tyson	2/4068	2/14/22	ILS OR LOC RWY 23R, ILS RWY 23R (SA CAT I), ILS RWY 23R (CAT II), Amdt 14A.
19–May–22 ..	TN	Crossville	Crossville Meml–Whitson Fld.	2/4105	2/15/22	ILS Y OR LOC Y RWY 26, Orig–C.
19–May–22 ..	TN	Crossville	Crossville Meml–Whitson Fld.	2/4106	2/15/22	ILS Z OR LOC Z RWY 26, Amdt 14C.
19–May–22 ..	IL	Harrisburg	Harrisburg–Raleigh	2/4289	3/18/22	RNAV (GPS) RWY 24, Amdt 2A.
19–May–22 ..	IL	Harrisburg	Harrisburg–Raleigh	2/4290	3/18/22	RNAV (GPS) RWY 6, Amdt 1.
19–May–22 ..	GA	Fitzgerald	Fitzgerald Muni	2/4472	2/15/22	RNAV (GPS) RWY 2, Amdt 2.
19–May–22 ..	NC	Manteo	Dare County Rgnl	2/4874	3/16/22	RNAV (GPS) RWY 5, Orig–B.
19–May–22 ..	NC	Manteo	Dare County Rgnl	2/4875	3/16/22	RNAV (GPS) RWY 23, Orig–A.
19–May–22 ..	TX	Junction	Kimble County	2/5322	3/17/22	RNAV (GPS) RWY 17, Orig–A.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
19–May–22 ..	MO	Tarkio	Gould Peterson Muni	2/5364	3/17/22	RNAV (GPS) RWY 18, Amdt 1.
19–May–22 ..	MO	Tarkio	Gould Peterson Muni	2/5365	3/17/22	RNAV (GPS) RWY 36, Amdt 1.
19–May–22 ..	IN	French Lick	French Lick Muni	2/5875	3/18/22	RNAV (GPS) RWY 26, Orig–C.
19–May–22 ..	IN	French Lick	French Lick Muni	2/5890	3/18/22	RNAV (GPS) RWY 8, Amdt 1C.
19–May–22 ..	AZ	Prescott	Prescott Rgnl—Ernest A Love Fld.	2/6124	3/18/22	RNAV (GPS) RWY 21L, Amdt 2C.
19–May–22 ..	NJ	Millville	Millville Muni	2/6126	3/18/22	RNAV (GPS) RWY 32, Orig–E.
19–May–22 ..	NJ	Millville	Millville Muni	2/6131	3/18/22	ILS OR LOC RWY 10, Amdt 2E.
19–May–22 ..	NJ	Millville	Millville Muni	2/6132	3/18/22	RNAV (GPS) RWY 10, Orig–B.
19–May–22 ..	OR	Ontario	Ontario Muni	2/6403	3/22/22	RNAV (GPS) RWY 15, Amdt 1.
19–May–22 ..	IL	Benton	Benton Muni	2/6538	3/21/22	RNAV (GPS) RWY 18, Orig–C.
19–May–22 ..	MI	Adrian	Lenawee County	2/6574	3/21/22	RNAV (GPS) RWY 5, Amdt 1C.
19–May–22 ..	MI	Adrian	Lenawee County	2/6575	3/21/22	RNAV (GPS) RWY 23, Orig–C.
19–May–22 ..	IL	Decatur	Decatur	2/6594	3/10/22	RNAV (GPS) RWY 18, Amdt 1A.
19–May–22 ..	IL	Lawrenceville	Lawrenceville–Vincennes Intl.	2/8096	3/24/22	RNAV (GPS) RWY 9, Amdt 1B.
19–May–22 ..	IL	Lawrenceville	Lawrenceville–Vincennes Intl.	2/8097	3/24/22	RNAV (GPS) RWY 27, Amdt 1B.
19–May–22 ..	IL	Lawrenceville	Lawrenceville–Vincennes Intl.	2/8098	3/24/22	RNAV (GPS) RWY 18, Amdt 1B.
19–May–22 ..	IL	Lawrenceville	Lawrenceville–Vincennes Intl.	2/8099	3/24/22	RNAV (GPS) RWY 36, Amdt 1B.
19–May–22 ..	IL	Mount Vernon	Mount Vernon	2/8163	3/24/22	RNAV (GPS) RWY 5, Orig–A.
19–May–22 ..	IL	Mount Vernon	Mount Vernon	2/8164	3/24/22	RNAV (GPS) RWY 23, Orig–A.
19–May–22 ..	AZ	St Johns	St Johns Industrial Air Park.	2/8564	3/18/22	RNAV (GPS) RWY 14, Amdt 1A.
19–May–22 ..	IA	Audubon	Audubon County	2/9208	3/25/22	RNAV (GPS) RWY 32, Orig–B.
19–May–22 ..	AK	Adak Island	Adak	2/9899	3/29/22	RNAV (GPS) RWY 23, Orig–B.
19–May–22 ..	LA	Vivian	Vivian	2/9946	3/11/22	VOR/DME–A, Amdt 3B.

[FR Doc. 2022–08313 Filed 4–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31422; Amdt. No. 4003]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 20, 2022. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 20, 2022.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg 29 Room 104, Oklahoma City, OK 73169. Telephone (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–

15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the typed of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on April 1, 2022.

Thomas J Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97 (14 CRF part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 19 May 2022

Palm Springs, CA, KTRM, RNAV (GPS) RWY 35, Amdt 2
Miami, FL, KMIA, ILS OR LOC RWY 9, Amdt 11
Mapleton, IA, KMEY, RNAV (GPS) RWY 2, Amdt 1
Mapleton, IA, KMEY, RNAV (GPS) RWY 20, Amdt 1
Olney-Noble, IL, KOLY, LOC RWY 11, Amdt 7
Marion, KY, KGDA, RNAV (GPS) RWY 7, Amdt 3
Marion, KY, KGDA, RNAV (GPS) RWY 25, Amdt 3
O'Neill, NE, KONL, VOR RWY 13, Amdt 5F
O'Neill, NE, KONL, VOR RWY 31, Amdt 1E
Berlin, NH, KBML, Takeoff Minimums and Obstacle DP, Amdt 3
Las Vegas, NV, KLAS, ILS OR LOC RWY 1L, Amdt 4
Las Vegas, NV, KLAS, RNAV (GPS) RWY 1R, Amdt 4
Las Vegas, NV, KLAS, RNAV (RNP) RWY 26R, Amdt 1
Babelthuap Island, PW, PTRO, NDB RWY 9, Orig-B
Babelthuap Island, PW, PTRO, RNAV (GPS) RWY 9, Orig-B
Babelthuap Island, PW, PTRO, RNAV (GPS) RWY 27, Orig-B
Mc Minnville, TN, KRNC, Takeoff Minimums and Obstacle DP, Amdt 3
Burlington, VT, KBTV, RNAV (GPS) RWY 1, Amdt 1

[FR Doc. 2022–08312 Filed 4–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. FDA–2018–N–1815]

RIN 0910–AI03

Beverages: Bottled Water

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or we) is revising the quality standard for bottled water to specify that bottled water to which fluoride is added by the manufacturer may not contain fluoride in excess of 0.7 milligrams per liter (mg/L), which available data suggests provides an optimal balance between the prevention of dental caries and the risk of dental fluorosis. This final rule revises the current allowable levels, which range from 0.8 to 1.7 mg/L, for fluoride in domestically packaged and imported bottled water to which fluoride is added. We are taking this action to make

the quality standard regulation for fluoride added to bottled water consistent with the 2015 recommendation by the U.S. Public Health Service (PHS) for community water systems that add fluoride for the prevention of dental caries. This action will not affect the allowable levels for fluoride in bottled water to which fluoride is not added by the manufacturer (such bottled water may contain fluoride from its source water).

DATES: This rule is effective June 21, 2022. The compliance date is October 17, 2022.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: David Whitman, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–3754, *David.Whitman@fda.hhs.gov*; or Deirdre Jurand, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

A. Purpose of the Final Rule

We are amending the allowable levels for fluoride in bottled water to which fluoride is added, to be consistent with the updated recommendation by the PHS on the optimal fluoride concentration in community water systems that add fluoride for the prevention of dental caries.

B. Summary of the Major Provisions of the Final Rule

The final rule revises the quality standard for bottled water (found in § 165.110(b) (21 CFR 165.110(b)) to set the allowable level for fluoride at 0.7 mg/L in domestically packaged and imported bottled water to which fluoride has been added.

C. Legal Authority

This final rule updates the quality standard for bottled water, consistent with our authority in sections 401, 403, and 701(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 341, 343, and 371(a)). We discuss our legal authority in greater detail in section III.

D. Costs and Benefits

This final rule revises the quality standard regulations so that the allowable level for fluoride is 0.7 mg/L in bottled water to which fluoride has been added, which is consistent with the current PHS recommendation on the optimal level of fluoride in community water systems that add fluoride for the prevention of dental caries. We estimate that there will be one-time costs to read and understand the rule for all bottled water manufacturers and one-time costs to verify the fluoride level after adjustment of the manufacturing process for bottled water manufacturers that choose to add fluoride to their product. The one-time costs range between $214,370.26 and $333,338.24. When discounted at 7 percent over 10 years, the annualized costs range from $30,521.50 to $47,459.87. When discounted at 3 percent over 10 years the annualized costs range from $25,130.73 to $39,077.41.

II. Background

A. Need for the Regulation/History of This Rulemaking

In 1973, FDA established standards of quality for bottled water, including allowable levels for fluoride, based on the PHS' 1962 Drinking Water Standards (38 FR 32558, November 26, 1973). In adopting the 1962 PHS drinking water standard for fluoride, FDA concluded that the addition of fluoride to bottled water should be permitted to be consistent with the policy of allowing community water fluoridation (38 FR 32558 at 32561). For bottled water to which fluoride is added that is packaged in the United States, FDA established as the allowable level a range (0.8 to 1.7 mg/L) based on the annual average maximum daily air temperatures at the location where the bottled water is sold at retail. For imported bottled water, we established a single allowable level for fluoride in bottled water to which fluoride is added (0.8 mg/L).

In 2015, the PHS updated and replaced its 1962 Drinking Water Standards related to community water fluoridation and recommended an optimal fluoride concentration of 0.7 mg/L. This recommendation is published in a **Federal Register** notice entitled ''Public Health Service Recommendation for Fluoride Concentration in Drinking Water for Prevention of Dental Caries'' (80 FR 24936, May 1, 2015). The same year, we issued a letter to industry recommending, based on the updated PHS recommendation, that bottled water manufacturers not add fluoride to bottled water at concentrations greater than a final concentration of 0.7 mg/L (Ref. 1). In our letter, we also stated our intent to revise the allowable levels for fluoride in bottled water to which fluoride has been added to be consistent with the updated PHS recommendation. We did not receive any objections to the letter, and bottled water manufacturer input indicates that most bottled water to which fluoride has been added that is sold or offered for sale in the United States, whether domestic or imported, now has no more than 0.7 mg/L fluoride (Ref. 2).

In the **Federal Register** of April 3, 2019, we issued a proposed rule to amend the quality standard for bottled water (found in § 165.110(b)) to set the allowable level for fluoride at 0.7 mg/L in domestically packaged and imported bottled water to which fluoride has been added (84 FR 12975) (''proposed rule''). We explained the basis for the PHS's 2015 optimal fluoride concentration recommendation for drinking water, concluded that the basis is a sound public health measure that should also apply to bottled water, and noted that amending the allowable level for fluoride in bottled water to which fluoride had been added to 0.7 mg/L would be consistent with the updated PHS fluoride recommendation. We also

stated that this may reduce any unnecessary confusion on the part of consumers from having the standard for fluoride added to bottled water differ from the PHS recommendations for community water fluoridation (84 FR 12975 at 12978).

In addition, consistent with the updated PHS recommendation, we proposed to remove references to annual averages of maximum daily air temperatures in § 165.110(b) because, as discussed in the updated PHS recommendation, data do not show a convincing relationship between fluid intake and ambient air temperature (84 FR 12975 at 12977).

We also proposed that the final rule be effective 60 days after the date of the final rule's publication in the **Federal Register** and a compliance date 120 days after the effective date.

B. Summary of Comments to the Proposed Rule

The proposed rule provided a 60-day comment period. We received more than 90 comments. The comments came from individuals, academia, healthcare professionals, consumer advocacy groups, research associations, and industry trade associations. Among other things, the comments discussed:

- *The level of added fluoride that should be in bottled water.* Many comments supported our proposed level, but some opposed the addition of any fluoride to bottled water or supported an amount less than 0.7 mg/L. Additionally, some comments suggested that consumers should be able to choose between bottled water with and without added fluoride. Other comments suggested that we should do our own studies or consider additional research.
- *The health effects of added fluoride to water.* While some comments agreed that the proposed level would help prevent dental caries, some other comments expressed concern that the ingestion of fluoride could have adverse health effects, such as dental fluorosis, skeletal fluorosis, neurological toxicity, endocrine disruption, and lower IQ.

III. Legal Authority

We are updating the quality standard establishing the allowable levels for fluoride in bottled water to which fluoride has been added, as set forth in this final rule, consistent with our authority in sections 401, 403, and 701(a) of the FD&C Act.

Section 401 of the FD&C Act directs the Secretary of the Department of Health and Human Services (the Secretary) to issue regulations fixing and establishing for any food a reasonable definition and standard of identity, quality, or fill of container whenever in the judgment of the Secretary such action will promote honesty and fair dealing in the interest of consumers.

Under section 403(h)(1) of the FD&C Act, a food is misbranded if it purports to be or is represented as a food for which a standard of quality has been prescribed by regulations under section 401 of the FD&C Act, and its quality falls below such standard, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

Under section 701(a) of the FD&C Act, we may issue regulations for the efficient enforcement of the FD&C Act to ''effectuate a congressional objective expressed elsewhere in the Act'' (*Association of American Physicians and Surgeons, Inc.* v. *FDA,* 226 F. Supp. 2d 204 (D.D.C. 2002) (citing *Pharm. Mfrs. Ass'n* v. *FDA,* 484 F. Supp. 1179, 1183 (D. Del. 1980)). Updating this allowable level for fluoride in bottled water to be consistent with the updated PHS recommendation would help effectuate the congressional objective expressed in sections 401 and 403 of the FD&C Act.

IV. Comments on the Proposed Rule and FDA Response

A. Introduction

We received no comments on our proposal to remove references to annual averages of maximum daily air temperatures in § 165.110(b) and are finalizing it without change. We received more than 90 comments on other provisions of the proposed rule, and each comment discussed one or more issues. The comments came from individuals, academia, healthcare professionals, consumer advocacy groups, research associations, and industry trade associations.

We describe and respond to the comments in sections B through F of this section. We have numbered each comment to help distinguish between different comments. We have grouped similar comments together under the same number, and, in some cases, we have separated different issues discussed in the same comment and designated them as distinct comments for purposes of our responses. The number assigned to each comment or comment topic is purely for organizational purposes and does not signify the comment's value or importance or the order in which comments were received.

B. Description of General Comments and FDA Response

Many comments made general remarks supporting or opposing the proposed rule without focusing on a particular proposed provision. In the following paragraphs, we discuss and respond to such general comments.

(Comment 1) Many comments expressed general support for the proposed rule. A few comments stated that the proposed rule, if finalized, would provide consistency between domestically packaged and imported bottled water.

(Response 1) We proposed to revise, and are revising, the allowable level for fluoride to 0.7 mg/L in bottled water to which fluoride has been added, a level consistent with the current PHS recommendations for the optimal level of fluoride in community water systems to prevent dental caries. The revised allowable level is consistent between domestically packaged and imported bottled water. As stated in the 2011 Department of Health and Human Services (HHS) notice proposing the revised recommended fluoride concentration, available data suggest that a concentration of 0.7 mg/L provides an optimal balance between the prevention of dental caries and the risk of dental fluorosis (76 FR 2383 at 2386). The PHS confirmed this in 2015 (80 FR 24936).

(Comment 2) A few comments advocated the availability of both fluoridated and non-fluoridated bottled water so that consumers have choices. One comment stated that FDA should not ask all bottlers to fluoridate to the 2015 PHS recommended level of 0.7 mg/L. Another said that consumers have a right to be aware of the content of their drinking water, and so FDA should require manufacturers who add fluoride to their water to label the amount added.

(Response 2) Our final rule revises the allowable level for fluoride to 0.7 mg/L for bottled water to which fluoride is added. Manufacturers are not required to fluoridate their water, or to fluoridate to a level of 0.7 mg/L. Instead, our regulations, at § 165.110(a)(1), provide that fluoride may be optionally added up to the allowable level.

Consumers can examine bottled water labeling to determine whether fluoride has been added. In the preamble to the 1995 final rule establishing the standard of identity and standard of quality for bottled water, we explained that bottled water with added fluoride would be a multi-ingredient food and, as such, its label must bear ingredient labeling (60 FR 57076 at 57079, November 13, 1995).

If fluoride is added to bottled water, it must be declared in the ingredients list (21 CFR 101.4(a)(1)). In addition, the terms ''fluoridated,'' ''fluoride added,'' or ''with added fluoride'' may be used on the label or in labeling of bottled water that contains added fluoride (21 CFR 101.13(q)(8)). Finally, our regulations, at § 101.9(c)(5) (21 CFR 101.9(c)(5)), require the label declaration of fluoride in certain circumstances and allow for it voluntarily in all other cases.

While labeling the amount of fluoride added to bottled water is outside the scope of this rule, we note that mandatory declaration of the amount of fluoride is required if a claim about fluoride content is made on the label or in the labeling of foods (see § 101.9(c)(5)). We also addressed this in the preamble to our 2016 final rule entitled ''Food Labeling: Revision of the Nutrition and Supplement Facts Labels'' (81 FR 33742, May 27, 2016) (Nutrition Facts Label final rule). We declined to require the declaration of fluoride because, among other reasons, fluoride is a nonessential nutrient, a daily reference intake cannot be established based on available quantitative intake recommendations, and total fluoride intake can come from sources other than bottled water (81 FR 33742 at 33881).

(Comment 3) Some comments stated that FDA should not rely on the PHS recommendation and FDA should provide its own scientific justification for the fluoride level in the proposed rule. A few others asked FDA to review studies published on the safety of fluoride and community water fluoridation after the 2015 PHS recommendation.

(Response 3) We disagree with the comments stating that FDA should not rely on the PHS recommendation. In the preamble to the proposed rule, we explained the basis for the PHS's 2015 recommendation and concluded that the basis is a sound public health measure that should also apply to bottled water to which fluoride is added. Furthermore, the PHS recommended 0.7 mg/L fluoride after systematic reviews of existing science by a Federal interdepartmental, interagency panel of scientists, including scientists from FDA (76 FR 2383, January 13, 2011; 80 FR 24936, May 1, 2015). This is consistent with our approach in 1973, when we established the allowable levels for fluoride in bottled water based on the PHS's 1962 Drinking Water Standards. At that time we also concluded that the addition of fluoride to bottled water should be permitted to be consistent with the policy of community water fluoridation (38 FR 32558 at 32561). We also believe this will help promote honesty and fair dealing in the interest of consumers under section 401 of the FD&C Act (21 U.S.C. 341) in that consumers may expect the levels of fluoride added to bottled water to be consistent with the levels of fluoride in public drinking water.

We recognize that additional studies on the safety of fluoride have published since the publication of the 2015 PHS recommendation. We do not believe these studies contradict the PHS recommendation, and neither these studies nor the body of literature we have reviewed show adverse health effects of fluoride in humans up to the level we are finalizing. The PHS recommendation has not changed, and we maintain that the addition of fluoride to bottled water should be permitted to be consistent with the policy of community water fluoridation. Given that the comments provided no new information indicating the need to duplicate the scientific evaluation already conducted by PHS, we are revising the allowable level for fluoride in bottled water to which fluoride is added based on the 2015 PHS recommendation.

(Comment 4) Some comments opposed the addition of any fluoride to bottled water. A few stated that fluoride is a contaminant, poison, or an industrial waste product, and suggested that our adoption of an optimal fluoride concentration, or use of the term ''optimal,'' is an endorsement of fluoridation or encourages the fluoridation of bottled water. Some comments listed possible adverse health effects of water fluoridation, such as dental fluorosis, skeletal fluorosis, neurological toxicity, endocrine disruption, and lower IQ. Some stated that the prevention of dental caries by ingesting fluoride does not have adequate scientific support and topical application of fluoride through toothpaste or mouthwash, or by a dentist, is a better way to prevent dental caries.

(Response 4) As an initial matter, we consider fluoride to be a nutrient. As stated in our response to comment 3, the addition of fluoride to bottled water should be permitted to be consistent with the PHS recommended level of community water fluoridation, and the PHS recommendation is a sound public health measure that should also apply to bottled water to which fluoride is added. The PHS recommendation addressed the potential for dental fluorosis as well as concerns about other adverse effects from water fluoridation (80 FR 24936 at 24940 through 24942). The PHS recommendation also addressed the concerns regarding the safety of fluoride additives (80 FR 24936 at 24942 through 24943). The comments did not provide, and we are not aware of, evidence that fluoride added to bottled water up to 0.7 mg/L is a contaminant or poison, or that fluoride is an industrial waste product.

Regarding the comments suggesting that this rule endorses or encourages bottled water fluoridation, we note in our response to comment 2 that the rule does not require manufacturers to fluoridate their water, or to fluoridate to a level of 0.7 mg/L. Instead, our regulations, at § 165.110(a)(1), provide that fluoride may be optionally added up to the allowable level. We also note that we are not adopting or identifying an optimum fluoride level for bottled water to which fluoride has been added, and we maintain that the addition of fluoride to bottled water should be consistent with the policy of community water fluoridation.

Regarding the ingestion of fluoride, we recognize that consumers are also exposed to fluoride from other sources. The PHS considered the availability of other fluoride-containing products, including toothpastes, mouth rinses, and professionally applied fluoride compounds, when establishing the 0.7 mg/L optimum level for community water fluoridation (80 FR 24936 at 24937 through 24938). The PHS also stated that community water fluoridation is a major factor responsible for the decline of the prevalence and severity of dental caries during the second half of the 20th century, and that, when analyses were limited to studies conducted after the introduction of other sources of fluoride, especially fluoride toothpaste, beneficial effects across the lifespan from community water fluoridation were still apparent (80 FR 24936 at 24937).

(Comment 5) One comment supported the proposal but asked whether the reduction of the amount of added fluoride in bottled water will have any other unforeseen long-term effects on the population.

(Response 5) The comment did not provide, and we are not aware of, any information regarding unforeseen long-term effects on the population of a 0.7 mg/L fluoride limit in bottled water to which fluoride is added.

C. Comments on the Level of Added Fluoride in Bottled Water and FDA Response

(Comment 6) Some comments that supported the proposed rule specifically supported the proposed level of 0.7 mg/L and stated that the level is consistent with public health

recommendations, FDA guidance, and current industry practice.

(Response 6) As we noted in our response to comment 1, we proposed to revise the standard for the allowable level for fluoride to 0.7 mg/L in bottled water to which fluoride has been added, a level consistent with the updated PHS recommendations. As stated in the 2011 HHS notice proposing the revised recommended fluoride concentration, available data suggest that a fluoride concentration of 0.7 mg/L provides an optimal balance between the prevention of dental caries and the risk of dental fluorosis (76 FR 2383 at 2386). Moreover, this may reduce any unnecessary confusion on the part of consumers from having the standard for fluoride added to bottled water differ from the PHS recommendations for community water fluoridation, or different standards for domestically packaged and imported bottled water.

(Comment 7) One comment said that there is no need for this rule because there is no immediate danger in the levels of fluoride in bottled water.

(Response 7) We disagree that there is no need for this rule or that an ''immediate danger'' is needed to take this action. This final rule is consistent with our authority in sections 401, 403, and 701(a) of the FD&C Act. We have concluded that the basis for PHS' updated recommendation of optimum fluoridation level of 0.7 mg/L in community water is a sound public health measure that should also apply to bottled water.

When we adopted the 1962 PHS drinking water standard for fluoride, we concluded that the addition of fluoride to bottled water should be permitted to be consistent with the policy of allowing community water fluoridation (38 FR 32558 at 32561). In addition, this rule may reduce any unnecessary confusion on the part of consumers from having the standard for fluoride added to bottled water differ from the PHS recommendations for community water fluoridation, or different standards for domestically packaged and imported bottled water.

(Comment 8) Some comments asked FDA to regulate the level of fluoride naturally present in bottled water. A few comments specifically asked FDA to reduce the allowable levels for naturally occurring fluoride to 0.7 mg/L, and a few others indicated that FDA should not permit the sale of bottled water with natural fluoride concentrations above 0.7 mg/L.

(Response 8) The regulation of bottled water to which no fluoride is added is outside the scope of this rule. Our regulations, at § 165.110(b)(4)(ii)(A) and (B), limit the amount of fluoride in domestic and imported bottled water to which no fluoride is added. Those levels range from 1.4 to 2.4 mg/L. Our current revision of the allowable levels of fluoride in bottled water is based on the 2015 PHS recommendation, which does not affect community water systems with naturally occurring fluoride in water at concentrations greater than 0.7 mg/L (80 FR 24936 at 24937). Therefore, we are not revising the allowable levels for fluoride in bottled water to which fluoride has not been added by the manufacturer.

We note that the maximum fluoride level we are finalizing limits the total amount of fluoride that may be present in bottled water to which fluoride is added—that is, the sum of added and naturally occurring fluoride amounts in bottled water to which fluoride is added may not exceed 0.7 mg/L.

(Comment 9) Several comments expressed concern that even if the amount of added fluoride is safe, the final fluoride level in bottled water to which fluoride is added may be unsafe because either: (a) The water to which fluoride is added may already contain fluoride; or (b) ingestion of both fluoridated community water and bottled water to which fluoride is added would lead to fluoride overconsumption.

(Response 9) As we noted in our response to comment 8, the maximum fluoride level we are finalizing limits the total amount of fluoride that may be present in bottled water to which fluoride is added—that is, the sum of added and naturally occurring fluoride amounts in bottled water to which fluoride is added may not exceed 0.7 mg/L. The regulation of bottled water to which no fluoride is added (which may contain naturally occurring fluoride) and of municipal water is outside the scope of this rule. However, the PHS considered the availability of other fluoride-containing products when establishing the 0.7 mg/L optimum level for community water fluoridation (80 FR 24936 at 24937).

(Comment 10) One comment recommended a level of 0.6 mg/L and cited the recommendation from the New Hampshire Department of Environmental Services (NH DES) (Ref. 3).

(Response 10) The NH DES recommends a drinking water fluoride level of 0.6 to 0.8 mg/L. It references the Centers for Disease Control and Prevention (CDC) community water fluoridation website (Ref. 4), which further references the 2015 U.S. PHS recommended level of 0.7 mg/L. As such, the NH DES's recommendation is consistent with the 2015 PHS recommendation. The comment did not provide other information to support the 0.6 mg/L level. Therefore, we are not revising the allowable level to 0.6 mg/L.

(Comment 11) One comment asked FDA to create an acceptable range of fluoride for the purposes of compliance with the rule, because such a range would appropriately recognize that: (a) Adding fluoride to bottled water is not an exact process; and (b) existing FDA regulations require added minerals to be present at least at the level declared on the label. The comment stated that this type of operational flexibility is needed because the level of fluoride in a bottled water product with added fluoride will be subject to some variation, consistent with good manufacturing practices. The comment said that, if the proposed rule is finalized without the requested range for compliance, the rule would appear to create a paradox with respect to compliance with two sets of FDA regulations: (1) This rule, which establishes 0.7 mg/L as the maximum or ceiling for bottled water to which fluoride is added; and (2) the FDA compliance standard for nutrition labeling, which establishes the declared level as the minimum or floor by requiring a composite sample tested for an added mineral like fluoride to contain the mineral at least 100 percent of the declared level. The comment specifically asked FDA to establish a range of 0.6 to 1.0 mg/L for fluoride in bottled water intended for children 4 years and older and adults, and a separate range of 0.4 to 0.7 mg/L for fluoride in bottled water intended for infants and toddlers under 4 years of age.

(Response 11) We decline to create a compliance range and are finalizing the revision of the standard for the allowable level for fluoride to 0.7 mg/L in bottled water to which fluoride has been added.

We recognize that there are potential variabilities in adding fluoride in bottled water during manufacturing and variabilities during fluoride measurement. We also recognize that the CDC proposed an operational control range of 0.6 to 1.0 mg/L in community water systems that adjust fluoride (83 FR 32666, July 13, 2018). The proposed range is based on the ability of community water systems to stay successfully within a particular operational control range (83 FR 32666 at 32667). The comment did not provide information on fluoride variations within community water systems that are applicable to a bottled water manufacturing environment or to

support the requested compliance ranges. Additionally, we have no information, and received no comments, suggesting that some current single-level fluoride standards that have no compliance range (*e.g.,* 0.8 mg/L for bottled water to which fluoride is added and that is at an annual average of maximum daily air temperature between 79.3 to 90.5 °F) have posed unreasonable challenges to the bottled water industry.

We agree that our regulations require added minerals to be present at least at the level declared on the label. Our regulations, at § 101.9(g)(4)(i), state that a food with a label declaration of, among other things, a mineral that meets our definition of a Class I nutrient is misbranded under section 403(a) of the FD&C Act unless its nutrient content is formulated to be at least equal to the value for that nutrient declared on the label. We explained in the Nutrition Facts Label final rule that we consider fluoride to be a nutrient, and specifically, a mineral (81 FR 33742 at 33883). Added fluoride is a Class I nutrient for nutrition labeling purposes because it is an added nutrient in fortified or fabricated foods (§ 101.9(g)(3)(i)).

A label declaration is required if a claim about fluoride content is made on the label or in the labeling of foods (see § 101.9(c)(5)). Our regulations would require the fluoride levels in such products to be at least at the level declared on the label. That minimum fluoride level is not incompatible with the fluoride level finalized in this rule. We understand that, to account for process variability, industry may formulate to a slightly higher fluoride content to ensure the impacted products consistently meet the minimum requirement for nutrient declaration as described in § 101.9(g)(4)(i). We expect that the slight overage of fluoride used to account for process variability is small and would be consistent with current good manufacturing practice (§ 101.9(g)(6)). In addition, an FDA sample for nutrient analysis consists of a composite of 12 subsamples (consumer units), with one sample taken from each of 12 different randomly chosen shipping cases, to be representative of a lot (§ 101.9(g)(2)). FDA conducts nutrient analyses using appropriate methods as given in the Official Methods of Analysis of the AOAC International (id.). Therefore, our sampling procedure for compliance purposes already takes into account the sample variabilities within a lot. Furthermore, as discussed in our response to comment 2, bottled water manufacturers that fluoridate their water are not required to fluoridate to a level of 0.7 mg/L—lower levels are permitted. A bottled water manufacturer could target a fluoridation level below 0.7 mg/L, and, even with the slight overage consistent with current good manufacturing practices, we would expect the finished product to be in compliance with both the labeling requirement in § 101.9(g)(4)(i) and the allowable level for fluoride finalized in this rule.

D. Comment on the Health Effects of Added Fluoride and FDA Response

(Comment 12) A few comments expressed concern that dental fluorosis could occur in infants who consume infant formula reconstituted with fluoridated bottled water.

(Response 12) The PHS considered this when they issued their 2015 recommendation. They stated that, if an infant is consuming only infant formula mixed with fluoridated water, there may be an increased chance for permanent teeth to have mild dental fluorosis (80 FR 24936 at 24940 through 24941). To lessen this chance, parents may choose to use low-fluoride bottled water some of the time to mix infant formula, *e.g.,* bottled waters labeled as deionized, purified, demineralized, or distilled, and without any fluoride added after purification treatment (80 FR 24936 at 24940). However, the PHS concluded that their recommendation to lower the fluoride concentration for community water fluoridation should decrease fluoride exposure during the time of enamel formation, from birth through 8 years of age for most permanent teeth, and further lessen the chance for children's teeth to have dental fluorosis, while keeping the decay prevention benefits of fluoridated water (80 FR 24936). We expect the same balance between the prevention of dental caries and the risk of dental fluorosis from consumption of bottled water to which fluoride is added because this rule revises the allowable fluoride level in those products to be consistent with the 2015 PHS recommendation. The comments provided no new information on this topic, and we agree with PHS' analysis.

As discussed in our response to comment 2, fluoride added to bottled water must be declared in the ingredient list in accordance with § 101.4. Consumers can examine bottled water labeling to determine whether fluoride has been added by, for instance, noting the type of bottled water (*e.g.,* purified) and reading the ingredient declaration (*i.e.,* for whether fluoride is listed as an ingredient).

E. Comment on the Compliance Date and FDA Response

(Comment 13) One comment expressed concern over bottled water manufactured prior to the effective date of the final rule. It asked whether these products can continue to be sold, and if these products would impact consumer health. The comment suggested FDA state publicly that bottled water produced under the current standard will not adversely influence consumers health so that the consumer can keep buying in the period between the effective date and the compliance date. The comment also stated that the proposed compliance date of 120 days after the effective date is too tight for large companies, which may need a longer time to adjust all of their fluoridated water products.

(Response 13) The comment provided, and we are aware of, no information suggesting that that there will be product remaining in inventories that does not comply with the rule after the compliance date, and that large companies may need a longer time to adjust their fluoridated products. We stated in the proposed rule that many bottled water manufacturers in the United States have already adjusted their addition of fluoride to obtain the 0.7 mg/L fluoride in their finished bottled water in response to the updated 2015 PHS recommendation and FDA's April 27, 2015, letter to manufacturers, distributors or importers of bottled water (84 FR 12975 at 12977). We received no comments from bottled water manufacturers or industry groups expressing concerns with inventory remaining after the compliance date. Therefore, we do not expect any significant amount of bottled water products to which fluoride has been added and whose fluoride are at levels above 0.7 mg/L to remain in inventory after the compliance date. We are finalizing the effective and compliance dates as proposed. With regard to the comment's question about the impact on public health of bottled water manufactured prior to this rule's effective date that meets the previous quality standard for added fluoride, we do not have safety concerns. We note that any such bottled water would be misbranded if it did not comply with the label statement requirements under § 165.110(c).

F. Miscellaneous Comments and FDA Response

Many comments addressed aspects of fluoride other than the allowable level in bottled water to which fluoride is added. Some aspects, such as allowable

fluoride levels in municipal water systems, the price of bottled water, and other substances that we could consider requiring or allowing in bottled water, are outside the scope of the rule, and we will not address them here.

We discuss the other miscellaneous comments in the following paragraphs.

(Comment 14) One comment said that too many children, especially infants, are ingesting too much fluoride. The comment said that the warning statement ''Do Not Use Fluoridated Water For Infants or Making Formula'' must be placed on fluoridated water, and the warning statement ''For Adult Use Only'' should be placed on fluoridated water.

(Response 14) As discussed in our response to comment 2, fluoride added to bottled water must be declared in the ingredient list in accordance with § 101.4. Consumers can examine bottled water labeling to determine whether fluoride has been added by, for instance, noting the type of bottled water (*e.g.,* purified) and reading the ingredient declaration (*i.e.,* for whether fluoride is listed as an ingredient). Parents may choose whether to give fluoridated bottled water to children and whether to use bottled water with added fluoride to mix infant formula. Additionally, as we explained in our response to comment 12, the level we are finalizing balances the prevention of dental caries and the risk of dental fluorosis from consumption of bottled water to which fluoride is added. The comment provided no new information on this topic. Therefore, we decline to revise the rule as suggested by the comment.

(Comment 15) One comment asked whether the determination about Indian Tribal Governments in the proposed rule has changed.

(Response 15) In the proposed rule, we tentatively concluded that the rule does not contain policies that would 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. Our tentative conclusion has not changed. The comment did not provide any information that would cause us to reexamine or alter our tentative conclusion.

V. Effective/Compliance Dates

Effective date: This rule is effective June 21, 2022.

Compliance date: The compliance date of this final rule is October 17, 2022.

VI. Economic Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). This final rule has been designated by the Office of Information and Regulatory Affairs as a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because updating the standards of the allowable level for fluoride in bottled water to which fluoride has been added specified in this final rule will not significantly increase costs to bottled water manufacturers, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $158 million, using the most current (2020) Implicit Price Deflator for the Gross Domestic Product. This final rule will not result in an expenditure in any year that meets or exceeds this amount.

The rule revises the bottled water quality standard for the allowable level for fluoride to 0.7 mg/L in bottled water to which fluoride has been added, a level consistent with the updated PHS recommendations for the optimal level of fluoride in community water systems to prevent dental caries (tooth decay).

There will be one-time costs to read and understand the rule for all bottled water manufacturers and one-time costs to verify the fluoride level after adjustment of the manufacturing process for bottled water manufacturers that choose to add fluoride to their product. The one-time costs range between $214,370.26 and $333,338.24. When discounted at 7 percent over 10 years, the annualized costs range from $30,521.50 to $47,459.87. When discounted at 3 percent over 10 years the annualized costs range from $25,130.73 to $39,077.41.

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. The full analysis of economic impacts is available in the docket for this final rule (Ref. 5) and at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

VII. Analysis of Environmental Impact

We have determined under 21 CFR 25.32(m) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

IX. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that this rule has federalism impacts as it amends the standard of quality regulations for bottled water. The existing standard of quality is not new and already preempts State laws because it is within the scope of section 403A of the FD&C Act, an express preemption provision.

X. Consultation and Coordination With Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive order and, consequently, a tribal summary impact statement is not required.

XI. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for

viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. FDA, ''Letter to Manufacturers, Distributors, or Importers of Bottled Water with an Update on Fluoride Added to Bottled Water'' (April 27, 2015). Available at *https://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/bottledwatercarbonatedsoftdrinks/ucm444373.htm* (accessed March 29, 2022).
2. International Bottled Water Association Communication to H. Kim, FDA, Letter, 6/15/2018.
3. New Hampshire Department of Environmental Services, Environmental Fact Sheet: Fluoride in Drinking Water (2020). Available at *https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/dwgb-3-5.pdf* (accessed March 29, 2022).
4. Centers for Disease Control and Prevention, ''Community Water Fluoridation.'' Available at *https://www.cdc.gov/fluoridation/index.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Ffluoridation%2Findex.htm* (accessed March 29, 2022).
5. FDA, ''Final Rule to Revise the Allowable Level of Fluoride in Bottled Water to which Fluoride Has Been Added, Economic Analysis of Impacts, Regulatory Flexibility Analysis, Unfunded Mandates Reform Act Analysis.'' Available at *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm* (accessed March 29, 2022).

List of Subjects in 21 CFR Part 165

Beverages, Bottled water, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 165 is amended as follows:

PART 165—BEVERAGES

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

Authority: 21 U.S.C. 321, 341, 343, 343–1, 348, 349, 371, 379e.

■ 2. Amend § 165.110 by revising paragraphs (b)(4)(ii)(C) and (D) to read as follows:

§ 165.110 Bottled water.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(C) Bottled water packaged in the United States to which fluoride is added must not contain fluoride in excess of 0.7 milligram per liter.

(D) Imported bottled water to which fluoride is added must not contain fluoride in excess of 0.7 milligram per liter.

* * * * *

Dated: April 8, 2022.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2022–08273 Filed 4–19–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2022–0168]

Special Local Regulations; Conch Republic Navy Parade and Battle, Key West, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulations for the Conch Republic Navy Parade and Battle in Key West, Florida. Our regulation for Recurring Marine Events in Seventh Coast Guard District identifies the regulated area for this event. During the enforcement period no person or vessel may enter into, transit through, anchor in, or remain within the regulated area without approval from the Captain of the Port Key West or a designated representative.

DATES: The regulations in 33 CFR 100.701 will be enforced for the location identified in paragraph (b) Item 2 of Table 1 to § 100.701, from 7 p.m. until 8 p.m. on April 22, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Junior Grade Vera Max, Sector Key West Waterways Management Division, Coast Guard; telephone (305) 292–8768, email *SKWWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.701, Table 1 to § 100.701, paragraph (b), Item 2, from 7 p.m. until 8 p.m. on April 22, 2022 for the annual Conch Republic Navy Parade and Battle in Key West, Florida. This action is being taken to provide for the safety of life on the navigable waters of the Key West Harbor during the simulated battle event. Our regulation for Recurring Marine Events within Seventh Coast Guard District, § 100.701, Table 1 to § 100.701, paragraph (b), Item 2, specifies the location of the regulated area for the reenactment of the battle within the Key West Harbor.

During the enforcement period, as reflected in § 100.701, no person or vessel may enter, transit through, anchor within, or remain within the established regulated areas without approval from the Captain of the Port Key West or designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notice of this enforcement period via the Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Dated: April 12, 2022.

Adam A. Chamie,

Captain, U.S. Coast Guard, Captain of the Port Key West.

[FR Doc. 2022–08423 Filed 4–19–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0233]

RIN 1625–AA00

Safety Zones; Cape Canaveral, Daytona, Tampa, Jacksonville, and Tallahassee, Florida

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing five temporary safety zones for the reentry of capsules launched by Space Exploration Technologies Corporation (Space X) in support of the Axiom and the National Aeronautics and Space Administration (NASA) Crew-3 capsule recovery missions. These five temporary safety zones are located within the Coast Guard District Seven area of responsibility offshore of Cape Canaveral, Daytona, Jacksonville, Tampa, and Tallahassee, Florida. The purpose of this rule is to ensure the safety of vessels, mariners, and the navigable waters in the safety zones before, during, and after the scheduled

event. This action is necessary to provide for the safe recovery of these capsules and astronauts in our exclusive economic zone and implements a special activities provision of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. This rule prohibits U.S. flagged vessels from being in the safety zones unless authorized by the Commander of the Seventh Coast Guard District or a designated representative.

DATES: This rule is effective without actual notice from April 20, 2022 through May 15, 2022. For purposes of enforcement, actual notice will be used from April 17, 2022 until April 20, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0233 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Stephanie Miranda, District 7 Waterways Division (dpw), U.S. Coast Guard; telephone (305) 415–6748, email *Stephanie.L.Miranda@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
EEZ Exclusive Economic Zone
FR Federal Register
NASA National Aeronautics and Space Administration
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
COTP Captain of the Port
Space X Space Exploration Technologies Corporation

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. The U.S. company, Space Exploration Technologies Corporation (Space X) Axiom-1 and the National Aeronautics and Space Administration (NASA) Crew-3 capsule recovery missions were approved and scheduled less than 30 days before the need for the five safety zones to be in place starting on April 17, 2022. Publishing an NPRM would be impracticable and contrary to the public interest since the missions would begin before completion of the rulemaking process, thereby inhibiting the Coast Guard's ability to protect against the hazards associated with the recovery missions.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because the temporary safety zones must be established on April 17, 2022, to mitigate safety concerns during the capsule recovery missions.

III. Legal Authority and Need for Rule

On January 1, 2021, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283) (Authorization Act) was enacted. Its section 8343 (134 Stat. 4710) calls for the Coast Guard to conduct a 2-year pilot program to establish and implement a process to establish safety zones to address special activities in the exclusive economic zone (EEZ).[1] These special activities include space activities carried out by United States citizens. The Seventh District Commander, Captain of the Port Jacksonville, and Captain of the Port St. Petersburg have determined that potential hazards associated with the Space X Axiom-1 and the NASA Crew-3 capsule recovery missions present a safety concern for anyone within the perimeter of the five safety zones. The safety zones will only be activated at a reasonable time before a recovery mission and deactivated once the area is no longer hazardous. The purpose of this rule is to ensure the safety of astronauts, vessels, mariners, and the navigable waters in the safety zones before, during, and after the scheduled event. The Coast Guard is issuing this rule under authority of section 8343 of the Authorization Act and 46 U.S.C. 70034.

IV. Discussion of the Rule

The Coast Guard is establishing five temporary safety zones. The Space X Axiom-1 and Crew-3 recovery missions may occur within one of the five following sites: Cape Canaveral, Daytona, Jacksonville, Tampa, and Tallahassee, Florida. Based on mission and environmental factors, Space X and NASA will determine which of the sites will be utilized approximately one day before capsule reentry and recovery. The appropriate safety zone will then be activated at a reasonable time before the recovery mission and deactivated once the area is no longer hazardous. Coast Guard District Eight may also establish temporary safety zones for recovery missions in its respective area of responsibility for these missions.

The five temporary safety zones are listed below and include all waters within the coordinates from surface to bottom. The coordinates are based on the projected reentry locations as determined from telemetry data and modeling by Space X.

(1) Cape Canaveral site:

Point 1	29°02′27″ N	080°13′48″ W
Point 2	28°51′00″ N	080°00′46″ W
Point 3	28°39′32″ N	080°13′48″ W
Point 4	28°51′00″ N	080°26′49″ W
Point 5	29°02′27″ N	080°13′48″ W

(2) Daytona site:

Point 1	29°59′27″ N	080°35′59″ W
Point 2	29°48′00″ N	080°22′51″ W
Point 3	29°36′32″ N	080°35′59″ W
Point 4	29°48′00″ N	080°49′08″ W
Point 5	29°59′27″ N	080°35′59″ W

(3) Jacksonville site:

Point 1	31°06′28″ N	080°15′00″ W
Point 2	30°55′01″ N	080°01′40″ W
Point 3	30°43′30″ N	080°15′00″ W
Point 4	30°55′01″ N	080°28′19″ W
Point 5	31°06′28″ N	080°15′00″ W

(4) Tampa site:

Point 1	28°17′27″ N	083°54′00″ W
Point 2	28°06′00″ N	083°41′02″ W
Point 3	27°54′32″ N	083°54′00″ W
Point 4	28°06′00″ N	084°06′57″ W
Point 5	28°17′27″ N	083°54′00″ W

(5) Tallahassee site:

Point 1	29°22′38″ N	084°05′20″ W
Point 2	29°16′59″ N	083°58′55″ W
Point 3	29°06′20″ N	084°11′12″ W
Point 4	29°22′38″ N	084°05′20″ W

When the safety zones are activated, the COTP or a designated representative will be able to restrict vessel movement including but not limited to transiting, anchoring, or mooring within the safety zone to protect vessels from hazards associated with rocket and capsule recovery missions. Active restrictions are based on mission specific recovery

[1] The Coast Guard defines the exclusive economic zone in 33 CFR 2.30.

exclusion areas provided by Space X and NASA, are temporary in nature, and would only be enacted and enforced at a reasonable time prior to and after a recovery. Since the safety zones fall in the EEZ, only United States flagged vessels are subject to safety zone enforcement. The determination of risk would be at the discretion of the COTP and informed by the mission specific recovery exclusion areas provided by Space X and NASA.

The COTP will inform the public of the activation or status of the safety zones by Local Notice to Mariners and Broadcast Notice to Mariners on VHF–FM channel 16.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and scope of the safety zones. The safety zones are limited in size and location to only those areas where capsule re-entry is reasonably expected to occur. Of the five safety zones, only one may will be activated for approximately two hours and only at a reasonable time prior to re-entry, then deactivated once the area is no longer hazardous. The safety zones are limited in scope, as vessel traffic will be able to safely transit around the safety zones which will impact a small part of the United States exclusive economic zone (EEZ) within the Atlantic Ocean and Gulf of Mexico.

B. Impact on Small Entities

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

The total time of the safety zone activation and thus restriction to the public is expected to be approximately two hours per capsule recovery, of which two instances are projected during prior to the expiration of this rule. Vessels would be able to transit around the activated safety zone location during these recoveries. We do not anticipate any significant economic impact resulting from activation of the safety zones.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishing of five temporary safety zones, one of which may be activated on two occasions for approximately two hours between April 17, 2022 and May 15, 2022 for a Space X and NASA mission. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T07–0233 to read as follows:

§ 165.T07–0233 Safety Zones; Cape Canaveral, Daytona, Tampa, Jacksonville, and Tallahassee, Florida.

(a) *Location.* The following areas are safety zones:

(1) *Cape Canaveral site.* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, thence to Point 3, thence to Point 4, connecting back to Point 5:

Point 1	29°02′27″ N	080°13′48″ W
Point 2	28°51′00″ N	080°00′46″ W
Point 3	28°39′32″ N	080°13′48″ W
Point 4	28°51′00″ N	080°26′49″ W
Point 5	29°02′27″ N	080°13′48″ W

(2) *Daytona site.* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, thence to Point 3, thence to Point 4, connecting back to Point 5:

Point 1	29°59′27″ N	080°35′59″ W
Point 2	29°48′00″ N	080°22′51″ W
Point 3	29°36′32″ N	080°35′59″ W
Point 4	29°48′00″ N	080°49′08″ W
Point 5	29°59′27″ N	080°35′59″ W

(3) *Jacksonville site.* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, thence to Point 3, thence to Point 4, connecting back to Point 5:

Point 1	31°06′28″ N	080°15′00″ W
Point 2	30°55′01″ N	080°01′40″ W
Point 3	30°43′30″ N	080°15′00″ W
Point 4	30°55′01″ N	080°28′19″ W
Point 5	31°06′28″ N	080°15′00″ W

(4) *Tampa site.* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, thence to Point 3, thence to Point 4, connecting back to Point 5:

Point 1	28°17′27″ N	083°54′00″ W
Point 2	28°06′00″ N	083°41′02″ W
Point 3	27°54′32″ N	083°54′00″ W
Point 4	28°06′00″ N	084°06′57″ W
Point 5	28°17′27″ N	083°54′00″ W

(5) *Tallahassee site.* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, thence to Point 3, connecting back to Point 4:

Point 1	29°22′38″ N	084°05′20″ W
Point 2	29°16′59″ N	083°58′55″ W
Point 3	29°06′20″ N	084°11′12″ W
Point 4	29°22′38″ N	084°05′20″ W

(b) *Definitions.* As used in this section—

Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, Coast Guard Representatives in the Merrill Operations Center, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Jacksonville and COTP St. Petersburg in the enforcement of the safety zones.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) The COTP Jacksonville and COTP St. Petersburg or a designated representative may restrict vessel movement including but not limited to transiting, anchoring, or mooring within these safety zones to protect vessels from hazards associated with rocket recoveries. These restrictions are temporary in nature and will only be enacted and enforced prior to and just after the recovery missions.

(3) Due to the safety zones falling within the United States exclusive economic zone, only United States flagged vessels are subject to safety zone enforcement. Other vessels are encouraged to remain outside the safety zone.

(4) Activation of a safety zone will be based on the risk assessment of the COTP Jacksonville and COTP St. Petersburg and informed by the mission specific recovery exclusion areas provided by the Space Exploration Technologies Corporation and the National Aeronautics and Space Administration to account for the specific risks posed by individual recoveries.

(d) *Enforcement periods.* This rule will be enforced from a reasonable time before a recovery mission and deactivated once the area is no longer hazardous between April 17, 2022 and May 15, 2022. The COTP will inform the public of which safety zone will be activated by Broadcast Notice to Mariners on VHF–FM channel 16.

Dated: April 12, 2022.

Brendan C. McPherson,

Rear Admiral Commander, Seventh Coast Guard District.

[FR Doc. 2022–08425 Filed 4–18–22; 11:15 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–0270]

Safety Zones; Annual Events in the Captain of the Port Buffalo Zone—Cleveland National Air Show

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Cleveland National Airshow from September 1 through September 5, 2022, to provide for the safety of life and property on navigable waters during this event. Our regulation for annual events in the Captain of the Port Buffalo Zone identifies the regulated area for this event in Cleveland, OH. During the enforcement period, no person or vessel may enter the safety zone without the permission of the Captain of the Port Buffalo.

DATES: The regulations in 33 CFR 165.939 will be enforced for the Cleveland National Airshow safety zone listed in item d.2 in the Table to § 165.939 from 9 a.m. through 6 p.m., each day from September 1, 2022 through September 5, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LT Jared Stevens, Waterways Management Division, Marine Safety Unit Cleveland, U.S. Coast Guard; telephone 216–937–0124, email *D09-SMB-MSUCLEVELAND-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone listed in 33 CFR 165.939 for the Cleveland National Airshow daily from 9 a.m. through 6 p.m. on September 1 through September 5, 2022. This action is being taken to provide for the safety of life on

navigable waterways during this multi-day event. Our regulation for annual events in the Captain of the Port Buffalo Zone identifies the regulated area for the Cleveland National Airshow which encompasses all U.S. waters of Lake Erie and Cleveland Harbor (near Burke Lakefront Airport) from 41°30′20″ N and 081°42′20″ W to 41°30′50″ N and 081°42′49″ W, to 41°32′09″ N and 081°39′49″ W, to 41°31′53″ N and 081°39′24″ W.

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within the safety zone during the enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or her designated representative. Those seeking permission to enter the safety zone may request permission from the Captain of Port Buffalo via VHF Channel 16. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Buffalo or her designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: April 12, 2022.

L.M. Littlejohn,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2022–08432 Filed 4–19–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. 0279]

Safety Zones; Annual Events in the Captain of the Port Buffalo Zone—Lake Erie Open Water Swim

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Lake Erie Open Water Swim. Our regulation for annual events in the Captain of the Port Buffalo Zone identifies the regulated area for this event in Cleveland, OH. This action is necessary and intended for the safety of life and property on navigable waters during the event. During the enforcement period, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Buffalo.

DATES: The regulations listed in 33 CFR 165.939 will be enforced for the Lake Erie Open Water Swim safety zone as listed in item b.12 in the Table to § 165.939 from 6:45 a.m. through 11:15 a.m. on July 9, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Jared Stevens, Waterways Management Division, Marine Safety Unit Cleveland, U.S. Coast Guard; telephone 216–937–0124, email *D09-SMB-MSUCLEVELAND-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone listed in 33 CFR 165.939 item b.12 in Table 1 for the Lake Erie Open Water Swim from 6:45 a.m. through 11:15 a.m. on July 9, 2022. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for annual events in the Captain of the Port Buffalo zone, § 165.939, specifies the location of the safety zone for the Lake Erie Open Water Swim as all U.S. waters of Lake Erie, south of a line drawn between positions 41°29′30″ N, 081°44′21″ W and 41°29′21″ N, 081°45′04″ W to the shore. During the enforcement period, as reflected in § 165.23, entry into, transiting, or anchoring within the safety zone during an enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or a designated representative. Those seeking permission to enter the safety zone may request permission from the Captain of Port Buffalo via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Buffalo or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Buffalo determines that the safety zone need not be enforced for the full duration stated in this notice, they may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone.

Dated: April 11, 2022.

L.M. Littlejohn,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2022–08428 Filed 4–19–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0277]

RIN 1625–AA00

Safety Zone; Ohio River, Cincinnati, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Ohio River, extending the entire width of the river, between mile marker (MM) 469.0–470.0. This safety zone is necessary to provide for the safety of life on these navigable waters near Cincinnati, Ohio for a private fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

DATES: This rule is effective on May 7, 2022 from 9:30 p.m. through 10 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0277 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Thomas Harp, Marine Safety Detachment Cincinnati, U.S. Coast Guard; telephone 513–921–9033, email *Thomas.L.Harp@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to

authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this regulation by May 7, 2022 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is necessary to protect persons and property from the dangers associated with the event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the private fireworks display, occurring on May 7, 2022 from 9:30 p.m. until 10pm, will be a safety concern for all navigable waters on the Ohio River, extending the entire width of the river, between mile markers (MM) 469.0–470.0. The purpose of this rule is to ensure the safety of life and vessels on these navigable waters before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a safety zone from 9:30 p.m. until 10 p.m. on May 7, 2022 on all navigable waters of the Ohio River, extending the entire width of the river, between MM 469.0 and 470.0. Transit into and through this area is prohibited during periods of enforcement on this date and time. The periods of enforcement will be prior to, during, and 30 minutes after any vessel movement and during the fireowrks display. The Coast Guard was informed that the event will take place from 9:30 p.m. until 10 p.m. Enforcement of the regulated area will occur during the fireworks display. The duration of the temporary safety zone is intended to ensure the safety of life and vessels on these navigable waters before, during, and after the scheduled event. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of Sector Ohio Valley. They may be contacted on VHF–FM Channel 16 or by telephone at 1–800–253–7465. Persons and vessels permitted to enter this regulated area must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. This safety zone will be in place between Mile Markers (MM) 469.0 and 470.0 Ohio River on May 7, 2022 from 9:30 p.m. until 10 p.m. The Coast Guard will issue written Local Notice to Mariners and Broadcast Notice to Mariners via VHF–FM marine channel 16 about the temporary safety zone, and this rule also allows vessels to seek permission from the COTP or a designated representative to enter the area.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone lasting thirty minutes that prohibits entry on all navigable waters of the Ohio River between MM 469.0 and 470.0. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0277 to read as follows:

§ 165.T08–0277 Safety Zone, Ohio River, Cincinnati, OH.

(a) *Location.* All navigable waters of the Ohio River between MM 469.0 and 470.0 Cincinnati, OH.

(b) *Period of enforcement.* This section will be enforced on May 7, 2022 from 9:30 p.m. until 10 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative, Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM radio channel 16 or phone at 1–800–253–7465.

(2) Persons and vessel permitted to deviate from this safety zone regulation and enter the restricted are must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through Local Notice to Mariners and Broadcast Notice to Mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule.

Dated: April 14, 2022.

A.M. Beach,

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

[FR Doc. 2022–08433 Filed 4–19–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0661]

RIN 1625–AA11

Regulated Navigation Area; Offshore, Cape Canaveral, Florida

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a regulated navigation area (RNA) for rocket launch vehicles originating from Cape Canaveral, FL. The RNA will encompass all waters within typical rocket flight trajectories originating from launch complexes on or around Cape Canaveral, FL, and out to 12 nautical miles. The RNA is necessary to ensure the safety of vessels, mariners and navigable waters during scheduled rocket launch vehicle operations. An notice of proposed rulemaking (NPRM) and supplemental notice of proposed rulemaking (SNPRM) were conducted to allow for public comment on the rule. The SNPRM considered the comments from the NPRM, and made several minor revisions, which included revisions that expanded the list of RNA exclusion zones.

DATES: This rule is effective May 20, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0661 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Stephanie Miranda, District 7 Waterways Division (dpw), U.S. Coast Guard; telephone (305) 415–6748, email *Stephanie.L.Miranda@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
SNPRM Supplemental notice of proposed rulemaking
§ Section
U.S.C. United States Code
MOC Merril Operations Center
SLD 45 U.S. Space Launch Delta 45
COTP Captain of the Port
WGS 1984 World Geodetic System 1984

II. Background Information and Regulatory History

On September 17, 2021, the Coast Guard published a notice of proposed rulemaking entitled ''Regulated Navigation Area; Offshore, Cape Canaveral, Florida'' in the **Federal Register** (86 FR 51845) in order to replace the existing safety zone in 33 CFR 165.775 with a regulated navigation area (RNA). During the comment period on the NPRM that ended on October 18, 2021, we received three comments.

On January 7, 2022, the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM) in the **Federal Register** (87 FR 916). Section III of the SNPRM provides a summary of the comments and the Coast Guard's

responses to those comments. The SNPRM revised the regulatory text from the original NPRM to expand the list of RNA exclusionary zones to include additional missions which are expected to be conducted. The SNPRM also included the Captain of the Port's (COTP) consideration of analysis from U.S. Space Launch Delta 45 (SLD 45) when activating an RNA exclusionary zone. No other changes were made in the SNPRM. The comment period on the SNPRM closed on March 16, 2022. No comments were submitted on the SNPRM.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Seventh District Commander and the Captain of the Port Jacksonville have determined that potential hazards associated with rocket launches from Cape Canaveral, FL, display a safety concern for anyone within the perimeter of the RNA exclusionary zones. The RNA will only be activated a reasonable time before a launch and deactivated once the area is no longer hazardous. The purpose of this rule is to ensure safety of vessels, mariners, and the navigable waters in the RNA before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

We received no comments on our SNPRM published January 7, 2022. In the final rule, the Coast Guard is making one change. The Coast Guard is revising § 165.775(b) ''Definitions'' to clarify that the Coast Guard representative in the Merril Operations Center (MOC) is a designated representative of the COTP.

The final rule establishes an RNA in the following areas: All waters offshore Cape Canaveral from surface to bottom, encompassed by a line connecting the following points beginning with Point 1 at 28°48′54″ N, 80°28′40″ W; thence southwest to Point 2 at 28°43′20″ N, 80°41′00″ W; thence south along the shoreline to Point 3 at 28°25′18″ N, 80°34′43″ W; thence continuing south offshore to Point 4 at 28°11′00″ N, 80°29′00″ W; thence east to Point 5 at 28°10′00″ N, 80°21′13″ W; thence north along the 12 nautical mile line back to Point 1. Coordinates are in the World Geodetic System 1984 (WGS 1984). These coordinates are based on the furthest north and south trajectories of typical rocket launch vehicles originating from Cape Canaveral. In addition, there are five launch hazard areas in which the majority of rocket launches will fall and are meant to alert mariners to the general areas in which launches will occur. We list the coordinates and locations of the five launch hazard areas in the regulatory text of this RNA.

When the RNA is deemed activated, the COTP or a designated representative will be able to restrict vessel movement including but not limited to transiting, anchoring, or mooring within this RNA to protect vessels from hazards associated with rocket launches. Active restrictions are based on mission specific launch exclusion areas provided by the SLD 45, are temporary in nature, and would only be enacted and enforced prior to and just after a launch. The COTP would be able to activate any single area, a combination of areas, or establish areas within the RNA boundary area as warranted by specific risks posed by individual launches. The determination of risk would be at the discretion of the COTP and informed by the mission specific launch exclusion areas provided by SLD 45.

The COTP will inform the public of the activation or status of the RNA and specific exclusion areas, by Broadcast Notice to Mariners on VHF–FM channel 16, Public Notice of Enforcement, on-scene presence, and by the display of a yellow ball from a 90-foot pole near the shoreline.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

The RNA will operate in a similar way to the existing safety zone, but will reduce the size of exclusionary areas for each specific rocket launch. We expect the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. The RNA will only be activated a reasonable time before a launch and deactivated once the area is no longer hazardous.

B. Impact on Small Entities

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

The total time of the RNA activation and thus restriction to the public is expected to be approximately one hour per launch. Vessels would be able to transit around the activated RNA locations during these launches. We do not anticipate any significant economic impact resulting from activation of the RNA.

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 rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

This rule will not call for a new collection of information under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the activation of a RNA with smaller exclusionary zones. The activation of the RNA is expected to be an hour total per occurrence. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Revise § 165.775 to read as follows:

§ 165.775 Regulated Navigation Area; Launch Area Offshore Cape Canaveral, FL.

(a) *Location.* (1) The following area is a regulated navigation area (RNA): All waters offshore Cape Canaveral from surface to bottom, encompassed by a line connecting the following points beginning with Point 1 at 28°48′54″ N, 80°28′40″ W; thence southwest to Point 2 at 28°43′20″ N, 80°41′00″ W; thence south along the shoreline to Point 3 at 28°25′18″ N, 80°34′43″ W; thence continuing south offshore to Point 4 at 28°11′00″ N, 80°29′00″ W; thence east to Point 5 at 28°10′00″ N, 80°21′13″ W; thence north along the 12 nautical mile line back to Point 1. Coordinates are in World Geodetic System (WGS) 1984. These coordinates are based on the furthest north and south trajectories of typical rocket launch vehicles originating from Cape Canaveral.

(2) Restrictions may be enforced anywhere within the boundaries of the RNA. Restrictions will be based on the risk assessment of the Captain of the Port Jacksonville and informed by the mission specific launch exclusion areas provided by U.S. Space Launch Delta 45 (SLD 45). There are five launch hazard areas that cover rocket launches. Launch hazard areas include all navigable waters within the following coordinates, encompassed by a line starting at Point 1 connecting the following points:

(i) *Northeast Launch Hazard Area.*

TABLE 1 TO PARAGRAPH (a)(2)(i)

Point 1	28°47′47″ N	080°27′48″ W
Point 2	28°42′18″ N	080°34′55″ W
Point 3	28°39′13″ N	080°37′49″ W
Point 4	28°32′29″ N	080°33′53″ W
Point 5	28°34′00″ N	080°29′00″ W
Point 6	28°39′43″ N	080°21′57″ W

(ii) *East Northeast Launch Hazard Area.*

TABLE 2 TO PARAGRAPH (a)(2)(ii)

Point 1	28°43′53″ N	080°24′50″ W
Point 2	28°36′10″ N	080°35′20″ W
Point 3	28°31′46″ N	080°33′40″ W
Point 4	28°34′42″ N	080°28′40″ W
Point 5	28°40′45″ N	080°22′28″ W

(iii) *Large East Launch Hazard Area.*

TABLE 3 TO PARAGRAPH (a)(2)(iii)

Point 1	28°40′32″ N	080°22′21″ W
Point 2	28°39′14″ N	080°37′48″ W
Point 3	28°27′00″ N	080°31′55″ W
Point 4	28°27′35″ N	080°18′27″ W

(iv) *Small East Launch Hazard Area.*

TABLE 4 TO PARAGRAPH (a)(2)(iv)

Point 1	28°39′42″ N	080°21′56″ W
Point 2	28°39′00″ N	080°31′00″ W
Point 3	28°38′00″ N	080°36′58″ W
Point 4	28°32′00″ N	080°33′45″ W
Point 5	28°31′51″ N	080°20′41″ W

(v) *Southeast Launch Hazard Area.*

TABLE 5 TO PARAGRAPH (a)(2)(v)

Point 1	28°37′00″ N	080°29′00″ W
Point 2	28°35′48″ N	080°34′59″ W
Point 3	28°25′18″ N	080°34′43″ W
Point 4	28°11′00″ N	080°29′00″ W
Point 5	28°10′00″ N	080°21′13″ W
Point 6	28°19′36″ N	080°23′10″ W
Point 7	28°22′11″ N	080°20′17″ W

(b) *Definitions.* The following definition applys to this section:

Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, Coast Guard Representatives in the Merril Operations Center, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Jacksonville in the enforcement of the RNA.

(c) *Regulations.* (1) The COTP Jacksonville or a designated representative may restrict vessel movement including but not limited to

transiting, anchoring, or mooring within this RNA to protect vessels from hazards associated with rocket launches. These restrictions are temporary in nature and will only be enacted and enforced prior to and just after a launch.

(2) The COTP Jacksonville may activate restrictions within any single area, a combination of areas, or establish ad hoc areas within the RNA boundary area. Activation of prescribed or ad hoc Launch Hazard Areas will be based on the risk assessment of the Captain of the Port Jacksonville and informed by the mission specific launch exclusion areas provided by SLD 45 to account for the specific risks posed by individual launches.

(d) *Notice of activation of RNA.* The COTP Jacksonville will inform the public of the activation or status of the RNA and specific exclusion areas, by Broadcast Notice to Mariners on VHF–FM channel 16, Public Notice of Enforcement, on-scene presence, and by the display of a yellow ball from a 90-foot pole near the shoreline at approximately 28°35′00″ N, 080°34′36″ W and from a 90-foot pole near the shoreline at approximately 28°55′18″ N, 080°35′00″ W. Coast Guard assets or other Federal, State, or local law enforcement assets will be clearly identified by lights, markings, or with agency insignia.

(e) *Contact information.* The COTP Jacksonville may be reached by telephone at (904) 564–7513. Any on-scene Coast Guard or designated representative assets may be reached on VHF–FM channel 16.

Dated: April 12, 2022.

Brendan C. McPherson,

Rear Admiral, Commander, Coast Guard Seventh District.

[FR Doc. 2022–08332 Filed 4–19–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Parts 36 and 668

RIN 1801–AA23

Adjustment of Civil Monetary Penalties for Inflation

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Department of Education (Department) issues these final regulations to adjust the Department's civil monetary penalties (CMPs) for inflation. This adjustment is required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act). These final regulations provide the 2022 annual inflation adjustments being made to the penalty amounts in the Department's final regulations published in the **Federal Register** on February 3, 2021 (2021 final rule).

DATES: These regulations are effective April 20, 2022. The adjusted CMPs established by these regulations are applicable only to civil penalties assessed after April 20, 2022 whose associated violations occurred after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Rhondalyn Primes Okoroma, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue SW, Room 6C150, Washington, DC 20202–2241. Telephone: (202) 453–6444. Email: *rhondalyn.okoroma@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

A CMP is defined in the Inflation Adjustment Act (28 U.S.C. 2461 note) as any penalty, fine, or other sanction that is (1) for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; (2) assessed or enforced by an agency pursuant to Federal law; and (3) assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

The Inflation Adjustment Act provides for the regular evaluation of CMPs to ensure that they continue to maintain their deterrent value. The Inflation Adjustment Act required that each agency issue regulations to adjust its CMPs beginning in 1996 and at least every four years thereafter. The Department published its most recent cost adjustment to its CMPs in the **Federal Register** on February 3, 2021 (86 FR 7974), and those adjustments became effective on the date of publication.

The 2015 Act (section 701 of Pub. L. 114–74) amended the Inflation Adjustment Act to improve the effectiveness of CMPs and to maintain their deterrent effect.

The 2015 Act requires agencies to: (1) Adjust the level of CMPs with an initial ''catch-up'' adjustment through an interim final rule (IFR); and (2) make subsequent annual adjustments for inflation. Catch-up adjustments are based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the year the penalty was last adjusted by a statute other than the Inflation Adjustment Act, and the October 2015 CPI–U. Annual inflation adjustments are based on the percentage change between the October CPI–U preceding the date of each statutory adjustment, and the prior year's October CPI–U.[1] The Department published an IFR with the initial ''catch-up'' penalty adjustment amounts on August 1, 2016 (81 FR 50321).

In these final regulations, based on the CPI–U for the month of October 2021, not seasonally adjusted, we are annually adjusting each CMP amount by a multiplier for 2022 of 1.06222, as directed by the Office of Management and Budget (OMB) Memorandum No. M–22–07 issued on December 15, 2021.

The Department's Civil Monetary Penalties

The following analysis calculates new CMPs for penalty statutes in the order in which they appear in 34 CFR 36.2. The penalty amounts are being adjusted up based on the multiplier of 1.06222 provided in OMB Memorandum No. M–22–07.

Statute: 20 U.S.C. 1015(c)(5).

Current Regulations: The CMP for 20 U.S.C. 1015(c)(5) (Section 131(c)(5) of the Higher Education Act of 1965, as amended (HEA)), as last set out in statute in 1998 (Pub. L. 105–244, title I, section 101(a), October 7, 1998, 112 Stat. 1602), is a fine of up to $25,000 for failure by an institution of higher education (IHE) to provide information on the cost of higher education to the Commissioner of Education Statistics. In the 2021 final rule, we increased this amount to $39,693.

New Regulations: The new penalty for this section is $42,163.

Reason: Using the multiplier of 1.06222 from OMB Memorandum No. M–22–07, the new penalty is calculated as follows: $39,693 × 1.06222 = $42,162.69, which makes the adjusted penalty $42,163, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1022d(a)(3).

Current Regulations: The CMP for 20 U.S.C. 1022d(a)(3) (Section 205(a)(3) of the HEA), as last set out in statute in 2008 (Pub. L. 110–315, title II, section 201(2), August 14, 2008, 122 Stat. 3147), is a fine of up to $27,500 for failure by an IHE to provide information to the State and the public regarding its

[1] If a statute that created a penalty is amended to change the penalty amount, the Department does not adjust the penalty in the year following the adjustment.

teacher-preparation programs. In the 2021 final rule, we increased this amount to $33,062.

New Regulations: The new penalty for this section is $35,119.

Reason: Using the multiplier of 1.06222 from OMB Memorandum No. M–22–07, the new penalty is calculated as follows: $33,062 × 1.06222 = $35,119.11, which makes the adjusted penalty $35,119, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1082(g).

Current Regulations: The CMP for 20 U.S.C. 1082(g) (Section 432(g) of the HEA), as last set out in statute in 1986 (Pub. L. 99–498, title IV, section 402(a), October 17, 1986, 100 Stat. 1401), is a fine of up to $25,000 for violations by lenders and guaranty agencies of Title IV of the HEA, which authorizes the Federal Family Education Loan Program. In the 2021 final rule, we increased this amount to $59,017.

New Regulations: The new penalty for this section is $62,689.

Reason: Using the multiplier of 1.06222 from OMB Memorandum No. M–22–07, the new penalty is calculated as follows: $59,017 × 1.06222 = $62,689.03, which makes the adjusted penalty $62,689, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1094(c)(3)(B).

Current Regulations: The CMP for 20 U.S.C. 1094(c)(3)(B) (Section 487(c)(3)(B) of the HEA), as set out in statute in 1986 (Pub. L. 99–498, title IV, section 407(a), October 17, 1986, 100 Stat. 1488), is a fine of up to $25,000 for an IHE's violation of Title IV of the HEA or its implementing regulations. Title IV authorizes various programs of student financial assistance. In the 2021 final rule, we increased this amount to $59,017.

New Regulations: The new penalty for this section is $62,689.

Reason: Using the multiplier of 1.06222 from OMB Memorandum No. M–22–07, the new penalty is calculated as follows: $59,017 × 1.06222 = $62,689.03, which makes the adjusted penalty $62,689, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1228c(c)(2)(E).

Current Regulations: The CMP for 20 U.S.C. 1228c(c)(2)(E) (Section 429 of the General Education Provisions Act), as set out in statute in 1994 (Pub. L. 103–382, title II, section 238, October 20, 1994, 108 Stat. 3918), is a fine of up to $1,000 for an educational organization's failure to disclose certain information to minor students and their parents. In the 2021 final rule, we increased this amount to $1,742.

New Regulations: The new penalty for this section is $1,850.

Reason: Using the multiplier of 1.06222 from OMB Memorandum No. M–22–07, the new penalty is calculated as follows: $1,742 × 1.06222 = $1,850.38, which makes the adjusted penalty $1,850, when rounded to the nearest dollar.

Statute: 31 U.S.C. 1352(c)(1) and (c)(2)(A).

Current Regulations: The CMPs for 31 U.S.C. 1352(c)(1) and (c)(2)(A), as set out in statute in 1989 (Pub. L. 101–121, title III, section 319(a)(1), October 23, 1989, 103 Stat. 750), are a fine of $10,000 to $100,000 for recipients of Government grants, contracts, etc. that improperly lobby Congress or the Executive Branch with respect to the award of Government grants and contracts. In the 2021 final rule, we increased these amounts to $20,731 to $207,314.

New Regulations: The new penalties for these sections are $22,021 to $220,213.

Reason: Using the multiplier of 1.06222 from OMB Memorandum No. M–22–07, the new minimum penalty is calculated as follows: $20,731 × 1.06222 = $22,020.88, which makes the adjusted penalty $22,021, when rounded to the nearest dollar. The new maximum penalty is calculated as follows: $207,314 × 1.06222 = $220,213.07, which makes the adjusted penalty $220,213, when rounded to the nearest dollar.

Statute: 31 U.S.C. 3802(a)(1) and (a)(2).

Current Regulations: The CMPs for 31 U.S.C. 3802(a)(1) and (a)(2), as set out in statute in 1986 (Pub. L. 99–509, title VI, section 6103(a), Oct. 21, 1986, 100 Stat. 1937), are a fine of up to $5,000 for false claims and statements made to the Government. In the 2021 final rule, we increased this amount to $11,803.

New Regulations: The new penalty for this section is $12,537.

Reason: Using the multiplier of 1.06222 from OMB Memorandum No. M–22–07, the new penalty is calculated as follows: $11,803 × 1.06222 = $12,537.38, which makes the adjusted penalty $12,537 when rounded to the nearest dollar.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

We have determined that these final regulations: (1) Exclusively implement the annual adjustment; (2) are consistent with OMB Memorandum No. M–22–07; and (3) have an annual impact of less than $100 million. Therefore, based on OMB Memorandum No. M–22–07, this is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final regulations as required by statute and in accordance with OMB Memorandum No. M–22–07. The Secretary has no discretion to consider alternative approaches as delineated in the Executive order. Based on this analysis and the reasons stated in the preamble, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

Waiver of Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, section 4(b)(2) of the 2015 Act (28 U.S.C. 2461 note) provides that the Secretary can adjust these 2022 penalty amounts notwithstanding the requirements of 5 U.S.C. 553. Therefore, the requirements of 5 U.S.C. 553 for notice and comment and delaying the effective date of a final rule do not apply here.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 601(2), the Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking. The Regulatory Flexibility Act does not apply to this rulemaking because section 4(b)(2) of the 2015 Act (28 U.S.C. 2461 note) provides that the Secretary can adjust these 2021 penalty amounts without publishing a general notice of proposed rulemaking.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

Based on our own review, we have determined that these regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document 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.

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List of Subjects

34 CFR Part 36

Claims, Fraud, Penalties.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Miguel A. Cardona,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 36 and 668 of title 34 of the Code of Federal Regulations as follows:

PART 36—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474; 28 U.S.C. 2461 note, as amended by section 701 of Pub. Law 114–74, unless otherwise noted.

■ 2. Section 36.2 is amended by revising Table I to read as follows:

§ 36.2 Penalty adjustment.

* * * * *

TABLE I—§ 36.2.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

Statute	Description	New maximum (and minimum, if applicable) penalty amount
20 U.S.C. 1015(c)(5) (Section 131(c)(5) of the Higher Education Act of 1965 (HEA)).	Provides for a fine, as set by Congress in 1998, of up to $25,000 for failure by an institution of higher education (IHE) to provide information on the cost of higher education to the Commissioner of Education Statistics.	$42,163
20 U.S.C. 1022d(a)(3) (Section 205(a)(3) of the HEA).	Provides for a fine, as set by Congress in 2008, of up to $27,500 for failure by an IHE to provide information to the State and the public regarding its teacher-preparation programs.	35,119
20 U.S.C. 1082(g) (Section 432(g) of the HEA).	Provides for a civil penalty, as set by Congress in 1986, of up to $25,000 for violations by lenders and guaranty agencies of Title IV of the HEA, which authorizes the Federal Family Education Loan Program.	62,689
20 U.S.C. 1094(c)(3)(B) (Section 487(c)(3)(B) of the HEA).	Provides for a civil penalty, as set by Congress in 1986, of up to $25,000 for an IHE's violation of Title IV of the HEA, which authorizes various programs of student financial assistance.	62,689
20 U.S.C. 1228c(c)(2)(E) (Section 429 of the General Education Provisions Act).	Provides for a civil penalty, as set by Congress in 1994, of up to $1,000 for an educational organization's failure to disclose certain information to minor students and their parents.	1,850

TABLE I—§ 36.2.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

Statute	Description	New maximum (and minimum, if applicable) penalty amount
31 U.S.C. 1352(c)(1) and (c)(2)(A)	Provides for a civil penalty, as set by Congress in 1989, of $10,000 to $100,000 for recipients of Government grants, contracts, etc. that improperly lobby Congress or the Executive Branch with respect to the award of Government grants and contracts.	22,021 to 220,213
31 U.S.C. 3802(a)(1) and (a)(2)	Provides for a civil penalty, as set by Congress in 1986, of up to $5,000 for false claims and statements made to the Government.	12,537

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 3. The general authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070a, 1070g, 1085, 1087b, 1087d, 1087e, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221e–3, and 3474; Pub. L. 111–256, 124 Stat. 2643; unless otherwise noted.

* * * * *

§ 668.84 [Amended]

■ 4. In § 668.84 amend paragraph (a)(1) introductory text by removing the number ''$59,017'' and adding, in its place, the number ''$62,689''.

[FR Doc. 2022–08222 Filed 4–19–22; 8:45 am]

BILLING CODE 4000–01–P

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Parts 1502, 1507, and 1508

[CEQ–2021–0002]

RIN 0331–AA05

National Environmental Policy Act Implementing Regulations Revisions

AGENCY: Council on Environmental Quality.

ACTION: Final rule.

SUMMARY: The Council on Environmental Quality (CEQ) issues this final rule to amend certain provisions of its regulations for implementing the National Environmental Policy Act (NEPA), addressing the purpose and need of a proposed action, agency NEPA procedures for implementing CEQ's NEPA regulations, and the definition of ''effects.'' The amendments generally restore provisions that were in effect for decades before being modified in 2020.

DATES: This rule is effective May 20, 2022.

ADDRESSES: CEQ established a docket for this action under docket number CEQ–2021–0002. All documents in the docket are listed on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy B. Coyle, Deputy General Counsel, 202–395–5750, *Amy.B.Coyle@ceq.eop.gov.*

SUPPLEMENTARY INFORMATION: CEQ is issuing this final rule to amend three provisions of its regulations implementing the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* which are set forth in 40 CFR parts 1500 through 1508 (''NEPA regulations'' or ''CEQ regulations''). First, CEQ is revising 40 CFR 1502.13 on the requirement for a purpose and need statement in an environmental impact statement. The revision clarifies that agencies have discretion to consider a variety of factors when assessing an application for an authorization, removing the requirement that an agency base the purpose and need on the goals of an applicant and the agency's statutory authority. The final rule also makes a conforming edit to the definition of ''reasonable alternatives'' in 40 CFR 1508.1(z). Second, CEQ is revising 40 CFR 1507.3 to remove language that could be construed to limit agencies' flexibility to develop or revise procedures to implement NEPA specific to their programs and functions that may go beyond the CEQ regulatory requirements. Third, CEQ is revising the definition of ''effects'' in paragraph (g) of 40 CFR 1508.1 to include direct, indirect, and cumulative effects. CEQ is making these changes in order to better align the provisions with CEQ's extensive experience implementing NEPA and unique perspective on how NEPA can best inform agency decision making, as well as longstanding Federal agency experience and practice, NEPA's statutory text and purpose to protect and enhance the quality of the human environment, including making decisions informed by science, and case law interpreting NEPA's requirements.

I. Background

A. NEPA Statute

Congress enacted NEPA in 1969 by a unanimous vote in the Senate and a nearly unanimous vote in the House [1] to declare an ambitious and visionary national policy to promote environmental protection for present and future generations. President Nixon signed NEPA into law on January 1, 1970. NEPA seeks to ''encourage productive and enjoyable harmony'' between humans and the environment, recognizing the ''profound impact'' of human activity and the ''critical importance of restoring and maintaining environmental quality'' to the overall welfare of humankind. Furthermore, NEPA seeks to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of people, making it the continuing policy of the Federal Government to use all practicable means and measures to create and maintain conditions under which humans and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of Americans. It also recognizes that each person should have the opportunity to enjoy a healthy environment and has a responsibility to contribute to the preservation and enhancement of the environment. 42 U.S.C. 4321, 4331.

NEPA requires Federal agencies to interpret and administer Federal policies, regulations, and laws in accordance with NEPA's policies and to give appropriate consideration to environmental values in their decision making. To that end, section 102(2)(C) of NEPA requires Federal agencies to prepare ''detailed statements,'' referred to as environmental impact statements (EISs), for ''every recommendation or

[1] *See* Linda Luther, Cong. Rsch. Serv., RL33152, The National Environmental Policy Act: Background and Implementation (2008), *https://crsreports.congress.gov/product/details?prodcode=RL33152.*

report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment'' and, in doing so, provide opportunities for public participation to help inform agency decision making. 42 U.S.C. 4332(2)(C). The EIS process embodies the understanding that informed decisions are better decisions, and that environmental conditions will improve when decision makers understand and consider environmental impacts. The EIS process also serves to enrich the understanding of the ecological systems and natural resources important to the Nation and helps guide sound decision making, including development, in line with the best available science and data. NEPA also established the Council on Environmental Quality (CEQ) in the Executive Office of the President, which advises the President on environmental policy matters and oversees Federal agencies' implementation of NEPA. 42 U.S.C. 4342.

In many respects, NEPA was a statute ahead of its time, and it remains relevant and vital today. It codifies the common-sense and fundamental idea of ''look before you leap'' to guide agency decision making, particularly in complex and consequential areas, because conducting sound environmental analysis before actions are taken reduces conflict and waste in the long run by avoiding unnecessary harms and uninformed decisions. It establishes a framework for agencies to ground decisions in sound science and recognizes that the public may have important ideas and information on how Federal actions can occur in a manner that reduces potential harms and enhances ecological, social, and economic well-being. *See, e.g.,* 42 U.S.C. 4331, 4332(2)(A).

B. Regulatory Implementation of NEPA 1970–2020

In 1970, President Nixon issued Executive Order (E.O.) 11514, *Protection and Enhancement of Environmental Quality,* directing CEQ to issue guidelines for implementation of section 102(2)(C) of NEPA.[2] In response, CEQ issued interim guidelines in April 1970, and revised the guidelines in 1971 and 1973.[3] In 1977, President Carter issued E.O. 11991, *Relating to Protection and Enhancement of Environmental Quality,* amending E.O. 11514 and directing CEQ to issue regulations for implementation of section 102(2)(C) of NEPA and requiring that Federal agencies comply with those regulations.[4] CEQ promulgated its NEPA regulations in 1978.[5] Issued 8 years after NEPA's enactment, the NEPA regulations reflected CEQ's interpretation of the statutory text and Congressional intent, expertise developed through issuing and revising the CEQ guidelines and advising Federal agencies on their implementation of NEPA, initial interpretations of the courts, and Federal agency experience implementing NEPA. The 1978 regulations reflected the fundamental principles of informed and science-based decision making, transparency, and public engagement Congress established in NEPA. They directed Federal agencies to issue and update periodically agency-specific implementing procedures to supplement CEQ's procedures and integrate the NEPA process into the agencies' specific programs and processes. Consistent with 42 U.S.C. 4332(2)(B), the regulations also required agencies to consult with CEQ in the development or update of these agency-specific procedures to ensure consistency with CEQ's regulations.

In 1981, CEQ issued the ''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,'' [6] one of numerous guidance documents CEQ has issued. The ''Forty Questions'' reflected CEQ's contemporaneous interpretation of the 1978 regulations and grew out of meetings CEQ held in ten Federal regions to discuss implementation of the CEQ regulations with Federal, state, and local government officials, which identified common questions. The Forty Questions guidance is the most comprehensive guidance CEQ has issued on the 1978 regulations, addressing a broad set of topics from alternatives to tiering. Since its issuance, CEQ has routinely identified the Forty Questions guidance as an invaluable tool for Federal, state, Tribal, and local governments and officials, and members of the public, who have questions about NEPA implementation. Since 1981, CEQ has issued more than 30 additional guidance documents on a range of topics including efficient and coordinated environmental reviews, mitigation and monitoring, and effects analyses.[7]

CEQ made technical amendments to the 1978 implementing regulations in 1979 [8] and amended one provision in 1986 (referred to collectively as 1978 regulations).[9] Otherwise, the regulations were left unchanged for over 40 years. As a result, CEQ and Federal agencies developed extensive experience implementing the 1978 regulations, and a large body of agency practice and case law developed based on them.

C. 2020 Amendments to the CEQ Regulations

On August 15, 2017, President Trump issued E.O. 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects,*[10] directing, in part, CEQ to establish and lead an interagency working group to identify and propose changes to the NEPA regulations.[11] In response, CEQ issued an advanced notice of proposed rulemaking (ANPRM) on June 20, 2018, requesting comment on potential revisions to ''update and clarify'' the CEQ regulations and including a list of questions on specific aspects of the regulations.[12] CEQ received approximately 12,500 comments.[13]

On January 10, 2020, CEQ published a notice of proposed rulemaking (NPRM) proposing broad revisions to the 1978 NEPA regulations.[14] A wide range of stakeholders submitted more than 1.1 million comments on the proposed rule,[15] including state and local governments, Tribes, environmental advocacy organizations, professional and industry associations, other advocacy or non-profit organizations, businesses, and private citizens. Many commenters provided detailed feedback on the legality, policy wisdom, and potential consequences of the proposed amendments. In keeping with the proposed rule, the final rule, promulgated on July 16, 2020 (''2020 regulations'' or ''2020 rule''), made

[2] 35 FR 4247 (Mar. 7, 1970), sec. 3(h).

[3] *See* 35 FR 7390 (May 12, 1970) (interim guidelines); 36 FR 7724 (Apr. 23, 1971) (final guidelines); 38 FR 10856 (May 2, 1973) (proposed revisions to the guidelines); 38 FR 20550 (Aug. 1, 1973) (revised guidelines).

[4] 42 FR 26967 (May 25, 1977).

[5] 43 FR 55978 (Nov. 23, 1978).

[6] 46 FR 18026 (Mar. 23, 1981) (''Forty Questions''), *https://www.energy.gov/nepa/downloads/forty-most-asked-questions-concerning-ceqs-national-environmental-policy-act.*

[7] *See https://www.energy.gov/nepa/ceq-guidance-documents* for a list of current CEQ guidance documents.

[8] 44 FR 873 (Jan. 3, 1979).

[9] 51 FR 15618 (Apr. 25, 1986) (amending 40 CFR 1502.22).

[10] 82 FR 40463 (Aug. 24, 2017).

[11] *Id.,* sec. 5(e)(iii).

[12] 83 FR 28591 (June 20, 2018).

[13] The comments are available on *www.regulations.gov* under Docket No. CEQ–2018–0001.

[14] 85 FR 1684 (Jan. 10, 2020).

[15] *See* Docket No. CEQ–2019–0003, *https://www.regulations.gov/document/CEQ-2019-0003-0001.*

wholesale revisions to the regulations; it took effect on September 14, 2020.[16]

In the months that followed the issuance of the 2020 regulations, five lawsuits were filed challenging the 2020 rule.[17] These cases challenge the 2020 rule on a variety of grounds, including under the Administrative Procedure Act (APA), NEPA, and the Endangered Species Act, contending that the rule exceeded CEQ's authority and that the related rulemaking process was procedurally and substantively defective. In response to CEQ and joint motions, the district courts have issued temporary stays in each of these cases, except for *Wild Virginia* v. *Council on Environmental Quality,* which the district court dismissed without prejudice on June 21, 2021,[18] and is currently on appeal to the U.S. Court of Appeals for the Fourth Circuit.

D. CEQ's Comprehensive Review of the 2020 Regulations

On January 20, 2021, President Biden issued E.O. 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,*[19] to establish an Administration policy to listen to the science; improve public health and protect our environment; ensure access to clean air and water; limit exposure to dangerous chemicals and pesticides; hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; reduce greenhouse gas emissions; bolster resilience to the impacts of climate change; restore and expand the Nation's treasures and monuments; and prioritize both environmental justice and the creation of well-paying union jobs necessary to achieve these goals.[20] The E.O. calls for Federal agencies to review existing regulations issued between January 20, 2017, and January 20, 2021, for consistency with the policy it articulates and to take appropriate action. The E.O. also revokes E.O. 13807 and directs agencies to promptly take steps to rescind any rules or regulations implementing it. An accompanying White House fact sheet, published on January 20, 2021, specifically directs CEQ to review the 2020 regulations for consistency with E.O. 13990's policy.[21]

On January 27, 2021, the President signed E.O. 14008, *Tackling the Climate Crisis at Home and Abroad,* to establish a government-wide approach to the climate crisis by reducing greenhouse gas emissions and an Administration policy to increase climate resilience, transition to a clean-energy economy, address environmental justice and invest in disadvantaged communities, and spur well-paying union jobs and economic growth.[22] E.O. 14008 also requires the Chair of CEQ and the Director of the Office of Management and Budget (OMB) to ensure that Federal permitting decisions consider the effects of greenhouse gas emissions and climate change.[23]

Consistent with E.O. 13990 and E.O. 14008, CEQ is engaged in a comprehensive review of the 2020 regulations to ensure that they provide for sound and efficient environmental review of Federal actions, including those actions integral to tackling the climate crisis, in a manner that enables meaningful public participation, advances environmental justice, respects Tribal sovereignty, protects our Nation's resources, and promotes better environmental and community outcomes. CEQ is taking a phased approach to its comprehensive review, which includes this Phase 1 rulemaking and a planned, more comprehensive Phase 2 rulemaking. Additionally, as a preliminary matter, CEQ issued an interim final rule on June 29, 2021, amending the requirement in 40 CFR 1507.3(b) for agencies to propose changes to existing agency-specific NEPA procedures by September 14, 2021, to make those procedures consistent with the 2020 regulations.[24] CEQ extended the date by 2 years to avoid agencies proposing changes to agency-specific implementing procedures on a tight deadline to conform to regulations that are undergoing extensive review and will likely change in the near future. CEQ requested comments on the interim final rule and received approximately 20 written submissions; summaries and responses to those comments are included in the response to comments document posted to the docket for this rulemaking.

As a next step in the phased approach, CEQ published a proposed rule [25] for the Phase 1 rulemaking on October 7, 2021. In the Phase 1 proposed rule, CEQ identified a discrete set of provisions that pose significant near-term interpretation or implementation challenges for Federal agencies; would have the most impact to agencies' NEPA processes during the interim period before a ''Phase 2'' rulemaking is complete and make sense to revert to the 1978 regulatory approach. In proposing to revert to language conforming to the approach in the 1978 regulations, the proposed rule addressed issues similar or identical to those the public and Federal agencies recently had the opportunity to consider and comment on during the rulemaking for the 2020 rule.

Publication of the proposed rule initiated a 45-day public comment period that concluded on November 22, 2021. CEQ received approximately 94,458 written comments in response to the proposed rule. Seventy-six comments were shared with CEQ during two virtual public meetings CEQ hosted on the proposed rule on October 19, 2021, and October 21, 2021. In total, CEQ received 94,534 comments on the proposed rule, which CEQ considered in the development of this final rule. A majority of the comments (approximately 93,893) were campaign form letters sent in response to an organized initiative and identical or very similar in form and content. CEQ received approximately 573 unique public comments, of which 362 were substantive comments raising a variety of issues related to the rulemaking approach and contents of the proposed rule. The vast majority of the unique comments expressed some level of support for the proposed rule. Many supportive comments included suggestions for Phase 2 or expressed general support for Phase 1 while also

[16] 85 FR 43304 (July 16, 2020).

[17] *Wild Va.* v. *Council on Env't Quality,* No. 3:20cv45 (W.D. Va. 2020); *Env't Justice Health All.* v. *Council on Env't Quality,* No. 1:20cv06143 (S.D.N.Y. 2020); *Alaska Cmty. Action on Toxics* v. *Council on Env't Quality,* No. 3:20cv5199 (N.D. Cal. 2020); *California* v. *Council on Env't Quality,* No. 3:20cv06057 (N.D. Cal. 2020); *Iowa Citizens for Cmty. Improvement* v. *Council on Env't Quality,* No. 1:20cv02715 (D.D.C. 2020). Additionally, in *The Clinch Coalition* v. *U.S. Forest Service,* No. 2:21cv00003 (W.D. Va. 2020), plaintiffs challenged the U.S. Forest Service's NEPA implementing procedures, which established new categorical exclusions, and, relatedly, the 2020 rule's provisions on categorical exclusions.

[18] *Wild Va.* v. *Council on Env't Quality,* 544 F. Supp.3d 620 (W.D. Va. 2021) (appeal pending).

[19] 86 FR 7037 (Jan. 25, 2021).

[20] *Id.,* sec. 1.

[21] White House Fact Sheet: List of Agency Actions for Review (Jan. 20, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/*.

[22] E.O. 14008, 86 FR 7619 (Feb. 1, 2021). E.O. 14008's direction to advance environmental justice reinforces and reflects the policy established in E.O. 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,* that the Federal Government ''pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.'' 86 FR 7009 (Jan. 20, 2021).

[23] *Id.,* sec. 213(a); *see also* sec. 219 directing agencies to make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities.

[24] 86 FR 34154 (June 29, 2021).

[25] 86 FR 55757 (Oct. 7, 2021).

indicating that the commenters would have preferred for CEQ to have proposed more comprehensive changes in Phase 1. CEQ provides a summary of the comments received on the proposed rule and responses to those comment summaries in the document, ''National Environmental Policy Act Implementing Regulations Revision Phase 1 Response to Comments'' (Phase 1 Response to Comments) and provides below brief summaries of comments and responses related to the provisions in the final rule.

Separately, CEQ is developing a Phase 2 rulemaking to propose comprehensive revisions to the 2020 regulations and intends to issue a second proposed rule for notice and public comment. Both the Phase 1 and Phase 2 rulemakings are intended to ensure that the NEPA process provides for efficient and effective environmental reviews that are guided by science and are consistent with the statute's text and purpose; enhance clarity and certainty for Federal agencies, project proponents, and the public; inform the public about the potential environmental effects of Federal Government actions and enable full and fair public participation; and ultimately promote better informed Federal decisions that protect and enhance the quality of the human environment and advance environmental, climate change mitigation and resilience, and environmental justice objectives.

E. Public Comments on the Phased Approach

CEQ received multiple comments related to the phased approach that it has selected to organize its review of the 2020 regulations. Numerous commenters suggested that CEQ set aside the 2020 regulations entirely and reissue the 1978 regulations to serve as a baseline for consideration of further regulatory reforms. These commenters expressed overall support for the content of the Phase 1 proposed rule, but contended that other provisions in the 2020 regulations also pose near-term challenges and also should be revised to revert to the 1978 text. Some of these commenters expressed the view that a full repeal of the 2020 regulations is needed to prevent conflicts between existing agency NEPA procedures and the CEQ regulations. Some commenters also requested that CEQ reissue the 1978 regulations and not pursue additional revisions. CEQ also received many comments expressing support for the Phase 1 rulemaking and encouraging CEQ to quickly initiate and complete a Phase 2 rulemaking. Some of these commenters also identified additional provisions that the commenters contended Phase 1 should address or provided recommendations for consideration in Phase 2.

Other commenters requested that CEQ pursue one overall rulemaking, rather than a phased approach. These commenters expressed views that one rulemaking has advantages, including enabling stakeholders and the public to understand and comment on the full scope of changes at one time, rather than in two phases. Some of these commenters also expressed concern that the phased approach could result in confusion and inefficiency.

CEQ appreciates the views expressed by commenters on the phased approach and acknowledges that a single rulemaking process would have entailed different tradeoffs and conferred different benefits. However, CEQ considers the phased approach for its review of the 2020 regulations to strike the appropriate balance between the need to act quickly to address critical issues and the need to conduct a thorough review of the 2020 regulations. As explained above, CEQ determined that the phased approach will address important near-term implementation challenges while allowing sufficient time to conduct a thorough review of the 2020 regulations to determine what other changes, including additional reversions to the 1978 regulations and new revisions, may be necessary or appropriate. CEQ decided against proposing a full reversion to the 1978 regulations in Phase 1 to focus time and resources on the most pressing issues and avoid the administrative burdens associated with analyzing each provision in the 2020 regulations, considering whether to revert each provision to the 1978 language and the reasoning for doing so, and responding to comments on the large number of regulatory provisions that would be affected. CEQ is a small agency with limited resources and had concerns about undertaking two large rulemakings—one to revert to the 1978 regulations and a second to propose new updates.

With this final rule, CEQ is concluding Phase 1 and will continue its work on Phase 2. In Phase 2, CEQ will consider the NEPA regulations comprehensively and assess whether to revise additional provisions to revert to the language of the 1978 regulations or to propose other revisions based on its expertise, NEPA's policies and requirements, relevant case law, and feedback from Federal agencies and the public. Further information on the phased approach can be found in the Phase 1 Response to Comments.

III. Summary of and Rationale for Final Rule

This section summarizes and identifies CEQ's rationale for the regulatory changes included in the final rule. This section also briefly summarizes and responds to the comments CEQ received in response to the NPRM. CEQ has provided more detailed summaries and responses in the Phase 1 Response to Comments document,[26] which CEQ incorporates by reference and has made available in the docket for this rulemaking.

Many commenters expressed general support for CEQ's proposal and the general return to the language from the 1978 regulations for the provisions on purpose and need; agency NEPA procedures; and the definition of effects. These commenters stated that the 2020 rule weakened NEPA and that parts of the 2020 regulations were misguided and reflected a bias in favor of project proponents to the possible detriment of environmental values or the public interest. Several of these commenters indicated that the proposed revisions are important for providing clarity, certainty, and consistency.

Commenters who expressed general opposition to the proposed rule were generally supportive of the 2020 regulations. These commenters expressed disappointment about CEQ rescinding portions of the 2020 rule and expressed concerns that the proposed rule would slow down efforts to improve the nation's infrastructure or harm certain economic sectors. Some of these commenters agreed with the goals that CEQ identified as guiding this rulemaking, but stated that the 2020 rule advanced those goals.

CEQ acknowledges that there is both support for and opposition to the changes outlined in the NPRM, and that there are many additional provisions that commenters suggested CEQ should change in either the Phase 1 rulemaking or in future rulemakings. CEQ is considering these comments as it develops its proposed Phase 2 rule.

This Phase 1 final rule is guided by the extensive experience of CEQ and Federal agencies implementing NEPA for the last 50 years. CEQ is charged with overseeing NEPA implementation across the Federal Government and reviews every agency's proposed new or

[26] The National Environmental Policy Act Implementing Regulations Revision Phase 1 Response to Comments is available under ''Supporting & Related Materials'' in the docket on *www.regulations.gov* under docket ID CEQ–2021–0002, available at *https://www.regulations.gov/docket/CEQ-2021-0002/document?documentTypes=Supporting%20%26%20Related%20Material.*

updated NEPA implementing procedures. Through this iterative process, CEQ engages with agencies to understand their specific authorities and programs to ensure they integrate consideration of environmental impacts into their decision-making processes. Additionally, CEQ frequently consults with agencies on the efficacy and effectiveness of NEPA implementation. Where necessary or appropriate, CEQ engages with agencies on NEPA reviews for specific projects or project types to provide advice and identify any emerging or cross-cutting issues that would benefit from CEQ issuing formal guidance or assisting with coordination. For example, CEQ has convened interagency working groups to promote efficient and effective environmental reviews for transportation and broadband projects. CEQ also has extensive experience providing written guidance to Federal agencies on a wide range of NEPA-related issues, including environmental justice, emergency actions, climate change, and more.[27] In addition, CEQ meets regularly with external stakeholders to understand their perspectives on the NEPA process. Finally, CEQ coordinates with other Federal agencies and components of the White House on a wide array of environmental issues, such as endangered species consultation or impacts to Federal lands and waters from federally authorized activities.

CEQ relied on this body of experience and expertise in developing this final rule. As discussed in detail in the following sections, CEQ is generally reverting to the approach in the 1978 regulations for these three provisions with non-substantive changes to the 1978 regulatory text to accommodate the current structure of the CEQ regulations. In doing so, CEQ intends for the Phase 1 final rule provisions to have the same meaning as the corresponding provisions in the regulations in effect from 1978 to September 2020.

A. Purpose and Need (§ 1502.13)

i. Regulatory History and Proposed Changes

The purpose and need section of an EIS identifies the agency's purpose for the proposed action and the need it serves. Developing a statement of the purpose and need is a vital early step in the NEPA process that is foundational to other elements of an EIS. For example, the purpose and need statement informs the range of reasonable alternatives that the agency analyzes and considers.

The 1978 regulations required that each EIS briefly state the underlying purpose and need to which the agency is responding in proposing the alternatives, including the proposed action. 40 CFR 1502.13 (2019). The 2020 regulations modified this requirement by adding specific language to address circumstances in which an agency's ''statutory duty'' is to consider an application for authorization, such as applications for permits or licenses. In those circumstances, the 2020 regulations require agencies to base the purpose and need on the goals of an applicant and the agency's authority. The 2020 rule added conforming language to a new definition of ''reasonable alternatives'' in § 1508.1(z). Specifically, the 2020 regulations define ''reasonable alternatives'' to mean ''a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant.'' [28] In the NPRM for this rulemaking, CEQ proposed to revert to the language of the 1978 regulations in § 1502.13 and make a conforming edit to the definition of ''reasonable alternatives'' in § 1508.1(z) by deleting the reference to the goals of the applicant from the definition.

ii. Summary of NPRM Comments on Purpose and Need

CEQ received comments that both supported and opposed the proposed changes in the NPRM to §§ 1502.13 and 1508.1(z). Some commenters supported the changes in the proposed rule, expressing the view that the changes would result in better decisions because agencies would consider a full range of alternatives and their effects without any arbitrary limitations tied to a project applicant or specific agency authorities. Commenters also expressed the view that the 2020 rule could be interpreted to allow or encourage agencies to prioritize an applicant's goals over the needs and goals of the public or the agency's own goals, and that the proposed rule would remedy these problems. Some commenters also specifically supported the retention of ''technically and economically feasible'' in the definition of ''reasonable alternatives,'' stating this is in alignment with previous CEQ guidance on the 1978 regulations. Many commenters agreed with CEQ's statements in the NPRM that the purpose and need statement should reflect understanding of an agency's statutory authority, the public interest, and an applicant's goals but that these should be framed in the context of the general goal of an action and not through an evaluation of whether an applicant can reach its specific goals. Some comments also indicated that the reference to agency authority is redundant and supported the proposed removal of this reference to avoid unnecessary confusion.

Other commenters opposed the proposed changes to §§ 1502.13 and 1508.1(z), contending that the language adopted in the 2020 rule provides clarity that agencies must base the purpose and need on the applicant's goals and agency's statutory authority. Commenters also expressed the view that the 1978 regulation resulted in some Federal agencies prioritizing agency goals over the goals of the applicant, and therefore, that the proposed rule would have the same effect. They further argued that analyses considering alternatives that do not meet an applicant's goals or that cannot be implemented by the applicant or agency are wasteful of both the applicant's and the agency's resources. Commenters also expressed the view that the proposed changes to purpose and need are not required by NEPA. For example, some commenters stated that there is no requirement to consider the public interest when developing a purpose and need statement for a non-Federal project. These commenters also objected to CEQ's statements in the NPRM that the 2020 regulations could be interpreted to require that an applicant's goals be the sole or primary factor for articulating purpose and need. These commenters contended that the 2020 rule's requirement that agencies consider alternatives that the applicant is capable of implementing does not foreclose consideration of potential environmental impacts or public interests. Further, these commenters stated that basing alternatives on the needs of an applicant does not unreasonably narrow the range of alternatives that an agency must consider because agencies still must consider the ''no action alternative'' and other reasonable alternatives that align with the goals of the applicant. Some commenters who supported retaining the reference to agency statutory

[27] *See https://www.energy.gov/nepa/ceq-guidance-documents* for a list of current CEQ guidance documents.

[28] As noted in the 2020 rule, the definition of ''reasonable alternatives'' was based in part on CEQ's longstanding guidance, the ''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,'' 46 FR 18026 (Mar. 23, 1981), as amended, 1986, *https://www.energy.gov/sites/default/files/2018/06/f53/G-CEQ-40Questions.pdf.* Specifically, the guidance states in response to Question 2A, ''Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.''

authority agreed with CEQ that the language is confusing, but contended that CEQ should clarify it and that deleting the reference also will create confusion.

The inconsistent interpretations of the language in 40 CFR 1502.13 (2020) expressed by commenters to the NPRM, as well as commenters on the 2020 rule, demonstrate the ambiguity of the language and underscore the need for clarification. Some commenters read the language in the 2020 rule to make the applicant's goals and the agency's statutory authority the sole factors an agency can consider in formulating a purpose and need statement when considering an application for authorization. Other commenters read the language as allowing agencies to consider other, unenumerated factors. These comments demonstrate the ambiguity of the 2020 text, which CEQ is clarifying in this final rule.

CEQ specifically requested comment on the potential effects of the proposed changes to §§ 1502.13 and 1501.8(z) to the environmental review process, including timeframes for environmental review. In response, some commenters indicated they do not believe the proposed changes will affect the average timeline for the environmental review process. Other commenters stated that CEQ's proposed revisions to purpose and need will lead to unnecessarily time-consuming and costly expansions of the consideration of alternatives by agencies with little focus on the project's stated purpose. Some commenters expressed concern that the change to purpose and need would result in additional EISs as opposed to more efficient environmental assessments. CEQ did not receive any specific data or evidence from commenters that would address whether or not the proposed change would have an effect on the environmental review process, including timelines.

iii. Rationale for Final Rule

In the final rule, CEQ makes the changes as proposed. Specifically, the final rule amends the first sentence in § 1502.13 to require an EIS to state the purpose and need to which the agency is responding in proposing alternatives, including the proposed action. The rule removes the second sentence requiring agencies base the purpose and need on the goals of the applicant and the agency's authority when the agency is reviewing an application for authorization. Finally, the final rule removes the reference to the goals of the applicant from the definition of ''reasonable alternatives'' in § 1508.1(z).

CEQ makes these changes to address the ambiguity created by the 2020 rule language and ensure agencies have the flexibility to consider a variety of factors in developing the purpose and need statement and are not unnecessarily restricted by misconstruing this language to require agencies to prioritize an applicant's goals over other potentially relevant factors, including effectively carrying out the agency's policies and programs or the public interest. While CEQ does not interpret the 2020 rule language to require agencies to prioritize an applicant's goals above or to the exclusion of other relevant factors, CEQ finds that removing the language on applications for authorization and restoring the 1978 regulatory text is appropriate. The language of the 2020 rule could be misconstrued to inappropriately constrain the discretion of agencies in formulating a purpose and need statement, which would be inconsistent with fully informed decision making and sound environmental analysis. And even if interpreted to merely direct agencies to consider the applicant's goals and the agency's statutory authority alongside other relevant factors, CEQ deems it appropriate to strike the text because it is unnecessary and confusing.

Consistent with longstanding practice and to ensure informed decision making, agencies should have discretion to base the purpose and need for their actions on a variety of factors, which include the goals of the applicant, but not to the exclusion of other factors. Agencies have long considered myriad factors in developing a purpose and need statement. These include the agency's mission and the specifics of the agency decision, including statutory and regulatory requirements. Factors also may include national, agency, or other policy objectives applicable to a proposed action, such as a discretionary grant program targeted to achieve certain policy goals; desired conditions on the landscape or other environmental outcomes; local needs; and an applicant's goals. Additionally, when considering a project sponsored by an outside party, there may be actions by multiple Federal agencies for which the lead agency, in consultation with cooperating agencies, will need to craft the purpose and need statement in a manner to address all of the Federal agency actions (*e.g.,* funding and permits) covered by the NEPA document.

Finally, the goals of the applicant are an important, but not determinative, factor in developing a purpose and need statement for a variety of reasons, including helping to identify reasonable alternatives that are technically and economically feasible. Both the development of purpose and need statements and the identification of alternatives are governed by a rule of reason; the range of alternatives should be reasonable, practical, and not boundless. This approach is consistent with CEQ's longstanding position as set forth in the Forty Questions issued shortly after the promulgation of the 1978 regulations, where CEQ acknowledged that agencies must consider practicality and feasibility, without relying solely on the applicant's preference for identifying what alternatives are reasonable.[29] Additionally, removing this language does not foreclose an agency from considering the goals of the applicant.

The final rule also removes the reference to the agency's statutory authority from § 1502.13 because it is confusing and unnecessary. Federal agency discussions with CEQ and public comments, as reflected in both the 2020 Rule Response to Comments and the Phase 1 Response to Comments, demonstrate that some interpret this language to limit agencies' discretion in developing the purpose and need statement. The implication that an agency's authority is only relevant when the proposed action is for an authorization, such as a permit or license, is incorrect because an agency's statutory authority for its action is always a relevant consideration for developing a purpose and need statement irrespective of whether the proposed action is an authorization. The 2020 rule's addition of the text also is confusing because it suggested that a change in practice was intended. In fact, agencies have always considered their statutory authority and the scope of the agency decision when developing purpose and need statements. In CEQ's experience implementing the 1978 regulations, there has been little or no confusion among the agencies regarding these issues; therefore, the additional language is unnecessary. Furthermore,

[29] *See* Forty Questions, 2A, *supra* note 28 (''In determining the scope of alternatives to be considered, the emphasis is on what is 'reasonable' rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.''). *See also Simmons* v. *U.S. Army Corps of Engineers,* 120 F.3d 664, 669 (7th Cir. 1997) (''An agency cannot restrict its analysis to those 'alternative means by which a particular applicant can reach his goals'. . . . The Corps has the 'duty under NEPA to exercise a degree of skepticism in dealing with self-serving statements from a prime beneficiary of the project.' '').

for projects involving multiple agency actions under different statutory authorities, the lead agency should have flexibility in crafting a purpose and need statement to address multiple agency decisions both for efficiency and effective decision making.

CEQ also makes these changes in the final rule because the language added by the 2020 rule may be interpreted in a manner that does not lay the appropriate groundwork for environmentally sound decision making when an agency considers a request for an authorization or reflect the best reading of the NEPA statute or case law. A properly drafted purpose and need statement should lead to consideration of the reasonable alternatives to the proposed action, consistent with NEPA's requirements. *See* 42 U.S.C. 4332(2)(C), 4332(2)(E). CEQ disagrees with commenters assertions that consideration of alternatives that do not meet an applicant's goals or cannot be implemented by the applicant will always waste applicant or agency resources or result in delays. There may be times when an agency identifies a reasonable range of alternatives that includes alternatives—other than the no action alternative—that are beyond the goals of the applicant or outside the agency's jurisdiction because the agency concludes that they are useful for the agency decision maker and the public to make an informed decision. Always tailoring the purpose and need to an applicant's goals when considering a request for an authorization could prevent an agency from considering alternatives that do not meet an applicant's stated goals, but better meet the policies and requirements set forth in NEPA and the agency's statutory authority and goals. The rule of reason continues to guide decision making in such contexts.

CEQ's concern that the 2020 regulation's change to § 1502.13 may be interpreted to unduly constrain the discretion of agencies leading to the development of unreasonably narrow purpose and need statements is consistent with a similar concern raised by the courts in reviewing agencies' purpose and need statements under the 1978 regulations. It is contrary to NEPA for agencies to ''contrive a purpose so slender as to define competing 'reasonable alternatives' out of consideration (and even out of existence).'' *Simmons* v. *U.S. Army Corps of Engineers,* 120 F.3d 664, 666 (7th Cir. 1997) (citing 42 U.S.C. 4332(2)(E)). Constricting the definition of the project's purpose could exclude ''truly'' reasonable alternatives, making an EIS incompatible with NEPA's requirements. *Id. See also, e.g., Nat'l Parks & Conservation Ass'n* v. *Bureau of Land Mgmt.,* 606 F.3d 1058, 1070 (9th Cir. 2010) (''Agencies enjoy 'considerable discretion' to define the purpose and need of a project. However, 'an agency cannot define its objectives in unreasonably narrow terms.''' (internal citations omitted)).

Other court decisions have deferred to agencies' purpose and need statements developed under the 1978 regulation that put weight on multiple factors rather than just an applicant's goals, recognizing those factors as appropriately within the scope of the agency's consideration. *Citizens Against Burlington, Inc.* v. *Busey,* 938 F.2d 190 (D.C. Cir. 1991), which the 2020 final rule relied upon as the justification for language added to the purpose and need provision, is consistent with the language in the 1978 regulations that CEQ is restoring, and, in fact, interpreted and applied that language. In that case, in applying the traditional ''rule of reason,'' the court held that the agency's consideration of the applicant's goals to develop the purpose and need of the action was reasonable. *Id.* at 196–99. However, the court did not require all agencies to make the applicant's goals the sole (or even primary) factor in the formulation of the purpose and need in all factual and legal contexts. *See id.* Returning to the 1978 framework is consistent with case law affirming agency discretion to formulate purpose and need statements based on a variety of relevant factors.

Removing the language regarding an applicant's goals from § 1502.13 does not mean that an agency should consider a boundless set of alternatives. This final rule does not amend language in 40 CFR 1502.14 directing agencies to ''[e]valuate reasonable alternatives to the proposed action,'' and § 1508.1(z), as amended in this final rule, continues to define ''reasonable alternatives'' as ''a reasonable range of alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.'' The principle that the range of alternatives should be reasonably related to the purpose and need is well-settled. *See Westlands Water Dist.* v. *U.S. Dep't of the Interior,* 376 F.3d 853, 868 (9th Cir. 2004); *Process Gas Consumers Grp.* v. *U.S. Dep't of Agric.,* 694 F.2d 728, 769 (D.C. Circ. 1981).

The final rule will reduce confusing and unnecessary text and align the regulations more closely to the purposes underlying NEPA. These changes reaffirm agency discretion to identify and consider the factors relevant to formulating statements of purpose and need in view of the specific circumstances before the agency and the agency's responsibilities, including effectively carrying out agency policies and programs and considering the public interest and the goals of an applicant. CEQ disagrees with the assertions that returning or reaffirming agency discretion to consider multiple factors even where a private applicant is involved will result in significant additional burdens or negatively affect timelines. Agencies have significant experience under the 1978 regulations in considering a variety of factors when crafting purpose and need statements, including an applicant's goals. Furthermore, CEQ did not receive any data, but only general and speculative statements, in response to its specific request for comment on potential effects of the proposed changes to §§ 1502.13 and 1501.8(z) on the environmental review process, including timeframes for environmental review. CEQ notes that it is ultimately for the agency to determine what alternatives are needed to inform its decision making. Exploring and evaluating reasonable alternatives helps decision makers and the public examine other ways to meet the purpose and need of an action, including options with different environmental consequences or mitigation measures, and demonstrate to the public that the agency made an informed decision because it has explored such tradeoffs. CEQ also disagrees with the assertion that the changes to purpose and need in the final rule will directly result in an increase in the number of certain types of environmental review documents like EISs. Development of a purpose and need statement is separate from the assessment of whether a potential effect is significant, and therefore, whether an EIS is required. The changes made in the final rule will ensure agencies can make these determinations based on all relevant factors.

B. Agency NEPA Procedures (§ 1507.3)

i. Regulatory History and Proposed Changes

The 1978 regulations required Federal agencies to develop NEPA procedures through a notice and comment process to integrate NEPA reviews into their decision-making processes. Over the 40–year period that the 1978 regulations were in place, approximately 85 agencies issued procedures to facilitate agency compliance with NEPA.[30]

[30] A list of agency NEPA procedures is available at *https://ceq.doe.gov/laws-regulations/agency_implementing_procedures.html.* No agency has updated its procedures to implement the 2020

Continued

Agencies have taken a wide range of approaches to their agency-specific NEPA procedures. Some have essentially incorporated the CEQ regulations by reference without much additional detail; others have issued procedures that tailor the NEPA process to the contexts in which they operate and integrate NEPA compliance with the agency's other statutory responsibilities or environmental requirements.[31] Consistent with 42 U.S.C. 4332(2)(B) and 40 CFR 1507.3 (2019), agencies consulted with CEQ in developing agency-specific procedures and CEQ determined that the procedures conformed with NEPA and the CEQ regulations before the agencies issued final procedures.

The 2020 rule amended 40 CFR 1507.3 to include ''ceiling provisions'' that made the CEQ regulations the maximum requirements agencies could include in their agency NEPA procedures. In adopting the ceiling provisions, the 2020 rule asserted that the ceiling provisions were intended to eliminate inconsistencies among agency-specific procedures and between agency procedures and the CEQ regulations by requiring that the 2020 regulations apply where existing agency NEPA procedures are inconsistent with the CEQ regulations absent a clear and fundamental conflict with another statutory requirement. The 2020 rule also required agencies to propose new or revised procedures within 12 months to eliminate any inconsistencies and prohibited agencies from imposing procedures or requirements additional to the CEQ regulations unless those additional procedures promote agency efficiency or are required by law.

In the Phase 1 NPRM, CEQ proposed to revise § 1507.3(a) and (b) to delete the ceiling provisions to provide that while agency NEPA procedures need to be consistent with the CEQ regulations, agencies have discretion and flexibility to develop procedures beyond the CEQ regulatory requirements, enabling agencies to address their specific programs, statutory mandates, and the contexts in which they operate. Specifically, the NPRM proposed to remove language from § 1507.3(a) stating that where existing agency NEPA procedures are ''inconsistent'' with the CEQ regulations, the CEQ regulations apply ''unless there is a clear and fundamental conflict with the requirements of another statute.'' The NPRM did not propose to amend the determination made in the 2020 rule in § 1507.3(a) that categorical exclusions established in agency NEPA procedures as of September 14, 2020, are consistent with the CEQ regulations. The NPRM also proposed to remove from § 1507.3(b) the language requiring agencies ''to eliminate any inconsistencies'' with the CEQ regulations and the prohibition on agencies imposing additional procedures or requirements beyond the CEQ regulations unless those additional procedures promoted agency efficiency or were required by law. The NPRM did not propose to further amend the requirement for agencies to propose new or revised NEPA procedures within 36 months, by September 14, 2023, as revised in the interim final rule,[32] as well as the encouragement for major subunits of departments to adopt their own procedures with the consent of the department.

ii. Summary of NPRM Comments on Agency NEPA Procedures

Many commenters supported the proposed changes to § 1507.3, stating that the 2020 ceiling provisions were unnecessary and unhelpful because agencies should have flexibility to add additional requirements or detail to their NEPA procedures tailored to their unique needs and missions. Commenters also noted that the proposed change would assist agencies during the transition period before the completion of a Phase 2 rulemaking because it clarifies that agencies can and should continue to apply their existing NEPA procedures while CEQ finishes its review of the 2020 rule. They noted that without this change, agencies might be in the position of developing agency procedures that either conflict with NEPA or the 2020 regulations. Many commenters stated that the proposal would restore the ability of Federal agencies to develop agency-specific NEPA procedures to implement NEPA to the ''fullest extent possible'' consistent with 42 U.S.C. 4332. Some commenters who supported removing the ceiling provision noted that removing the provision may reduce, but will not eliminate, all of the harms of the 2020 rule because the 2020 rule is not being repealed.

Other commenters opposed the proposed changes to § 1507.3 as unnecessary because the 2020 regulations contain language allowing flexibility for agencies to tailor their NEPA procedures to improve efficiency. Some commenters also suggested that CEQ's proposed changes invite agencies to disregard the 2020 rule. Commenters indicated that the NPRM's proposed changes would result in inconsistencies and conflicts among agencies' NEPA procedures, increased litigation, costs, delays, and paperwork, and impede the Administration's goals. Commenters also requested that CEQ provide additional rationale and examples of agency confusion about the 2020 regulations.

Some commenters suggested additional changes CEQ should consider to § 1507.3, including to develop a framework for CEQ review of agency NEPA procedures to ensure agency discretion is not boundless; require agencies to affirm their procedures were reviewed for consistency by CEQ; and require that Federal agencies make revisions to their procedures only with public notice and comment. While such changes are beyond the scope of this rulemaking, CEQ notes that agencies cannot make changes to their NEPA procedures without consulting with CEQ, providing notice and comment, and receiving a determination from CEQ that the proposed changes are consistent with NEPA and the CEQ regulations. *See* 40 CFR 1507.3(b)(1)–(2). CEQ will consider the ideas included in these comments in the development of its Phase 2 rulemaking.

iii. Rationale for Final Rule

The 2020 final rule did not include a detailed rationale for adoption of the ''ceiling'' provisions, although the 2020 proposed rule stated that they were intended to ''prevent agencies from designing additional procedures that will result in increased costs or delays.'' (85 FR 1693). The 2020 Final Rule Response to Comments document also stated that ''it is important that agencies do not revise their procedures in a way that will impede integration'' with other environmental review requirements or ''otherwise result in heightened costs or delays.'' [33] CEQ also asserted in the 2020 Final Rule Response to Comments that it had the authority to place limits on agency procedures pursuant to 42 U.S.C. 4344(3) and E.O. 11991.[34]

CEQ has reexamined the rationales provided for the 2020 rule and the

regulations and, as discussed above, CEQ promulgated an interim final rule to extend the deadline for agencies to propose updates.

[31] *Compare* the U.S. Department of Agriculture's procedures, 7 CFR part 1b, *with* NOAA Administrative Order 216–6A and Companion Manual, *https://www.noaa.gov/nepa.*

[32] As noted in part I of the preamble, CEQ revised this time period from 12 months to 36 months in its interim final rule. *See* 86 FR 34154 (June 29, 2021).

[33] CEQ, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act Final Rule Response to Comments, p. 436 (June 30, 2020), *https://www.regulations.gov/document/CEQ-2019-0003-720629.*

[34] *Id.*

comments received on the Phase 1 NPRM and determined that finalizing the changes as proposed in the Phase 1 NPRM is appropriate. Doing so clarifies that agencies can and should continue to apply their existing NEPA procedures, consistent with the CEQ regulations in effect, while CEQ completes its review of and revisions to the 2020 regulations in its Phase 2 rulemaking. The final rule makes clear that agencies have this discretion by removing the ceiling provisions. The removal of the ceiling provisions allows agencies to exercise their discretion to develop and implement procedures beyond the CEQ regulatory requirements; however, agency procedures cannot conflict with current CEQ regulations. More generally and as discussed further below, these changes to § 1507.3 will promote better decisions, improve environmental and community outcomes, and spur innovation that advances NEPA's goals by giving agencies the flexibility to follow their existing procedures or develop new or revised NEPA procedures that best meet the agencies' statutory missions and enable integration of environmental considerations in their decision making in a flexible manner. Giving agencies the flexibility to innovate should increase the likelihood that agencies identify process improvements and efficiencies that benefit Federal agencies as well as project sponsors and other stakeholders, including the public. CEQ disagrees with the 2020 rule's assertions and some NPRM commenters' contentions that this change will result in increased costs and delays due to conflicts among agency NEPA procedures or between agency NEPA procedures and the CEQ regulations. A primary purpose of the longstanding process by which CEQ engages with agencies in the development of their NEPA procedures is to identify and resolve potential conflicts and ensure that agency-specific procedures conform with the CEQ regulations. Furthermore, the public has an opportunity to provide public comments on proposed agency NEPA procedures before they are finalized. These processes facilitate identification of potential conflicts, costs, or delays and give agencies opportunities to balance various policy and process considerations before establishing or changing their procedures.

The final rule's changes to § 1507.3 also will better achieve NEPA's objectives and statutory requirements. First, while CEQ is responsible for interpreting and overseeing NEPA implementation, all agencies are charged with administering the statute's requirements. *See* 42 U.S.C. 4332. NEPA expressly instructs agencies to develop methods and procedures in consultation with CEQ to ensure consideration of ''environmental amenities and values'' in decision making. *See* 42 U.S.C. 4332(2)(B). NEPA and the CEQ regulations, *see* 40 CFR 1507.3, call for agencies to take responsibility for their own procedures, even while consulting with CEQ. Agencies should be allowed to pursue the environmental aims of the statute, including by adopting and carrying out procedures that require additional or more specific environmental analysis than called for by the CEQ regulations. Furthermore, CEQ plays a critical role in reviewing and determining that an agency's NEPA procedures comply with NEPA and the CEQ regulations, which ensures that agency procedures integrate the NEPA process with agency decision making so that the public and decision makers are informed of the environmental consequences of agency decisions. *See* 40 CFR 1507.3(b), (e).

Second, removing these ceiling provisions improves alignment of the NEPA regulations with NEPA's statutory text, which directs agencies to pursue the statute's goals ''to the fullest extent possible.'' 42 U.S.C. 4332. The legislative history of NEPA indicates that the intent behind this statement was to ensure that all Federal agencies comply with NEPA as well as their statutory authorities and that ''no agency shall utilize an excessively narrow construction of its existing statutory authorizations to avoid compliance.'' [35] This final rule provides agencies the flexibility to comply with NEPA, including by allowing agencies to adopt agency-specific NEPA procedures that align with their unique missions, circumstances, and statutory mandates.

Agencies may more fully pursue NEPA's twin aims to consider environmental effects and inform the public by establishing procedures that provide for additional environmental review and public participation or evaluation of certain issues such as air and water quality impacts, environmental justice considerations, or habitat effects. *See* 42 U.S.C. 4332. Agency procedures could include more specific requirements for the development of environmental assessments to facilitate the decision-making process, such as requiring multiple alternatives or documentation of alternatives considered but dismissed. For example, the National Oceanic and Atmospheric Administration (NOAA), which, among other things, is responsible for the stewardship of the Nation's ocean resources and their habitat, might adopt agency-specific procedures on the analysis of impacts to species or habitats protected by the Endangered Species Act, the Marine Mammal Protection Act, or the Magnuson-Stevens Fishery Conservation and Management Act, as well as other vulnerable marine and coastal ecosystems. Removing the ceiling provision allows agencies to include such specificity, which can help lead to more effective reviews and provide efficiencies by fostering better integration of NEPA with other statutory requirements.

Third, upon further consideration, CEQ no longer agrees with the assertions in the 2020 Final Rule Response to Comments that setting the CEQ regulations as the ceiling puts agencies in the best position to reduce costs and delays in NEPA implementation, or that doing so will promote integration of NEPA and compliance with other environmental review requirements. The 2020 rule did not provide any support for the assertion that these changes would achieve those goals. It also did not explain why the process laid out in § 1507.3—requiring agencies to collaborate with CEQ on the development of their NEPA procedures, seek public comment on proposed procedures, and obtain CEQ conformity determinations—does not sufficiently advance the goal of ensuring an efficient and effective NEPA review. CEQ has reconsidered the ceiling provisions in light of this longstanding process, CEQ's experience implementing it, and the comments CEQ received on the proposed rule, and determined that the ceiling provisions create unnecessary rigidity in light of other mechanisms to promote consistency and coordination, and reduce costs and delays. CEQ also finds that the processes included in the 1978 regulations effectively promoted the integration of NEPA and other environmental reviews. *See* 40 CFR 1502.25 (2019). CEQ's review of agency procedures allows CEQ and the agency to discuss the rationale for any new or additional procedures or requirements proposed by agencies, and allows CEQ to promote consistency across the Federal Government, as appropriate, without limiting agencies' flexibility to do more than the CEQ regulations describe or otherwise inhibit innovation, including innovation and

[35] H. Rep. No. 91–765, at 9–10 (1969).

flexibilities that can improve agency efficiency.

iv. Deadline Extension

As explained in section I.D, CEQ issued an interim final rule in June 2021 that extended by 2 years—to September 14, 2023—the deadline in 40 CFR 1507.3(b) for agencies to propose changes to their existing agency-specific NEPA procedures to make them consistent with the current CEQ regulations. The interim final rule explained that the extension would avoid agencies having to propose changes to their implementing procedures on a tight deadline to conform to regulations that are undergoing extensive review and will likely change in the near future.

The Administrative Procedure Act did not require CEQ to provide notice and an opportunity for public comment prior to extending the deadline. *See, e.g.,* 86 FR 34156. Nevertheless, CEQ requested comments on the interim final rule and received approximately 20 written submissions. CEQ has provided summaries and responses to these comments in the response to comments document posted to the docket for this rulemaking. For the reasons set forth in the interim final rule and the response to comment document, and having now considered public comments, CEQ is finalizing in this rule the deadline extension originally made effective in the interim final rule.

C. Definition of ''*Effects*'' *or* ''*Impacts*'' *(§ 1508.1(g))*

i. Regulatory History and Proposed Changes

NEPA requires Federal agencies to examine the environmental effects of their proposed actions and alternatives and any adverse environmental effects that cannot be avoided if the proposed action is implemented. 42 U.S.C. 4332(2)(C). The 1978 regulations defined ''effects'' to include ''direct effects'' and ''indirect effects'' and separately defined ''cumulative impact.'' *See* 40 CFR 1508.7, 1508.8 (2019). Section 1508.8(a) of the 1978 regulations defined ''direct effects'' as effects ''caused by the action and occur at the same time and place.'' Section 1508.8(b) of the 1978 regulations defined ''indirect effects'' as effects ''caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.'' Section 1508.8 of the 1978 regulations also provided examples of indirect effects and effects generally, and noted that the terms ''effects'' and ''impacts'' as used in the regulations were synonymous. The 1978 regulations defined ''cumulative impact'' as ''the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.'' *Id.* § 1508.7. The definition also stated that cumulative impacts ''can result from individually minor but collectively significant actions taking place over a period of time.'' *Id.*

The 2020 rule made several major changes to these definitions. The 2020 rule provided a single definition for ''effects'' or ''impacts,'' deleting the subcategorization of ''direct'' and ''indirect'' effects and the definition of ''cumulative impacts.'' The definition includes introductory text followed by three paragraphs designated (g)(1) through (3). The first clause of the introductory text provides that ''[*e*]*ffects* or *impacts* means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives.'' The second clause provides that the definition of ''effects'' or ''impacts'' includes ''those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives.'' The phrase ''those effects that occur at the same time and place as the proposed action or alternatives,'' is drawn verbatim from the description of direct effects in the 1978 regulations' definition of effects. The clause ''*may include* effects that are later in time or farther removed in distance,'' is a modified version of the language describing indirect effects in the 1978 regulations' definition of effects; the 2020 rule qualified this description by adding ''may include.'' 40 CFR 1508.1(g) (2020) (emphasis added).

Following the introductory text, paragraph (g)(1) includes language identifying examples of effects, which is modified from the last paragraph of the 1978 definition of ''effects.'' Paragraph (g)(2) includes new text providing that a '''but for' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA'' and that agencies generally should not consider effects ''if they are remote in time, geographically remote, or the product of a lengthy causal chain.'' This paragraph also explicitly excludes ''effects that the agency has no ability to prevent due to its limited statutory authority or would occur regardless of the proposed action.'' Paragraph (g)(3) requires an agency's analysis of effects to be consistent with the definition of ''effects'' and explicitly repeals the definition of cumulative impact.

In the NPRM, CEQ proposed to revise the definition of ''effects'' or ''impacts'' in § 1508.1(g) to restore the substance of the definitions of ''effects'' and ''cumulative impact'' contained in the 1978 regulations. The NPRM also proposed to continue to provide one combined definition for the two terms, rather than reinstating separate definitions for ''effects'' and ''cumulative impacts'' as existed in the 1978 regulations, because separate definitions are unnecessary as reflected in the 1978 regulation's statement that the terms ''impacts'' and ''effects'' were synonymous.

The NPRM proposed the following specific amendments to § 1508.1(g). First the NPRM proposed to revise the introductory paragraph in § 1508.1(g) to define ''effects'' or ''impacts'' as ''changes to the human environment from the proposed action or alternatives'' that include ''direct effects,'' ''indirect effects,'' and ''cumulative effects'' as described in § 1508.1(g)(1) through (3), and remove the phrase ''that are reasonably foreseeable and have a reasonably close causal relationship.''

Second, the NPRM proposed to revise each of the paragraphs (g)(1) through (3) and add a fourth paragraph (g)(4). Proposed paragraphs (g)(1) through (3) describe ''direct effects,'' ''indirect effects,'' and ''cumulative effects,'' and proposed paragraph (g)(4) provides a list of examples of effects similar to paragraph (g)(1) of the 2020 regulation. The NPRM proposed to move text included in the introductory paragraph of the 2020 regulations, but which originated in the 1978 regulations, into the relevant paragraphs. Specifically, the phrase ''effects that occur at the same time and place'' would be moved to the description of direct effects in paragraph (g)(1), and the phrase ''effects that are later in time or farther removed in distance'' would be moved to the description of indirect effects in paragraph (g)(2). The definition of cumulative effects in paragraph (g)(3) is made up of the language defining ''cumulative impact'' in the 1978 regulations with non-substantive edits for consistency with the current regulations. Paragraph (g)(4) includes proposed amended text from paragraph (g)(1) of the 2020 regulation providing a list of examples of effects. In paragraph (g)(4), the NPRM proposed to restore the language of the 1978 regulations and

delete minor and non-substantive modifications made in the 2020 rule. Following the proposed amendments, the text in paragraph (g)(4) would be identical to the final sentence of the effects definition in the 1978 regulation.

Third, the NPRM proposed to delete in its entirety the text included in paragraph (g)(2) of the 2020 regulations, which states that a ''but for'' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA; generally excludes from the definition of ''effects'' those that are remote in time, geographically remote, or the product of a lengthy causal chain; and fully excludes effects that the agency has no ability to prevent due to its limited statutory authority or that would occur regardless of the proposed action.

Fourth, the NPRM proposed to delete in its entirety the text included in paragraph (g)(3) of the 2020 regulations, which requires agencies to analyze effects consistent with the definition of ''effects'' and explicitly repeals the definition of ''cumulative impact'' from the 1978 regulations.

Finally, CEQ notes that the NPRM did not propose to include in the definition of ''effects'' or ''impacts'' the statement in the 1978 regulations' definition of ''effects'' that ''[e]ffects and impacts as used in these regulations are synonymous.'' *See* 40 CFR 1508.8(b) (2019). Because the NPRM proposed to continue to provide a single definition for ''effects'' or ''impacts,'' including that statement would be unnecessary and redundant.

ii. Summary of NPRM Comments on the Definition of ''Effects''

General Comments

CEQ received numerous comments on the proposed changes to § 1508.1(g), both expressing support for and opposition to the proposed changes. Many commenters supported the proposed revisions and restoring the concepts of direct, indirect, and cumulative effects or impacts to the regulations. Commenters expressed support for the proposed changes for a variety of reasons, including because the proposed changes better reflect NEPA principles and case law; help ensure the proper scope of analysis that NEPA requires, including analysis of effects on climate change, communities with environmental justice concerns, and wildlife; and provide clarity and consistency for the environmental review process. Many of these commenters identified the changes to the definitions of effects and impacts as the most damaging changes put in place by the 2020 rule. Some commenters specifically pointed to the importance of considering indirect and cumulative effects for addressing environmental justice concerns and climate change in environmental reviews, consistent with E.O. 13990 and the Administration's priority to assess and mitigate climate pollution. Commenters also contended that central to an agency considering whether an action will cause or contribute to undue burdens to a community is a review of cumulative impacts resulting from past, present, and reasonably foreseeable future actions and effects in a project area, including the impacts of climate change. Other commenters raised concerns about the 2020 rule's removal of language on direct, indirect, and cumulative effects and impacts and emphasized the importance of considering these categories of effects on wildlife and other natural resources. Some commenters agreed with the NPRM that the proposed changes will provide clarity to agencies, practitioners, and the public by helping agencies and the public evaluate and understand the full scope of reasonably foreseeable effects in NEPA reviews.

CEQ also received multiple comments expressing overall opposition to the proposed changes. Some commenters raised concerns that restoring the approach to impacts and effects in the 1978 regulations would lead to wider and more complex analysis in the NEPA process, require evaluation of impacts that are outside the scope of the decision, and go beyond the intent of the statute. These commenters stated that the proposed changes to the definition of effects will not improve NEPA compliance or agency certainty. Some commenters expressed the view that the proposed changes will result in undue burden on agencies, increased costs and litigation, and lengthier review times. Some commenters indicated that if CEQ restores the definition of effects in the final rule then the definition should include sideboards or other bounding criteria to prevent misuse, unnecessary delays, and increased costs. These commenters contended that requiring agencies to expend time and resources on analyzing and disclosing speculative effects adds time and cost to the NEPA process without providing value to decision makers or the public. Some commenters expressed concern specifically about the proposed rule's potential to delay critical infrastructure projects.

As discussed further in section II.C.iii and in the Phase 1 Response to Comments, CEQ has considered the comments in support of and opposed to the changes to the definition of ''effects'' in the proposed rule. With respect to the potential impacts to NEPA review timelines, CEQ is not aware of—and commenters did not provide—data supporting the claim that evaluation of direct, indirect, and cumulative effects necessarily leads to longer timelines, especially given the long history of agency and practitioner experience with analyzing these categories of impacts and effects under the 1978 regulations, as well as modern techniques leveraging science and technology to make environmental reviews comprehensive yet efficient.[36] CEQ considers the importance of clear and robust analysis of effects to informed agency decision making to outweigh the speculative potential for shorter NEPA documents or timeframes.

Furthermore, the deletion of the definition of ''cumulative impacts'' in the 2020 rule did not absolve agencies from evaluating reasonably foreseeable cumulative effects, and therefore, it is unclear that the deletion would narrow the scope of effects analyzed by agencies. Numerous commenters on the NPRM noted that the 2020 rule's changes to the definition of ''effects'' created uncertainty and confusion in agencies implementing NEPA. CEQ expects that substantively restoring these definitions, which were in place and in use for decades, will better clarify the effects agencies need to consider in their NEPA analyses and could help avoid delays or deficiencies in NEPA reviews caused by agency uncertainty over the proper scope of effects analysis. Furthermore, conducting a robust consideration of all reasonably foreseeable effects of a proposed action is not a delay; rather, doing so constitutes sound decision making and fulfills NEPA's statutory mandate. *See* 42 U.S.C. 4332. Therefore, based on CEQ's experience and expertise, this final rule strikes the proper balance of promoting informed decision making and completing environmental reviews expeditiously.

CEQ also considered comments regarding the potential for increased litigation. Both commenters in favor of and opposed to the NPRM's proposal to restore language from the 1978 regulations on direct, indirect, and

[36] For example, CEQ's NEPA.gov website provides a list of greenhouse gas (GHG) accounting tools, *https://ceq.doe.gov/guidance/ghg-accounting-tools.html,* and the Environmental Protection Agency's (EPA's) NEPAssist tool, *https://www.epa.gov/nepa/nepassist,* a web-based application that draws environmental data dynamically from EPA's Geographic Information System databases and web services and provides immediate screening of environmental assessment indicators for a user-defined area of interest.

cumulative effects raised concerns over increased litigation. CEQ considers the effect of the proposed changes on litigation to be difficult to predict, and therefore not a useful factor in determining the approach for this final rule.

Consistency With the NEPA Statute

Some commenters stated that Federal agencies have a statutory obligation to assess all of the relevant environmental effects of their proposed actions and argue that restoring the 1978 definition of ''effects'' would align the regulations with longstanding agency practice and judicial precedent. Commenters expressed the view that NEPA's plain language requires Federal agencies to address impacts to future as well as present generations, that this statutory mandate cannot be met without analyzing cumulative and indirect effects, and that courts have consistently affirmed this legal obligation. Other commenters stated that the changes to the definition of effects and impacts made by the 2020 rule are at odds with the statute's plain language, clear congressional intent, and decades of legal precedent and have created confusion and uncertainty.

Other commenters objected to the proposed rule contending that because NEPA does not include the terms ''direct,'' ''indirect,'' or ''cumulative'' effects, including those terms in the regulations is contrary to the plain language of the statute. Commenters also contended that the 2020 rule's elimination of those terms and replacement with a simplified definition of ''effects'' focused on reasonable foreseeability is in better alignment with NEPA's statutory language, the goals of the statute, and case law.

The restoration of direct, indirect, and cumulative effects as part of the definition of ''effects'' better reflects NEPA's statutory purpose, policy, and intent and is more consistent with the case law interpreting NEPA's requirements. NEPA sets forth a policy to encourage productive and enjoyable harmony between humans and their environment; to promote efforts that will prevent or eliminate damage to the environment and biosphere, and stimulate the health and welfare of people; and to enrich the understanding of the ecological systems and natural resources important to the Nation. 42 U.S.C. 4321. Accordingly, the U.S. Supreme Court has stated that NEPA promotes a ''sweeping commitment to 'prevent or eliminate damage to the environment and biosphere' by focusing Government and public attention on the environmental effects of proposed agency action.'' *Marsh* v. *Oregon Natural Resources Council,* 490 U.S. 360, 371 (1989) (citing 42 U.S.C. 4321). The Court explained that NEPA requires agencies to take a ''hard look'' at the environmental effects of their planned actions, including indirect effects relevant to the dam project at issue in the case, such as potential changes in downstream water temperature that could reduce species survival. *Id.* at 374, 385.

Similarly, courts have long applied the concept of cumulative impacts or effects as identified in the 1978 regulations to NEPA analysis. *See, e.g., NRDC* v. *Hodel,* 865 F.2d 288, 297–98 (D.C. Cir. 1988) (stating, ''NEPA, as interpreted by the courts, and CEQ regulations both require agencies to consider the cumulative impacts of proposed actions,'' and holding that NEPA required the Secretary of the Interior to consider the cumulative impacts of offshore development in different areas of the Outer Continental Shelf). Even before CEQ issued regulations defining ''effects'' to include cumulative effects, the U.S. Supreme Court had interpreted NEPA to require consideration of ''cumulative or synergistic environmental impact.'' *Kleppe* v. *Sierra Club,* 427 U.S. 390, 410 (1976). Although this case focuses on programmatic review, the Court recognized the importance of considering the collective environmental effects of agency actions to inform the decision-making process. *Id.* (''Only through comprehensive consideration of pending proposals can the agency evaluate different courses of action.'').[37]

Comments on Department of Transportation v. Public Citizen

Some commenters agreed with CEQ's statements in the NPRM about *Department of Transportation* v. *Public Citizen,* 541 U.S. 752 (2004), contending that the 2020 rule's interpretation of the decision to justify limits on effects analysis was incorrect and that the changes in the Phase 1 proposed rule align with the Supreme Court's decision. Commenters also expressed the view that the 2020 rule's reliance on or interpretation of *Public Citizen* to impose a categorical limitation on the scope of effects that agencies may permissibly analyze was fundamentally misguided because the decision identified the effects that an agency *must* consider, but did not limit the effects that an agency *may* consider. Commenters also expressed the view that the holding in *Public Citizen* is limited to the narrow circumstance in which an agency has no discretion to alter the activity that causes the effects in question. Additional commenters contended that if the Court intended to exclude cumulative effects or impacts from environmental review, the Court would have clearly said so. Based on these interpretations of *Public Citizen,* these commenters generally supported the NPRM's proposed definition of effects and requested that CEQ clarify that the case applies only in limited circumstances.

Commenters who disagreed with the NPRM's interpretation of *Public Citizen* contended that the Court stated clearly that NEPA requires a reasonably close causal relationship between the environmental effect and alleged cause and that a ''but for'' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Commenters also argued that the 2020 rule aligned with *Public Citizen,* because the Court held that consideration of actions beyond an agency's statutory authority serves no purpose and fails to satisfy NEPA's rule of reason. Commenters also asserted that the NPRM did not adequately explain CEQ's change in interpretation of *Public Citizen* in light of the 2020 rule's heavy reliance upon it.

CEQ has reexamined its interpretation of and reliance on the *Public Citizen* decision in the 2020 rule. The 2020 rule relied upon the decision to provide a broadly applicable statement on effects analysis that is not compelled by the opinion itself and that does not comport with CEQ's view of the proper scope of effects analysis in line with NEPA's informational purpose and longstanding agency practice and discretion. At issue in *Public Citizen* was whether the Federal Motor Carrier Safety Administration (FMCSA) had appropriately excluded from its NEPA analysis effects from Mexican trucks entering the United States that would occur if the President followed through on his intention to lift a moratorium on those trucks following FMCSA promulgating vehicle safety regulations. The Supreme Court explained that NEPA and the 1978 regulations are governed by a ''rule of reason.'' *Id.* at 767. FMCSA had no ability to deny certification if trucks met minimum requirements, and as a result, the Supreme Court held that FMCSA had

[37] *See also* CEQ's 1970 interim guidelines, interpreting the requirement in section 102(2)(C)(iv) to mean that ''[t]he relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity . . . requires the agency to assess the action for *cumulative and long-term effects* from the perspective that each generation is trustee of the environment for succeeding generations.'' 35 FR 7390, 7392 (May 12, 1970) (emphasis added).

lawfully defined the scope of its analysis, and that it was not arbitrary and capricious for FMCSA to exclude from its NEPA analysis effects that would occur if the President lifted the moratorium. *Id.* at 758–59.

In reaching that conclusion, the Court rejected application of ''a particularly unyielding variation of 'but for' causation, where an agency's action is considered a cause of an environmental effect even when the agency has no authority to prevent the effect.'' *Id.* at 767. The Court stated that ''NEPA requires 'a reasonably close causal relationship' between the environmental effect and the alleged cause.'' *Id.* And then it explained that ''inherent in NEPA and its implementing regulations is a 'rule of reason,' which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process.'' *Id.* It further explained that ''it would . . . not satisfy NEPA's 'rule of reason' to require an agency to prepare a full EIS due to the environmental impact of an action it could not refuse to perform. Put another way, the legally relevant cause of the entry of the Mexican trucks is not FMCSA's action, but instead the actions of the President in lifting the moratorium and those of Congress in granting the President this authority while simultaneously limiting FMCSA's discretion.'' *Id.* at 769.

The 2020 rule quoted the Court's statement on ''but for'' causation as a categorical limitation on effects analysis without recognizing the factual and legal context in which the statement was made, including the statements that immediately surrounded it. In fact, the Court tied its analysis of ''but for'' causation to a ''critical feature'' of the case—that FMCSA had no statutory authority to stop the process by which the trucks would operate. The Court explained that requiring FMCSA to consider the environmental impacts of those operations as effects of its action would violate the ''rule of reason,'' because the consideration would not fulfill NEPA's purpose of informing the decision maker. *See id.* at 768–69. Moreover, the Court affirmed FMCSA's consideration of effects under the 1978 regulations. *See id.* at 770. The Court did not hold that agencies *may not* consider a broader range of effects in other circumstances. The Court's focus was on situations ''where an agency has no ability to prevent a certain effect due to its limited statutory authority.'' *Id.* The 2020 rule could be read to apply universally the proximate causation principle of tort law when determining the scope of their NEPA analyses. This result is not compelled by the *Public Citizen* decision and is in significant tension with the Supreme Court's recognition that tort law and NEPA are governed by different principles that serve different policy objectives. *See Metro. Edison Co.* v. *People Against Nuclear Energy,* 460 U.S. 766, 775, FN 7 (1983). Instead, the Court held that FMCSA's effects analysis in the specific factual and legal context of its proposed action was reasonable and not arbitrary and capricious.

For these reasons, CEQ has reconsidered its reasoning and approach taken in the 2020 rule and does not deem it useful to include the ''reasonably close causal relationship'' and ''but for'' language drawn from *Public Citizen,* which dealt with a unique context in which an agency had no authority to direct or alter an outcome, in the broadly applicable NEPA regulations. Doing so inappropriately transforms a Court holding affirming an agency's exercise of discretion in a particular factual and legal context into a rule that could be read to limit agency discretion. Instead, as further discussed below, agencies are better guided by the longstanding principle of reasonable foreseeability and the rule of reason in implementing NEPA's directives.

Comments on Reasonably Foreseeable and Reasonably Close Causal Relationship

Some commenters supported the removal of the 2020 language contending that it limits effects analysis to effects that are ''reasonably foreseeable and have a reasonably close causal relationship'' and because consequential reasonably foreseeable environmental effects may occur remote in time or place from the original action or be the product of a causal chain; for example, toxic releases into air or water and greenhouse gas emissions that contribute to climate change often occur remote in time or place from the original action or are a product of a causal chain. As such, these commenters stated that restoring the definition of effects to the 1978 regulations would provide for more sound decision making. Commenters also stated that the 2020 regulations' definition of ''effects'' requiring a close causal relationship potentially narrowed and improperly limited the scope of effects agencies would consider for proposed Federal actions. Commenters specifically pointed to the ''but for'' language in the 2020 regulations as adding uncertainty and noted that, under the 1978 regulations, agencies shared an understanding of how to assess the effects of a proposed action based on agency procedures and case law.

On the other hand, commenters opposing changes to the 2020 rule's definition of ''effects'' argued that limiting the NEPA analysis to those effects that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action is in line with common sense and jurisprudence. Others emphasized that the 2020 definition reasonably limits the scope of potential effects analysis and prevents reviews from considering impacts that bear little or no relationship to the proposed action, and therefore improves clarity and relevance of NEPA documents. These commenters asserted that the 2020 rule's addition of ''reasonably foreseeable and reasonably close causal relationship'' made a practical clarification that may reduce unnecessary analysis and inefficiencies. Other commenters suggested that, if CEQ reintroduces direct, indirect, and cumulative effects, the rule should clarify that these effects are limited to those that are ''reasonably foreseeable.''

CEQ has reexamined the phrase ''reasonably close causal relationship,'' which the 2020 rule added to the definition of ''effects'' in part on the basis that consideration of effects should be limited by proximate cause principles from tort law.[38] CEQ now considers this phrase unnecessary and unhelpful because an agency's ability to exclude effects too attenuated from its actions is adequately addressed by the longstanding principle of reasonable foreseeability that has guided NEPA analysis for decades. *See Robertson* v. *Methow Valley Citizens Council,* 490 U.S. 332, 356 (1989). *See also Sierra Club* v. *FERC,* 867 F.3d 1357, 1371 (D.C. Cir. 2017) (citing *EarthReports, Inc.* v. *FERC,* 828 F.3d 949, 955 (D.C. Cir. 2016)). Furthermore, CEQ no longer deems it necessary to import principles of tort law into the NEPA regulations. Environmental review under NEPA serves different purposes, such as guiding sound agency decision making and future planning, that may reasonably entail a different scope of effects analysis than the distinct tort law context. *See Metro. Edison Co.,* 460 U.S. at 775, FN 7 (1983) (''[W]e do not mean to suggest that any cause-effect relation too attenuated to merit damages in a tort suit would also be too attenuated to merit notice in an EIS; nor do we mean to suggest the converse. In the context of both tort law and NEPA, courts must look to the underlying policies or legislative intent in order to draw a manageable line between those causal

[38] 85 FR 43304 (July 16, 2020).

changes that may make an actor responsible for an effect and those that do not.''). Keeping the 2020 limitation also would suggest that agency NEPA practitioners are required to apply a tort law legal standard where they would still have to exercise professional judgement in determining the scope of the effects analysis. CEQ is removing the phrase ''reasonably close causal relationship'' from the definition of ''effects''; the definition will continue to include the phrase ''reasonably foreseeable'' consistent with longstanding interpretation to allow agencies the flexibility to conduct appropriate effects analysis in line with their discretion and NEPA's requirements.

Comments on Potential Phase 2 Changes

CEQ also requested public comments on whether a Phase 2 rulemaking should provide more specificity about the manner in which agencies should analyze certain categories of effects. In response, some commenters suggested that the Phase 2 rulemaking should address how agencies address impacts from climate change and provide more specificity about how agencies analyze environmental justice impacts. Others emphasized that a Phase 2 rule should make the effects analysis more objective and less speculative or provide additional clarification to the definition of effects to produce more effective and focused environmental reviews. Some commenters requested CEQ issue guidance on analysis of effects, and some indicated that guidance might be more efficient than updating the regulations further in a Phase 2 rule. CEQ is considering these comments in the development of its Phase 2 rulemaking and its guidance on assessing greenhouse gas emissions and climate change in environmental reviews.

iii. Rationale for Final Rule

The final rule makes the changes proposed in the NPRM with minor modification. The final rule revises the introductory paragraph of § 1508.1(g) defining ''effects'' and ''impacts'' as ''changes to the human environment from the proposed action or alternatives *that are reasonably foreseeable.*'' The NPRM did not include the clause ''that are reasonably foreseeable,'' but the final rule retains this clause in response to comments. Doing so is consistent with the preamble to the NPRM, which consistently states that direct, indirect, and cumulative effects must be reasonably foreseeable. 86 FR 55765–67. While the NPRM proposed to remove the clause from the definition because reasonable foreseeability has always been central to defining the scope of effects, after considering comments, CEQ agrees that this clause enhances clarity in line with longstanding agency practice and NEPA case law. Therefore, CEQ has determined to retain this phrase in the final rule.

The final rule otherwise makes the changes as proposed in the NPRM. CEQ is including direct, indirect, and cumulative effects as part of the definition of ''effects'' or ''impacts'' to avoid disruption and uncertainty caused by the 2020 rule and clarify that agencies should continue to engage in the context-specific inquiry they have undertaken for more than 40 years to identify reasonably foreseeable effects of a proposed action and its alternatives, providing for sound decision making. The restoration of ''cumulative impacts'' from the 1978 regulations to include cumulative effects as a component of the definition of ''effects'' is a non-substantive change, as the 1978 regulations specifically provided that the terms ''impacts'' and ''effects'' are synonymous. Agencies should treat cumulative effects under the final rule in the same fashion as they treated cumulative impacts under the 1978 regulations.

As discussed in responding to comments above, restoring language on direct, indirect, and cumulative effects better promotes NEPA's statutory purposes and is more consistent with the extensive NEPA case law. *See* 42 U.S.C. 4321–4332. Restoring these phrases to the regulations also is consistent with this Administration's policies to be guided by science and to address environmental protection, climate change, and environmental justice. *See, e.g.,* E.O. 13990[39] and E.O. 14008.[40] Returning to the approach in the 1978 regulations provides regulatory consistency and stability for Federal agencies, affected stakeholders, and the public. CEQ is not returning to these definitions because this is what has always been done, but because longstanding CEQ and Federal agency experience and practice has demonstrated that these interpretations promote the aims of the NEPA statute and are practical to implement. These interpretations also reasonably reflect the plain meaning of the statutory phrase ''environmental impact,'' and explicitly capture the indirect and cumulative nature of many environmental impacts.

CEQ is including direct, indirect, and cumulative effects as part of the definition of ''effects'' or ''impacts'' because they have long provided an understandable and effective framework for agencies to consider the effects of their proposed actions in a manner that is understandable to NEPA practitioners and the public. CEQ considers this approach to result in a more practical and easily implementable definition than the 2020 rule's definition of ''effects'' that explicitly captures the indirect and cumulative nature of many environmental effects, such as greenhouse gas emissions or habitat fragmentation. Upon further evaluation of the rationale for the 2020 rule and the comments CEQ received on the NPRM, CEQ does not consider the tort law standards of ''close causal relationship'' and ''but for'' causation to be ones that provide more clarity or predictability for NEPA practitioners, agency decision makers, or the public. Furthermore, as discussed in this section, CEQ does not consider the existing case law interpreting the 1978 definition of ''effects'' to require that the NEPA regulations limit agency discretion to identify reasonably foreseeable effects under such a standard. CEQ also is removing the potential limitations on consideration of temporally or geographically removed environmental effects, effects that are a product of a lengthy causal chain, and ''effects that the agency has no ability to prevent due to its limited statutory authority or would occur regardless of the proposed action.'' These qualifications may unduly limit agency discretion and stating them as categorical rules that limit effects analyses is in tension with NEPA's directives to produce a detailed statement on the ''environmental impact of [a] proposed action,'' ''any adverse environmental effects which cannot be avoided,'' and ''the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.'' 42 U.S.C. 4332(2)(C). Furthermore, this language could lead Federal agencies to omit from analysis or disclosure critical categories of reasonably foreseeable effects that are temporally or geographically removed, such as climate effects, frustrating NEPA's core purpose and Congressional intent.

Although the 2020 rule preamble suggested that agencies could continue to consider indirect and cumulative effects,[41] an agency could

[39] *Supra* note 19.

[40] *Supra* note 22.

[41] In responding to comments about potential effects on threatened and endangered species, the preamble to the 2020 rule explained that ''the final rule does not ignore cumulative effects on listed species.'' 85 FR 43304 (July 16, 2020). Similarly, the 2020 Final Rule Response to Comments stated that

misunderstand the language of the rule to prohibit considering indirect or cumulative effects of their proposed actions given the language in 40 CFR 1508.1(g)(3): ''An agency's analysis of effects shall be consistent with this [definition of effects].'' Additionally, the definition included inconsistent directions to agencies—the introductory paragraph stated that effects ''may include effects that are later in time or farther removed in distance'' but paragraph (g)(2) stated that agencies generally should not consider effects if they are remote in time or geographically remote. CEQ considers the clarification that indirect and cumulative effects are included in the definition of effects critical to ensuring that agency decision makers have a complete view of reasonably foreseeable effects of their proposed actions.[42]

Defining ''effects'' to include direct, indirect, and cumulative effects will not result in consideration of a limitless universe of effects. The consideration of effects has always been bounded by a reasonableness standard, and, as discussed above, the final rule will retain language on reasonable foreseeability. While CEQ understands the importance of predictability, it is also critical that analyses are complete and scientifically accurate to ensure that decision makers and the public are fully informed.

Including direct and indirect effects in the definition of ''effects'' ensures that NEPA analyses disclose both adverse and beneficial effects over various timeframes, providing important information to decision makers. For example, a utility-scale solar facility could have short-term direct effects, such as adverse construction and land impacts. The facility also could have long-term indirect beneficial effects, such as reductions in air pollution, including greenhouse gas emissions, from the renewable energy generated by the solar facility that displaces more greenhouse gas-intensive energy sources (such as coal or natural gas) as an electricity source for years or decades into the future. As another example, air pollution, including greenhouse gas emissions, released by fossil fuel combustion is often a reasonably foreseeable indirect effect of proposed fossil fuel extraction that agencies should evaluate in the NEPA process, even if the pollution is remote in time or geographically remote from a proposed action. An agency decision maker can make a more informed decision about how a proposed action aligns with the agency's statutory authorities and policies when she has information on the comparative potential air pollution effects and greenhouse gas emissions of the proposed action and alternatives, including the no action alternative. The final rule's definition of ''effects'' provides clarity and ensures that agencies disclose such indirect effects.

CEQ also has reevaluated its position on cumulative effects and disagrees with the assertions in the 2020 rule that cumulative effects analyses divert agency resources from analyzing the most significant effects to effects that are irrelevant or inconsequential. Rather, consideration of reasonably foreseeable cumulative effects allows agencies and the public to understand the full scope of potential impacts from a proposed action, including how the incremental impacts of a proposed action contribute to cumulative environmental problems such as air pollution, water pollution, climate change, environmental injustice, and biodiversity loss. Science confirms that cumulative environmental harms, including repeated or frequent exposure to toxic air or water pollution, threaten human and environmental health and pose undue burdens on historically marginalized communities.[43] CEQ does not consider such harms to be inconsequential or irrelevant, but rather critical to sound agency decision making. By restoring the phrase ''cumulative effects,'' this final rule will make clear that agencies must fully analyze reasonably foreseeable cumulative effects before Federal decisions are made.

CEQ continues to have the goal that environmental reviews should be efficient and effective and will continue to evaluate the NEPA process for opportunities to improve timeliness consistent with NEPA's purposes. However, CEQ disagrees with the assertion in the 2020 rule that requiring analysis of reasonably foreseeable cumulative effects causes unacceptably long NEPA processes. CEQ considers the disclosure of all reasonably foreseeable direct, indirect, and cumulative effects to be critical to the informed decision-making process required by NEPA, *see, e.g.,* 42 U.S.C. 4332, such that the benefits of any such disclosure outweigh any potential for shorter NEPA documents or timeframes. Moreover, nothing in this final rule suggests that a well-drafted NEPA document cannot be both concise and supported by thorough analysis. CEQ also disagrees with the 2020 rule's assertion that deleting reference to direct, indirect, and cumulative effects is necessary because agencies have devoted substantial resources categorizing effects as direct, indirect, or cumulative. 85 FR 43343. Nothing in the CEQ regulations requires agencies to categorize effects separately in this manner; instead, well-organized NEPA documents address the direct, indirect, and cumulative effects of particular resources in a cohesive and comprehensive manner. Agencies may discuss holistically all reasonably foreseeable direct, indirect, and cumulative effects, rather than delineating the categories in separate sections of a NEPA document, to facilitate the decision maker and the public's comprehensive understanding of the effects of the proposed actions and alternatives.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866, Regulatory Planning and Review

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules.[44] E.O. 13563 reaffirms the principles of E.O. 12866, calling for improvements in the Federal Government's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory objectives.[45] Because this final rule applies to all Federal agencies, it is a significant regulatory action that CEQ submitted to OMB for review. The changes will remove uncertainty created by the 2020 rule to benefit agencies and the public. These changes do not obligate agencies to undertake longer, more complicated analyses. Furthermore, an effective NEPA process can save time and reduce overall project costs by identifying and avoiding problems, including potential

the 2020 rule did not automatically exclude from analysis effects falling within the deleted definition of ''cumulative impact[s].'' CEQ, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act Final Rule Response to Comments 467 (June 30, 2020), *https://www.regulations.gov/document/CEQ-2019-0003-720629.*

[42] CEQ's longstanding position has been that cumulative effects analysis is ''critical'' for the purposes of evaluating project alternatives and developing appropriate mitigation strategies. *See* CEQ GHG guidance at *https://ceq.doe.gov/guidance/ceq_guidance_nepa-ghg.html.*

[43] *See, e.g.,* Mercedes A. Bravo et al., *Racial Isolation and Exposure to Airborne Particulate Matter and Ozone in Understudied U.S. Populations: Environmental Justice Applications of Downscaled Numerical Model Output,* 92–93 Env't Int'l 247 (2016) (finding that long-term exposure to particulate matter is associated with racial segregation, with more highly segregated areas suffering higher levels of exposure).

[44] 58 FR 51735 (Oct. 4, 1993).

[45] 76 FR 3821 (Jan. 21, 2011).

significant effects, that may occur in later stages of project development.[46] Additionally, if agencies choose to consider additional alternatives and conduct clearer or more robust analyses, such analyses should improve societal outcomes by improving agency decision making. Because individual cases will vary, the magnitude of potential costs and benefits resulting from these proposed changes are difficult to anticipate. Therefore, CEQ has not quantified them. CEQ received a number of comments requesting that it revisit the regulatory impact analysis from the 2020 rule. Because this final rule mainly clarifies provisions,[47] CEQ considers Phase 2 to be the more appropriate rulemaking for any reconsideration of the regulatory impact analysis to the extent Phase 2 proposes substantive changes.

B. Regulatory Flexibility Act and Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking

The Regulatory Flexibility Act (RFA), as amended, 5 U.S.C. 601 *et seq.,* and E.O. 13272 [48] require agencies to assess the impacts of proposed and final rules on small entities. Under the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. An agency must prepare a Regulatory Flexibility Analysis at the proposed and final rule stages unless it determines and certifies that the rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). An agency need not perform an analysis of small entity impacts when a rule does not directly regulate small entities. *See Mid-Tex Electric Coop., Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985). This final rule does not directly regulate small entities. Rather, it applies to Federal agencies and sets forth the process for their compliance with NEPA. Accordingly, CEQ hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

Under the CEQ regulations, major Federal actions may include regulations. When CEQ issued regulations in 1978, it prepared a ''special environmental assessment'' for illustrative purposes pursuant to E.O. 11991.[49] The NPRM for the 1978 rule stated ''the impacts of procedural regulations of this kind are not susceptible to detailed analysis beyond that set out in the assessment.'' [50] Similarly, in 1986, while CEQ stated in the final rule amending its regulations that there were ''substantial legal questions as to whether entities within the Executive Office of the President are required to prepare environmental assessments,'' it also prepared a special environmental assessment.[51] The special environmental assessment issued in 1986 made a finding of no significant impact, and there was no finding made for the assessment of the 1978 final rule.

CEQ continues to take the position that a NEPA analysis is not required for establishing or updating NEPA procedures. *See Heartwood* v. *U.S. Forest Serv.,* 230 F.3d 947, 954–55 (7th Cir. 2000) (finding that neither NEPA or the CEQ regulations required the Forest Service to conduct an environmental assessment or an EIS prior to the promulgation of its procedures creating a categorical exclusion). Nevertheless, based on past practice, CEQ developed a special environmental assessment, posted it in the docket, and invited comments. CEQ did not receive any comments, but made minor changes to the special environmental assessment, which CEQ has posted in the docket.

D. Executive Order 13132, Federalism

E.O. 13132 requires agencies to develop an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.[52] Policies that have federalism implications include regulations that have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. This rule does not have federalism implications because it applies to Federal agencies, not states. However, CEQ notes that States may elect to assume NEPA responsibilities under Federal statutes. CEQ received comments in response to the NPRM from a number of States, including those that have assumed NEPA responsibilities, and considered these comments in development of the final rule.

E. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

CEQ acknowledges that it shares a government-to-government relationship with Tribes that differs from its relationship to the general public. E.O. 13175 requires agencies to have a process to ensure meaningful and timely input by Tribal officials in the development of policies that have Tribal implications.[53] Such policies include regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. CEQ has assessed the impact of this final rule on Indian Tribal governments and has determined that the final rule would not significantly or uniquely affect these communities. However, CEQ recognizes the important role Tribes play in the NEPA process and held a government-to-government consultation on the NEPA regulations generally on September 30, 2021. CEQ also held a consultation specifically on the Phase 1 proposed rule on November 12, 2021. CEQ also invited Tribes and Alaska Native Corporations to provide early input on the Phase 2 rulemaking as well as CEQ's guidance on considering greenhouse gas emissions and climate change in NEPA reviews. In addition to the feedback provided during these consultation sessions, CEQ considered written comments that Tribes submitted during and after the consultations, as well as Tribal comments submitted during the public comment period. CEQ plans to continue to engage in additional government-to-government consultation with federally recognized Tribes and Alaska Native Corporations on its NEPA regulations. During consultation and in written comments, CEQ has received input on areas of importance to Tribes, many of which are around provisions that were not addressed in this Phase 1 rule. CEQ will consider this input for the Phase 2 rulemaking.

[46] *See* Linda Luther, Cong. Rsch. Serv., R42479, The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues for Congress (2012), *https://crsreports.congress.gov/product/pdf/R/R42479.*

[47] While the changes to § 1507.3 are more than clarifying edits, agencies have not revised their NEPA procedures to address changes to the CEQ regulations made by the 2020 rule. Therefore, this change does not have costs and benefits for CEQ to consider.

[48] 67 FR 53461 (Aug. 16, 2002).

[49] 43 FR 25230 (June 9, 1978).

[50] *Id.* at 25232.

[51] 51 FR 15618, 15619 (Apr. 25, 1986).

[52] 64 FR 43255 (Aug. 10, 1999).

[53] 65 FR 67249 (Nov. 9, 2000).

F. Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

E.O. 12898 requires agencies to make achieving environmental justice part of their missions by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations.[54] CEQ has analyzed this final rule and determined that it will not cause disproportionately high and adverse human health or environmental effects on minority populations and low-income populations. This rule sets forth implementing regulations for NEPA for Federal agencies; it is in the agency implementation of NEPA when conducting reviews of proposed agency actions where consideration of environmental justice effects occurs.

G. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Agencies must prepare a Statement of Energy Effects for significant energy actions under E.O. 13211.[55] CEQ has determined that this rulemaking is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

H. Executive Order 12988, Civil Justice Reform

Under section 3(a) of E.O. 12988,[56] agencies must review their proposed regulations to eliminate drafting errors and ambiguities, draft them to minimize litigation, and provide a clear legal standard for affected conduct. Section 3(b) provides a list of specific issues for review to conduct the review required by section 3(a). CEQ has conducted this review and determined that this final rule complies with the requirements of E.O. 12988.

I. Unfunded Mandate Reform Act

Section 201 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531, requires Federal agencies to assess the effects of their regulatory actions on state, Tribal, and local governments, and the private sector to the extent that such regulations incorporate requirements specifically set forth in law. Before promulgating a rule that may result in the expenditure by a state, Tribal, or local government, in the aggregate, or by the private sector of $100 million, adjusted annually for inflation, in any 1 year, an agency must prepare a written statement that assesses the effects on state, Tribal, and local governments and the private sector. 2 U.S.C. 1532. This final rule applies to Federal agencies and will not result in expenditures of $100 million or more for state, Tribal, and local governments, in the aggregate, or the private sector in any 1 year. This action also will not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of 2 U.S.C. 1531–1538.

J. Paperwork Reduction Act

This final rule will not impose any new information collection burden that requires additional review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Parts 1502, 1507, and 1508

Administrative practice and procedure; Environmental impact statements; Environmental protection; Natural resources.

Brenda Mallory,

Chair.

For the reasons discussed in the preamble, the Council on Environmental Quality amends parts 1502, 1507, and 1508 in title 40 of the Code of Federal Regulations as follows:

PART 1502—ENVIRONMENTAL IMPACT STATEMENT

■ 1. Revise the authority citation for part 1502 to read as follows:

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.

■ 2. Revise § 1502.13 to read as follows:

§ 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

PART 1507—AGENCY COMPLIANCE

■ 3. Revise the authority citation for part 1507 to read as follows:

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.

■ 4. Amend § 1507.3 by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 1507.3 Agency NEPA procedures.

(a) The Council has determined that the categorical exclusions contained in agency NEPA procedures as of September 14, 2020, are consistent with this subchapter.

(b) No more than 36 months after September 14, 2020, or 9 months after the establishment of an agency, whichever comes later, each agency shall develop or revise, as necessary, proposed procedures to implement the regulations in this subchapter. When the agency is a department, it may be efficient for major subunits (with the consent of the department) to adopt their own procedures.

* * * * *

PART 1508—DEFINITIONS

■ 5. Revise the authority citation for part 1508 to read as follows:

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.

■ 6. Amend § 1508.1 by revising paragraphs (g) and (z) to read as follows:

§ 1508.1 Definitions.

* * * * *

(g) *Effects* or *impacts* means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and include the following:

(1) Direct effects, which are caused by the action and occur at the same time and place.

(2) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

(3) Cumulative effects, which are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

[54] 59 FR 7629 (Feb. 16, 1994).

[55] 66 FR 28355 (May 22, 2001).

[56] 61 FR 4729 (Feb. 7, 1996).

(4) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effects will be beneficial.

* * * * *

(z) *Reasonable alternatives* means a reasonable range of alternatives that are technically and economically feasible, and meet the purpose and need for the proposed action.

* * * * *

[FR Doc. 2022–08288 Filed 4–19–22; 8:45 am]

BILLING CODE 3325–F2–P

Proposed Rules

Federal Register
Vol. 87, No. 76
Wednesday, April 20, 2022

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

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2022–BT–STD–0014]

RIN 1904–AF39

Energy Conservation Program: Energy Conservation Standards for Certain Commercial and Industrial Equipment; Small Electric Motors

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

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (''DOE'') is undertaking a review for amended energy conservation standards for small electric motors to determine whether to amend applicable energy conservation standards for this equipment. Specifically, through this request for information (''RFI''), DOE seeks data and information to evaluate whether amended energy conservation standards would result in significant savings of energy; be technologically feasible; and be economically justified. DOE welcomes written comments from the public on any subject within the scope of this document (including those topics not specifically raised in this RFI), as well as the submission of data and other relevant information concerning this RFI.

DATES: Written comments and information are requested and will be accepted on or before May 20, 2022.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov,* under docket number EERE–2022–BT–STD–0014. Follow the instructions for submitting comments. Alternatively, comments may be submitted by email to *SmallElecMotors2022STD0014@ee.doe.gov.* Include docket number EERE–2022–BT–STD–0014 in the subject line of the message.

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

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including the Federal eRulemaking Portal, email, postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing corona virus 2019 (''COVID–19'') pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *www.regulations.gov/docket/EERE-2022-BT-STD-0014.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

DOE has established a review process to conduct a more focused analysis to evaluate, based on statutory criteria, whether a new or amended energy conservation standard is warranted. Based on the information received in response to the RFI and DOE's own analysis, DOE will determine whether to proceed with a rulemaking for a new or amended energy conservation standard. If DOE makes an initial determination that a new or amended energy conservation standard would satisfy the applicable statutory criteria or DOE's analysis is inconclusive, DOE would undertake the preliminary stages of a rulemaking to issue a new or amended energy conservation standard. If DOE makes an initial determination based upon available evidence that a new or amended energy conservation standard would not meet the applicable statutory criteria, DOE would engage in a notice and comment rulemaking before issuing a final determination that new or amended energy conservation standards are not warranted.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

6317) Title III, Part C [2] of EPCA, added by Public Law 95–619, Title IV, section 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes small electric motors (''SEMs''), the subject of this document. (42 U.S.C. 6311(13)(G); 42 U.S.C. 6317(b))

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

EPCA directed DOE to establish a test procedure for those SEMs for which DOE determined that energy conservation standards would (1) be technologically feasible and economically justified and (2) result in significant energy savings. (42 U.S.C. 6317(b)(1)) Manufacturers of covered equipment must use the Federal test procedures as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). The DOE test procedures for SEMs appear at 10 CFR part 431, subpart X.

EPCA further directed DOE to prescribe energy conservation standards for those SEMs for which test procedures were established. (42 U.S.C. 6317(b)(2)) Additionally, EPCA prescribed that any such standards shall not apply to any SEM which is a component of a covered product under 42 U.S.C. 6292(a) or covered equipment under 42 U.S.C. 6311 of EPCA. (42 U.S.C. 6317(b)(3)) Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (*See* 42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297(a)–(c)).

EPCA requires that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE evaluate the energy conservation standards for each type of covered equipment, including those at issue here, and publish either a notice of determination that the standards do not need to be amended, or a NOPR that includes new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)). EPCA further provides that, not later than 3 years after the issuance of a final determination not to amend standards, DOE must make a new determination not to amend the standards or issue a NOPR including new proposed energy conservation standards. (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(3)(B)) DOE must make the analysis on which a determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(2))

In making a determination that the standards do not need to be amended, DOE must evaluate under the criteria of 42 U.S.C. 6295(n)(2) whether amended standards (1) will result in significant conservation of energy, (2) are technologically feasible, and (3) are cost effective as described under 42 U.S.C. 6295(o)(2)(B)(i)(II). (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)) Under 42 U.S.C. 6295(o)(2)(B)(i)(II), an evaluation of cost effectiveness requires DOE to consider savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard.

DOE is publishing this document in accordance with its authority under EPCA, and in satisfaction of its statutory requirement under EPCA.

B. Rulemaking History

On January 19, 2021, DOE published a notice of final determination (''January 2021 Final Determination'') with the determination that energy conservation standards for SEMs should not be amended. 86 FR 4885. In the January 2021 Final Determination, while DOE determined that more stringent standards would be technologically feasible, DOE also determined that more stringent energy conservation standards would not be cost effective. 86 FR 4885, 4906. Therefore, DOE determined that the current standards for SEMs did not need to be amended. *Id.*

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''appendix A''), applicable to covered equipment under 10 CFR 431.4, DOE notes that it is deviating from that appendix's provision requiring an early assessment review and a 75-day comment period for all pre-NOPR standards documents. 10 CFR part 430, subpart C, appendix A, sections 6(a)(1) and 6(d)(2). Given that the market and technologies have not changed substantively since the prior rulemaking during which stakeholders were provided an opportunity to comment, this RFI with the 30-day comment period is expected to provide sufficient opportunity for stakeholders to provide comment.

II. Request for Information

DOE is publishing this RFI to collect data and information to inform its decision, consistent with its obligations under EPCA, as to whether the Department should proceed with an energy conservation standards rulemaking. In the following sections, DOE has identified certain topics for which information and data are requested to assist in the evaluation of the potential for amended energy conservation standards. DOE also welcomes comments on other issues relevant to the RFI that may not specifically be identified in this document.

A. Significant Savings of Energy

In the January 2021 Final Determination, DOE determined that amended standards would not satisfy the cost-effectiveness criterion as required by EPCA when determining whether to amend standards for a given covered product or equipment. (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)(C)) Consequently, DOE did not separately determine whether the potential energy savings would be significant for the purposes of 42 U.S.C. 6295(n)(2). 86 FR 4885, 4899.

On March 9, 2010, DOE established the current energy conservation standards for small electric motors. 75 FR 10874 (''March 2010 Final Rule''). In the March 2010 Final Rule, DOE projected that the adopted energy conservation standards would result in 2.2 quadrillion British thermal units (''quads'') of primary energy savings over a 30-year period (*i.e.,* 0.29 quad at TSL 4b for polyphase SEMs and 1.91 quad at TSL 7 for single phase SEMs). 75 FR 10874, 10876. Additionally, DOE estimated that an energy conservation standard established at an energy efficiency level equivalent to that achieved using the maximum available technology (''max-tech'') would have

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

resulted in 2.7 quads of primary energy savings (*i.e.,* an additional 0.5 quads of primary energy savings above the selected standard) (*i.e.,* 0.37 quad at TSL 7 for polyphase SEMs and 2.33 quad at TSL 8 for single phase SEMs). 75 FR 10874, 10916.

While DOE's request for information is not limited to the following issues, DOE is particularly interested in comment, information, and data on the following topics.

1. DOE seeks comments on whether the results of the energy use are still relevant. Specifically, DOE seeks inputs on whether the inputs to the energy use calculation used in the January 2021 Final Determination are still relevant. If revisions are needed, DOE seeks input on data sources that DOE can use to characterize the variability in annual energy consumption for SEMs. Specifically, DOE is requesting data and information related to: (1) The distribution of shipments across applications and sectors by equipment class or by motor topology and horsepower; (2) typical operating hours by application and sector; (3) typical motor load by application and sector; and (4) typical load profiles (*i.e.,* percentage of annual operating hours spent at specified load points) by application and sector.

2. DOE seeks comments on whether the no-new standards case efficiency distributions used in the January 2021 Final Determination still reflect the current mix of equipment efficiency in the market. DOE seeks data and input on the appropriate efficiency distribution in the no-new standards case for SEMs by equipment class group and horsepower range. DOE seeks data that would support changes in efficiency distributions over time in the no-new standards case.

3. DOE seeks comments on whether or not the inputs to the shipments analysis used in the March 2010 Final Rule are still relevant. DOE further requests 2011–2021 (or the most recently available) annual sales data (*i.e.,* number of shipments) for SEMs by equipment class. If disaggregated data of annual sales are not available at the equipment class level, DOE requests more aggregated data of annual sales at the motor topology level. DOE also requests data and information to help characterize future shipments of SEMs by equipment classes. Specifically, DOE requests information on the rate at which annual sales (*i.e.,* number of shipments) of SEMs is expected to change in the next 5–10 years. If possible, DOE requests this information by motor topology.

B. Technological Feasibility

During the January 2021 Final Determination, DOE considered a number of technology options that manufacturers could use to reduce energy consumption in SEMs.

4. DOE seeks comment on any changes to these technology options since the January 2021 Final Determination that could affect whether DOE could propose a ''no-new-standards'' determination, such as an insignificant increase in the range of efficiencies and performance characteristics of these technology options. DOE also seeks comment on whether there are any updated or new technology options that DOE should consider in its analysis.

5. DOE seeks comment on whether the methodologies employed in the January 2021 Final Determination engineering analysis, specifically regarding the adoption of the motor designs and associated efficiency levels considered in the March 2010 Final Rule analysis as the basis for the final determination, still apply. If not, DOE seeks comment on how the methodologies should be updated.

C. Economic Justification

In determining whether a proposed energy conservation standard is economically justified, DOE analyzes, among other things, the potential economic impact on consumers, manufacturers, and the Nation. DOE seeks comment on whether there are economic barriers to the adoption of more stringent energy conservation standards. DOE also seeks comment and data on indicating whether a more stringent energy conservation standard would be cost effective and economically justified.

While DOE's request for information is not limited to the following issues, DOE is particularly interested in comment, information, and data on the following.

6. DOE seeks input on whether and how the costs estimated for motor designs considered in the January 2021 Final Determination have changed since the time of that analysis. DOE also requests information on the investments (including related costs) necessary to incorporate specific design options, including, but not limited to, costs related to new or modified tooling (if any), materials, engineering and development efforts to implement each design option, and manufacturing/production impacts.

7. DOE requests information on the existence of any distribution channels other than the channels that were identified in the January 2021 Final Determination. DOE also requests data on the fraction of sales that go through these channels and any other identified channels.[3]

8. DOE seeks comments on whether the lifetime inputs used in the January 2021 Final Determination are still valid. DOE seeks data and input on the appropriate equipment lifetimes for small electric motors both in years and in lifetime mechanical hours that DOE should apply in its analysis.[4]

III. Submission of Comments

DOE invites all interested parties to submit in writing by the date under the **DATES** heading, comments and information on matters addressed in this notification and on other matters relevant to DOE's review of whether more-stringent energy conservation standards are warranted for SEMs.

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

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be

[3] In the January 2021 Final Determination, DOE identified three distribution channels for small electric motors and estimated their respective shares of sales volume: (1) From manufacturers to original equipment manufacturers (''OEMs''), who incorporate motors in larger pieces of equipment, to OEM equipment distributors, to contractors, and then to end-users (65 percent of shipments); (2) from manufacturers to wholesale distributors, to OEMs, to OEM equipment distributors, to contractors, and then to end-users (30 percent of shipments); and (3) from manufacturers to distributors or retailers, to contractors and then to end-users (5 percent of shipments). 86 FR 4885, 4899.

[4] In the January 2021 Final Determination, DOE used two Weibull distributions. One characterizes the motor lifetime in total operating hours (*i.e.,* mechanical lifetime), while the other characterizes the lifetime in years of use in the application (*e.g.,* a pump). DOE estimated motor mechanical lifetimes of 40,000 hours for polyphase motors and 30,000 hours for single phase motors. DOE estimated average application lifetimes to 7.8–9.7 years. 86 FR 4885, 4902.

included in your comment, nor in any document attached to your comment. If this instruction is followed, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

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

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

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

Include contact information each time you submit comments, data, documents, and other information to DOE. Faxes will not be accepted.

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

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

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

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

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on April 14, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 15, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–08441 Filed 4–19–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0461; Project Identifier MCAI–2021–01156–T]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2008–16–06, which applies to all BAE Systems (Operations) Limited Model 4101 airplanes. AD 2008–16–06 requires the installation of additional bonding leads, inspection of existing bonding leads for defects, inspection of fuel system pipe runs in the wings to ensure appropriate clearances are maintained, and corrective actions. Since the FAA issued AD 2008–16–06, a safety analysis by BAE Systems (Operations) Limited identified insufficient bonding for the crossfeed valve in the fuel tank area. This proposed AD would continue to require the actions in AD 2008–16–06, and add a requirement to install additional bonding leads around the crossfeed valve and accomplish a resistance check. 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 6, 2022.

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

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

For service information identified in this NPRM, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* internet *https://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0461; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3228; email *todd.thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0461; Project Identifier MCAI–2021–01156–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

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 Todd Thompson, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3228; email *todd.thompson@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The FAA issued AD 2008–16–06, Amendment 39–15624 (73 FR 45346, August 5, 2008) (AD 2008–16–06), for all BAE Systems (Operations) Limited Model 4101 airplanes. AD 2008–16–06 requires the installation of additional bonding leads, inspection of existing bonding leads for defects, inspection of fuel system pipe runs in the wings to ensure appropriate clearances are maintained, and corrective actions. Corrective actions include replacing any defective bonding leads and adjusting clearances of the fuel system pipe runs. AD 2008–16–06 resulted from a Special Federal Aviation Regulation 88 (SFAR 88) and equivalent Joint Aviation Authorities/European Aviation Safety Agency (JAA/EASA) policy assessment of fuel tank wiring installations in which BAE Systems (Operations) Limited identified the need for design changes to the bonding in the fuel tank area of Model 4101 airplanes. The FAA issued AD 2008–16–06 to address insufficient or defective bonding in the fuel tank area, which, if not corrected, could lead to ignition of fuel vapors and subsequent fuel tank explosion.

Actions Since AD 2008–16–06 Was Issued

Since the FAA issued AD 2008–16–06, a safety analysis by BAE Systems (Operations) Limited identified insufficient bonding for the crossfeed valve in the fuel tank, and determined that installing additional bonding leads around the crossfeed valve and a resistance check are required.

The Civil Aviation Authority (CAA), which is the aviation authority for the United Kingdom, has issued CAA AD G–2021–0013, dated October 21, 2021 (also referred to as the MCAI), to correct an unsafe condition for all BAE Systems (Operations) Limited Model 4101 airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0461.

This proposed AD was prompted by a report that there is insufficient bonding of the crossfeed valve in the fuel tank area. The FAA is proposing this AD to address insufficient or defective bonding in the fuel tank area, which, if not corrected, could lead to ignition of fuel vapors and subsequent fuel tank explosion. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

BAE Systems (Operations) Limited has issued Service Bulletin J41–28–013, Revision 2, dated July 8, 2019. This service information describes procedures for installation of additional bonding leads on components within the dry bay at Rib 1 on the airplane centerline and below the fuselage (around the crossfeed valve), a resistance check, an inspection of existing bonding leads for defects, an inspection for clearance of all fuel system pipe runs in the wings, and corrective actions, as necessary. Corrective actions include replacing any defective bonding leads and adjusting clearances of the fuel system pipe runs.

This proposed AD would also require BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 1, dated January 10, 2008, which the Director of the Federal Register approved for incorporation by reference as of September 9, 2008 (73 FR 45346, August 5, 2008).

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

FAA's Determination

This product has been approved by the aviation authority of another

country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would retain all requirements of AD 2008–16–06. This proposed AD would also require accomplishing the actions specified in the service information described previously.

Costs of Compliance

The FAA estimates that this proposed AD affects 12 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2008–16–06	80 work-hours × $85 per hour = $6,800	$1,700	$8,500	$102,000
New proposed actions	2 work-hours × $85 per hour = $170	1,700	1,870	22,440

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$0	$85

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 has 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) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The 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:

■ a. Removing Airworthiness Directive (AD) 2008–16–06, Amendment 39–15624 (73 FR 45346, August 5, 2008); and

■ b. Adding the following new AD:

BAE Systems (Operations) Limited: Docket No. FAA–2022–0461; Project Identifier MCAI–2021–01156–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by June 6, 2022.

(b) Affected ADs

This AD replaces AD 2008–16–06, Amendment 39–15624 (73 FR 45346, August 5, 2008) (AD 2008–16–06).

(c) Applicability

This AD applies to BAE Systems (Operations) Limited Model 4101 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by a report that there is insufficient bonding of the crossfeed valve in the fuel tank area. The FAA is issuing this AD to address insufficient or defective bonding in the fuel tank area, which, if not corrected, could lead to ignition of fuel vapors and subsequent fuel tank explosion.

(f) Compliance

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

(g) Retained Actions, With Revised Service Information

This paragraph restates the requirements of paragraph (f) of AD 2008–16–06, with revised service information. Within 24 months after September 9, 2008 (the effective date of AD 2008–16–06), unless already done, do the actions specified in paragraphs (g)(1) through (3) of this AD.

(1) Inspect the bonding leads between ribs 1 and 9, and between ribs 16 and 19, in the left-hand (LH) and right-hand (RH) wings in accordance with paragraph 2.B.(2) of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 1, dated January 10, 2008; or BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 2, dated July 8, 2019; and, before next flight, replace all defective bonding leads with airworthy parts in accordance with BAE Systems (Operations) Limited Service Bulletin J41–28–013,

Revision 1, dated January 10, 2008; or BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 2, dated July 8, 2019. As of the effective date of this AD, BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 2, dated July 8, 2019, must be used for the actions required by this paragraph.

(2) Inspect all fuel system pipe runs inside the LH and RH wings in accordance with paragraph 2.B.(3) of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 1, dated January 10, 2008; or BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 2, dated July 8, 2019; and, if incorrect clearances are found, before next flight, adjust clearances in accordance with BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 1, dated January 10, 2008; or BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 2, dated July 8, 2019. As of the effective date of this AD, BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 2, dated July 8, 2019, must be used for the actions required by this paragraph.

(3) Install additional electrical bonding of components within the LH and RH wings in accordance with paragraphs 2.B.(4) through 2.B.(15) of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 1, dated January 10, 2008; or paragraphs 2.B.(4) and 2.B.(6) through 2.B.(16) inclusive of BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 2, dated July 8, 2019. As of the effective date of this AD, BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 2, dated July 8, 2019, must be used for the actions required by this paragraph.

(h) New Requirement of This AD: Replace Bolts and Washers Securing Crossfeed Valve

Within 24 months after the effective date of this AD, install additional bonding leads on components within the dry bay at Rib 1 on the airplane centerline and below the fuselage (around the crossfeed valve) and perform a resistance check in accordance with paragraph 2.B.(5) of BAE Systems (Operations) Limited Service Bulletin J41–28–013, Revision 2, dated July 8, 2019.

(i) Other FAA AD Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) CAA AD G–2021–0013, dated October 21, 2021, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0461.

(2) For more information about this AD, contact Todd Thompson, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3228; email *todd.thompson@faa.gov.*

(3) For service information identified in this AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* internet *https://www.baesystems.com/Businesses/RegionalAircraft/index.htm*. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on April 14, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–08411 Filed 4–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0465; Project Identifier AD–2022–00330–R]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–20–10, which applies to certain Leonardo S.p.a. Model AB139 and AW139 helicopters. AD 2021–20–10 requires removing from service a certain part-numbered main gearbox (MGB) spherical bearing lock nut (lock nut) that is installed on certain part-numbered MGBs and replacing it with a newly designed MGB lock nut. AD 2021–20–10 also prohibits installing any MGB with the affected MGB lock nut and prohibits installing any affected MGB lock nut on any helicopter. Since the FAA issued AD 2021–20–10, it was discovered that a part number (P/N) was incorrectly listed and that the applicability needed to be clarified. This proposed AD would retain the requirements of AD 2021–20–10 and would clarify the applicability. 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 6, 2022.

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

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

For service information identified in this NPRM, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://customerportal.leonardocompany.com/en-US/*. You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0465; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the European Union Aviation Safety Agency (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0465; Project Identifier AD–2022–00330–R'' 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 *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–20–10, Amendment 39–21748 (86 FR 57574, October 18, 2021) (AD 2021–20–10), for Leonardo S.p.a. Model AB139 and AW139 helicopters, without MGB lock nut P/N 3G6320A09152 installed and with MGB P/N 3G6320A00131, 3G6320A00132, 3G6320A00133, 3G6320A00134, 3G6320A00135, 3G6320A00136, 3G6320A22031, 4G6320A00132, or 4G6320A00133 installed; or MGB P/N 3G320A00133 with serial number (S/N) M23, or MGB P/N 3G6320A00134, with S/N M6, N76, N92, P124, P129, P131, P162, P184, Q230, Q243, Q249, R272, V21, V39, V96, V163, V211, V241, V272, V281, V384, V386, or V622 installed; or MGB P/N 3G6320A00136 with S/N AW1, AW2, AW3, AW5, or AW10 installed.

AD 2021–20–10 requires, within 100 hours time in service (TIS), or during the next scheduled MGB overhaul, whichever occurs first after the effective date of the AD, removing a certain part-numbered MGB lock nut from service and replacing it with a different part-numbered MGB lock nut. AD 2021–20–10 also prohibits installing an MGB having an affected MGB lock nut on any helicopter and also prohibits installing an affected MGB lock nut on any helicopter as of the effective date of the AD.

AD 2021–20–10 was prompted by a series of EASA ADs beginning with EASA AD 2019–0036, dated February 15, 2019 (EASA AD 2019–0036), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for all serial-numbered Leonardo S.p.a. Helicopters (formerly Finmeccanica S.p.A, AgustaWestland S.p.A., Agusta S.p.A.; and AgustaWestland Philadelphia Corporation, formerly Agusta Aerospace Corporation) Model AB139 and AW139 helicopters. EASA advised that an occurrence was reported of a cracked MGB lock nut P/N 3G6310A09151, which is used to keep the planetary gears in position. EASA AD 2019–0036 required replacing each MGB lock nut with an airworthy MGB lock nut. EASA advised this condition, if not detected and corrected, could lead to failure of the MGB planetary gears, resulting in loss of control of the helicopter.

After EASA issued EASA AD 2019–0036, an additional occurrence was reported of a cracked MGB lock nut P/N 3G6320A09151. Accordingly, EASA superseded EASA AD 2019–0036 with EASA AD 2019–0174, dated July 18, 2019 (EASA AD 2019–0174), which retained the requirements of EASA AD 2019–0036 but reduced the compliance times. After EASA issued EASA AD 2019–0174, Leonardo Helicopters issued Alert Service Bulletin No. 139–609, dated December 18, 2019, to provide instructions for replacing the affected MGB lock nut with MGB lock nut P/N 3G6320A09152, which has a redesigned flange reducing the stress at the bearing nut locations where cracks were detected.

Accordingly, EASA then issued EASA AD 2020–0011, dated January 29, 2020, and corrected January 30, 2020 (EASA AD 2020–0011), which superseded EASA AD 2019–0174, and partially retained the requirements of EASA AD 2019–0174. EASA AD 2020–0011 revised the compliance times in EASA AD 2019–0174, required replacing each affected MGB lock nut with a newly designed MGB lock nut, and prohibited installing an affected MGB on any helicopter. After EASA issued EASA AD 2020–0011, EASA identified certain MGB part numbers that were inadvertently categorized incorrectly and therefore listed in the wrong group of helicopters. Accordingly, EASA issued EASA AD 2020–0011R1, dated November 20, 2020 (EASA AD 2020–011R1), thereby revising EASA AD 2020–0011. EASA AD 2020–0011R1 retained the requirements of EASA AD 2020–0011 and corrected Appendix 1 of EASA AD 2020–0011.

After EASA issued EASA AD 2020–0011R1, Leonardo Helicopters issued Alert Service Bulletin No. 139–609, Revision A, dated April 13, 2021, which identifies an additional part-numbered MGB, which is also affected by the unsafe condition. Accordingly, EASA superseded EASA AD 2020–0011R1 with EASA AD 2021–0121, dated May 4, 2021 (EASA AD 2021–0121). EASA AD 2021–0121 adds an additional part-numbered MGB with a certain S/N to the list of affected parts. EASA AD 2021–0121 retains the requirements of EASA AD 2020–0011R1, and corrects Table 1 and Appendix 1 of EASA AD 2020–0011R1.

Accordingly, EASA AD 2021–0121 requires replacing each affected MGB lock nut with a newly designed MGB lock nut, and prohibits installing an affected MGB on any helicopter.

Actions Since AD 2021–20–10 Was Issued

Since the FAA issued AD 2021–20–10, it was discovered that MGB P/N 3G6320A00133 is incorrectly listed as MGB P/N 3G320A00133 in both the preamble and applicability paragraph of the AD. Also, the FAA determined that

all MGBs, regardless of S/N, are affected by the unsafe condition. Therefore, this proposed AD would remove any reference to S/Ns in the applicability. In addition, this proposed AD includes the total U.S. fleet costs, which were inadvertently excluded in AD 2021–20–10.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

This proposed AD would require Leonardo Helicopters Alert Service Bulletin No. 139–609, Revision A, dated April 13, 2021, which the Director of the Federal Register approved for incorporation by reference as of November 22, 2021 (86 FR 57574, October 18, 2021).

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

Other Related Service Information

The FAA also reviewed Leonardo Helicopters Alert Service Bulletin No. 139–567, Revision B, dated October 18, 2019, which provides additional information for replacing the MGB lock nut.

Proposed AD Requirements in This NPRM

This proposed AD would retain all of the requirements of AD 2021–20–10.

Differences Between This Proposed AD and EASA AD 2021–0121

EASA AD 2021–0121 requires a compliance time based on number of landings, whereas this proposed AD would require a compliance time based on hours TIS. The service information referenced in EASA AD 2021–0121 requires submitting certain information and parts to Leonardo, whereas this proposed AD would not. EASA AD 2021–0121 applies to all serial-numbered Model AB139 and AW139 helicopters, whereas this proposed AD would apply to all Model AB139 and AW139 helicopters, regardless of S/N, with a certain part-numbered MGB lock nut and MGB installed.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 130 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Replacing each affected MGB lock nut with a newly designed MGB lock nut would take about 190 work-hours (during next MGB overhaul) and parts would cost about $7,600 for an estimated cost of $23,750 per helicopter and $3,087,500 for the U.S. fleet.

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, 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:

■ a. Removing Airworthiness Directive 2021–20–10, Amendment 39–21748 (86 FR 57574, October 18, 2021); and

■ b. Adding the following new airworthiness directive:

Leonardo S.p.a.: Docket No. FAA–2022–0465; Project Identifier AD–2022–00330–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by June 6, 2022.

(b) Affected ADs

This AD replaces AD 2021–20–10, Amendment 39–21748 (86 FR 57574, October 18, 2021) (AD 2021–20–10).

(c) Applicability

This AD applies to Leonardo S.p.a. Model AB139 and AW139 helicopters, certificated in any category, with a main rotor gearbox (MGB) part number (P/N) 3G6320A00131, 3G6320A00132, 3G6320A00133, 3G6320A00134, 3G6320A00135, 3G6320A00136, 3G6320A22031, 4G6320A00132, or 4G6320A00133, and MGB spherical bearing lock nut (lock nut) P/N 3G6320A09151 installed.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6320, Main Rotor Gearbox.

(e) Unsafe Condition

This AD was prompted by a cracked MGB lock nut. The FAA is issuing this AD to replace an affected MGB lock nut with a new MGB lock nut. The unsafe condition, if not addressed, could result in failure of the MGB planetary gears, resulting in loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 100 hours time-in-service, or during the next scheduled MGB overhaul, whichever occurs first after November 22, 2021 (the effective date of AD 2021–20–10),

remove each MGB lock nut P/N 3G6320A09151 from service and replace with MGB lock nut P/N 3G6320A09152 in accordance with Annex A, steps 1 through 17, of Leonardo Helicopters Alert Service Bulletin No. 139–609, Revision A, dated April 13, 2021, except you are not required to send parts to Leonardo Helicopters.

Note to paragraph (g)(1): Leonardo Helicopters service information refers to an MGB lock nut as a ring nut.

(2) As of November 22, 2021 (the effective date of AD 2021–20–10), do not install any MGB having MGB lock nut P/N 3G630A09151 on any helicopter, and do not install any MGB lock nut P/N 3G630A09151 on any helicopter.

(h) Special Flight Permits

Special flight permits are prohibited.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, contact Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov.*

(2) For service information identified in this AD, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://customerportal.leonardocompany.com/en-US/.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(3) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD 2021–0121, dated May 4, 2021. You may view the EASA AD at *https://www.regulations.gov* in Docket No. FAA–2022–0465.

Issued on April 13, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–08304 Filed 4–19–22; 8:45 am]

BILLING CODE 4910–13–P

POSTAL SERVICE

39 CFR Part 111

Special Handling—Fragile Discontinued

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to amend *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) in various sections to discontinue the Special Handling—Fragile extra service.

DATES: Submit comments on or before May 20, 2022.

ADDRESSES: Mail or deliver written comments to the Director, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to *PCFederalRegister@usps.gov,* with a subject line of ''Special Handling—Fragile Discontinued''. Faxed comments are not accepted.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC, 20260. These records are available for review on Monday through Friday, 9 a.m.—4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT: Karen F. Key at (202) 268–7492 or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: The Postal Service is proposing to discontinue the Special Handling—Fragile extra service. An investigation has revealed that operational procedures do not support the preferential handling of Special Handling—Fragile items.

The Postal Service continues to strive to build and maintain a loyal relationship with its customers and provide products and services with integrity. However, with the execution gaps that currently exist with Special Handling—Fragile, the Postal Service believes it is in the best interest to discontinue the Special Handling-Fragile extra service.

The decision to discontinue Special Handling—Fragile will not affect live animals tendered to the Postal Service as provided in Publication 52—*Hazardous, Restricted, and Perishable Mail.*

In addition, the Postal Service is proposing to revise the applicable Quick Service Guides (QSG), *Price List* (Notice 123), and Publication 52, to reflect this DMM revision.

The Postal Service is proposing to implement this change effective July 10, 2022.

We believe the proposed revision will provide customers with a more efficient mailing experience.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, the Postal Service proposes the following changes to Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1)

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401—404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631—3633, 3641, 3681–3685, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) to read as follows:

***Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM)**

* * * * *

500 Additional Services

503 Extra Services

1.0 Basic Standards for All Extra Services

* * * * *

1.4 Eligibility for Extra Services

* * * * *

1.4.1 Eligibility—Domestic Mail

* * * * *

Exhibit 1.4.1 Eligibility—Domestic Mail

[Delete the ''Special Handling—Fragile'' extra service item in its entirety.]

[Under the ''Additional Combined Extra Services'' column delete ''Special Handling—Fragile'' from the ''Insurance'', ''Certificate of Mailing'', ''Certificate of Bulk Mailing'', ''Return Receipt'', ''Signature Confirmation'', ''Signature Confirmation Restricted Delivery'', and ''Collect on Delivery'' extra service items.]

* * * * *

[Delete section 10.0, Special Handling—Fragile, in its entirety.]

* * * * *

1.4.2 Eligibility—Other Domestic Mail

* * * * *

Exhibit 1.4.2 Eligibility—Other Domestic Mail

* * * * *

[Delete the Special Handling—Fragile line item in its entirety.]

* * * * *

507 Mailer Services

* * * * *

1.0 Treatment of Mail

* * * * *

1.3 Directory Service

USPS letter carrier offices give directory service to the types of mail listed below that have an insufficient address or cannot be delivered at the address given (the USPS does not compile a directory of any kind):

[Revise the text of item a to read as follows:]

a. Mail with extra services (certified, COD [excluding COD Hold For Pickup mailpieces], registered).

* * * * *

1.4 Basic Treatment

* * * * *

1.4.5 Extra Services

Mail with extra services is treated according to the charts for each class of mail in 1.5, except that:

* * * * *

[Delete item c in its entirety and renumber item d as item c.]

* * * * *

2.0 Forwarding

* * * * *

2.3 Postage for Forwarding

* * * * *

2.3.7 Extra Services

[Revise the text of 2.3.7 to read as follows:]

Certified, collect on delivery (COD) (excluding COD Hold For Pickup mailpieces), USPS Tracking, insured, registered, Signature Confirmation, and Adult Signature mail is forwarded to a domestic address only without additional extra service fees, subject to the applicable postage charge.

* * * * *

600 Basic Standards for All Mailing Standards

* * * * *

604 Postage Payment Methods and Refunds

1.0 Stamps

* * * * *

1.3 Postage Stamps Invalid for Use

The following are not valid to pay postage for U.S. domestic or U.S.-originated international mail:

[Revise the text of item a to read as follows:]

a. Postage due, special delivery, and Certified Mail stamps.

* * * * *

4.0 Postage Meters and PC Postage Products (''Postage Evidencing Systems'')

* * * * *

4.6 Mailings

4.6.1 Mailing Date Format

* * * The mailing date format used in the indicia is also subject to the following conditions.

a. Complete Date. Mailers must use a complete date for the following:

* * * * *

[Revise the text of item a2 to read as follows:]

2. All mailpieces with Insured Mail or COD service.

* * * * *

9.0 Exchanges and Refunds

* * * * *

9.2 Postage and Fee Refunds

* * * * *

9.2.3 Full Refund

A full refund (100%) may be made when:

* * * * *

[Revise the text of item e to read as follows:]

e. Fees are paid for Certified Mail services, USPS Tracking, or USPS Signature Services, and the article fails to receive the extra service for which the fee is paid.

* * * * *

700 Special Standards

703 Nonprofit USPS Marketing Mail and Other Unique Eligibility

* * * * *

2.0 Overseas Military and Diplomatic Post Office Mail

* * * * *

2.5 Parcel Airlift (PAL)

* * * * *

2.5.5 Additional Services

The following extra services may be combined with PAL if the applicable standards for the services are met and the additional service fees paid:

* * * * *

[Delete item ''e'' in its entirety.]

* * * * *

3.0 Department of State Mail

* * * * *

3.2 Conditions For Authorized Mail

* * * * *

3.2.6 Extra Services

* * * * *

[Delete item e and renumber item f as item e.]

* * * * *

9.0 Mixed Classes

* * * * *

9.13 Extra Services for Mixed Classes

[Delete 9.13.1 in its entirety and renumber items 9.13.2 and 9.13.3 as 9.13.1 and 9.13.2.]

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

18.0 Priority Mail Express Open and Distribute and Priority Mail Open and Distribute

* * * * *

18.3 Additional Standards for Priority Mail Express Open and Distribute

* * * * *

18.3.2 Extra Services

No extra services may be added to the Priority Mail Express segment of a Priority Mail Express Open and Distribute shipment, and the enclosed mail may receive only the following extra services:

[Revise the text of items a and b to read as follows:]

a. First-Class Mail pieces may be sent with Certified Mail service or, for parcels only, USPS Tracking or Signature Confirmation service.

b. Priority Mail pieces may be sent with Certified Mail service, USPS Tracking, or Signature Confirmation service.

* * * * *

[Revise the text of item d to read as follows:]

d. Parcel Select, USPS Retail Ground and Package Services mail may be sent with, for parcels only, USPS Tracking or Signature Confirmation service.

18.4 Additional Standards for Priority Mail Open and Distribute

* * * * *

18.4.2 Extra Services

No extra services are available for Priority Mail Open and Distribute containers. The mail enclosed in the container may receive only the following services:

[Revise the text of item a to read as follows:]

a. First-Class Mail pieces may be sent with Certified Mail service or special handling or, for parcels only, USPS Tracking or Signature Confirmation service.

* * * * *

[Revise the text of item c to read as follows:]

c. Parcel Select and Package Services mail may be sent with, for parcels only, USPS Tracking or Signature Confirmation service.

* * * * *

Joshua J. Hofer,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–07829 Filed 4–19–22; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220413–0095]

RIN 0648–BL12

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 63

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

ACTION: Proposed rule; request for comments.

SUMMARY: This action proposes to approve and implement Framework Adjustment 63 to the Northeast Multispecies Fishery Management Plan. This rule proposes to set or adjust catch limits for 5 of the 20 multispecies (groundfish) stocks, adjust recreational measures for Georges Bank cod, and revise the default specifications process. This action is necessary to respond to updated scientific information and to achieve the goals and objectives of the fishery management plan. The proposed measures are intended to help prevent overfishing, rebuild overfished stocks, achieve optimum yield, and ensure that management measures are based on the best scientific information available.

DATES: Comments must be received by May 5, 2022.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2021–0133, by the following method:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2021–0133 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by us. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of Framework Adjustment 63, including the draft Environmental Assessment, the Regulatory Impact Review, and the Regulatory Flexibility Act Analysis prepared by the New England Fishery Management Council in support of this action, are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The supporting documents are also accessible via the internet at: *https://www.nefmc.org/management-plans/northeast-multispecies* or *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Liz Sullivan, Fishery Policy Analyst, phone: 978–282–8493; email: *Liz.Sullivan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Summary of Proposed Measures

This action would implement the management measures in Framework Adjustment 63 to the Northeast Multispecies Fishery Management Plan (FMP). The New England Fishery Management Council reviewed the proposed regulations and deemed them consistent with, and necessary to implement, Framework 63 in a March 8, 2022, letter from Council Chairman Eric Reid to Regional Administrator Michael Pentony. Under the Magnuson-Stevens Act, we approve, disapprove, or partially approve measures that the Council proposes, based on consistency with the Act and other applicable law. We review proposed regulations for consistency with the fishery management plan, plan amendment, the Magnuson-Stevens Act and other applicable law, and publish the proposed regulations, solicit public comment, and promulgate the final regulations. We are seeking comments on the Council's proposed measures in Framework 63. Through Framework 63, the Council proposes to:

- Set shared U.S./Canada quotas for Georges Bank (GB) yellowtail flounder and eastern GB cod and haddock for fishing years 2022 and 2023;
- Set specifications, including catch limits, for five groundfish stocks: Gulf of Maine (GOM) cod (2022–2024), GB yellowtail flounder (2022–2023), and GB cod, GB haddock, and white hake (2022);
- Adjust recreational measures for GB cod;
- Grant the Regional Administrator authority to adjust recreational

measures for GB cod in 2023 and 2024, and;

- Modify the current process for default specifications.

This action also proposes regulatory corrections that are not part of Framework 63, but that may be considered and implemented under our section 305(d) authority in the Magnuson-Stevens Act to make changes necessary to carry out the FMP. We are proposing these corrections in conjunction with the Framework 63 proposed measures for expediency purposes. These proposed corrections are described in Regulatory Corrections under Secretarial Authority.

Fishing Years 2022 and 2023 Shared U.S./Canada Quotas

Management of Transboundary Georges Bank Stocks

Eastern GB cod, eastern GB haddock, and GB yellowtail flounder are jointly managed with Canada under the United States/Canada Resource Sharing Understanding. The Transboundary Management Guidance Committee (TMGC) is a government-industry committee made up of representatives from the United States and Canada. For historical information about the TMGC see: *https://www.bio.gc.ca/info/intercol/tmgc-cogst/index-en.php.* Each year, the TMGC recommends a shared quota for each stock based on the most recent stock information and the TMGC's harvest strategy. The TMGC's harvest strategy for setting catch levels is to maintain a low to neutral risk (less than 50 percent) of exceeding the fishing mortality limit for each stock. The harvest strategy also specifies that when stock conditions are poor, fishing mortality should be further reduced to promote stock rebuilding. The shared quotas are allocated between the United States and Canada based on a formula that considers historical catch (10-percent weighting) and the current resource distribution (90-percent weighting).

For GB yellowtail flounder, the Council's Scientific and Statistical Committee (SSC) also recommends an acceptable biological catch (ABC) for the stock. The ABC is typically used to inform the U.S. TMGC's discussions with Canada for the annual shared quota. Although the stock is jointly managed with Canada, and the TMGC recommends annual shared quotas, the Council may not set catch limits that would exceed the SSC's recommendation. The SSC does not recommend ABCs for eastern GB cod and haddock because they are management units of the total GB cod and haddock stocks. The SSC recommends overall ABCs for the total GB cod and haddock stocks. The shared U.S./Canada quota for eastern GB cod and haddock is included in these overall ABCs, and must be consistent with the SSC's recommendation for the total GB stocks.

2022 and 2023 U.S./Canada Quotas

The Transboundary Resources Assessment Committee conducted assessments for the three transboundary stocks in July 2021, and detailed summaries of these assessments can be found at: *https://www.nefsc.noaa.gov/assessments/trac/.* The TMGC met in September 2021 to recommend shared quotas for 2022 based on the updated assessments, and the Council adopted the TMGC's recommendations in Framework 63. Framework 63 proposes to set the same shared quotas for a second year (*i.e.,* for fishing year 2023) as placeholders, with the expectation that those quotas will be reviewed annually and new recommendations will be received from the TMGC. The proposed 2022 and 2023 shared U.S./Canada quotas, and each country's allocation, are listed in Table 1.

TABLE 1—PROPOSED 2022 AND 2023 FISHING YEARS U.S./CANADA QUOTAS (MT, LIVE WEIGHT) AND PERCENT OF QUOTA ALLOCATED TO EACH COUNTRY

Quota	Eastern GB cod	Eastern GB haddock	GB yellowtail flounder
Total Shared Quota	571	14,100	200.
U.S. Quota	160 (28 percent)	6,627 (47 percent)	122 (61 percent).
Canadian Quota	411 (72 percent)	7,473 (53 percent)	78 (39 percent).

The proposed 2022 U.S. quota for eastern GB cod would represent a 16.1-percent decrease compared to 2021; the proposed 2022 U.S. quota for eastern GB haddock and GB yellowtail flounder would represent 2-percent and 53-percent increases, respectively, compared to 2021. For a more detailed discussion of the TMGC's 2022 catch advice, including a description of each country's quota share, see the TMGC's guidance document that will be posted at: *https://www.greateratlantic.fisheries.noaa.gov/.*

The regulations implementing the U.S./Canada Resource Sharing Understanding require deducting any overages of the U.S. quota for eastern GB cod, eastern GB haddock, or GB yellowtail flounder from the U.S. quota in the following fishing year. If catch information for the 2021 fishing year indicates that the U.S. fishery exceeded its quota for any of the shared stocks, we will reduce the respective U.S. quotas for the 2022 fishing year in a future management action, as close to May 1, 2022, as possible. If any fishery that is allocated a portion of the U.S. quota exceeds its allocation and causes an overage of the overall U.S. quota, the overage reduction would be applied only to that fishery's allocation in the following fishing year. This ensures that catch by one component of the overall fishery does not negatively affect another component of the overall fishery.

Catch Limits for Fishing Years 2022–2024

Summary of the Proposed Catch Limits

Tables 2 through 11 show the proposed catch limits for the 2022–2024 fishing years. A brief summary of how these catch limits were developed is provided below. More details on the proposed catch limits for each groundfish stock can be found in Appendix II (Calculation of Northeast Multispecies Annual Catch Limits, FY 2022–FY 2024) to the Framework 63 Environmental Assessment (see **ADDRESSES** for information on how to get this document).

Through Framework 63, the Council proposes to adopt catch limits for GOM cod for the 2022–2024 fishing years and for GB cod for the 2022 fishing year, based on stock assessments completed in 2021; a catch limit for white hake for fishing year 2022, based on the revised rebuilding plan implemented by Framework 61; and a catch limit for GB yellowtail flounder for fishing years 2022–2023. Framework 59 (85 FR 45794; July 30, 2020) previously set 2022 quotas for seven groundfish stocks based on assessments conducted in 2019, which would remain in place, with a small change to the U.S. ABC for GB haddock to reflect the 2022 TMGC

recommendation for that stock. Framework 61 (86 FR 40353; July 28, 2021) previously set 2022–2023 quotas for the remaining nine groundfish stocks based on assessments conducted in 2020, and those would also remain in place. Table 2 provides an overview of which catch limits, if any, would change, as proposed in Framework 63, as well as when the stock was most recently assessed. Table 3 provides the percent change in the 2022 catch limit compared to the 2021 fishing year.

TABLE 2—CHANGES TO CATCH LIMITS, AS PROPOSED IN FRAMEWORK 63

Stock	Most recent assessment	Proposed change in framework 63
GB Cod	2021	New 2022 ABC.
GOM Cod	2021	New 2022–2024 ABC.
GB Haddock	2019	New 2022 U.S. ABC.
GOM Haddock	2019	No change: 2022 catch limits set by Framework 59.
GB Yellowtail Flounder	2020	New 2022–2023 ABC.
SNE/MA Yellowtail Flounder	2019	No change: 2022 catch limits set by Framework 59.
CC/GOM Yellowtail Flounder	2019	No change: 2022 catch limits set by Framework 59.
American Plaice	2019	No change: 2022 catch limits set by Framework 59.
Witch Flounder	2019	No change: 2022 catch limits set by Framework 59.
GB Winter Flounder	2020	No change: 2022–2023 catch limits set by Framework 61.
GOM Winter Flounder	2020	No change: 2022–2023 catch limits set by Framework 61.
SNE/MA Winter Flounder	2020	No change: 2022–2023 catch limits set by Framework 61.
Redfish	2020	No change: 2022–2023 catch limits set by Framework 61.
White Hake	2019	New 2022 ABC.
Pollock	2019	No change: 2022 catch limits set by Framework 59.
N. Windowpane Flounder	2020	No change: 2022–2023 catch limits set by Framework 61.
S. Windowpane Flounder	2020	No change: 2022–2023 catch limits set by Framework 61.
Ocean Pout	2020	No change: 2022–2023 catch limits set by Framework 61.
Atlantic Halibut	2020	No change: 2022–2023 catch limits set by Framework 61.
Atlantic Wolffish	2020	No change: 2022–2023 catch limits set by Framework 61.

N = Northern; S = Southern.

TABLE 3—PROPOSED FISHING YEARS 2022–2024 OVERFISHING LIMITS AND ACCEPTABLE BIOLOGICAL CATCHES

[mt, live weight]

Stock	2022		Percent change from 2021	2023		2024	
	OFL	U.S. ABC		OFL	U.S. ABC	OFL	U.S. ABC
GB Cod	UNK	343	−73.78				
GOM Cod	724	551	0	853	551	980	551
GB Haddock	114,925	81,383	−2				
GOM Haddock	14,834	11,526	−31				
GB Yellowtail Flounder	UNK	122	53	UNK	122		
SNE/MA Yellowtail Flounder	184	22	0				
CC/GOM Yellowtail Flounder	1,116	823	0				
American Plaice	3,687	2,825	−2				
Witch Flounder	UNK	1,483	0				
GB Winter Flounder	974	608	0	1,431	608		
GOM Winter Flounder	662	497	0	662	497		
SNE/MA Winter Flounder	1,438	456	0	1,438	456		
Redfish	13,354	10,062	−1	13,229	9,967		
White Hake	3,022	2,116	−1				
Pollock	21,744	16,812	−24				
N. Windowpane Flounder	UNK	160	0	UNK	160		
S. Windowpane Flounder	513	384	0	513	384		
Ocean Pout	125	87	0	125	87		
Atlantic Halibut	UNK	101	0	UNK	101		
Atlantic Wolffish	122	92	0	122	92		

UNK = Unknown.

Note: An empty cell indicates no OFL/ABC is adopted for that year. These catch limits would be set in a future action.

Overfishing Limits and Acceptable Biological Catches

The overfishing limit (OFL) is calculated to set the maximum amount of fish that can be caught in a year, without constituting overfishing. The ABC is typically set lower than the OFL to account for scientific uncertainty. For GB cod, GB haddock, and GB yellowtail flounder, the total ABC is reduced by the amount of the Canadian quota (see Table 1 for the Canadian and U.S. shares of these stocks). Although the TMGC recommendations were only for fishing year 2022, the portion of the shared quota allocated to Canada in fishing year 2022 was used to project U.S. ABCs for GB yellowtail for 2023. This avoids artificially inflating the U.S. ABC up to the total ABC for the 2023 fishing year. Because there are no proposed total ABCs for GB cod and GB haddock for fishing year 2023, there are no fishing year 2023 U.S. ABCs for these two stocks either, although there are proposed quotas for eastern GB cod and haddock (see Fishing Years 2022 and 2023 Shared U.S./Canada Quotas). The TMGC will make new recommendations for 2023, which would replace any quotas for these stocks set in this action. Additionally, although GB winter flounder, white hake, and Atlantic halibut are not jointly managed with Canada, there is some Canadian catch of these stocks. Because the total ABC must account for all sources of fishing mortality, expected Canadian catch of GB winter flounder (26 mt), white hake (39 mt), and Atlantic halibut (49 mt) is deducted from the total ABC. The U.S. ABC is the amount available to the U.S. fishery after accounting for Canadian catch (see Table 3). For stocks without Canadian catch, the U.S. ABC is equal to the total ABC.

The OFLs are currently unknown for GB cod, GB yellowtail flounder, witch flounder, northern windowpane flounder, and Atlantic halibut. For 2022, the SSC recommended maintaining the unknown OFL for GB yellowtail flounder and GB cod. Empirical stock assessments are used for these five stocks, and these assessments can no longer provide quantitative estimates of the status determination criteria, nor were appropriate proxies for stock status determination able to be developed. In the temporary absence of an OFL, in this and previous actions, we have considered recent catch data and estimated trends in stock biomass as an indication that the catch limits derived from ABCs are sufficiently managing fishing mortality at a rate that is preventing overfishing. For GB yellowtail flounder, the SSC noted that the fishery does not appear to be the main driver limiting stock recovery. However, the continued low stock biomass and poor recruitment for this stock warrant the maintenance of low catch levels. For GB cod, a majority of the SSC accepted the continued use of the ''PlanBSmooth'' approach for setting the ABC for GB cod, which results in a large decrease (approximately 57 percent) from the previously set ABC value, and a 37-percent decrease from the most recent 3-year average catch. This large reduction in the ABC for GB cod is anticipated to increase the probability of stock rebuilding. Based on these considerations, we have preliminarily determined that these ABCs are a sufficient limit for preventing overfishing and are consistent with the National Standards. This action does not propose any changes to the status determination criteria for these stocks.

Georges Bank Cod

The GB cod 2021 management track assessment followed the PlanBsmooth approach, using updated commercial fishery catch data through calendar year 2020 and updated research survey indices of abundance through 2021. While this approach does not allow biological reference points to be calculated, the output of the PlanBsmooth approach has been used as the basis of catch advice since the 2015 age-based updated assessment was rejected by the peer review. At the October 25, 2021, SSC meeting, two applications of the PlanBsmooth approach were presented. In the first method, Plan B was applied with missing values for the 2020 spring and fall surveys, which were not conducted due to impacts of the COVID–19 health emergency. In the second method, values for the 2020 survey data were imputed based on averages of recent data. The results of the two methods were a slightly different catch multiplier (0.611 vs. 0.632, respectively) and recommended ABCs (729 mt vs. 754 mt). While a minority of the SSC advocated for an alternative proposal that used a ramp-down approach to setting the GB cod ABC for 2022–2024, the majority of the SSC endorsed the use of the PlanBsmooth as the best scientific information available on which to set catch advice and adopted the use of the second method with imputed survey data. The SSC recommended a 3-year constant ABC of 754 mt, which would represent a 57-percent decrease from the 2021 ABC value. Because a portion of the total ABC is allocated to Canada, the resulting U.S. ABC of 343 mt would be a 74-percent decrease from the 2021 U.S. ABC. The Council discussed both the SSC's recommendation and the opinion presented in the SSC's minority report, and ultimately decided to propose the SSC's recommended ABC of 754 mt, but for fishing year 2022 only. Framework 63 would not set an ABC for GB cod for 2023 or beyond, and the Council would need to propose an ABC in a future action.

Annual Catch Limits

Development of Annual Catch Limits

The U.S. ABC for each stock is divided among the various fishery components to account for all sources of fishing mortality. An estimate of catch expected from state waters and the other sub-component (*e.g.,* non-groundfish fisheries or some recreational groundfish fisheries) is deducted from the U.S. ABC. The remaining portion of the U.S. ABC is distributed to the fishery components that receive an allocation for the stock. Components of the fishery that receive an allocation have a sub-ACL set by reducing their portion of the ABC to account for management uncertainty and are subject to accountability measures (AM) if they exceed their respective catch limit during the fishing year. For GOM cod and haddock only, the U.S. ABC is first divided between the commercial and recreational fisheries, before being further divided into sub-components and sub-ACLs. This process is described fully in Appendix II of the Framework 63 Environmental Assessment. Amendment 23, if approved, could remove the management uncertainty buffer for sectors, and the Amendment 23 proposed rule (87 FR 11014; February 28, 2022) provides additional information regarding the implementation of this potential change. However, the allocations in Framework 63 include the management uncertainty buffers.

Sector and Common Pool Allocations

For stocks allocated to sectors, the commercial groundfish sub-ACL is further divided into the non-sector (common pool) sub-ACL and the sector sub-ACL, based on the total vessel enrollment in sectors and the cumulative potential sector contributions (PSC) associated with those sectors. The sector and common pool sub-ACLs proposed in this action are based on preliminary fishing year 2022 sector rosters. All permits enrolled in a sector, and the vessels associated with those permits, have until April 30, 2022, to withdraw from a sector and fish in the common pool for the 2022 fishing year. In addition to the enrollment

delay, all permits that change ownership after the roster deadline are able to join a sector (or change sector) through April 30, 2022.

Common Pool Total Allowable Catches

The common pool sub-ACL for each allocated stock (except for SNE/MA winter flounder) is further divided into trimester TACs. Table 7 summarizes the common pool trimester TACs proposed in this action.

Incidental catch TACs are also specified for certain stocks of concern (*i.e.,* stocks that are overfished or subject to overfishing) for common pool vessels fishing in the special management programs (*i.e.,* special access programs (SAP) and the Regular B Days-at-Sea (DAS) Program), in order to limit the catch of these stocks under each program. Tables 8 through 11 summarize the proposed Incidental Catch TACs for each stock and the distribution of these TACs to each special management program.

TABLE 4—PROPOSED CATCH LIMITS FOR THE 2022 FISHING YEAR

[mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Sector sub-ACL	Common pool sub-ACL	Recreational sub-ACL	Midwater trawl fishery	Scallop fishery	Small-mesh fisheries	State waters sub-component	Other sub-component
	A to H	A+B+C	A	B	C	D	E	F	G	H
GB Cod	330	244	238	6					11	75
GOM Cod	522	462	263	7.4	192				48	12
GB Haddock	77,302	75,382	74,090	1,292		1,514			0	406
GOM Haddock	10,873	10,690	6,922	134	3,634	107			38	38
GB Yellowtail Flounder	118	97	93	4.5			19	2.3	0.0	0.0
SNE/MA Yellowtail Flounder	21	16	12	3.2			2.0		0.2	3.3
CC/GOM Yellowtail Flounder	787	692	666	26					58	37
American Plaice	2,687	2,630	2,565	65					28	28
Witch Flounder	1,414	1,317	1,285	33					44	52
GB Winter Flounder	591	563	550	14					0	27
GOM Winter Flounder	482	281	260	21					194	7.5
SNE/MA Winter Flounder	441	288	254	34					21	132
Redfish	9,559	9,559	9,470	89					0	0
White Hake	2,011	1,990	1,971	19					11	11
Pollock	16,068	14,135	14,028	107					1,093	841
N Windowpane Flounder	150	108	na	108			31		0.8	10
S Windowpane Flounder	371	43	na	43			129		23	177
Ocean Pout	83	50	na	50					0	33
Atlantic Halibut	97	73	na	73					20	3.5
Atlantic Wolffish	86	86	na	86					0	0

na: Not allocated to sectors.

TABLE 5—PROPOSED CATCH LIMITS FOR THE 2023 FISHING YEAR *

[mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Sector sub-ACL	Common pool sub-ACL	Recreational sub-ACL	Midwater trawl fishery	Scallop fishery	Small-mesh fisheries	State waters sub-component	Other sub-component
	A to H	A+B+C	A	B	C	D	E	F	G	H
GOM Cod	522	462	263	7.4	192				48	12
GB Yellowtail Flounder	118	97	93	4.5			19	2.3	0	0
GB Winter Flounder	591	563	550	14					0	27
GOM Winter Flounder	482	281	260	21					194	7.5
SNE/MA Winter Flounder	441	288	254	34					21	132
Redfish	9,469	9,469	9,381	88					0	0
N. Windowpane Flounder	150	108	na	108			31		0.8	10
S. Windowpane Flounder	371	43	na	43			129		23	177
Ocean Pout	83	50	na	50					0	33
Atlantic Halibut	97	73	na	73					20	3.5
Atlantic Wolffish	86	86	na	86					0	0

na: Not allocated to sectors.

* All other Northeast multispecies stocks not included in Table 4 do not have catch limits approved or proposed beyond fishing year 2022.

TABLE 6—PROPOSED CATCH LIMITS FOR THE 2024 FISHING YEAR *

[mt, live weight]

Stock	Total ACL A to H	Groundfish sub-ACL A+B+C	Sector sub-ACL A	Common pool sub-ACL B	Recreational sub-ACL C	Midwater trawl fishery D	Scallop fishery E	Small-mesh fisheries F	State waters sub-component G	Other sub-component H
GOM Cod	522	462	263	7	192				48	12

* Framework 63 only proposes a fishing year 2024 catch limit for GOM cod.

TABLE 7—PROPOSED FISHING YEARS 2022–2024 COMMON POOL TRIMESTER TACS

[mt, live weight]

Stock	2022			2023			2024		
	Trimester 1	Trimester 2	Trimester 3	Trimester 1	Trimester 2	Trimester 3	Trimester 1	Trimester 2	Trimester 3
GB Cod	1.7	2.1	2.3						
GOM Cod	3.6	2.4	1.3	3.6	2.4	1.3	3.6	2.4	1.3
GB Haddock	348.8	426.3	516.8						
GOM Haddock	36.2	34.9	63.0						
GB Yellowtail Flounder	0.8	1.3	2.3	0.8	1.3	2.3			
SNE/MA Yellowtail Flounder	0.7	0.9	1.6						
CC/GOM Yellowtail Flounder	15.0	6.9	4.5						
American Plaice	48.1	5.2	11.7						
Witch Flounder	18.0	6.5	8.2						
GB Winter Flounder	1.1	3.3	9.2	1.1	3.3	9.2			
GOM Winter Flounder	7.6	7.8	5.1	7.6	7.8	5.1			
Redfish	22.2	27.5	39.1	22.0	27.3	38.7			
White Hake	7.2	5.9	5.9						
Pollock	29.9	37.4	39.6						

TABLE 8—PROPOSED COMMON POOL INCIDENTAL CATCH TACS FOR THE 2022–2024 FISHING YEARS

[mt, live weight]

Stock	Percentage of common pool sub-ACL	2022	2023	2024
GB Cod	1.68	0.10		
GOM Cod	1	0.07	0.07	0.07
GB Yellowtail Flounder	2	0.09	0.9	
CC/GOM Yellowtail Flounder	1	0.26		
American Plaice	5	3.25		
Witch Flounder	5	1.63		
SNE/MA Winter Flounder	1	0.34	0.34	

TABLE 9—PERCENTAGE OF INCIDENTAL CATCH TACS DISTRIBUTED TO EACH SPECIAL MANAGEMENT PROGRAM

Stock	Regular B DAS program (percent)	Eastern U.S./CA haddock SAP (percent)
GB Cod	60	40
GOM Cod	100	n/a
GB Yellowtail Flounder	50	50
CC/GOM Yellowtail Flounder	100	n/a
American Plaice	100	n/a
Witch Flounder	100	n/a
SNE/MA Winter Flounder	100	n/a

na: Not allocated to sectors.

TABLE 10—PROPOSED FISHING YEARS 2022–2024 INCIDENTAL CATCH TACS FOR EACH SPECIAL MANAGEMENT PROGRAM

[mt, live weight]

Stock	Regular B DAS program			Eastern U.S./Canada haddock SAP		
	2022	2023	2024	2022	2023	2024
GB Cod	0.06			0.04		
GOM Cod	0.07	0.07	0.07	n/a	n/a	n/a
GB Yellowtail Flounder	0.04	0.04		0.04	0.04	

TABLE 10—PROPOSED FISHING YEARS 2022–2024 INCIDENTAL CATCH TACS FOR EACH SPECIAL MANAGEMENT PROGRAM—Continued

[mt, live weight]

Stock	Regular B DAS program			Eastern U.S./Canada haddock SAP		
	2022	2023	2024	2022	2023	2024
CC/GOM Yellowtail Flounder	0.26			n/a	n/a	n/a
American Plaice	3.25			n/a	n/a	n/a
Witch Flounder	1.63			n/a	n/a	n/a
SNE/MA Winter Flounder	0.34	0.34		n/a	n/a	n/a

na: Not allocated to sectors.

TABLE 11—PROPOSED FISHING YEARS 2022–2024 REGULAR B DAS PROGRAM QUARTERLY INCIDENTAL CATCH TACS

[mt, live weight]

Stock	2022				2023				2024			
	1st quarter (13 percent)	2nd quarter (29 percent)	3rd quarter (29 percent)	4th quarter (29 percent)	1st quarter (13 percent)	2nd quarter (29 percent)	3rd quarter (29 percent)	4th quarter (29 percent)	1st quarter (13 percent)	2nd quarter (29 percent)	3rd quarter (29 percent)	4th quarter (29 percent)
GB Cod	0.01	0.02	0.02	0.02								
GOM Cod	0.01	0.02	0.02	0.02	0.01	0.02	0.02	0.02	0.01	0.02	0.02	0.02
GB Yellowtail Flounder	0.006	0.013	0.013	0.013	0.01	0.01	0.01	0.01				
CC/GOM Yellowtail Flounder	0.03	0.08	0.08	0.08								
American Plaice	0.42	0.94	0.94	0.94								
Witch Flounder	0.21	0.47	0.47	0.47								
SNE/MA Winter Flounder	0.04	0.10	0.10	0.10	0.04	0.10	0.10	0.10				

Recreational Fishery Measures

The recreational fishery harvests GB cod, but there is no allocation to the recreational sector. A portion of the ABC is set aside for the catch in state waters (including both commercial and recreational vessels) and catch in Federal waters by other fisheries (including non-groundfish commercial vessels and recreational groundfish vessels). There are no AMs for the GB cod recreational fishery; an overage to the ACL, even if it results from catch by the recreational fishery, is paid back (pound-for-pound) by the commercial groundfish fishery.

Given the proposed reduction in the GB cod ABC, the Council has proposed setting a new GB cod recreational catch target of 75 mt, which would replace the current catch target of 138 mt. The Council used this catch target to set the proposed values of the state and other sub-components (see Appendix II of the EA).

Framework 63 would also adjust the current recreational measures for GB cod, in order to reduce mortality to stay below the GB cod recreational catch target. Combined with the reduction in catch target, these measures were developed to reduce mortality on GB cod and allow for the promotion of GB cod stock rebuilding. These measures would apply to both private and for-hire recreational vessels, and would remain in place unless modified. Table 12 shows the current and proposed GB cod recreational measures.

TABLE 12—CURRENT AND PROPOSED GEORGES BANK COD RECREATIONAL MANAGEMENT MEASURES

	Current	Proposed
Minimum Size	21 in (53.3 cm)	22 in (55.9 cm).
Maximum Size	None	28 in (71.1 cm).
Possession Limit	10 fish per person per day	5 fish per person per day.
Closed Season	None	May 1 through July 31.
Open Season	All year	August 1 through April 30.

Past data show that setting a possession limit, increasing minimum size, and establishing a closed season are effective techniques for reducing recreational catch. While less common, a maximum size limit (often referred to as a ''slot limit'' when coupled with a minimum size) can also increase the chance that large fish, which are more likely successful spawners, are released alive and are able to continue to spawn. Based on data from recent fishing years, it is estimated that the proposed measures would result in approximately 60 mt of catch. Given the variability in MRIP data and the lack of a bioeconomic model for GB cod to evaluate the potential behavioral effects of the proposed measures, there is uncertainty about the accuracy of that estimate for any given year.

To help prevent future overages of the GB cod ACL, Framework 63 proposes to grant the Regional Administrator authority to set recreational measures for fishing years 2023 and 2024 to prevent the catch target from being exceeded. After consultation with the Council, we would make any changes to

recreational measures consistent with the Administrative Procedure Act.

Default Specifications Process

Framework 53 (80 FR 25110; May 1, 2015) established a mechanism for setting default catch limits in the event a future management action is delayed. If final catch limits have not been implemented by the start of a fishing year on May 1, then default catch limits are set at 35 percent of the previous year's catch limit, effective until July 31 of that fishing year, or when replaced by new catch limits, whichever happens first.

Framework 63 proposes to modify the default specifications process to increase the default limits to 75 percent of the previous year's catch limit, and extend the effective date through October 31 of that fishing year, or when replaced by new catch limits, whichever happens first. As implemented by Framework 53, if the default value is higher than the Council's recommended catch limit for the upcoming fishing year, the default catch limits will be equal to the Council's recommended catch limits for the applicable stocks for the upcoming fishing year. Additionally, there is no proposed change to the sector holdback provision. When specifications are in place at the start of the fishing year, a portion of each groundfish sector's quota is not allocated to the sector while NMFS determines whether overages or other catch accounting issues occurred in the prior fishing year. Under the sector holdback provision, if a default catch limit is in place, sectors would not be subject to holdback at the beginning of the fishing year. As part of the proposed changes to the default specifications process, the Council recommended setting a second year TAC for eastern GB cod and haddock, with the expectation on that these would be replaced as a result of the annual TMGC process. This is more fully described in Fishing Years 2022 and 2023 Shared U.S./Canada Quotas.

Because most groundfish vessels are not able to fish if final catch limits have not been implemented, this measure was originally established to allow fishing to continue for a short interim period to minimize disruption to the groundfish fishery. The proposed modifications would particularly benefit seasonal fisheries that primarily operate in the early part of the fishing year, which would have access to a greater portion of their quota, while still ensuring that overfishing will not occur. In recent years, various factors have led to the groundfish framework actions not being implemented until close to the end of the current default period, and the potential for the catch limits to expire before new catch limits are set has led to disruptions and uncertainty for the industry. The addition of 3 months to the current expiration date of default specifications (October 31 vs July 31) retains a timeline for rulemaking while reducing the likelihood of having specifications for groundfish stocks expire. However, both the Council and NMFS intend for the annual specifications to be in place at, or as close as possible to, the start of the fishing year (May 1) each year.

Regulatory Corrections Under Secretarial Authority

Framework 63 would reinstate the possession limit for the northern red hake stock, specified at § 648.86(d)(1)(vi), under our authority described in section 305(d) of the Magnuson-Stevens Act. Red hake is considered a small-mesh multispecies along with silver and offshore hake. Small-mesh multispecies are included as a part of the FMP; however, because the fishery is conducted with much smaller mesh it is managed separately from other regulated NE multispecies through distinct actions specific to the small-mesh fishery. The 2015–2018 Small-Mesh Multispecies Specifications (80 FR 30379; May 28, 2015) reduced the possession limit of the northern red hake stock from 5,000 lb (2,268 kg) to 3,000 lb (1,361 kg) based on an approved Council recommendation. The possession limit for the northern red hake stock remains unchanged at 3,000 lb (1,361 kg) and Framework 63 would reinstate the possession limit that was inadvertently deleted through a prior rulemaking.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with Framework 63, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. In making the final determination, we will consider the data, views, and comments received during the public comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

This proposed rule does not contain policies with federalism or takings implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule would have on small entities, including small businesses, and also determines ways to minimize these impacts. The IRFA includes this section of the preamble to this rule and analyses contained in Framework 63 and its accompanying EA/RIR/IRFA. A copy of the full analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows.

Description of the Reasons Why Action by the Agency Is Being Considered and Statement of the Objectives of, and Legal Basis for, This Proposed Rule

This action proposes management measures, including annual catch limits, for the multispecies fishery in order to prevent overfishing, rebuild overfished groundfish stocks, and achieve optimum yield in the fishery. A complete description of the action, why it is being considered, and the legal basis for this action are contained in Framework 63, and elsewhere in the preamble to this proposed rule, and are not repeated here.

Description and Estimate of the Number of Small Entities to Which This Proposed Rule Would Apply

The proposed rule would impact the recreational groundfish, Atlantic sea scallop, small mesh multispecies, Atlantic herring, and large-mesh non-groundfish fisheries. Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different FMPs, even beyond those impacted by the proposed action. Furthermore, multiple-permitted vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purposes of the Regulatory Flexibility Act analysis, the ownership entities, not the individual vessels, are considered to be the regulated entities.

As of June 1, 2021, NMFS had issued 721 commercial limited-access groundfish permits associated with vessels (including those in confirmation of permit history, CPH), 649 party/charter groundfish permits, 705 limited access and general category Atlantic sea scallop permits, 734 small-mesh multispecies permits, 80 Atlantic herring permits, and 802 large-mesh non-groundfish permits (limited access summer flounder and scup permits).

Therefore, this action potentially regulates 3,691 permits. When accounting for overlaps between fisheries, this number falls to 2,126 permitted vessels. Each vessel may be individually owned or part of a larger corporate ownership structure, and for RFA purposes, it is the ownership entity that is ultimately regulated by the proposed action. Ownership entities are identified on June 1st of each year based on the list of all permit numbers, for the most recent complete calendar year, that have applied for any type of Greater Atlantic Federal fishing permit. The current ownership data set is based on calendar year 2020 permits and contains gross sales associated with those permits for calendar years 2018 through 2020.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. The determination as to whether the entity is large or small is based on the average annual revenue for the three years from 2018 through 2020. The Small Business Administration (SBA) has established size standards for all other major industry sectors in the U.S., including for-hire fishing (NAICS code 487210). These entities are classified as small businesses if combined annual receipts are not in excess of $8.0 million for all its affiliated operations. As with commercial fishing businesses, the annual average of the three most recent years (2018–2020) is utilized in determining annual receipts for businesses primarily engaged in for-hire fishing.

Based on the ownership data, 1,696 distinct business entities hold at least one permit that the proposed action potentially regulates. All 1,696 business entities identified could be directly regulated by this proposed action. Of these 1,696 entities, 976 are commercial fishing entities, 281 are for-hire entities, and 439 did not have revenues (were inactive in 2020). Of the 976 commercial fishing entities, 967 are categorized as small entities and 9 are categorized as large entities, per the NMFS guidelines. Furthermore, 579 of these commercial fishing entities held limited access groundfish permits, with 577 of these entities being classified as small businesses and 2 of these entities being classified as large businesses. All 281 for-hire entities are categorized as small businesses.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of This Proposed Rule

The proposed action does not contain any new collection-of-information requirements under the Paperwork Reduction Act (PRA).

Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule

The proposed action does not duplicate, overlap, or conflict with any other Federal rules.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

The economic impacts of each proposed measure are discussed in more detail in sections 6.5 and 7.12 of the Framework 63 Environmental Assessment and are not repeated here. For the updated groundfish specifications and adjustments to the GB cod recreational measures, the No Action alternative was the only other alternative considered by the Council. There are no significant alternatives that would minimize the economic impacts. The proposed action is predicted to generate $73.3 million in gross revenues on the sector portion of the commercial groundfish trips, which is $2.2 million less than No Action, but falls within the recent historical range. Small entities engaged in common pool groundfish fishing may be negatively impacted by the proposed action as well. Likewise, small entities engaged in the recreational groundfish fishery are also likely to be negatively impacted. These negative impacts for both commercial and recreational groundfish entities are driven primarily by a substantial decline in the ACL for GB cod for fishing year 2022. While this decline is expected to result in short-term negative impacts, decreased GB cod catch in fishing year 2022 is expected to yield long-term positive impacts through stock rebuilding.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping, and reporting requirements.

Dated: April 13, 2022.

Samuel D. Rauch, III,

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

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.14, revise paragraph (k)(16)(v) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(16) * * *

(v) *Size limits.* If fishing under the recreational or charter/party regulations, possess regulated species or ocean pout that are smaller than the minimum fish sizes or larger than maximum fish sizes specified in § 648.89(b)(1) and (b)(3).

* * * * *

■ 3. In § 648.86 add paragraph (d)(1)(vi) to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(d) * * *

(1) * * *

(vi) *Possession of northern red hake.* Vessels participating in the small-mesh multispecies fishery and fishing on the northern red hake stock, defined as statistical areas 464–465, 467, 511–515, 521–522, and 561, may possess and land no more than 3,000 lb 91,361 kg) of red hake when fishing in the GOM/GB Exemption area, as described in § 648.80(a)(17).

* * * * *

■ 4. Amend § 648.89 by revising paragraph (b) introductory text, paragraphs (b)(1), Table 2 to paragraph (c), Table 3 to paragraph (c), and (g), to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(b) *Recreational minimum and maximum fish sizes—*

(1) *Minimum and maximum fish sizes.* Unless further restricted under this section, persons aboard charter or party boats permitted under this part and not fishing under the NE multispecies DAS program or under the restrictions and conditions of an approved sector operations plan, and private recreational fishing vessels may

not possess fish in or from the EEZ that are smaller than the minimum fish sizes or larger than the maximum fish sizes, measured in total length, as follows:

TABLE 1 TO PARAGRAPH (b)(1)

Species	Minimum size		Maximum size	
	Inches	cm	Inches	cm
Cod:				
Inside GOM Regulated Mesh Area [1]	21	53.3	N/A	N/A
Outside GOM Regulated Mesh Area [1]	22	55.9	28	71.1
Haddock:				
Inside GOM Regulated Mesh Area [1]	17	43.2	N/A	N/A
Outside GOM Regulated Mesh Area [1]	18	45.7	N/A	N/A
Pollock	19	48.3	N/A	N/A
Witch Flounder (gray sole)	14	35.6	N/A	N/A
Yellowtail Flounder	13	33.0	N/A	N/A
American Plaice (dab)	14	35.6	N/A	N/A
Atlantic Halibut	41	104.1	N/A	N/A
Winter Flounder (black back)	12	30.5	N/A	N/A
Redfish	9	22.9	N/A	N/A

[1] GOM Regulated Mesh Area specified in § 648.80(a).

* * * * *

(c) * * *

(1) * * *

(i) * * *

TABLE 2 TO PARAGRAPH (c)

Stock	Open season	Possession limit	Closed season
GB Cod	August 1–April 30	5	May 1–July 31.
GOM Cod	September 15–30, April 1–14	1	April 15–September 14, October 1–March 31.
GB Haddock	All Year	Unlimited	N/A.
GOM Haddock	May 1–February 28 (or 29), April 1–30	15	March 1–March 31.
GB Yellowtail Flounder	All Year	Unlimited	N/A.
SNE/MA Yellowtail Flounder	All Year	Unlimited	N/A.
CC/GOM Yellowtail Flounder	All Year	Unlimited	N/A.
American Plaice	All Year	Unlimited	N/A.
Witch Flounder	All Year	Unlimited	N/A.
GB Winter Flounder	All Year	Unlimited	N/A.
GOM Winter Flounder	All Year	Unlimited	N/A.
SNE/MA Winter Flounder	All Year	Unlimited	N/A.
Redfish	All Year	Unlimited	N/A.
White Hake	All Year	Unlimited	N/A.
Pollock	All Year	Unlimited	N/A.
N Windowpane Flounder	Closed	No retention	All Year.
S Windowpane Flounder	Closed	No retention	All Year.
Ocean Pout	Closed	No retention	All Year.
Atlantic Halibut	See paragraph (c)(3) of this section.		
Atlantic Wolffish	Closed	No retention	All Year.

* * * * *

(2) * * *

TABLE 3 TO PARAGRAPH (c)

Species	Open season	Possession limit	Closed season
GB Cod	August 1–April 30	5	May 1–July 31.
GOM Cod	September 8–October 7, April 1–14	1	April 15–September 7, October 8–March 31.
GB Haddock	All Year	Unlimited	N/A.
GOM Haddock	May 1–February 28 (or 29), April 1–30	15	March 1–March 31.
GB Yellowtail Flounder	All Year	Unlimited	N/A.
SNE/MA Yellowtail Flounder	All Year	Unlimited	N/A.
CC/GOM Yellowtail Flounder	All Year	Unlimited	N/A.
American Plaice	All Year	Unlimited	N/A.
Witch Flounder	All Year	Unlimited	N/A.
GB Winter Flounder	All Year	Unlimited	N/A.
GOM Winter Flounder	All Year	Unlimited	N/A.

TABLE 3 TO PARAGRAPH (c)—Continued

Species	Open season	Possession limit	Closed season
SNE/MA Winter Flounder	All Year	Unlimited	N/A.
Redfish	All Year	Unlimited	N/A.
White Hake	All Year	Unlimited	N/A.
Pollock	All Year	Unlimited	N/A.
N Windowpane Flounder	Closed	No retention	All Year.
S Windowpane Flounder	Closed	No retention	All Year.
Ocean Pout	Closed	No retention	All Year.
Atlantic Halibut	See Paragraph (c)(3) of this section.		
Atlantic Wolffish	Closed	No retention	All Year.

* * * * *

(g) *Regional Administrator authority for Georges Bank cod recreational measures.* For the 2023 and 2024 fishing years, the Regional Administrator, after consultation with the NEFMC, may adjust recreational measures for Georges Bank cod to prevent the recreational fishery from exceeding the annual catch target as determined by the NEFMC. Appropriate measures, including adjustments to fishing seasons, minimum fish sizes, or possession limits, may be implemented in a manner consistent with the Administrative Procedure Act, with the final measures published in the **Federal Register** prior to the start of the fishing year when possible. Separate measures may be implemented for the private and charter/party components of the recreational fishery. Measures in place in fishing year 2024 will be in effect beginning in fishing year 2025, and will remain in effect until they are changed by a Framework Adjustment or Amendment to the FMP, or through an emergency action.

* * * * *

■ 5. In § 648.90, revise paragraph (a)(3)(i) and paragraph (a)(4)(i) introductory text to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(a) * * *

(3) * * *

(i) Unless otherwise specified in this paragraph (a)(3), if final specifications are not published in the **Federal Register** for the start of a fishing year, as outlined in paragraph (a)(4) of this section, specifications for that fishing year shall be set at 75 percent of the previous year's specifications for each NE multispecies stock, including the U.S./Canada shared resources, for the period of time beginning on May 1 and ending on October 31, unless superseded by the final rule implementing the current year's specifications.

* * * * *

(4) * * *

(i) *ABC/ACL recommendations.* As described in this paragraph (a)(4), with the exception of stocks managed by the Understanding, the PDT shall develop recommendations for setting an ABC, ACL, and OFL for each NE multispecies stock for each of the next 3 years as part of the biennial review process specified in paragraph (a)(2) of this section. ACLs can also be specified based upon updated information in the annual SAFE report, as described in paragraph (a)(1) of this section, and other available information as part of a specification package, as described in paragraph (a)(6) of this section. For NE multispecies stocks or stock components managed under both the NE Multispecies FMP and the Understanding, the PDT shall develop recommendations for ABCs, ACLs, and OFLs for the pertinent stock or stock components for each of the next 2 years as part of the annual process described in this paragraph (a)(4) and § 648.85(a)(2).

* * * * *

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Notices

Federal Register
Vol. 87, No. 76
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Federal Excess Personal Property and Firefighter Property Program Administration

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the revised information collection, *Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) Program Administration.*

DATES: Comments must be received in writing on or before June 21, 2022 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to: USDA, Forest Service, Michael Huneke, National FEPP/FFP Program Manager, Fire and Aviation Management; USDA Forest Service, 1400 Independence Avenue Southwest, Mailstop 1107, Washington, DC 20250. Comments may also be submitted via email to: *michael.huneke@usda.gov.*

The public may inspect comments received at USDA Forest Service, Washington Office during normal business hours. Visitors are encouraged to call ahead to (202) 205–0995 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Michael Huneke, National FEPP/FFP Program Manager, Fire and Aviation Management; (484) 888–0005; *michael.huneke@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) Program Administration.

OMB Number: 0596–0223.

Expiration Date of Approval: February 28, 2023.

Type of Request: Extension without Revision.

Abstract: Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) Program Cooperative Agreements are available to State forestry agencies. The program administration provides participating State agencies with excess Department of Defense and other Federal agencies' property and supplies to be used in firefighting and emergency services. The FEPP program loans property to the State who in turn sub-loans the equipment and supplies to fire departments. The FFP program transfers ownership of non-controlled property to either the State agency or the individual fire department.

A cooperative agreement collects information from the participating State agencies and outlines the requirements and rules for the cooperation. Each State forestry agency shall provide an Accountable Officer who will be responsible for the integrity of the program within their respective State. For this reason, FEPP and FFP collect the state forestry agency contact information, the information of the Accountable Officer, and the requirements of participation in the FEPP and FFP programs.

A cooperative agreement will be prepared by each State forestry agency that desires to participate in one or both of the programs. Participating State agencies must submit separate agreements if they desire to be participants in both programs. Agreements will be processed and maintained at the United States Department of Agriculture, Forest Service, Fire and Aviation Management, Partnerships, Cooperative Programs branch in each Forest Service Regional Office.

Since FEPP property belongs to the Forest Service, State Cooperators will use the Federal Excess Property Management Inventory System (FEPMIS) for all records, documentation, and audit processes involved in acquiring, management, and disposing of FEPP property. Forest Service property management staff will ensure information entered in FEPMIS is uploaded in the USDA National Finance Center database—Corporate Property Automated Information System—Personal Property (CPAIS–PP). Forest Service Property Management Officer (PMO) ensure records are updated and accurate. FEPMIS is the official property management database for the FFP program.

The authority to provide excess property to state agencies under the FEPP Program comes from the Federal Property and Administration Services Act of 1949, 40 U.S.C., Sec 483. The FFP Program is authorized under 10 U.S.C., Subtitle A, Part IV, Chapter 153, 2576b.

Estimate of Annual Burden: 1 hour and 2 minutes.

Type of Respondents: State Foresters and State Agency FEPP Property Managers.

Estimated Annual Number of Respondents: 65.

Estimated Annual Number of Responses per Respondent: 302.

Estimated Total Annual Burden on Respondents: 570 hours.

Comment is Invited: Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Jaelith Hall-Rivera,

Deputy Chief, State & Private Forestry.

[FR Doc. 2022–08374 Filed 4–19–22; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Texas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Texas Advisory Committee (Committee) will hold a series of meetings via Webex platform on the following dates and times listed below. These meetings are for the purpose of planning their project investigating mental health care in juvenile justice facilities.

DATES: These meetings will be held on:

- Monday, May 2, 2022, from 2:00 p.m.–3:30 p.m. CT
- Thursday, May 19, 2022, from 1:30 p.m.–3:00 p.m. CT
- Thursday, June 16, 2022, from 2:00 p.m.–3:30 p.m. CT
- Thursday, July 21, 2022, from 2:00 p.m.–3:30 p.m. CT

Public Webex Registration Link

- Monday, May 2nd: *https://tinyurl.com/svavn92f*
- Thursday, May 19th: *https://tinyurl.com/ydfa626y*
- Thursday, June 16th: *https://tinyurl.com/5ar9hn2c*
- Thursday, July 21st: *https://tinyurl.com/yetkew68*

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO) at *bpeery@usccr.gov* or by phone at (202) 701–1376. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery (DFO) at *bpeery@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkoAAA.*

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

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: April 15, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–08458 Filed 4–19–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the New Mexico Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the New Mexico Advisory Committee (Committee) will hold a series of meetings via Webex videoconference on the following dates and times for the purpose of discussing their project on education disparities for Native American students.

DATES: These meetings will be held on:

- Wednesday, May 25, 2022, from 12:00 p.m.–1:30 p.m. MT
- Wednesday, June 15, 2022, from 12:00 p.m.–1:30 p.m. MT
- Wednesday, July 6, 2022, from 12:00 p.m.–1:30 p.m. MT
- Wednesday, July 27, 2022, from 12:00 p.m.–1:30 p.m. MT
- Wednesday, August 17, 2022, from 12:00 p.m.–1:30 p.m. MT

Public Registration Link

- Wednesday, May 25th: *https://tinyurl.com/yjxs7yew*
- Wednesday, June 15th, 2022: *https://tinyurl.com/33ejkwyb*
- Wednesday, July 6th, 2022: *https://tinyurl.com/2p8chrzk*
- Wednesday, July 27th, 2022: *https://tinyurl.com/4kswmddx*
- Wednesday, August 17th, 2022: *https://tinyurl.com/3a2vh7hw*

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or (202) 701–1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the public registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. 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. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 300 N Los Angeles St., Suite 2010, Los Angeles, CA 90012 or emailed to Brooke Peery at *bpeery@usccr.gov*.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlGAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: April 15, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–08457 Filed 4–19–22; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Arkansas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold a virtual (online) meeting Friday, May 6, 2022 at 1:00 p.m. Central Time. The purpose of the meeting is for the Committee to discuss testimony received regarding IDEA compliance and implementation in Arkansas schools.

DATES: The meeting will be held on Friday, May 6, 2022, 1:00 p.m.–2:00 p.m. Central time.

Web Access (audio/visual): Register at: *https://bit.ly/367ibzT*

Phone Access (audio only): 800–360–9505, Access Code: 2764 427 7156

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may join online or listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. 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. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are 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 Melissa Wojnaroski at *mwojnaroski@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Arkansas 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 Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Discussion: IDEA Compliance and Implementation in Arkansas School
III. Public Comment
VI. Adjournment

Dated: April 15, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–08450 Filed 4–19–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[3/24/2022 through 4/14/2022]

Firm name	Firm address	Date accepted for investigation	Product(s)
Spot Design, LLC d/b/a Zero Hour Parts	275 Metty Drive, Ann Arbor, MI 48103 ...	4/4/2022	The firm manufactures aerospace parts.
Superior Precision Sheet Metal Corp	4715 North Chestnut Street, Colorado Springs, CO 80907.	4/11/2022	The firm manufactures miscellaneous metal parts.
LBZ, LLC d/b/a Platinum Aerostructures	1200 East Highland Avenue, Nevada, MO 64772.	4/11/2022	The firm manufactures sheet metal fabrications.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.8 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Bryan Borlik,

Director.

[FR Doc. 2022–08414 Filed 4–19–22; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–83–2021]

Foreign-Trade Zone (FTZ) 7—Mayaguez, Puerto Rico; Authorization of Production Activity; CooperVision Manufacturing PR LLC (Disposable Contact Lenses), Juana Diaz, Puerto Rico

On December 16, 2021, CooperVision Manufacturing PR LLC submitted a

notification of proposed production activity to the FTZ Board for its facility within FTZ 7, in Juana Diaz, Puerto Rico.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 73730, December 28, 2021). On April 15, 2022, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: April 15, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–08418 Filed 4–19–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment

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

SUMMARY: The Department of Commerce (Commerce) seeks public comment on any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period July 1, 2021, through December 31, 2021.

DATES: Comments must be submitted within 30 days after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 805 of Title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008), the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidy provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies. Commerce submitted its last subsidy report to the Congress on December 21, 2021.

Request for Comments

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries which had exports accounting for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule of the United States (HTSUS) codes 4407.1001, 4407.1100, 4407.1200, 4407.1905, 4407.1906, 4407.1910, during the period July 1, 2021, through December 31, 2021. Official U.S. import data, published by the United States International Trade Commission's DataWeb, indicate that five countries (Brazil, Canada, Germany, Romania, and Sweden) exported softwood lumber to the United States during that time period in amounts sufficient to account for at least one percent of U.S. imports of softwood lumber products. We intend to rely on similar six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we will rely on U.S. imports of softwood lumber and softwood lumber products during the period January 1, 2022, through June 30, 2022, to select the countries subject for the next report.

Under U.S. trade law, a subsidy exists where an authority: (i) Provides a financial contribution; (ii) provides any form of income or price support within the meaning of Article XVI of the General Agreement on Tariffs and Trade 1994; or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred.[1]

Parties should include in their comments: (1) The country which provided the subsidy; (2) the name of the subsidy program; (3) a brief description (no more than three to four sentences) of the subsidy program; and (4) the government body or authority that provided the subsidy.

Submission of Comments

As specified above, to be assured of consideration, comments must be received no later than 30 days after the publication of this notice in the **Federal Register**. All comments must be submitted through the Federal eRulemaking Portal at *https://www.regulations.gov,* Docket No. ITA–2022–0004. 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 Ryan Majerus, Deputy Assistant Secretary for Policy and Negotiations, at U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

Dated: April 14, 2022.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2022–08434 Filed 4–19–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* section 771(5)(B) of the Tariff Act of 1930, as amended.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB946]

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 (MAFMC) Ecosystem and Ocean Planning (EOP) Committee will hold a public webinar meeting. See **SUPPLEMENTARY INFORMATION** for agenda details.

DATES: The meeting will be held on Tuesday, May 10, 2022, from 1 p.m. until 3 p.m.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted to the calendar prior to the meeting at *www.mafmc.org.*

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 purpose of the meeting is for the EOP Committee to review the draft MAFMC Aquaculture Policy and Aquaculture in the Mid-Atlantic Region background document and to make recommendations for Council approval of the policy document.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: April 14, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–08404 Filed 4–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB939]

Determination of Overfishing or an Overfished Condition

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

ACTION: Notice.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has found that South Atlantic blueline tilefish is now subject to overfishing; Georges Bank Atlantic cod is still overfished; and Gulf of Maine Atlantic cod is still subject to overfishing and still overfished. NMFS, on behalf of the Secretary, notifies the appropriate regional fishery management council (Council) whenever it determines that a stock or stock complex is subject to overfishing, overfished, or approaching an overfished condition.

FOR FURTHER INFORMATION CONTACT: Kathryn Frens, (301) 427–8523.

SUPPLEMENTARY INFORMATION: Pursuant to section 304(e)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1854(e)(2), NMFS, on behalf of the Secretary, must notify Councils, and publish a notice in the **Federal Register**, whenever it determines that a stock or stock complex is subject to overfishing, overfished, or approaching an overfished condition.

NMFS has determined that South Atlantic blueline tilefish is now subject to overfishing. Blueline tilefish was not assessed in 2021, and catch data from 2020 support a determination that this stock is subject to overfishing because the catch exceeded the threshold. NMFS has notified the South Atlantic Fishery Management Council of the requirement to end and prevent overfishing on this stock.

NMFS has determined that Georges Bank Atlantic cod is still overfished, and that Gulf of Maine Atlantic cod is still subject to overfishing and still overfished. The Georges Bank Atlantic cod determination is based on the most recent assessment, completed in 2021 using commercial fishery catch data through 2020 and updated research survey indices of abundance through spring 2021. The assessment cannot quantitatively determine overfished or overfishing status, but the poor condition of the stock qualitatively indicates that it remains overfished. The Gulf of Maine Atlantic cod determination is based on the most recent assessment, completed in 2021 using data through 2019, which indicate that the stock is subject to overfishing because the fishing mortality rate is above the threshold, and overfished because the biomass is below the threshold. NMFS continues to work with the New England Fishery Management Council to end overfishing on Gulf of Maine Atlantic cod and to rebuild both of these stocks.

Dated: April 14, 2022.

Kelly Denit,

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

[FR Doc. 2022–08375 Filed 4–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB920]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 76 South Atlantic Black Sea Bass Data Scoping Webinar.

SUMMARY: The SEDAR 76 assessment of the South Atlantic stock of black sea bass will consist of a series of assessment webinars. A SEDAR 76 Data Scoping Webinar is scheduled for May 11, 2022. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 76 South Atlantic Black Sea Bass Data Scoping Webinar has been scheduled for May 11, 2022, from 10 a.m. to 1 p.m. Eastern. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Registration for the webinar is available by contacting the SEDAR coordinator via email at *Kathleen.Howington@safmc.net.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4371; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data.

Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 76 South Atlantic Black Sea Bass Data Scoping Webinar are as follows: Discuss available data resources, points of contact, data delivery deadlines, and any known data issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 10 business 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: April 14, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–08405 Filed 4–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB955]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of seminar series presentation via webinar.

SUMMARY: The South Atlantic Fishery Management Council (Council) will host a webinar presentation on managing a multispecies fishery with management complexities similar to the Snapper Grouper Fishery Management Plan.

DATES: The webinar presentation will be held on Tuesday, May 10, 2022, from 1 p.m. until 2:30 p.m.

ADDRESSES: The presentation will be provided via webinar. The webinar is open to members of the public. Information, including a link to webinar registration will be posted on the Council's website at: *https://safmc.net/safmc-meetings/other-meetings/* as it becomes available.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8439 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: As part of a continuing informational webinar series, the Council will host a presentation from the Pacific Fishery Management Council on management of groundfish species, including more than 65 rock fish species; flatfish, such as petrale sole and Dover sole; and roundfish, such as sablefish and Pacific whiting (hake). Management of the Pacific groundfish fishery has addressed issues similar to those identified in managing the multi-species Snapper Grouper Fishery Management Complex within the South Atlantic region. A question-and-answer session will follow the presentation. Members of the public will have the opportunity to participate in the discussion. The presentation is for informational purposes only and no management actions will be taken.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 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: April 14, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–08406 Filed 4–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB953]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit (EFP) application submitted by Full Share Inc. contains all of the required information and warrants further consideration. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before May 5, 2022.

ADDRESSES: You may submit written comments by the following method:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''Finestkind Filming EFP.''

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, *travis.ford@noaa.gov,* (978) 281–9233.

SUPPLEMENTARY INFORMATION: Full Share, Inc. submitted a complete application for an EFP to enable filming and documentation of commercial fishing activities for a motion picture, currently titled ''Finestkind.'' This EFP would exempt the participating vessel from: The minimum shell height requirement at 50 CFR 648.14(i)(2)(i) and 648.50(a); the in-shell possession limit inside vessel monitoring system (VMS) demarcation line at §§ 648.14(i)(2)(iii)(B) and 648.52(e); the crew size restrictions at § 648.51(c); the day-at-sea requirements at § 648.53(b); the requirements of the Northern Gulf of Maine Management Program at § 648.62; and minimum size and possession

restrictions for filming in part 648 subparts B and D through O.

Josef Boreland, Marine Coordinator, applied for an EFP on April 1, 2022, on behalf of Full Share Inc., in support of a motion picture, currently titled ''Finestkind.'' The filming would take place aboard the commercial fishing vessel SANDRA JANE (P: 410430). For the purpose of replicating authentic commercial fishing practices for the motion picture, the F/V SANDRA JANE [1] would be fishing for scallops off of Gloucester, MA for 4 days in June 2022.

The proposed EFP would allow the vessel to fish for scallops outside of the requirements of its Federal permit for the purpose of filming the motion picture. Fishing would occur for 4 days off of Gloucester, MA to fish scallops in Federal waters of the Gulf of Maine on and around Stellwagen Bank. The fishing vessel will have its normal crew of 7 (including the operator) and an additional 25 film crew onboard. Additional film support vessels will accompany the fishing vessel.

The fishing vessel would capture scallops by towing two 4.57-meter wide New Bedford-style dredges at approximately 5 knots (9.26 km/hr) for 10 minutes per tow, 1 to 2 tows per day. The deployment and haul back of the gear will be filmed. The majority of the catch will be immediately returned to the sea. A portion of the scallop catch may be transported shoreward to more easily film shucking and other processing procedures closer to shore in state waters. The applicant will pursue a letter of authorization from the Massachusetts Department of Marine Fisheries for any necessary exemptions from any state regulations. No catch will be landed for sale.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

[1] The United States Coast Guard has acknowledged that the name SANDRA JANE will be temporarily replaced with the name FINESTKIND on the vessel for filming. The vessel will not officially have its name changed.

Dated: April 15, 2022.

Kelly Denit,

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

[FR Doc. 2022–08443 Filed 4–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB964]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold a meeting of its Scientific and Statistical Committee (SSC).

DATES: The meeting will be held on Tuesday, May 10, 2022, starting at 12:30 p.m. and continue through 1 p.m. on Wednesday, May 11, 2022. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will be conducted in a hybrid format, with options for both in-person and webinar participation.

Meeting address: The meeting will be held at the Royal Sonesta Harbor Court, 550 Light Street, Baltimore, MD 21202. Details on how to connect to the webinar by computer and by telephone will be available at: *www.mafmc.org/ssc.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: During this meeting, the SSC will review and provide feedback on a draft response to address the Council's motion seeking SSC input on the Recreational Harvest Control Rule management action. The SSC will also receive an introductory overview of the recently peer reviewed *Illex* squid and Butterfish research track stock assessment information and on the Ecosystem and Socio-economic Profiles being developed for the Bluefish and Black Sea Bass research track assessments. The SSC will also review the most recent survey and fishery data and the previously recommended 2023 Acceptable Biological Catch (ABC) for Atlantic Surfclam and Ocean Quahog and will make 2023–2025 ABC recommendations for Chub Mackerel. The SSC will also develop guidance for Council consideration on constant/average ABC recommendations. The SSC may take up any other business as necessary.

A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: April 14, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–08403 Filed 4–19–22; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0025]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (CFPB or Bureau) requests the extension of the Office of Management and Budget's (OMB's) approval of the existing information collection titled ''Generic Information Collection Plan for Consumer Complaint and Information Collection System (Testing and Feedback)'' approved under OMB Control Number 3170–0042.

DATES: Written comments are encouraged and must be received on or before May 20, 2022 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting

''Currently under 30-day Review—Open for Public Comments'' or by using the search function. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, Paperwork Reduction Act Officer, at (202) 841–0544, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for Consumer Complaint and Information Collection System (Testing and Feedback).

OMB Control Number: 3170–0042.

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

Affected Public: Individuals or households.

Estimated Number of Respondents: 655,000.

Estimated Total Annual Burden Hours: 110,833.

Abstract: The Bureau has undertaken a variety of service delivery-focused activities contemplated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203). These activities (which include consumer complaint and inquiry processing, referral, and monitoring) involve several interrelated systems.[1] The streamlined process of the generic clearance will allow the Bureau to implement these systems efficiently in line with the Bureau's commitment to continuous improvement of its delivery of services through iterative testing and feedback collection.

This is a routine request for OMB to extend its approval of the information collection currently approved under OMB Control Number 3170–0042. The Bureau is proposing to increase the number of web complaint respondents from 250,000 to 500,000. This estimate is based on recent data which showed how many more consumers now use the web intake process. Additionally, the Bureau has decreased the types of stakeholder feedback it may request from three lines items to one. The Bureau has also decreased the annual number of respondents regarding stakeholder feedback from 10,000 to 5,000. However, the average burden per intake had been increased from 10 minutes to 30 minutes due to longer projected engagements with the respondents.

Request for Comments: The Bureau published a 60-day **Federal Register** notice on 12/28/2021 (86 FR 73744) under Docket Number: CFPB–2021–0022. The Bureau is soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be submitted to OMB as part of its review of this request. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–08436 Filed 4–19–22; 8:45 am]

BILLING CODE 4810–AM–P

[1] These interrelated systems include secure, web-based portals that allow consumers, companies, and agencies to access complaints and an online ''Tell Your Story'' feature that allows consumers to share feedback about their experiences in the consumer financial marketplace.

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0044]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Policy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Security Cooperation Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 21, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Security Cooperation Agency, 2800 Defense Pentagon, Washington, DC 20301, Ms. Robyn Walker or call 703–697–9709.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Security Assistance Network; OMB Control Number 0704–0555.

Needs and Uses: The Security Assistance Network (SAN) is a web-based database used to exchange Security Cooperation training information between overseas Security Cooperation Offices, Geographical Combatant Commands, Military Departments, Defense Security Cooperation Agency, DoD Schoolhouses, Regional Centers, and International Host Nation Organizations. The Security Cooperation Training Management System is a tool used by the Security Cooperation community to

manage International Military Student training data.

Affected Public: Individuals or households.

Annual Burden Hours: 10,995.

Number of Respondents: 43,980.

Responses per Respondent: 1.

Annual Responses: 43,980.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Dated: April 14, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–08451 Filed 4–19–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0046]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 21, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Human Resources Activity, 4800 Mark Center Drive, Suite 08F05, Alexandria, VA 22350, LaTarsha Yeargins, 571–372–2089.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: My Career Advancement Account Scholarship Program; OMB Control Number 0704–0585.

Needs and Uses: The DoD My Career Advancement Account (MyCAA) scholarship program is a career development and employment assistance program intended to assist military spouses pursue licenses, certificates, certifications or associate's degrees (excluding associate's degrees in general studies, liberal arts, and interdisciplinary studies that do not have a concentration) necessary for gainful employment in high demand, high growth portable career fields and occupations. To support this program, the MyCAA web portal collects information from military spouses to provide a record of educational endeavors and progress of military spouses participating in education services and to manage the tuition assistance scholarship, track enrollments and funding, and to facilitate communication with participants.

Affected Public: Individuals or households.

Annual Burden Hours: 5,074 hours.

Number of Respondents: 10,148.

Responses per Respondent: 3.

Annual Responses: 30,444.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

Dated: April 14, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–08459 Filed 4–19–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0043]

Proposed Collection; Comment Request

AGENCY: Pentagon Force Protection Agency, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Pentagon Force Protection Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 21, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Pentagon Force Protection Agency, 9000 Defense Pentagon, Washington, DC 20301–9000, Rosalind Taylor, or call 703–692–7842.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Pentagon Force Protection Agency Request for U.S. Flag(s) to be Flown over the Pentagon; PFPA Form 55; 0704–FLAG.

Needs and Uses: This information collection is needed to process requests for U.S. Flags to be flown over the Pentagon.

Affected Public: Individuals.

Annual Burden Hours: 93.1 hours.

Number of Respondents: 1,862.

Responses per Respondent: 1.

Annual Responses: 1,862.

Average Burden per Response: 3 minutes.

Frequency: On occasion.

Dated: April 14, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–08472 Filed 4–19–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: USN–2022–HQ–0002]

Submission for OMB Review; Comment Request

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

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by May 20, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: United States Marine Corps Child and Youth Programs; NAVMC Forms 1750/7, 1750/10, 1750/11; OMB Control Number 0703–UCYP.

Type of Request: New.

Number of Respondents: 16,000.

Responses per Respondent: 1.

Annual Responses: 16,000.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 2,666.67.

Needs and Uses: The United States Marine Corps (USMC) Child and Youth Programs information collection is needed to obtain authorization for Child and Youth Programs personnel to maintain the medication administration record, controlled medication administration record, daily log for USMC Child and Youth Programs participants and to administer non-medicated topical products.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: April 14, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–08445 Filed 4–19–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0045]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 21, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and

associated collection instruments, please write to Defense Human Resources Activity, 4800 Mark Center Drive, Suite 08F05, Alexandria, VA 22350, LaTarsha Yeargins, 571–372–2089.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Spouse Education and Career Opportunities Program; OMB Control Number 0704–0556.

Needs and Uses: The DoD Spouse Education and Career Opportunities (SECO) Program is the primary source of education, career and employment counseling for all military spouses who are seeking post-secondary education, training, licenses and credentials needed for portable career employment. The SECO system delivers the resources and tools necessary to assist spouses of service members with career exploration/discovery, career education and training, employment readiness, and career connections at any point within the spouse career lifecycle. It is imperative that the DoD collect data to ensure that the SECO program is meeting its overarching goal of increasing employment opportunities for military spouses. The DoD requires the information in the proposed collection for program planning and management purposes. Collected information will ensure that the SECO program will be able to collect relevant metrics and make determinations of program viability and improvement. Additionally, the data collected is utilized to build a spouse profile that allows information to be saved over time and to prepopulate information into tools such as resume builders and career and education planning resources.

Affected Public: Individuals or households.

Annual Burden Hours: 19,500 hours.

Number of Respondents: 26,000.

Responses per Respondent: 1.

Annual Responses: 26,000.

Average Burden per Response: 45 minutes.

Frequency: On occasion.

Dated: April 14, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–08455 Filed 4–19–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0010]

Proposed Collection; Comment Request

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

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Naval Health Research Center (NHRC) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 21, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Naval Health Research Center Gate 4, Patterson Rd at McClelland Rd, San Diego, CA 92152, ATTN: MAJ Keyia Carlton, or call 619–553–4363.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Recruit Assessment Program; OMB Control Number 0703–MRAP.

Needs And Uses: The Recruit Assessment Program (RAP) is a DoD-sponsored program for routine collection of baseline demographic, physical, psychological, environmental, and behavioral health data from recruits at Marine Corps Recruit Depots. While many other military surveys examine the health and well-being of service members, the RAP collects voluntary self-reported pre-military health data. These data are essential for: (1) Allowing researchers to examine and distinguish contributions of pre-military vs. military factors that influence service member health and career outcomes; (2) the development of early intervention programs to improve service member health and enhance career success; and (3) the examination of health trends across waves of military recruits over time. Understanding these factors contributes towards the development of health policy as well as recruiting and retention initiatives.

Affected Public: Individuals or households.

Annual Burden Hours: 24,266.7.

Number of Respondents: 41,600.

Responses per Respondent: 1.

Annual Responses: 41,600.

Average Burden Per Response: 35 minutes.

Frequency: Once per respondent.

During the first week of boot camp, drill instructors escort recruits to a classroom setting to be supervised by RAP administrators for the next hour. Administrators provide recruits with a paper copy of the RAP survey, which includes consent forms, privacy, and HIPAA rights. Recruits receive a briefing about the purpose and voluntary nature of the survey as well as investigator contact information if they want to withdraw their consent later or have further questions. Administrators guide recruits through the consent, HIPAA and demographic portions of the survey using a PowerPoint presentation as a visual aid. The survey takes approximately 35 minutes to complete in total. After survey completion, administrators provide instructions on dismissal procedures. Administrators turn recruits over to their drill instructors and recruits return surveys to administrators as they exit the classroom.

Dated: April 14, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–08449 Filed 4–19–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0011]

Proposed Collection; Comment Request

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

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Naval Health Research Center announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 21, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Naval Medical Center San Diego at 34800 Bob Wilson Drive, San Diego, CA 92134, ATTN: Dr. Kristen Walter, or call 619–553–0546.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Personalized Web-Based Sexual Assault Prevention for Service Members; OMB Control Number 0703–0080.

Needs and Uses: The aim of this study is to assist in the adaptation of an existing web-based sexual assault prevention program for college men and women, for use among the Navy population. To achieve this aim, data will be collected in several ways and respondents will participate in only one type of data collection. First, responses to a normative survey will provide information about the behavior and attitudes of Sailors regarding alcohol use and sexual assault. Next, focus groups and interviews will be conducted to obtain feedback about the content of the intervention and ways to adapt it for Sailors. Interviewees and focus group respondents will be selected based on their drinking habits, which will be determined by a brief pre-interview/focus group survey. All data are anonymous, meaning that there is no way for us to match any personally identifiable information of any participant to their survey responses. After interview/focus group completion, a post-interview/focus group survey will be given to obtain non-personally-identifiable demographic and alcohol use information to be used as descriptive information, as well as data from standardized measures that assess respondents' opinions of the existing intervention. All surveys will be completed via a HIPAA compliant software. Data from these surveys will be incorporated into the intervention content and will help generate an adapted prototype of the sexual assault prevention program (+Change) for Sailors.

The results of these surveys will impact the Department of the Navy by documenting the feasibility, acceptability, satisfaction, and utility of a multi-pronged, individually tailored, and easily distributed prevention program that addresses the large problem of sexual assault, and the associated effects of alcohol for Sailors. In the long-term, this research benefits the readiness of the force by producing an easily disseminated high-quality sexual assault prevention program that can be implemented in multiple military settings and sustain evaluation in a larger clinical trial. This research can also have a secondary impact on reducing hazardous alcohol use among service members and can prevent the occurrence of alcohol use problems and associated negative health sequelae in service members. These long-term objectives are consistent with both DoD and the national public health priorities.

Affected Public: Individuals or households.

Sexual Assault Prevention in Service Members Normative Survey

Annual Burden Hours: 208.3.
Number of Respondents: 500.
Responses per Respondent: 1.
Annual Responses: 500.
Average Burden per Response: 25 minutes.

Interview/Focus Group and Pre/Post Surveys

Annual Burden Hours: 152.25.
Number of Respondents: 87.
Responses per Respondent: 3.
Annual Responses: 261.
Average Burden per Response: 35 minutes.
Frequency: Once per respondent.

Dated: April 14, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–08447 Filed 4–19–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Spent Nuclear Fuel Management, Accelerated Basin De-Inventory Mission for H-Canyon, at the Savannah River Site

AGENCY: Office of Environmental Management, U.S. Department of Energy.

ACTION: Amended record of decision.

SUMMARY: The U.S. Department of Energy (DOE) is amending its August 7, 2000, Record of Decision (ROD) to the *Savannah River Site Spent Nuclear Fuel Management Final Environmental Impact Statement* (DOE/EIS–0279, DOE 2000, SRS SNF EIS). The changes to the August 7, 2000, ROD memorialize DOE's decision to manage approximately 29.2 metric tons of heavy metal (MTHM) of spent nuclear fuel (SNF) and target materials (hereafter referred to collectively as SNF), using conventional processing without recovery of uranium at the H-Canyon facility at the Savannah River Site

(SRS). DOE anticipates that processing this SNF would begin in 2022 and continue for approximately 12 to 13 years. DOE will send the dissolved material to the liquid high-level radioactive waste (HLW) system prior to immobilization the material in a borosilicate glass waste form in the Defense Waste Processing Facility (DWPF). In the meantime, DOE will continue to safely store SNF and target materials in L-Basin at SRS, pending processing in H-Canyon.

ADDRESSES: This Amended ROD, the *Supplement Analysis for the Spent Nuclear Fuel Accelerated Basin De-inventory Mission for H-Canyon at the Savannah River Site* (SRS ABD SA), and related National Environmental Policy Act (NEPA) documents are available on the DOE NEPA website at *www.energy.gov/nepa/nepa-documents* and the SRS website at *www.srs.gov/general/pubs/envbul/nepa1.htm.* To request copies of these documents, please contact: Mr. Jeffrey Bentley, NEPA Document Manager, Savannah River Operations Office, U.S. Department of Energy, P.O. Box B, Aiken, South Carolina 29802, telephone: (803) 226–5113, email: *jeffrey.bentley@srs.gov.*

FOR FURTHER INFORMATION CONTACT: For further information on the management of SNF at SRS, please contact Mr. Bentley as listed in **ADDRESSES**. For information on DOE's NEPA process, please contact: Mr. William Ostrum, DOE-Office of Environmental Management, NEPA Compliance Officer, U.S. Department of Energy, 1000 Independence Avenue SW, EM–4.31, Washington, DC 20585 or via phone at 202–586–2513 or email at *William.Ostrum@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background

DOE's purpose and need for action, as described in the SRS SNF EIS (DOE/EIS–0279; DOE 2000), is to develop and implement a safe and efficient SNF management strategy that includes preparing SNF and target materials stored at or expected to be shipped to SRS for ultimate disposition offsite.

In the SRS SNF EIS, DOE evaluated the potential environmental impacts of alternatives for management of the SNF and target material. DOE analyzed five reasonable alternatives that could be used to manage SNF: No Action, Minimum Impact, Direct Disposal, Maximum Impact, and the Preferred Alternative. The action alternatives represent combinations of technologies applied to fuel groups.

Under the Preferred Alternative in the SRS SNF EIS, DOE would prepare about 97 percent by volume (about 60 percent by mass) of the aluminum SNF (ASNF) for disposition using a melt-and-dilute process. The remaining 3 percent by volume (about 40 percent by mass) would be managed using chemical processing.

DOE issued the Final SRS SNF EIS in March 2000 and issued a ROD on August 7, 2000, (65 FR 48224) selecting the Preferred Alternative. Since the ROD was issued, DOE has not implemented the melt-and-dilute technology. On April 5, 2013, DOE issued an Amended ROD to process a portion of the ASNF using conventional processing in lieu of the melt-and-dilute process (78 FR 20625).

DOE has explored various scenarios to address storage capacity limitations and technical issues associated with SNF and target materials at SRS. Due to the vast variety of ASNF at SRS, implementing a dry storage program, as a potential alternative to the melt-and-dilute process, that would be effective for all SNF is technically challenging. Considering the storage capacity for non-aluminum SNF (NASNF) and the future availability of processing capabilities (H-Canyon) and liquid HLW systems (DWPF and Tank Farms) at SRS, DOE has reevaluated the management approach for SNF at SRS.

DOE previously evaluated and decided to consolidate the SNF by fuel type at Hanford, Idaho National Laboratory, and SRS, in the *Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Environmental Impact Statement* (SNF PEIS) (DOE/EIS–0203) and associated ROD (60 FR 28680, June 1, 1995). However, the decision to consolidate SNF by fuel type has not been fully implemented. DOE's inventory of ASNF has not been consolidated at SRS, and the NASNF has not been consolidated at the Idaho National Laboratory. This Amended ROD would not change that decision made in the 1995 ROD.

Under this Amended ROD, SNF (including both ASNF and NASNF, and target materials) located at SRS, would be transferred from L-Basin to H-Canyon for conventional processing [1] with no uranium recovery. At H-Canyon, the SNF would be dissolved in hot nitric acid, producing a solution of highly enriched uranium (HEU), fission products, aluminum, and small amounts of transuranic materials such as neptunium and plutonium. The resulting solutions (including uranium-235) would be transferred to the SRS liquid HLW system and processed for immobilization [2] at DWPF; HEU would not be recovered. The key benefit of the non-recovery scenario is that it requires only a single-unit process step in addition to neutralization, greatly simplifying the processing required in H-Canyon. Potentially, 75 percent of the H-Canyon conventional processing systems (Head End, First Uranium Cycle, High-Activity Waste Evaporation, Second Uranium Cycle, Low-Activity Waste Evaporation, Solvent Recovery, and Acid Recovery) would not be used. Additionally, no blending down of HEU to low enriched uranium would be required. The resulting liquid waste would be sent to DWPF for immobilization into borosilicate glass. The HLW glass-filled, stainless-steel canisters from DWPF would be stored in S-Area until sent to a repository for disposal.

In accordance with DOE NEPA regulations at 10 CFR 1021.314, DOE prepared the SRS ABD SA (DOE/EIS–0279–SA–07, 2022). Based on the SRS ABD SA, DOE has determined that a supplemental or new environmental impact statement is not required. DOE also concluded in the SRS ABD SA that the proposed change and new information is not a substantial change relative to the alternatives analyzed in the SRS SNF EIS and, thus, no further NEPA analysis is required.

The impacts of the Proposed Action as described in the SA were determined to be small and would not result in releases to the environment or radiation doses or risks to members of the public or workers that would be significantly larger than those evaluated in the SRS SNF EIS. Annual impacts of processing the SNF described in the SA would remain similar to or bounded by those analyzed in the SRS SNF EIS since annual throughput would be similar. Since approximately 16 percent more SNF would be processed over the life of the Proposed Action than the amount of SNF that was estimated to be processed under the SRS SNF EIS, some impacts of processing could increase by up to 16 percent. However, the reduction in processing steps would substantially

[1] Conventional processing is a chemical separation process that involves dissolving spent nuclear fuel in nitric acid and separating fission products from uranium using solvent extraction. After conventional processing, the solution containing the fission products is transferred to DWPF for immobilization in glass.

[2] A small quantity of low-activity liquid waste would be sent to the Salt Waste Processing Facility and eventually disposed of in grout at the SRS Saltstone Disposal Facility.

reduce resource use and worker exposure and related impacts.

Under the Proposed Action, DOE estimates that immobilization of liquid waste resulting from the processing of 29.2 MTHM SNF (without uranium recovery) would result in about 505 HLW glass-filled stainless-steel canisters. This results in 435 more canisters from SNF processing than was analyzed in the previous SRS SNF EIS. In the context of the approximately 8,400 HLW glass-filled stainless-steel canisters that DOE's most recent estimate indicated would be produced at DWPF, this increase is not substantial (less than 7 percent), and SRS's total expected canisters would still be within the 10,000 canisters DOE evaluated in the *Final Supplemental Environmental Impact Statement, Defense Waste Processing Facility* (DOE/EIS–0082–S, November 1994) and no additional storage capacity would be needed.

Although a national repository for SNF has not yet been identified, DOE remains committed to meeting its obligations to safely dispose of SNF and HLW. The estimated 505 additional HLW canisters that would eventually require disposal would be more than offset by the estimated 1,000 SNF storage canisters that would have needed disposal if the SNF were not processed in H-Canyon.

Under the Proposed Action, because the uranium would not be recovered, the fissile material concentration in the HLW glass needs to be as much as 2,500 grams per cubic meter to maximize the amount of material allowed in the H-Canyon transfers sent to the HLW sludge batches. Analyses indicate that increasing the fissile material content in the glass up to 2,500 grams per cubic meter would not constitute a criticality issue and would have minimal impact on key properties related to durability of the glass. Testing has demonstrated that the HLW glass produced under the Proposed Action will meet the performance standards of previously produced DWPF glasses.

Implementing the Proposed Action would entail activities at H-Canyon that are the same as or comparable to existing or historical operations and are largely bounded by activities evaluated in the SRS SNF EIS. Therefore, the Proposed Action is not expected to result in substantial increases to the range of cumulative impacts described in the SRS SNF EIS.

Amended Decision

DOE has decided to implement the Proposed Action as described in the SRS ABD SA. DOE will manage up to 29.2 MTHM of SNF using conventional processing without uranium recovery in H-Canyon at SRS. DOE anticipates processing these materials beginning as early as 2022, and continuing approximately 12 to 13 years, consistent with program and policy priorities and funding. DOE will use three dissolvers in order to cost-effectively utilize H-Canyon and expeditiously complete the mission, although only two dissolvers would be operated at any one time. Meanwhile, SNF will continue to be stored in L-Basin at SRS, pending processing in H-Canyon.

In the ROD for the SRS SNF EIS (65 FR 48224, August 7, 2000), DOE identified the Minimum Impact Alternative as the environmentally preferable alternative; this has not changed. No environmental impacts resulting from operations under this amended decision would require specific mitigation measures. DOE will continue its current practices and policies to use all practicable means to avoid or minimize environmental harm and impacts to workers when implementing the actions described herein. For example, DOE will continue to evaluate and implement, as appropriate, physical modifications to the H-Canyon facility and process chemistry changes that would reduce personnel exposure, facility effluents, and waste generation.

Basis for Decision

The proposed use of conventional processing for 29.2 MTHM of SNF, including target materials, as described in the SRS ABD SA (DOE/EIS–0279–SA–07, 2022) and this amendment to DOE's 2000 SNF ROD (65 FR 48224) takes advantage of existing processes in existing facilities. The activities encompassed by this amended decision will not incur potential health or environmental impacts significantly different from those analyzed in existing NEPA reviews. This amended decision reduces the overall cost of managing the currently stored SNF by eliminating the need for storage in L-Basin and maximizes near-term utilization of H-Canyon to expeditiously complete the mission. Further, the actions resulting from this Amended ROD allow processing of the remaining inventory of SNF stored at SRS L-Basin, converts the SNF to forms that are proliferation resistant and can be safely stored for long periods with minimal maintenance.

As described in the SRS ABD SA, most impacts would be similar to or bounded by those described in the SRS SNF EIS. While the decision documented in this Amended ROD will increase the number of canisters of vitrified HLW, it is not expected to significantly affect the quantity of vitrified HLW canisters requiring management and would be more than offset by the SNF canisters that would not require disposal.

The actions to be taken pursuant to this Amended ROD strongly support U.S. non-proliferation policy and goals by permanently dispositioning the HEU contained in the SNF. This Proposed Action is consistent with U.S. agreements regarding receipt of foreign research reactor materials in which involved countries with the economic ability to do so contribute to the costs of transportation and U.S. receipt, processing, and disposition of the materials.

Signing Authority

This document of the Department of Energy was signed on April 8, 2022, by William I. White, Senior Advisor for Environmental Management, Office of Environmental Management, 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 the 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. The administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 14, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–08383 Filed 4–19–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–828]

Duke Energy Carolinas, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Request for a temporary amendment of the reservoir elevation requirement at the Wateree development.

b. Project No.: 2232–828.

c. *Date Filed:* January 25, 2022.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* The project is located on the Catawba-Wateree River in Burke, McDowell, Caldwell, Catawba, Alexander, Iredell, Mecklenburg, Lincoln, and Gaston counties, North Carolina, and York, Lancaster, Chester, Fairfield, and Kershaw counties South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jeffrey G. Lineberger, Director of Water Strategy and Hydro Licensing, Duke Energy, Mail Code EC–12Q, 526 South Church Street, Charlotte, NC 28202, (704) 382–5942.

i. *FERC Contact:* Mr. Steven Sachs, (202) 502–8666, *Steven.Sachs@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/doc-sfiling/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include docket number P–2232–828.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant requests a temporary variance of its reservoir elevation requirement at the Wateree development. The applicant intends to maintain the water surface between 6 and 7 feet below the full pool elevation of 100 feet local datum for 11 to 16 months beginning in the third quarter of 2022. This differs from the normal target elevation which is 3 feet below full pool (97 feet local datum) from March through November and 5 to 5.5 feet below full pool (95 to 94.5 feet local datum) at all other times, and compares to the normal minimum elevation which is 6 feet below full pool (94 feet local datum) from March through October, and 7 feet below full pool (93 feet local datum) the reminder of the year. The applicant states the low reservoir elevation would allow it to install pneumatic crest gates on the Wateree dam.

l. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''MOTION TO INTERVENE'', or ''PROTEST'' as applicable; (2) set forth in the heading the name of the applicant and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening or protesting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: April 13, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08369 Filed 4–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–141–000]

Great Basin Gas Transmission Company; Notice of Application and Establishing Intervention Deadline

Take notice that on March 30, 2022, Great Basin Gas Transmission Company (Great Basin), P.O. Box 94197, Las Vegas, Nevada 89193, filed an application under sections 7(b) and 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting that the Commission authorize the 2023 Mainline Replacement Project (project), which consists in the abandonment and replacement of approximately 20.36 miles of 16-inch-diameter steel pipe and associated auxiliary or appurtenant facilities located in Humboldt County, Nevada, all as more fully set forth in the application which is on file with the Commission and open for public inspection. The estimated cost of the project is $47,119,897.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For

assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the proposed project should be directed to Mark A. Litwin, Vice President/General Manager, Great Basin Gas Transmission Company, P.O. Box 94197, Las Vegas, Nevada; by phone at (702) 364–3195; or by email to *mark.litwin@swgas.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are two ways to become involved in the Commission's review of this project: you can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on May 4, 2022.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before May 4, 2022.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP22–141–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You may file a paper copy of your comments by mailing them to the following address below[2]. Your written comments must reference the Project docket number (CP22–141–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov*.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[4] and the regulations under the NGA[5] by the intervention deadline for the project, which is May 4, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP22–141–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the Project docket number CP22–141–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov*.

Motions to intervene must be served on the applicant either by mail or email at: Mark A. Litwin, Vice President/General Manager, Great Basin Gas Transmission Company, P.O. Box 94197, Las Vegas, Nevada; by phone at

[1] 18 CFR (Code of Federal Regulations) 157.9.

[2] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[3] 18 CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

(702) 364–3195; or by email to *mark.litwin@swgas.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[9] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *http://www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on May 4, 2022.

Dated: April 13, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08370 Filed 4–19–22; 8:45 am]

BILLING CODE 6717–01–P

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ22–10–000]

Oncor Electric Delivery Company LLC; Notice of Filing

Take notice that on April 12, 2022, Oncor Electric Delivery Company LLC submitted its tariff filing: Tariff for Transmission Service to, from and over certain Interconnections, to be effective March 31, 2022.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on May 3, 2022.

Dated: April 13, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08365 Filed 4–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3025–031]

Green Mountain Power Corporation; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 3025–031.

c. *Date filed:* March 30, 2022.

d. *Applicant:* Green Mountain Power Corporation (GMP).

e. *Name of Project:* Kelley's Falls Project (project).

f. *Location:* On the Piscataquog River in Hillsborough County, New Hampshire. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. John Greenan, PE, Green Mountain Power Corporation, 2152 Post Road, Rutland, VT 05701; Phone at (802) 770–2195, or email at *John.Greenan@greenmountainpower.com.*

i. *FERC Contact:* Arash Barsari at (202) 502–6207, or *Arash.JalaliBarsari@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. Project *Description:* The existing Kelley's Falls Project consists of: (1) An approximately 230-foot-long, 31-foot-high concrete and stone masonry dam that includes: (a) An approximately 31-foot-long stone masonry east abutment with an intake structure that includes an 11-foot-wide, 11-foot-high headgate equipped with a 22.2-foot-wide, 17-foot-high trashrack with 2.5-inch clear bar spacing; (b) a 192-foot-long concrete ogee spillway section with: (i) A 6-foot-wide, 2.75-foot-high steel slide gate that includes a 3-foot-wide, 2-foot-high notch; (ii) 2.75-foot-high flashboards;

and (iii) a crest elevation of 160.75 feet mean sea level (msl) at the top of the flashboards; and (c) a 7-foot-long concrete west abutment with a 3.5-foot-diameter gated, low-level outlet pipe; (2) a 284-foot-long, 2.5-foot-wide stone retaining wall on the east river bank that connects to the east abutment of the dam; (3) an impoundment (Namaske Lake) with a surface area of 154 acres at an elevation of 160.75 feet msl; (4) a 65-foot-long underground steel and concrete penstock; (5) a 28-foot-long, 28-foot-wide brick masonry and steel powerhouse containing a 450-kilowatt vertical Francis turbine-generator unit; (6) a 275-foot-long, 2.4-kilovolt (kV) underground transmission line that connects the generator to a 2.4/12-kV step-up transformer; and (7) appurtenant facilities. The project creates an approximately 65-foot-long bypassed reach of the Piscataquog River.

GMP voluntarily operates the project in a run-of-river mode using an automatic pond level control system, such that project outflow approximates inflow. GMP maintains the impoundment at the flashboard crest elevation of 160.75 feet msl.

Article 25 of the current license requires GMP to release a continuous minimum flow of 45 cubic feet per second (cfs) or inflow to the impoundment, whichever is less, as measured immediately downstream of the powerhouse. Downstream fish passage is provided for river herring through the notch in the slide gate located on top of the spillway. There are no upstream fish passage facilities at the project.

The minimum and maximum hydraulic capacities of the powerhouse are 175 and 420 cfs, respectively. The average annual generation of the project was approximately 1,572 megawatt-hours from 2014 through 2020.

GMP is not proposing any changes to project facilities or operation.

l. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (*e.g.,* license application) via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–3025). For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

m. You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Deficiency Letter	April 2022.
Request Additional Information (if necessary)	May 2022.
Notice of Acceptance/Notice of Ready for Environmental Analysis	September 2022.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	November 2022.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: April 13, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08399 Filed 4–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

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

Filings in Existing Proceedings

Docket Numbers: RP22–735–001.

Applicants: Columbia Gas Transmission, LLC.

Description: Tariff Amendment: Errata to United Energy NR Agmt 263830 Filing—Metadata Update to be effective 4/1/2022.

Filed Date: 4/14/22.

Accession Number: 20220414–5054.

Comment Date: 5 p.m. ET 4/26/22.

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

Filings Instituting Proceedings

Docket Numbers: RP21–1143–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Transcontinental Gas Pipe Line Company, LLC submits Supplemental Information in Response to FERC March 30, 2022 Data Request.

Filed Date: 4/13/22.

Accession Number: 20220413–5222.

Comment Date: 5 p.m. ET 4/25/22.

Docket Numbers: RP22–819–000.

Applicants: Adelphia Gateway, LLC.

Description: Compliance filing: Adelphia Operational Purchase and Sales Report April 13 2022 to be effective N/A.

Filed Date: 4/14/22.

Accession Number: 20220414–5038.

Comment Date: 5 p.m. ET 4/26/22.

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

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

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

Dated: April 14, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08469 Filed 4–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1858–023]

Beaver City Corporation; Notice Soliciting Scoping Comments

Take notice that the following application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* P–1858–023.

c. *Date filed:* July 30, 2021.

d. *Applicant:* Beaver City Corporation (Beaver City).

e. *Name of Project:* Beaver City Canyon Plant No. 2 Hydroelectric Project.

f. *Location:* The existing hydroelectric project is located on the Beaver River, in Beaver County, Utah, about 5 miles east of the city of Beaver. The project currently occupies 10.2 acres of federal land administered by the U.S. Forest Service and 2.4 acres of federal land managed by the U.S. Bureau of Land Management. As proposed, the project would occupy 10.5 acres of federal land administered by the U.S. Forest Service and 2.4 acres of federal land administered by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Jason Brown, Beaver City Manager, 30 West 300 North, Beaver, UT 84713; (435)–438–2451.

i. *FERC Contact:* Evan Williams, (202) 502–8462, or email at *evan.williams@ferc.gov*.

j. *Deadline for filing scoping comments:* May 14, 2022.[1]

The Commission strongly encourages electronic filing. Please file all documents using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Beaver City Canyon Plant No. 2 Hydroelectric Project (P–1858–023).

k. This application is not ready for environmental analysis at this time.

l. The existing project consists of: (1) A 15.5-foot-high by 65-foot-wide diversion dam that impounds a small reservoir with a surface area of approximately 0.15 acre and a storage capacity of approximately 1-acre-foot; (2) a 30-inch-diameter, 11,632-foot-long black steel penstock; (3) a 34-foot-long by 41-foot-wide stone powerhouse containing an impulse turbine and one generating unit with an installed capacity of 625 kilowatts; (4) a 4-foot-wide by 150-foot-long tailrace channel; (5) a 12.5-kilovolt, approximately 21,000-foot-long transmission line; and (6) appurtenant facilities. The estimated average annual generation (2012 to 2017) is 2,602.6 megawatt-hours.

Beaver City proposes to abandon the existing: (1) Powerhouse; (2) portion of penstock between the existing powerhouse and proposed new powerhouse; (3) buried line from the turbine generator to the transformer on the west side of the existing powerhouse; (4) old transformer; (5) overhead line from the old transformer to the start of the transmission line on the west bank of the Beaver River; and (6) tailrace. As such, Beaver City proposes to remove approximately 50-feet of the existing penstock, increase the existing project boundary, and construct: (1) A new 40-foot-long by 27-foot-wide metal-walled powerhouse, with a reinforced concrete foundation, to contain one new turbine-generator with an installed capacity of 720 kilowatts; (2) a new approximately 35-foot-long buried line from the new turbine-generator to the new transformer; (3) a new approximately 33-foot-long buried line from the new transformer to a 40-foot-tall intermediate pole of wood and metal construction; (4) a new 120-foot-long overhead line from the intermediate pole to the start of the existing transmission line; and (5) a new 43-foot-long tailrace that tailrace varies from 7.5 feet wide adjacent to powerhouse to 19 feet wide at point of discharge. The new powerhouse, power distribution facilities, and tailrace would be constructed approximately 50 feet upstream (south) of the existing powerhouse, enclosed by new approximately 240 feet of 8-foot-tall chain-link perimeter fence, and the existing powerhouse would be retained within the project boundary as an historic structure.

m. In addition to publishing the full text of this document in the **Federal Register**. The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659.

n. Register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Scoping Process.

The Commission staff intends to prepare an Environmental Assessment (EA) for the Canyon Plant No. 2 Hydroelectric Project in accordance with the National Environmental Policy Act. The EA will consider site-specific environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information, on the Scoping Document (SD) issued on April 14, 2022.

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of the SD may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph m. Based on all written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised schedule, as well as a list of issues, identified through the scoping process.

Dated: April 14, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08463 Filed 4–19–22; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2007(a)(2) of the Commission's regulations provide that if a filing date falls on a Saturday, Sunday, or federal legal public holiday, then the deadline for filing becomes the next business day.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2523–053; 2689–041]

N.E.W. Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Extension of License Terms.

b. *Project Nos:* P–2523–053 and P–2689–041.

c. *Date Filed:* October 18, 2021.

d. *Applicant:* N.E.W. Hydro, LLC.

e. *Name of Project:* Oconto Falls Upper (P–2689) and Oconto Falls Lower (P–2523) Hydroelectric Projects.

f. *Location:* The projects are located on the Oconto River in Oconto Falls, Oconto County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* David Fox, Director, Licensing and Compliance, N.E.W. Hydro, LLC, c/o Eagle Creek Renewable Energy, LLC, 7315 Wisconsin Avenue, Suite 1100W, Bethesda, Maryland 20814, (201) 306–5616, *david.fox@eaglecreekre.com.*

i. *FERC Contact:* Ashish Desai, (202) 502–8370, *Ashish.Desai@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests: May 13, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket numbers P–2523–053 and P–2689–041. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* N.E.W. Hydro, LLC., licensee for the Oconto Falls Upper Project No. 2523 and the Oconto Falls Lower Project No. 2689, filed a request with the Commission for a 5-year, 3-month extension of the 30-year licenses for the projects, currently expiring on October 31, 2027. The new expiration date for the two projects would be January 31, 2033. The licensee requests the extensions to align the license expiration dates of the two projects with that of the Stiles Hydroelectric Project located approximately six river miles downstream on the Oconto River. The licensee states that aligning the expiration dates for the projects would allow a more synchronized approach to the relicensing process and a more comprehensive analysis of the projects' cumulative environmental impacts. In addition, the licensee states that relicensing the projects concurrently would also reduce administrative burdens and promote regulatory efficiencies for the benefit of regulatory agencies, the licensees, and other relicensing stakeholders.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: April 13, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08368 Filed 4–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

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

Docket Numbers: EG22–94–000.

Applicants: SR McKellar Lessee, LLC.

Description: SR McKellar Lessee, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 4/14/22.

Accession Number: 20220414–5114.

Comment Date: 5 p.m. ET 5/5/22.

Docket Numbers: EG22–95–000.

Applicants: SR McKellar, LLC.

Description: SR McKellar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 4/14/22.
Accession Number: 20220414–5128.
Comment Date: 5 p.m. ET 5/5/22.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL19–56–001.
Applicants: Hoosier Energy Rural Electric Cooperative, Inc.
Description: Hoosier Energy Rural Electric Cooperative, Inc. submits tariff filing per 35: Informational Filing to Schedule 2 of MISO's Tariff to be effective N/A.
Filed Date: 4/12/22.
Accession Number: 20220412–5251.
Comment Date: 5 p.m. ET 5/3/22.

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

Docket Numbers: ER21–1790–006.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2022–04–14 Compliance Filing—Load, Exports and Wheeling Through Priority to be effective 8/4/2021.
Filed Date: 4/14/22.
Accession Number: 20220414–5153.
Comment Date: 5 p.m. ET 5/5/22.

Docket Numbers: ER22–42–001.
Applicants: DTE Electric Company.
Description: Refund Report: Refund Report Under Docket ER22–42 to be effective N/A.
Filed Date: 4/14/22.
Accession Number: 20220414–5094.
Comment Date: 5 p.m. ET 5/5/22.

Docket Numbers: ER22–1353–000.
Applicants: GridLiance High Plains LLC.
Description: Motion to Intervene and Consolidate and Formal Challenge of Xcel Energy Services Inc.
Filed Date: 4/13/22.
Accession Number: 20220413–5235.
Comment Date: 5 p.m. ET 5/13/22.

Docket Numbers: ER22–1632–000.
Applicants: CenterPoint Energy Houston Electric, LLC.
Description: § 205(d) Rate Filing: TFO Tariff Interim Raate Revision to Conform with PUCT Rate to be effective 4/12/2022.
Filed Date: 4/13/22.
Accession Number: 20220413–5192.
Comment Date: 5 p.m. ET 5/4/22.

Docket Numbers: ER22–1633–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3928 Twelvemile Solar Energy Surplus Interconnection GIA to be effective 6/14/2022.
Filed Date: 4/14/22.
Accession Number: 20220414–5068.
Comment Date: 5 p.m. ET 5/5/22.

Docket Numbers: ER22–1634–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3929 Twelvemile Energy Surplus Interconnection GIA to be effective 6/14/2022.
Filed Date: 4/14/22.
Accession Number: 20220414–5070.
Comment Date: 5 p.m. ET 5/5/22.

Docket Numbers: ER22–1635–000.
Applicants: New York Independent System Operator, Inc., New York State Electric & Gas Corporation.
Description: § 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): NYISO–NYSEG Joint 205 Amended and Restated TPIA2604—CEII to be effective 4/6/2022.
Filed Date: 4/14/22.
Accession Number: 20220414–5129.
Comment Date: 5 p.m. ET 5/5/22.

Docket Numbers: ER22–1637–000.
Applicants: Duke Energy Florida, LLC, Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: Duke Energy Florida, LLC submits tariff filing per 35.13(a)(2)(iii): DEF—Annual Update of Real Power Loss Factors (2022) to be effective 5/1/2022.
Filed Date: 4/14/22.
Accession Number: 20220414–5157.
Comment Date: 5 p.m. ET 5/5/22.

Docket Numbers: ER22–1638–000.
Applicants: AEP Oklahoma Transmission Company, Inc.
Description: § 205(d) Rate Filing: Seven Cowboy Wind PDA Notice of Cancellation to be effective 10/15/2021.
Filed Date: 4/14/22.
Accession Number: 20220414–5165.
Comment Date: 5 p.m. ET 5/5/22.

Docket Numbers: ER22–1639–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of WMPA. SA No. 3595, Queue No. Y3–074 to be effective 6/15/2022.
Filed Date: 4/14/22.
Accession Number: 20220414–5168.
Comment Date: 5 p.m. ET 5/5/22.

Docket Numbers: ER22–1640–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2022–04–14_Order 2222 Participation of DER Aggregations Compliance Filing to be effective 10/1/2029.
Filed Date: 4/14/22.
Accession Number: 20220414–5193.
Comment Date: 5 p.m. ET 6/6/22.

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

Docket Numbers: ES22–36–000.
Applicants: DTE Electric Company.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of DTE Electric Company.
Filed Date: 4/13/22.
Accession Number: 20220413–5240.
Comment Date: 5 p.m. ET 5/4/22.

Docket Numbers: ES22–37–000.
Applicants: Trans Bay Cable LLC.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Trans Bay Cable LLC.
Filed Date: 4/13/22.
Accession Number: 20220413–5241.
Comment Date: 5 p.m. ET 5/4/22.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM22–10–000.
Applicants: Wisconsin Electric Power Company.
Description: Application of Wisconsin Electric Power Company to Terminate Its Mandatory Purchase Obligation under the Public Utility Regulatory Policies Act of 1978.
Filed Date: 4/14/22.
Accession Number: 20220414–5212.
Comment Date: 5 p.m. ET 5/12/22.

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

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

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

Dated: April 14, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08470 Filed 4–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–15–000]

Texas Eastern Transmission, LP; Notice of Additional Virtual Public Scoping Session

On March 16, 2022, the Commission issued a notice stating it would conduct a virtual public scoping session on March 30, 2022, requesting comments on the Venice Extension Project in Pointe Coupee, Iberville, Lafourche, and Plaquemines Parishes, Louisiana. However, technical difficulties at the start of this meeting prevented stakeholders from accessing the private room to relay their verbal comments to the court reporter. Therefore, we have rescheduled this meeting to occur on April 26, 2022, as identified below.

Date and Time

Tuesday, April 26, 2022, 5:00 p.m.–7:00 p.m. (EST), *Call in number:* 888–391–6570, *Participant code:* 6282096

This notice is being sent to the Commission's current environmental mailing list for the Project. Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: April 14, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08466 Filed 4–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2628–066]

Alabama Power Company; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2628–066.

c. *Date filed:* November 23, 2021.

d. *Applicant:* Alabama Power Company (Alabama Power).

e. *Name of Project:* R.L. Harris Hydroelectric Project (Harris Project).

f. *Location:* The Harris Project is located on the Tallapoosa River near the City of Lineville in Randolph, Clay, and Cleburne Counties, Alabama. The Harris Project also includes land within the James D. Martin-Skyline Wildlife Management Area located approximately 110 miles north of Harris Reservoir in Jackson County, Alabama. The project occupies 4.90 acres of federal land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Angie Anderegg, Harris Relicensing Project Manager, Alabama Power Company; 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35203–8180; (205) 257–2251, or email at *arsegars@southernco.com.*

i. *FERC Contact:* Sarah Salazar, Telephone (202) 502–6863, and email *sarah.salazar@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2628–066.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *The Harris Project consists of:* (1) The 29-mile-long, 9,870-acre Harris Lake at a normal full pool elevation of 793 feet mean sea level (msl); (2) a 151.5-foot-high concrete dam; (3) a 310-foot-long gated spillway with five 40.5-feet-high by 40-feet-wide radial gates for passing flood flows, and one radial trash gate; (4) a variable level powerhouse intake, integral with the dam, which can draw water from lake elevations between 746 feet and 764 feet msl; (5) a 186-foot-long, 150-foot-high concrete powerhouse, integral with the dam, housing two vertical Francis turbines with a maximum hydraulic capacity of 8,000 cubic feet per second (cfs) and a rated total installed capacity of 135 megawatts (MW); (6) two 115-kilovolt transmission lines, which extend 1.5 miles from the dam to the Crooked Creek Transmission sub-station; and (7) appurtenant facilities.

Alabama Power proposes to install, operate, and maintain a Francis-type minimum flow unit to provide a continuous minimum flow of approximately 300 cfs in the Tallapoosa River downstream from Harris Dam. Based on preliminary design, the proposed minimum flow unit would have a generating capacity of about 2.5 MW.

The Harris Project is a peaking facility that generates about 151,878 megawatt-hours of electricity annually. Alabama Power operates the project to target lake surface elevations as guided by the project's operating curve. In addition, the U.S. Army Corps of Engineers' Alabama-Coosa-Tallapoosa River Basin Water Control Manual describes flood management regulations, drought management provisions, and navigation requirements for the Harris Project.

m. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19) issued on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov,* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

You may also register online at *https://www.ferc.gov/ferc-online/overview* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests

filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Federal and state resource agencies, Indian Tribes, and interested non-governmental organizations and individuals affected by this project may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Review Responses to Additional Information Requests.	June 2022.
Issue Notice of Ready for Environmental Analysis.	July 2022.

Dated: April 14, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08462 Filed 4–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1627–000]

AM Wind Repower LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of AM Wind Repower LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 4, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *https://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*https://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 14, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08464 Filed 4–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

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

Filings Instituting Proceedings

Docket Numbers: RP21–340–000; RP21–794–000.

Applicants: ANR Pipeline Company.

Description: Motion of ANR Pipeline Company to Withdraw Tariff Filing RP21–340–000, et al.

Filed Date: 04/12/2022.

Accession Number: 20220412–5177.

Comment Date: 5 p.m. ET 4/27/22.

Docket Numbers: RP22–818–000.

Applicants: LA Storage, LLC.

Description: § 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW Agreement 4.11.22 to be effective 4/11/2022.

Filed Date: 4/12/22.

Accession Number: 20220412–5107.

Comment Date: 5 p.m. ET 4/25/22.

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

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

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

Dated: April 13, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08371 Filed 4–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–467–000]

Texas Gas Transmission, LLC; Notice of Availability of the Draft Environmental Impact Statement for The Proposed Henderson County Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft Environmental Impact Statement (EIS) for the Henderson County Expansion Project (Project), proposed by Texas Gas Transmission, LLC (Texas Gas) in the above-referenced docket. Texas Gas requests a Certificate of Public Convenience and Necessity and Abandonment Authorization to construct, operate, and maintain, and abandon certain natural gas transmission pipeline facilities in Henderson and Webster Counties, Kentucky and Posey and Johnson Counties, Indiana. The Project purpose is to provide up to 220,000 dekatherms per day of new firm transportation service to CenterPoint Energy Indiana South's (CenterPoint) AB Brown Generating Station in Posey County, Indiana.

The draft EIS assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). FERC staff concludes that approval of the proposed Project, with the mitigation measures recommended in the EIS, would result in some adverse environmental impacts; however, with the exception of potential impacts on climate change, we conclude that impacts would be reduced to less than significant levels. Regarding climate change impacts, this EIS is not characterizing the Project's greenhouse gas emissions as significant or insignificant because the Commission is conducting a generic proceeding to determine whether and how the Commission will conduct significance determinations going forward.[1]

The U.S. Environmental Protection Agency participated as a cooperating agency in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. Although the U.S. Environmental Protection Agency provides input to the conclusions and recommendations presented in the draft EIS, the agency may present its own conclusions and recommendations in any applicable Records of Decision or other documentation for the Project.

The draft EIS addresses the potential environmental effects of the construction and operation of the following project facilities:

- Henderson Lateral—Construction of an approximately 23.5-mile-long, 20-inch-diameter natural gas transmission pipeline extending from a new tie-in facility in Henderson County, Kentucky to the new AB Brown Meter and Regulating (M&R) Station in Posey County, Indiana (Henderson Lateral).
- AB Brown M&R Station and Point of Demarcation Site (Posey County, Indiana)—Construction of a delivery M&R station, receiver facility, and a 0.1-mile-long, 16-inch-diameter interconnecting pipeline terminating at the new Point of Demarcation Site, which would serve as CenterPoint's tie-in for Project facilities for its AB Brown Generating Station.
- Slaughters Compressor Station (Webster County, Kentucky)—Installation of a new 4,863-horsepower Solar Centaur 50 turbine compressor unit with piping modifications and other appurtenant facilities, abandonment in place of an existing compressor unit (Unit 5), and placement on standby of two existing compressor units (Unit 6 and Unit 7).
- New ancillary facilities including a mainline valve and tie-in facility in Henderson County, Kentucky and upgrades to an existing M&R station in Johnson County, Indiana.

The Commission mailed a copy of the *Notice of Availability of the Draft Environmental Impact Statement for the Proposed Henderson County Expansion Project* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Project area. The draft EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the draft EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*) select ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.*, CP21–467). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The draft EIS is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the draft EIS may do so. Your comments should focus on draft EIS's disclosure and discussion of potential environmental effects, measures to avoid or lessen environmental impacts, and the completeness of the submitted alternatives, information and analyses. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments on or before 5:00pm Eastern Time on June 6, 2022.

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov*. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP21–467–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed

[1] *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews,* 178 FERC ¶ 61,108 (2022); 178 FERC ¶ 61,197 (2022).

to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend one of the virtual public comment sessions its staff will conduct by telephone to receive comments on the draft EIS, scheduled as follows:

Date and Time

Wednesday, May 18, 2022, 5:30–7:30 p.m. (CDT), *Call in number:* 800–779–8625, *Participant Passcode:* 3472916

Thursday, May 19, 2022, 1:30–3:30 p.m. (CDT), *Call in number:* 800–779–8625, *Participant Passcode:* 3472916

The primary goal of these comment sessions is to have you identify the specific environmental issues and concerns with the draft EIS. There will not be a formal presentation by Commission staff when the session opens. Individual oral comments will be taken on a one-on-one basis with a court reporter present on the line. This format is designed to receive the maximum amount of oral comments, in a convenient way during the timeframe allotted, and is in response to the ongoing COVID–19 pandemic. Prospective commentors are encouraged to review the draft EIS to familiarize themselves with the Project prior to participating in the meeting.

Each comment session is scheduled from either 5:30 to 7:30 p.m. or else 1:30 p.m. to 3:30 p.m., Central Time. You may call at any time after the listed start times, at which point you will be placed on mute and hold. Calls will be answered in the order they are received. Once answered, you will have the opportunity to provide your comment directly to a court reporter with FERC staff or representative present on the line. A time limit of 3 minutes will be implemented for each commentor.

Transcripts of all comments received during the comment sessions will be publicly available on FERC's eLibrary system (see page 2 of this notice for instructions on using eLibrary).

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided at a virtual comment session.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR part 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/how-intervene*. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Questions?

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: April 14, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08467 Filed 4–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
CPV Maple Hill Solar, LLC	EG22–37–000
BT Noble Solar, LLC	EG22–38–000
High Lonesome Storage, LLC	EG22–39–000
Roadrunner Storage, LLC	EG22–40–000
Snyder ESS Assets, LLC	EG22–41–000
Westover ESS Assets, LLC	EG22–42–000
Sweetwater ESS Assets, LLC	EG22–43–000
Swoose II LLC	EG22–44–000
Jicarilla Solar 2 LLC	EG22–45–000
Brazoria West Solar Project, LLC	EG22–46–000
Geysers Power Company, LLC	EG22–47–000

Take notice that during the month of March 2022, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2021).

Dated: April 14, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08465 Filed 4–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL21–38–000.

Applicants: City Water, Light & Power-City of Springfield, IL.

Description: Supplement to December 31, 2020 Proposed Revenue Requirement for Reactive Supply Service under Midcontinent Independent Transmission System Operator, Inc. Tariff Schedule 2 of City Water, Light and Power of the City of Springfield, Illinois.

Filed Date: 4/8/22.

Accession Number: 20220408–5292.

Comment Date: 5 p.m. ET 4/29/22.

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

Docket Numbers: ER21–1002–001.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Compliance filing: Compliance Filing Western Energy Imbalance Market to be effective 4/1/2021.

Filed Date: 4/13/22.

Accession Number: 20220413–5113.

Comment Date: 5 p.m. ET 5/4/22.

Docket Numbers: ER22–1618–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of CSA, SA No. 5211; Queue No. AB2–134 to be effective 3/14/2022.

Filed Date: 4/13/22.

Accession Number: 20220413–5041.

Comment Date: 5 p.m. ET 5/4/22.

Docket Numbers: ER22–1619–000.

Applicants: Lanyard Power Holdings, LLC.

Description: § 205(d) Rate Filing: Proposed Revisions to Reactive Rate Schedule_Requests for Limited Tariff Waiver to be effective 6/1/2022.

Filed Date: 4/13/22.

Accession Number: 20220413–5057.

Comment Date: 5 p.m. ET 5/4/22.

Docket Numbers: ER22–1620–000.
Applicants: Morgantown Station, LLC.
Description: § 205(d) Rate Filing: Proposed Revisions to Reactive Rate Schedule_Request for Limited Tariff Waiver to be effective 12/31/9998.
Filed Date: 4/13/22.
Accession Number: 20220413–5058.
Comment Date: 5 p.m. ET 5/4/22.
Docket Numbers: ER22–1621–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Notice of Cancellation of Service Agreement No. 888 to be effective 3/14/2022.
Filed Date: 4/13/22.
Accession Number: 20220413–5066.
Comment Date: 5 p.m. ET 5/4/22.
Docket Numbers: ER22–1622–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Notice of Cancellation of Rate Schedule FERC No. 279 to be effective 6/13/2022.
Filed Date: 4/13/22.
Accession Number: 20220413–5070.
Comment Date: 5 p.m. ET 5/4/22.
Docket Numbers: ER22–1623–000.
Applicants: Hallador Power Company, LLC.
Description: Baseline eTariff Filing: Baseline new reactive tariff to be effective 12/31/9998.
Filed Date: 4/13/22.
Accession Number: 20220413–5074.
Comment Date: 5 p.m. ET 5/4/22.
Docket Numbers: ER22–1624–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2022–04–13_Schedule 29 and 29A Waiver to be effective N/A.
Filed Date: 4/13/22.
Accession Number: 20220413–5075.
Comment Date: 5 p.m. ET 5/4/22.
Docket Numbers: ER22–1625–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2022–04–13_SA 1495 NSP-Walleye Wind 2nd Rev GIA (G253 J569) to be effective 4/7/2022.
Filed Date: 4/13/22.
Accession Number: 20220413–5111.
Comment Date: 5 p.m. ET 5/4/22.
Docket Numbers: ER22–1626–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: E&P LA Desert Sunlight PV TOT198–TOT199 (SA282) to be effective 4/14/2022.
Filed Date: 4/13/22.
Accession Number: 20220413–5119.
Comment Date: 5 p.m. ET 5/4/22.
Docket Numbers: ER22–1627–000.
Applicants: AM Wind Repower LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 6/13/2022.
Filed Date: 4/13/22.
Accession Number: 20220413–5120.
Comment Date: 5 p.m. ET 5/4/22.
Docket Numbers: ER22–1628–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: Lucky Star Construction Agreement to be effective 4/14/2022.
Filed Date: 4/13/22.
Accession Number: 20220413–5136.
Comment Date: 5 p.m. ET 5/4/22.
Docket Numbers: ER22–1629–000.
Applicants: R–WS Antelope Valley Gen-Tie, LLC.
Description: § 205(d) Rate Filing: Assignment and Assumptions of Co-Tenancy Interest in Shared Facilities to be effective 4/14/2022.
Filed Date: 4/13/22.
Accession Number: 20220413–5137.
Comment Date: 5 p.m. ET 5/4/22.
Docket Numbers: ER22–1630–000.
Applicants: Rabbitbrush Solar, LLC.
Description: § 205(d) Rate Filing: Certificates of Concurrence for Shared Facilities Common Ownership Agreements to be effective 4/14/2022.
Filed Date: 4/13/22.
Accession Number: 20220413–5147.
Comment Date: 5 p.m. ET 5/4/22.
Docket Numbers: ER22–1631–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6393; AE2–217 to be effective 3/14/2022.
Filed Date: 4/13/22.
Accession Number: 20220413–5171.
Comment Date: 5 p.m. ET 5/4/22.

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

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

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

Dated: April 13, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08364 Filed 4–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications

listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
1. CP21–57–000	3–30–2022	FERC Staff.[1]
2. CP21–57–000	4–8–2022	FERC Staff.[2]
3. CP21–57–000	4–8–2022	FERC Staff.[3]
4. CP21–57–000	4–8–2022	FERC Staff.[4]
5. CP21–57–000	4–8–2022	FERC Staff.[5]
6. CP21–57–000	4–8–2022	FERC Staff.[6]
7. CP21–57–000	4–11–2022	FERC Staff.[7]
Exempt:		
1. P–14803–001; P–2082–063	4–1–2022	U.S. Representative Doug LaMalfa.
2. RP19–1523–000	4–8–2022	U.S. Senator Roy Blunt.

Dated: April 13, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08366 Filed 4–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7189–015]

Green Lake Water Power Company; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 7189–015.

c. *Date Filed:* March 31, 2022.

d. *Applicant:* Green Lake Water Power Company (Green Lake Power).

e. *Name of Project:* Green Lake Project (project).

f. *Location:* The existing project is located on Green Lake and Reeds Brook in Hancock County, Maine. The project occupies approximately two acres of the U.S. Fish and Wildlife Service's Green Lake National Fish Hatchery.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Caroline Kleinschmidt, Green Lake Water Power Company, 120 Hatchery Way, Ellsworth, ME 04605; Phone at (207) 667–3322; or email at *caroline@greenlakewaterpower.com.*

i. *FERC Contact:* Nicholas Palso at (202) 502–8854, or *nicholas.palso@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *Project Description:* The existing Green Lake Project consists of: (1) A 273.2-foot-long, 7.5-foot-high dam that includes: (a) An 82-foot-long concrete-gravity section with an 80-foot-long overflow spillway that has a crest elevation of 160.7 feet United States Geological Survey (USGS) datum; (b) a 12-foot-long concrete intake structure with a 5-foot-wide, 5-foot-high headgate equipped with an 8-foot-wide, 12-foot-high trashrack; (c) a 22.2-foot-long concrete spillway section with two 6-foot-wide, 7-foot-high sluice gates and a crest elevation of 162.5 feet USGS datum; and (d) an approximately 157-foot-long section that includes a 35-foot-long auxiliary spillway with a crest elevation of approximately 162 feet USGS datum, and a 120-foot-long auxiliary spillway with a crest elevation of approximately 163 to 164 feet USGS datum; (2) an impoundment (Green Lake) with a surface area of 2,989 acres at an elevation of 160.7 feet USGS datum; (3) a 1,740-foot-long penstock; (4) a 27-foot-long, 35-foot-wide concrete powerhouse containing a 400-kilowatt (kW) Allis-Chalmers tube turbine-generator unit and a 25-kW centrifugal pump turbine-generator unit, for a total installed capacity of 425 kW; (5) two 50-foot-long, 5-foot-diameter powerhouse discharge pipes; (6) a 2.3/12.47-kilovolt (kV) step-up transformer and a 650-foot-long, 12.47-kV underground transmission line that connects the generators to the regional grid; and (7) appurtenant facilities. The project creates an approximately 1,900-foot-long bypassed reach of Reeds Brook.

The current license requires Green Lake Power to: (1) Maintain the elevation of Green Lake between 159.7 feet and 160.7 feet USGS datum from June 1 through Labor Day weekend each year, and between 157.5 feet and 160.7 feet USGS datum for the remainder of the year; (2) complete the fall drawdown of Green Lake by October 15 of each year; (3) reduce the elevation of Green Lake during the spring drawdown to no lower than the elevation attained on the previous October 15 of each year; and (4) release a year-round minimum flow to Reeds Brook of one cubic foot per second (cfs), or inflow to Green Lake, whichever is less, for the protection and enhancement of fish and wildlife resources downstream of the dam. In addition, the current license requires Green Lake Power to provide flows of up to 30 cfs to the FWS's Green Lake National Fish Hatchery (GLNFH).

The current license also requires Green Lake Power to install screens at the project intake to protect fish from turbine entrainment and prevent out-migration of adult salmonids from Green Lake. The existing screens have a two-inch mesh size and extend from the bottom of the intake to 2 feet above the crest of the spillway.

The average annual generation of the project was approximately 1,657.8

[1] Emailed comments dated 4/8/2022 from Colleen Wysser—Martin.

[2] Emailed comments dated 3/26/22 from Colleen Wysser—Martin.

[3] Emailed comments dated 3/27/22 from Colleen Wysser—Martin.

[4] Emailed comments dated 3/27/22 from Ann Dorsey.

[5] Emailed comments dated 4/8/22 from Betsy Webster.

[6] Emailed comments dated 3/27/22 from Betsy Webster.

[7] Emailed comments dated 4/8/22 from Betsy Webster.

megawatt-hours from 2016 through 2020.

Green Lake Power proposes to modify the trashrack to have a consistent 1-inch clear bar spacing by either closing a two-inch gap at the side of the trashrack or reducing the gap to one inch. Green Lake Power is not proposing any changes to project operation.

l. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this this notice, as well as other documents in the proceeding (*e.g.,* license application) via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–7189). For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

m. You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Deficiency Letter	April 2022.
Request Additional Information (if necessary).	May 2022.
Notice of Acceptance/Notice of Ready for Environmental Analysis.	September 2022.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions.	November 2022.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: April 14, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08461 Filed 4–19–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9753–01–OW]

Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

The Charter for the United States Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The purpose of EFAB is to provide advice and recommendations to the EPA Administrator on issues associated with environmental financing. It is determined that EFAB is in the public interest in connection with the performance of duties imposed on the Agency by law. Inquiries may be directed to Tara Johnson, Water Infrastructure and Resiliency Finance Center, U.S. EPA, 1200 Pennsylvania Avenue NW, Washington, DC 20460 (Mail Code: 4204M), Telephone (202) 564–6186, or *johnson.tara@epa.gov.*

Dated: April 12, 2022.

Andrew D. Sawyers,

Director, Office of Wastewater Management, Office of Water.

[FR Doc. 2022–08397 Filed 4–19–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9710–01–OMS]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, the Environmental Protection Agency (EPA) gives notice of a public meeting of the Good Neighbor Environmental Board (GNEB or Board). The GNEB is an independent federal advisory committee. Its mission is to advise the President and Congress of the United States on good neighbor practices along the U.S. border with Mexico. Its recommendations are focused on environmental infrastructure needs within the U.S. states contiguous to Mexico. The Board is a federal advisory committee chartered under the Federal Advisory Committee Act.

Purpose of Meeting: To discuss and develop the framework for the Board's annual letter to the President, which will focus on water and wastewater infrastructure issues and challenges along the U.S.-Mexico border.

DATES: May 5, 2022, from 2:00 p.m.–6:00 p.m. (EST). A copy of the agenda will be posted at *www.epa.gov/faca/gneb.*

ADDRESSES: The meeting will be conducted virtually and is open to the public with limited access available on a first-come, first-served basis. Members of the public wishing to participate in the teleconference, should contact Eugene Green at *green.eugene@epa.gov* by April 28th.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or submit written public comments to the Board, should also be directed to Eugene Green at least five business days prior to the teleconference.

Meeting Access: Information regarding access and/or accommodations for individuals with disabilities should be directed to Eugene Green at the email address or phone number listed above. To ensure adequate time for processing, please make requests for accommodations at least 10 days prior to the teleconference meeting. For additional information regarding the teleconference, please contact Eugene Green at (202) 564–2432 or via email at *green.eugene@epa.gov.*

Dated: April 14, 2022.

Eugene Green,

Program Analyst.

[FR Doc. 2022–08439 Filed 4–19–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8140–01–R10]

Reissuance of NPDES General Permit for Tribal Enhancement and Federal Research Marine Net Pen Facilities Within Puget Sound (WAG132000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reissuance of NPDES general permit.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, is reissuing the National Pollutant Discharge Elimination System (NPDES) General Permit for Tribal Enhancement and Federal Research Marine Net Pen Facilities Within Puget Sound (WAG132000). Eligible facilities include tribal enhancement net pens, which are permitted to raise up to 200,000 pounds of native salmonids over a four-month

growing period each year, and Federal research net pen facilities, which are permitted to raise up to 100,000 pounds annually of native finfish. Currently, there are five tribal enhancement facilities and one Federal research facility eligible for coverage under the general permit. Existing enhancement and research facilities may request authorization to discharge under the general permit by submitting a Notice of Intent (NOI) no more than ninety (90) days following the effective date of the permit. New enhancement or research facilities that begin operations after the effective date of the general permit must submit a NOI at least 180 days prior to initiation of operations. Upon receipt, EPA will review the NOI to ensure that all permit requirements are met. If determined appropriate by EPA, a discharger will be granted coverage under the general permit upon the date that EPA provides written notification.

DATES: The issuance date of the general permit is April 20, 2022. The general permit will be effective May 20, 2022.

ADDRESSES: Copies of the general permit, Fact Sheet, and Response to Comments are available upon request. Electronic requests may be sent to: *washington.audrey@epa.gov.*

FOR FURTHER INFORMATION CONTACT: For requests by phone, call Audrey Washington at (206) 553–0523. These documents can also be accessed online on the EPA Region 10 website at: *https://www.epa.gov/npdes-permits/npdes-general-permit-tribal-enhancement-and-federal-research-marine-net-pen.*

SUPPLEMENTARY INFORMATION:

I. General Information

Please see the general permit and Fact Sheet for detailed information on permit conditions.

EPA received two comments from one entity during the public comment period, published in the **Federal Register** on February 9, 2021 (86 FR 8779), comments due by March 26, 2021. EPA also received tribal and state CWA 401 certifications, which can be found in Appendix D of the Fact Sheet. Consultation with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act has been completed. A Response to Comments document was prepared, which explains any changes made to the general permit between proposal and final issuance.

II. Other Legal Requirements

This action is not a significant regulatory action and, therefore, was not submitted to the Office of Management and Budget (OMB) for review.

Compliance with Endangered Species Act, Essential Fish Habitat, Paperwork Reduction Act, and other requirements are discussed in the Fact Sheet to the general permit.

Appeal of Permit: Any interested person may appeal the final permit action within 120 days of April 20, 2022 (*i.e.,* the issuance date of this permit) in the Federal Court of Appeals in accordance with Section 509(b)(1) of the CWA, 33 U.S.C 1369(b)(1).

Daniel D. Opalski,

Director, Water Division, Region 10.

[FR Doc. 2022–08396 Filed 4–19–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

[Docket No. 22–13]

International Express Trucking, Inc., Complainant v. ZIM Integrated Shipping Services, Ltd., Respondent; Notice of Filing of Complaint and Assignment

Served: April 13, 2022.

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by International Express Trucking, Inc., hereinafter ''Complainant'', against ZIM Integrated Shipping Services Ltd., hereinafter ''Respondent''. Complainant alleges that Respondent is an ocean carrier company with an office in Norfolk, Virginia.

Complainant alleges that Respondents violated 46 U.S.C. 41102(c) and 46 CFR 545.4 and 545.5 with regard to assessing demurrage and/or detention charges against containers. The full text of the complaint can be found in the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/22-13/.*

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding office in this proceeding shall be issued by April 13, 2023, and the final decision of the Commission shall be issued by October 27, 2023.

William Cody,

Secretary.

[FR Doc. 2022–08376 Filed 4–19–22; 8:45 am]

BILLING CODE 6730–02–P

GENERAL SERVICES ADMINISTRATION

[Notice MG–2022–02; Docket No. 2022–0001; Sequence No. 5]

Office of Federal High-Performance Green Buildings; Green Building Advisory Committee; Request for Membership Nomination

AGENCY: Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Notice of request for membership nomination.

SUMMARY: The Green Building Advisory Committee provides advice to GSA as a statutorily required federal advisory committee, as specified in the Energy Independence and Security Act of 2007 (EISA) and in accordance with the provisions of the Federal Advisory Committee Act (FACA). This notice invites qualified candidates with a combination of both lived and professional expertise in environmental justice, equity, and green buildings to apply for an appointment to serve as a member on GSA's Green Building Advisory Committee. This is a competitive process for one opening, in light of the statutory limitation on the size of the Committee.

DATES: May 20, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Steverson, Office of Federal High-Performance Green Buildings, GSA, *bryan.steverson@gsa.gov* or 202–501–6115.

SUPPLEMENTARY INFORMATION:

Background

The Administrator of the GSA established the Green Building Advisory Committee (hereafter, ''the Committee'') on June 20, 2011 (76 FR 118) pursuant to Section 494 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17123, or EISA), in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2). Under this authority, the Committee advises GSA on how the Office of Federal High-Performance Green Buildings can most effectively accomplish its mission. Information about this Office is available online at *https://www.gsa.gov/hpb,* while information about the Committee may be found at *https://www.gsa.gov/gbac.* EISA requires the Committee to be represented by specific categories of members as well as ''other relevant agencies and entities, as determined by the Federal Director'' (EISA § 494(b)(1)(B)). This notice reflects the

decision of the Federal Director of GSA's Office of Federal High-Performance Green Buildings to add a member with specific expertise in environmental justice and equity. This decision is informed by national policy as reflected in Executive Order 14008, specifically the requirement in Section 219 that ''agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts''.

Member Responsibilities

The individual will be appointed to a three-year term. Membership is limited to the specific individual appointed and is non-transferrable. All Committee members are expected to personally attend all meetings, review all Committee materials, and actively provide their advice and input on topics covered by the Committee. Committee members will not receive compensation but may receive travel reimbursements from the Government for in-person meetings, where a need has been demonstrated and funds are available.

Request for Membership Nominations

This notice provides an opportunity for individuals (or others on their behalf) to submit their qualifications to serve as a member on the Committee. GSA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, GSA encourages nominations from people of all communities, identities, races, ethnicities, backgrounds, abilities, cultures, and beliefs, including underserved communities and from all geographic locations of the United States of America.

GSA is specifically looking for nominees with a combination of professional and lived experiences and knowledge of environmental justice and equity as it relates to green buildings. Illustrative examples of relevant expertise may include: Advocacy for or technical assistance to communities on environmental justice and equity issues related to the built environment; advancing diversity, equity, inclusion and/or accessibility policies in architecture, engineering or other building trades; designing and/or operating governmental or corporate environmental justice and equity programs.

Other criteria used to evaluate nominees include:

- The background and experience that would help the member contribute to the diversity of perspectives on the committee (*e.g.,* geographic, economic, social, cultural, educational background, professional affiliations, and other considerations);
- demonstrated experience with environmental justice and community sustainability issues at the national, state, or local level;
- excellent interpersonal and consensus-building skills and demonstrated ability to work constructively and effectively on committees.
- ability to volunteer time to attend meetings 2–3 times a year, participate in teleconference meetings, develop policy recommendations, and prepare reports and advice letters; and

All nominees should have at least 5 years experience and hold academic degrees, certifications or training demonstrating knowledge in green building, environmental justice and equity. Knowledge of Federal sustainability and green building requirements, laws and programs is of particular value to the Committee. GSA will review and consider all applications and determine which candidate is likely to add the most value to the Committee based on the criteria outlined in this notice. No person appointed to serve in an individual capacity shall be a federally registered lobbyist in accordance with the Presidential Memorandum ''Lobbyists on Agency Boards and Commissions'' (June 18, 2010) and OMB Final Guidance published in the **Federal Register** on October 5, 2011 and revised on August 13, 2014.

Nomination Process for Advisory Committee Appointment

Individuals may nominate themselves or others. A nomination package shall include the following information for each nominee:

(1) A letter of nomination stating the name and organizational affiliation(s) of the nominee (and position within that organization), nominee's field(s) of expertise, specific qualifications to serve on the Committee, and description of interest and qualifications;

(2) A professional resume or CV; and

(3) Complete contact information including name, return address, email address, and daytime telephone number of the nominee and nominator.

GSA reserves the right to choose the Committee member based on qualifications, experience, Committee balance, statutory requirements and all other factors deemed critical to the success of the Committee. Candidates may be asked to provide detailed financial information to ensure that the interests and affiliations of advisory committee members are reviewed for conformance with applicable conflict of interest statutes and other Federal ethics rules. All nominations must be submitted to *bryan.steverson@gsa.gov* by 5:00 p.m., Eastern Time (ET), on May 20, 2022.

Kevin Kampschroer,

Federal Director, Office of Federal High-Performance Green Buildings, Office of Government-Wide Policy, General Services Administration.

[FR Doc. 2022–08419 Filed 4–19–22; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0001]

Science Advisory Board to the National Center for Toxicological Research Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) announces a forthcoming public advisory committee meeting of the Science Advisory Board to the National Center for Toxicological Research. The general function of the committee is to provide advice and recommendations to the Agency on research being conducted at the National Center for Toxicological Research (NCTR). At least one portion of the meeting will be closed to the public.

DATES: The meeting will be held virtually on May 18, 2022, from 8 a.m. to 5:55 p.m., Central Standard Time, and on May 19, 2022, from 8 a.m. to 11:30 a.m., Central Standard Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/advisory-committees/about-advisory-committees/common-questions-and-answers-about-fda-advisory-committee-meetings.* The meeting will be webcast both days and will be available at the following link: *https://fda.zoomgov.com/j/1605634800?pwd=QWlpWUpZUnZTVnZWWUIwckxMRVdZUT09.*

Passcode: N5v5y*

FOR FURTHER INFORMATION CONTACT: Donna Mendrick, National Center for Toxicological Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 2208, Silver Spring, MD 20993–0002, 301–796–8892, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On May 18, 2022, the Science Advisory Board Chair will welcome the participants, and the NCTR Director will provide a Center-wide update on scientific initiatives and accomplishments during the past year. The Science Advisory Board will be presented with an overview of the Science Advisory Board Subcommittee Site Visit Report and a response to this review. The Center for Biologics Evaluation and Research, Center for Drug Evaluation and Research, Center for Devices and Radiological Health, Center for Food Safety and Applied Nutrition, Center for Tobacco Products, and the Office of Regulatory Affairs will each briefly discuss their specific research strategic needs and potential areas of collaboration.

On May 19, 2022, there will be updates from the NCTR Research Divisions and a public comment session. Following an open discussion of all the information presented, the open session of the meeting will close so the Science Advisory Board members can discuss personnel issues at NCTR.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link.

Procedure: On May 18, 2022, from 8 a.m. to 5:55 p.m., Central Standard Time, and May 19, 2022, from 8 a.m. to 11:30 a.m., Central Standard Time, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 13, 2022. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Central Standard Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 5, 2022. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 6, 2022.

Closed Committee Deliberations: On May 19, 2022, from 11:30 a.m. to 12 p.m., Central Standard Time, the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). This portion of the meeting will be closed to permit discussion of information concerning individuals associated with the research programs at NCTR.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Donna Mendrick at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 15, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–08460 Filed 4–19–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–1155]

The Use of Published Literature in Support of New Animal Drug Applications; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry #106 entitled ''The Use of Published Literature in Support of New Animal Drug Applications.'' This draft guidance, when finalized, will replace the existing final guidance #106, ''The Use of Published Literature in Support of New Animal Drug Approval,'' which FDA published in August 2000 and which specifically addressed the use of a single article to support drug approval. This revision of the guidance document considers multiple uses of the scientific literature, including narrative reviews, systematic reviews, and meta-analyses to support approval of a new animal drug.

DATES: Submit either electronic or written comments on the draft guidance by June 21, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a

third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–1155 for ''The Use of Published Literature in Support of New Animal Drug Applications.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Amey Adams, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0816, *Amey.Adams@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry #106 entitled ''The Use of Published Literature in Support of New Animal Drug Applications.'' The purpose of this document is to provide guidance to animal drug sponsors on specific areas of the approval process where the available scientific literature may be useful to support the approval of a new animal drug application, an abbreviated new animal drug application, or a conditionally approved new animal drug application, as well as methodologies to ensure the validity of conclusions drawn by animal drug sponsors from the scientific literature to support an approval.

The original guidance #106, ''The Use of Published Literature in Support of New Animal Drug Approval,'' was published in 2000 and specifically addressed the use of a single article to support drug approval. Since its publication, animal drug sponsors have used literature to support various aspects of animal drug development and approval, including early stages of drug development, dosage characterization, microbial food safety, design of the target animal safety evaluation, prediction of potential adverse effects, and substantial evidence of effectiveness.

Animal drug sponsors have expressed interest in further leveraging information published in the scientific literature to support new animal drug approvals. Use of published scientific literature is of interest because it makes use of existing knowledge and may reduce the number of animals needed for studies to support approval and, in some cases, may provide greater inferential value compared to individual studies conducted for the purpose of supporting an approval. Scientific literature may also be used to respond to specific regulatory questions, identify data gaps, and inform protocol design. This draft guidance expands upon the original guidance #106 by considering multiple uses of the scientific literature, including narrative reviews, systematic reviews, and meta-analyses to support approval of a new animal drug.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''The Use of Published Literature in Support of New Animal Drug Applications.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in FDA's guidance entitled ''The Use of Published Literature in Support of New Animal Drug Applications'' have been approved under OMB control number 0910–0032.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either

https://www.fda.gov/animal-veterinary/guidance-regulations/guidance-industry, https://www.fda.gov/regulatory-information/search-fda-guidance-documents, or *https://www.regulations.gov*.

Dated: April 15, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–08452 Filed 4–19–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html*.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on March 1, 2022, through March 31, 2022. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Health Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (*Petitioner's Name* v. *Secretary of HHS*) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Carole Johnson,

Administrator.

List of Petitions Filed

1. Maxwell Manley, Phoenix, Arizona, Court of Federal Claims No: 22–0227V
2. Brendan Bixel, Portland, Oregon, Court of Federal Claims No: 22–0228V
3. Nancy Purcell, Tinley Park, Illinois, Court of Federal Claims No: 22–0231V
4. William Watkins, Norman, Oklahoma, Court of Federal Claims No: 22–0232V
5. Robert Thomson, Woods Cross, Utah, Court of Federal Claims No: 22–0234V
6. Maise Johnson, Springfield, Massachusetts, Court of Federal Claims No: 22–0235V
7. Danae Denton, Chicago, Illinois, Court of Federal Claims No: 22–0238V
8. Khair M. Issa, Woodbridge, Virginia, Court of Federal Claims No: 22–0240V
9. Danielle Poore, Palo Alto, California, Court of Federal Claims No: 22–0241V
10. Margaret Chalgren, Minneapolis, Minnesota, Court of Federal Claims No: 22–0245V
11. Meredith Perry on behalf of L. P., Phoenix, Arizona, Court of Federal Claims No: 22–0246V
12. Teresa Donovan, Seattle, Washington, Court of Federal Claims No: 22–0249V
13. Dana Bertucci on behalf of D. A., Chicago, Illinois, Court of Federal Claims No: 22–0250V
14. Marivic Malolos, Fontana, California, Court of Federal Claims No: 22–0251V
15. Jennifer Goldson and Brian Goldson on behalf of J. G., Phoenix, Arizona, Court of Federal Claims No: 22–0254V
16. Paul E. Saliba, Dallastown, Pennsylvania, Court of Federal Claims No: 22–0257V
17. Myrtle Barrett, Kershaw, South Carolina, Court of Federal Claims No: 22–0258V
18. Stanley Hatch, Goleta, Florida, Court of Federal Claims No: 22–0260V

19. David Strike, Colorado Springs, Colorado, Court of Federal Claims No: 22–0262V
20. Lawrence Knight, Royston, Georgia, Court of Federal Claims No: 22–0263V
21. Timothy M. Kinman, Los Angeles, California, Court of Federal Claims No: 22–0264V
22. Deborah DeFosses, Westerly, Rhode Island, Court of Federal Claims No: 22–0265V
23. Gertrude Teresa McCleary, Evansville, Indiana, Court of Federal Claims No: 22–0266V
24. Karen A. Bramen, Sudbury, Massachusetts, Court of Federal Claims No: 22–0268V
25. Katherine Showalter, Phoenix, Arizona, Court of Federal Claims No: 22–0270V
26. Margo Moses, Cape May, New Jersey, Court of Federal Claims No: 22–0271V
27. Kathy F. McMurty, Brentwood, Tennessee, Court of Federal Claims No: 22–0272V
28. Scott Egan, Madeira, Ohio, Court of Federal Claims No: 22–0273V
29. Martha Kememu, Bronx, New York, Court of Federal Claims No: 22–0275V
30. Lilian Amador on behalf of L. H., Deceased, East Setauket, New York, Court of Federal Claims No: 22–0276V
31. John Piermatteo, York, Pennsylvania, Court of Federal Claims No: 22–0277V
32. Lance Trollop, Wausau, Wisconsin, Court of Federal Claims No: 22–0278V
33. Mandy White, Milford, Utah, Court of Federal Claims No: 22–0280V
34. Shannon Puffinberger, Winchester, Virginia, Court of Federal Claims No: 22–0281V
35. Dermott Whalen, New York, New York, Court of Federal Claims No: 22–0282V
36. Huong Garrett, San Rafael, California, Court of Federal Claims No: 22–0283V
37. Cassie Karpenski, Panama, Oklahoma, Court of Federal Claims No: 22–0284V
38. Diane Janni on behalf of the Estate of Joseph Janni, Deceased, Albuquerque, New Mexico, Court of Federal Claims No: 22–0285V
39. Randy Patton, Springfield, Missouri, Court of Federal Claims No: 22–0286V
40. Stephan Dias, Jericho, New York, Court of Federal Claims No: 22–0287V
41. Jodi Lawton and Christi Kirkland on behalf of the Estate of Grace L. Sharpe, Deceased, Allendale, South Carolina, Court of Federal Claims No: 22–0288V
42. Ricky Steward, Elko, Nevada, Court of Federal Claims No: 22–0289V
43. William C. Bodie, Lexington, South Carolina, Court of Federal Claims No: 22–0290V
44. John Paul Tucker, Dardanelle, Arkansas, Court of Federal Claims No: 22–0293V
45. Alexis Mae Montgomery, North Bend, Washington, Court of Federal Claims No: 22–0294V
46. Maria Kabayan, Arcadia, California, Court of Federal Claims No: 22–0298V
47. Evelyn Castle, Vacaville, California, Court of Federal Claims No: 22–0299V
48. Jennifer Callies, Virginia Beach, Virginia, Court of Federal Claims No: 22–0301V
49. Edith Murray, Portland, Oregon, Court of Federal Claims No: 22–0303V
50. Charles E. Mandril, Westminster, Colorado, Court of Federal Claims No: 22–0305V
51. Trudi Donovan, Pueblo, Colorado, Court of Federal Claims No: 22–0306V
52. Paul Holleran, Shrewsbury, Massachusetts, Court of Federal Claims No: 22–0307V
53. Deanna Robitille, Wauwatosa, Wisconsin, Court of Federal Claims No: 22–0309V
54. Darrell Clofer, Luling, Louisiana, Court of Federal Claims No: 22–0310V
55. Sophianne Taguacta and Timothy Taguacta on behalf of B. T., Bullhead City, Arizona, Court of Federal Claims No: 22–0311V
56. Barbara Castelein, Rutherford, New Jersey, Court of Federal Claims No: 22–0312V
57. Susan Donnewald on behalf of Dwight D. Donnewald, Jr., Deceased, Durand, Illinois, Court of Federal Claims No: 22–0313V
58. Pamela Cavanaugh, Waconia, Minnesota, Court of Federal Claims No: 22–0314V
59. Elizabeth Roberts on behalf of R. R., Phoenix, Arizona, Court of Federal Claims No: 22–0315V
60. Christopher Ciunci on behalf of J. C., East Greenwich, Rhode Island, Court of Federal Claims No: 22–0316V
61. Brandie C. Pitts, Biloxi, Mississippi, Court of Federal Claims No: 22–0318V
62. Farideh Fakhimnia, Santa Clarita, California, Court of Federal Claims No: 22–0319V
63. Harold E. Kaplan, Asheville, North Carolina, Court of Federal Claims No: 22–0320V
64. Christine Prescott, Atlanta, Georgia, Court of Federal Claims No: 22–0321V
65. Heather Peterson, Des Plaines, Illinois, Court of Federal Claims No: 22–0322V
66. Bruce Matzner, Laguna Beach, California, Court of Federal Claims No: 22–0323V
67. Amy Martineau Jereb, Norfolk, Virginia, Court of Federal Claims No: 22–0324V
68. Staci Arnold, Niagara Falls, New York, Court of Federal Claims No: 22–0326V
69. Logan Dunn, Chalfont, Pennsylvania, Court of Federal Claims No: 22–0327V
70. Aura Beattie on behalf of E. C., Phoenix, Arizona, Court of Federal Claims No: 22–0328V
71. John Cherry, New York, New York, Court of Federal Claims No: 22–0331V
72. David Kirsch, Philadelphia, Pennsylvania, Court of Federal Claims No: 22–0332V
73. Timothy Shrum, Washington, District of Columbia, Court of Federal Claims No: 22–0333V
74. Victoria Weinfeld, North Miami Beach, Florida, Court of Federal Claims No: 22–0334V
75. Charles Taylor, New York, New York, Court of Federal Claims No: 22–0335V
76. Dorothy Pohl, Papillion, Nebraska, Court of Federal Claims No: 22–0336V
77. Henry Ricci, Pittsgrove, New Jersey, Court of Federal Claims No: 22–0337V
78. Stephen Martin, Vancouver, Washington, Court of Federal Claims No: 22–0338V
79. Lenka Valentine, Ashburn, Virginia, Court of Federal Claims No: 22–0340V
80. Ronald Iverson, Duluth, Minnesota, Court of Federal Claims No: 22–0343V
81. Ilona Clitus, Phoenix, Arizona, Court of Federal Claims No: 22–0347V
82. Mae Macaluso, Smithtown, New York, Court of Federal Claims No: 22–0367V
83. Monya Rowe, New York, New York, Court of Federal Claims No: 22–0368V
84. Alex Bratcher, Jr., Jacksonville, Florida, Court of Federal Claims No: 22–0369V
85. William Alverson, Roswell, Georgia, Court of Federal Claims No: 22–0370V

[FR Doc. 2022–08417 Filed 4–19–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Transfer of ARPA–H to NIH

Notice is hereby given that I have transferred the Advanced Research Projects Agency for Health (ARPA–H) to the National Institutes of Health (NIH) as authorized by title II of division H of the Consolidated Appropriations Act, 2022, Public Law 117–103, and pursuant to the notification to the Committees on Appropriations of the House of Representatives and the Senate on March 30, 2022.

The transfer is subject to the following condition:

- The Director, ARPA–H will report directly to the Secretary Delegation of Authority.

I have delegated to the Director, NIH, the following authorities vested in me as the Secretary of Health and Human Services, for the purpose of carrying out section 301 and title IV of the PHS Act with respect to advanced research projects for health to:

- Administer the functions, personnel, missions, activities, authorities, and funds of ARPA–H
- Support activities with funds provided under the heading 'Advanced Research Projects Agency for Health' under title II of division H of the Consolidated Appropriations Act, 2022, Public Law 117–103, that shall not be subject to the requirements of section 406(a)(3)(A)(ii) or 492 of the PHS Act.
- Make or rescind appointments of scientific, medical, and professional personnel without regard to any provision in title 5, United States Code, governing appointments under the civil service laws.

The delegation is subject to the following conditions:

- The authority delegated to the Director, NIH, herein shall transfer to the Director, ARPA–H, upon appointment of the Director, ARPA–H, or naming of an acting Director, ARPA–H.
- NIH may not subject ARPA–H to NIH policies.

I have affirmed and ratified any actions taken by the Director, NIH,

Director, ARPA–H, or Acting Director, ARPA–H, which involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

This delegation of authority does not impact any other delegations of authority within NIH or in any other U.S. Department of Health and Human Services Operating Division or Staff Division. The transfer and delegation became effective upon the date of signature.

Dated: April 15, 2022.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2022–08456 Filed 4–19–22; 8:45 am]

BILLING CODE 4150–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics: Biobehavioral and Behavioral Processes Panel 02.

Date: April 26, 2022.

Time: 10:00 a.m. to 12:00 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: Pablo M Blazquez Gamez, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1042, *pablo.blazquezgamez@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. 93.306, 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: April 14, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08395 Filed 4–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Fellowships in Digestive Diseases and Nutrition.

Date: June 9–10, 2022.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 2 Democracy, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7011, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 14, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08393 Filed 4–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Accelerating Healing While Decreasing Pain and Inflammation in Fractured Aged Bone.

Date: May 27, 2022.

Time: 12:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joshua Jin-Hyouk Park, Scientific Review Officer, Scientific Review Branch, NIA (National Institute on Aging), Gwy. Bg. Rm. 2W200, 7201 Wisconsin Ave., Bethesda, MD 20892, (301) 496–6208, *joshua.park4@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 14, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08391 Filed 4–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; MOST4 Osteoarthritis Study.

Date: May 16, 2022.

Time: 12:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joshua Jin–Hyouk, Park Scientific Review, Officer Scientific Review Branch, NIA (National Institute on Aging), GWY BG, Rm 2W200, 7201 Wisconsin Ave., Bethesda, MD 20892, (301) 496–6208, *joshua.park4@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 14, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08394 Filed 4–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0041]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0015

AGENCY: Coast Guard, DHS.

ACTION: Thirty-Day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0015, Bridge Permit Application Guide; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before May 20, 2022.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2022–0041]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2022–0041], and must be received by May 20, 2022.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0015.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (87 FR 3834, January 25, 2022) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Bridge Permit Application Guide.

OMB Control Number: 1625–0015.

Summary: The collection of information is a request for a bridge permit submitted as an application for approval by the Coast Guard of any proposed bridge project. An applicant must submit to the Coast Guard a letter of application along with letter-size drawings (plans) and maps showing the proposed project and its location.

Need: 33 U.S.C. 401, 491, and 525 authorize the Coast Guard to approve plans and locations for all bridges and causeways that go over navigable waters of the United States.

Forms: None.

Respondents: Public and private owners of bridges over navigable waters of the United States.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden for the period FY18–FY20 is 10,306 hours, which averages to 3,435 hours per year. The previous submission for this request (FY15–FY17) included permit pre-application coordination between the Bridge Program and the applicant that is required as an application is prepared for submission. Recognition of this work more accurately captured the work of the Bridge Program and significantly increased the total burden hours. Unfortunately the Coast Guard was unable to continue to support the antiquated database that was used to capture this data and a new database solution is not expected to be fully operational until 2022, therefore reliable data for the full data period is unavailable. This submission does not include pre-application work and will therefore show a drastic decrease in burden hours from 17,607 to 3,435 due to this omission.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. *et seq.,* chapter 35, as amended.

Dated: April 5, 2022.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2022–08426 Filed 4–19–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0042]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0086

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0086, The Great Lakes Pilotage; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before May 20, 2022.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2022–0042]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2022–0042], and must be received by May 20, 2022.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0086.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (87 FR 3835, January 25, 2022) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: The Great Lakes Pilotage.

OMB Control Number: 1625–0086.

Summary: The Office of Great Lakes Pilotage is seeking an extension of OMB's current approval for Great Lakes Pilotage data collection requirements for the three U.S. pilot associations it regulate. This extension would require continued submission of data to an electronic collection system and Form CG–4509. This system is identified as the Great Lakes Pilot Management System which replaced the manual paper submissions used to collect data on bridge hours, vessel delay, vessel cancellation, pilot travel and administration, revenues, pilot availability, and related data. This extension ensures the required data is available in a timely manner and allows immediate accessibility to data crucial from both an operational and rate-making standpoint.

Need: To comply with the statutory and regulatory requirements respecting the rate-making and oversight functions imposed upon the agency.

Forms: CG–4509, Application for Registration as United States Registered Pilot.

Respondents: The three U.S. pilot associations regulated by the Office of Great Lakes Pilotage and members of the public applying to become Great Lakes Registered Pilots.

Frequency: Daily, Weekly, Monthly, Quarterly, Semi-annually, Annually, On occasion; frequency dictated by marine traffic levels and association staffing.

Hour Burden Estimate: The estimated burden increased to 1,214 hours a year. This increase is an update due to increased traffic on the Great Lakes and better record keeping in the past four years. The information requested from the respondents has not changed.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. *et seq.,* chapter 35, as amended.

Dated: April 5, 2022.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2022–08429 Filed 4–19–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0826]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0068

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0068, State Access to the Oil Spill Liability Trust Fund for Removal Costs under the Oil Pollution Act of 1990; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before May 20, 2022.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2021–0826]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2021–0826], and must be received by May 20, 2022.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have

provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0068.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (87 FR 2445, January 14, 2022) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: State Access to the Oil Spill Liability Trust Fund for Removal Costs under the Oil Pollution Act of 1990.

OMB Control Number: 1625–0068.

Summary: This information collection is the mechanism for a Governor, or their designated representative, of a state to make a request for payment from the Oil Spill Liability Trust Fund (OSLTF) in an amount not to exceed $250,000 for removal cost consistent with the National Contingency Plan required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of discharge, of oil.

Need: This information collection is required by, 33 CFR part 133, for implementing 33 U.S.C. 2712(d)(1) of the Oil Pollution Act of 1990 (OPA 90). The information provided by the State to the National Pollution Fund Center (NPFC) is used to determine whether expenditures submitted by the state to the OSLTF are compensable, and, where compensable, to ensure the correct amount of reimbursement is made by the OSLTF to the state. If the information is not collected, the Coast Guard and the National Pollution Funds Center will be unable to justify the resulting expenditures, and thus be unable to recover costs from the parties responsible for the spill when they can be identified.

Forms: None.

Respondents: Governor of a state or their designated representative.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden of 3 hours a year remains unchanged.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. *et seq.,* chapter 35, as amended.

Dated: April 5, 2022.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2022–08430 Filed 4–19–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: TSA End of Course Level 1 Evaluation–Instructor-Led Classroom Training

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0041, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the submission of ratings and written comments about the quality of training instruction from TSA students who successfully complete TSA instructor-led classroom training. TSA students include TSA personnel, as well as State and local civilian personnel, who attend any of the following courses at the Canine Training Center (CTC): Explosives Detection Canine Handler Course, Passenger Screening Canine Handler Course, Bridge Course, Canine Training Instructor Course, and the Security Operations (SO) Canine Management Course.

DATES: Send your comments by May 20, 2022. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on November 15, 2021, 86 FR 63049.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: TSA End of Course Level 1 Evaluation–Instructor-Led Classroom Training.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0041.

Forms(s): TSA Form 1904A.

Affected Public: Canine Handlers.

Abstract: TSA's CTC delivers the Explosives Detection Canine Handler Course, Passenger Screening Canine Handler Course, Bridge Course, Canine Training Instructor Course, and the SO Canine Management Course to TSA personnel, as well as to State and local civilian personnel. State and local civilian personnel, primarily consisting of law enforcement agencies that are responsible for the security at airports throughout the United States, participate under agency-specific cooperative agreements with TSA's

National Explosives Detection Canine Team Program. This information collection captures ratings and written comments and feedback from students about the quality of the referenced training.

The CTC collects the evaluation data to determine students' satisfaction with their learning experience and provides it to representatives at both TSA headquarters and at CTC (*e.g.,* to the Branch Manager, Deputy Branch Manager, and CTC instructional staff and supervisors) to improve the course curriculum and course of instruction.

Number of Respondents: 156.

Estimated Annual Burden Hours: An estimated 78 hours annually.

Dated: April 14, 2022.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2022–08378 Filed 4–19–22; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0096]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Genealogy Index Search Request and Genealogy Records Request

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 May 20, 2022.

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–2006–0013. All submissions received must include the OMB Control Number 1615–0096 in the body of the letter, the agency name and Docket ID USCIS–2006–0013.

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 November 30, 2021, at 86 FR 67965, 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–2006–0013 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:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Genealogy Index Search Request and Genealogy Records Request.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1041 and G–1041A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The Genealogy Program is necessary to provide a timelier response to requests for genealogical and historical records. Form G–1041 is provided as a convenient means for persons to provide data necessary to perform a search of historical agency indices. Form G–1041A provides a convenient means for persons to identify a particular record desired under the Genealogy Program. The forms provide rapid identification of such requests and ensures expeditious handling. Persons such as researchers, historians, and social scientists seeking ancestry information for genealogical, family history and heir location purposes will use Forms G–1041 and G–1041A.

(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 G–1041 is 3,847 and the estimated hour burden per response is 0.5 hour. The estimated total number of respondents for the information collection G–1041A is 2,920 and the estimated hour burden per response is 0.5 hour.

(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 3,384 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 $439,855.

Dated: April 14, 2022.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–08400 Filed 4–19–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0054]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Notice of Naturalization Oath Ceremony

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 May 20, 2022.

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–2006–0055. All submissions received must include the OMB Control Number 1615–0054 in the body of the letter, the agency name and Docket ID USCIS–2006–0055.

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 December 29, 2021, at 86 FR 74099, allowing for a 60-day public comment period. USCIS did not receive any 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–2006–0055 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:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice of Naturalization Oath Ceremony.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–445; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information furnished on Form N–445 refers to events that may have occurred since the applicant's initial interview and prior to the administration of the oath of allegiance. Several months may elapse between these dates and the information that is provided assists the officer to make and render an appropriate decision on the application. USCIS will use this information to determine if any changes to the respondent's prior statements affect the decisions the agency has made in regard to the respondent's ability to be naturalized.

(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 N–445 is 593,233 and the estimated hour burden per response is .25 hours.

(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 148,321 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 $0. This document is completed at the naturalization ceremony, there is no cost to submit it.

Dated: April 14, 2022.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–08398 Filed 4–19–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0013]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Travel Document

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 extension 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 June 21, 2022.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0013 in the body of the letter, the agency name and Docket ID USCIS–2007–0045. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2007–0045.

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–2007–0045 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:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Travel Document.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–131; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Certain aliens, principally permanent or conditional residents, refugees or asylees, applicants for adjustment of status, aliens in Temporary Protected Status (TPS), and aliens abroad seeking humanitarian parole who need to apply for a travel document to lawfully enter or reenter the United States. Eligible recipients of deferred action under childhood arrivals (DACA) may now request an advance parole documents based on humanitarian, educational and employment reasons. Lawful permanent residents may now file requests for travel permits (transportation letter or boarding foil)

(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–131 is 483,920 and the estimated hour burden per response is 1.9 hours; the estimated total number of respondents for biometrics processing is 84,000 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for passport-style photos is 380,000 and the estimated hour burden per response is 0.5 hours.

(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 1,207,728 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 $146,072,480.

Dated: April 14, 2022.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–08401 Filed 4–19–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7052–N–03]

60-Day Notice of Proposed Information Collection: Housing Trust Fund, OMB Control No.: 2506–0215

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 21, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5535 (this is not a toll-free number) or email at *anna.p.guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at (800) 877–8339 (this is a toll-free number).

FOR FURTHER INFORMATION CONTACT: Quinn Warner, Affordable Housing Specialist, Office of Affordable Housing Programs, 451 7th Street SW, Washington, DC 20410; email at *quinn.a.warner@hud.gov* or telephone 202–402–1401. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Housing Trust Fund (HTF).

OMB Approval Number: 2506–0215.

Type of Request: Extension.

Form Number: SF–1199A, HUD–27055.

Description of the need for the information and proposed use: The information collected through the Integrated Disbursement and Information System (IDIS) (24 CFR 93.402) is used by HUD Field Offices, HUD Headquarters, and HTF grantees. The information on program funds committed and disbursed is used by HUD to track grantee performance and to determine compliance with the statutory 24-month commitment deadline and the regulatory 5-year expenditure deadline (§ 93.400(d)). The project-specific property, tenant, owner, and financial data is used to make program management decisions about how well program participants are achieving the statutory objectives of the HTF Program. Program management reports are generated by IDIS to provide data on the status of program participants' commitment and disbursement of HTF funds. These reports are provided to HUD staff as well as to HTF grantees.

Financial, project, tenant and owner documentation are used to determine compliance with HTF Program cost limits (§ 93.404), eligible activities (§ 93.200), and eligible costs (§ 93.201). Other information collected under Subpart H (Other Federal Requirements) is primarily intended for local program management and is only viewed by HUD during routine monitoring visits. The written agreement with the owner for long-term obligation (§ 93.404(b)) and tenant protections (§ 93.303) are required to ensure that the property owner complies with these important elements of the HTF Program and are also reviewed by HUD during monitoring visits. HUD reviews all other data collection requirements during monitoring to assure compliance with the requirements of the Act and other related laws and authorities.

HUD tracks grantee performance and compliance with the requirements of 24 CFR parts 91 and 93. Grantees use the required information in the execution of their program, and to gauge their own performance in relation to stated goals.

Regulatory section	Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
§ 93.100(a)	Notification of intent to participate	56.00	1.00	56.00	4.00	224.00	$43.04	$9,640.96
31 U.S.C. § 3512	HUD Form 27055	56.00	1.00	56.00	0.50	28.00	43.04	1,205.12
§ 93.100(b)	Submission of Consolidated Plan	56.00	0.20	11.20	40.00	448.00	43.04	19,281.92
§ 91.220	Action Plan	56.00	1.00	56.00	10.00	560.00	43.04	24,102.40
§ 93.101	Distribution of assistance	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.150(a)	Site and Neighborhood Standards	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.150(b)	New rental housing site and neighborhood requirements.	56.00	1.00	56.00	5.00	280.00	43.04	12,051.20
§ 93.200(b)	Establishment of terms of assistance	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.200(d)	Terminated projects	1.00	1.00	1.00	20.00	20.00	43.04	860.80
§ 93.201(b)(2)	Establish refinancing guidelines	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.300(a)	Establish maximum per-unit development subsidy amount.	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.300(b)	Underwriting and subsidy layering	168.00	1.00	168.00	4.00	672.00	43.04	28,922.88
§ 93.301(a)	Property standards—New construction	56.00	1.00	56.00	3.00	168.00	43.04	7,230.72
§ 93.302(b)	Establish rent limitations	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.302(c)	Establish utility allowance	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.302(d)(1)	Establish affordability requirements	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.302(d)(3)	Establish preemptive procedures before foreclosure.	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.302(e)(1)	Initial income determination	1821.00	1.00	1821.00	1.00	1821.00	43.04	78,375.84
§ 93.302(e)(1)	Annual income determination	5600.00	1.00	5600.00	0.25	1400.00	43.04	60,256.00
§ 93.350(a)	Nondiscrimination and equal opportunity procedures.	56.00	1.00	56.00	8.00	448.00	43.04	19,281.92
§ 93.350(b)(1)	Affirmative marketing procedures	56.00	1.00	56.00	10.00	560.00	43.04	24,102.40
§ 93.351	Lead-based paint	56.00	1.00	56.00	1.00	56.00	43.04	2,410.24
§ 93.352	Displacement, relocation, and acquisition procedures.	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.353	Conflict of interest adjudication	2.00	1.00	2.00	4.00	8.00	43.04	344.32
§ 93.354	Funding Accountability and Transparency Act.	56.00	12.00	672.00	1.00	672.00	43.04	28,922.88
§ 93.356(b)	VAWA notification requirements	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.356(d)	VAWA lease term/addendum	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.356(f)	VAWA Emergency transfer plan	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.402(b)(1)	IDIS—Project set-up	168.00	1.00	168.00	1.00	168.00	43.04	7,230.72
§ 93.402(c)(1)	IDIS—HTF drawdowns	168.00	1.00	168.00	1.00	168.00	43.04	7,230.72

Regulatory section	Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
§ 93.402(d)(1)	IDIS—Project completion	168.00	1.00	168.00	1.00	168.00	43.04	7,230.72
§ 93.403(a)	Program income administration	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.403(b)(1)	Repayment for ineligible activities	2.00	1.00	2.00	5.00	10.00	43.04	430.40
§ 93.404(b)	Written agreement	168.00	1.00	168.00	2.00	336.00	43.04	14,461.44
§ 93.404(d)(1)	Project completion inspection	168.00	1.00	168.00	2.00	336.00	43.04	14,461.44
§ 93.404(d)(2)(i)	Onsite inspection upon completion	560.00	1.00	560.00	2.00	1120.00	43.04	48,204.80
§ 93.404(d)(2)(ii)	Onsite inspections post completion	504.00	1.00	504.00	2.00	1008.00	43.04	43,384.32
§ 93.404(d)(2)(iv)	Project owner annual certification	168.00	1.00	168.00	2.00	336.00	43.04	14,461.44
§ 93.404(e)	Annual financial oversight of 10 or more units.	168.00	1.00	168.00	2.00	336.00	43.04	14,461.44
§ 93.405	Uniform administrative requirements	56.00	1.00	56.00	4.00	224.00	43.04	9,640.96
§ 93.406 (a)	Annual CFR 200 audit	56.00	1.00	56.00	10.00	560.00	43.04	24,102.40
§ 93.407 (a)(1)	Program recordkeeping	56.00	1.00	56.00	8.00	448.00	43.04	19,281.92
§ 93.407 (a)(2)	Project recordkeeping	560.00	1.00	560.00	2.00	1120.00	43.04	48,204.80
§ 93.407 (a)(3)	Financial recordkeeping	56.00	12.00	672.00	2.00	1344.00	43.04	57,845.76
§ 93.407 (a)(4)	Program administration records	56.00	12.00	672.00	8.00	5376.00	43.04	231,383.04
§ 93.407 (a)(5)	Records concerning other Federal requirements.	56.00	1.00	56.00	10.00	560.00	43.04	24,102.40
§ 93.408	Performance reports	56.00	12.00	672.00	2.50	1680.00	43.04	72,307.20
§ 93.451	Annual performance reviews	56.00	1.00	56.00	8.00	448.00	43.04	19,281.92
Total		12,186.00		14,605.20		26,247.00		1,129,670.88

Total cost: 26,247.00 hours * $43.04 (Hourly rate for GS12)

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

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

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

James Arthur Jemison II,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2022–08448 Filed 4–19–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2022–N013; FXES11130300000–223–FF03E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before May 20, 2022.

ADDRESSES:

Document availability and comment submission: Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* TEXXXXXX; see table in **SUPPLEMENTARY INFORMATION**):

- *Email: permitsR3ES@fws.gov.* Please refer to the respective application number (*e.g.,* Application No. TEXXXXXX) in the subject line of your email message.
- *U.S. Mail:* Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

FOR FURTHER INFORMATION CONTACT: Nathan Rathbun, 612–713–5343 (phone); *permitsR3ES@fws.gov* (email). 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:

Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct

activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

We invite local, State, and Federal agencies; Tribes; and the public to comment on the following applications:

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE43541A	Francesca Cuthbert, Saint Paul, MN.	Piping plover (*Charadrius melodus*).	IL, MI, NY, PA, WI	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate potential impacts.	Capture, handle, release, band, and DNA sample.	Renew.
TE38835A	Kim Karn, Grand Rapids, MI.	Karner blue butterfly (*Lycaeides melissa samuelis*).	MI	Conduct presence/absence surveys, document habitat use, and conduct habitat management.	Collect, handle, and loss of habitat.	Renew and Amend.
TE06820A	Russel Benedict, Pella, IA.	Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), and northern long-eared bat (*M. septentrionalis*).	IL, IA, MO, NE	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate potential impacts.	Capture, handle, harp trap, radio-tag, and release.	Renew.
TE65859D	Benjamin Schuplin, North Royalton, OH.	Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), and northern long-eared bat (*M. septentrionalis*).	AL, AR, CN, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NY, NC, ND, OK, OH, PA, RI, SC, SD, TN, VT, VA, WV, WI, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate potential impacts.	Add new activity—radio-tag—to existing authorized activities: Capture, handle, and release.	Amend.
TE69835D	Michigan State University, Hickory Corners, MI.	Add: new species—Mitchell's satyr butterfly (*Neonympha mitchellii mitchellii*) — to existing authorized species: Poweshiek skipperling (*Oarisma poweshiek*).	Add new States—AL, MS—to existing authorized State of MI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, captive propagate, conduct genomic studies, and evaluate potential impacts.	Add new activity — captive propagation — to existing authorized activities: Capture, handle, hold, and release.	Amend.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Services.

[FR Doc. 2022–08474 Filed 4–19–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[223A2100DD/AAKC001030/A0A501010.999900]

HEARTH Act Approval of Morongo Band of Mission Indians, California Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Morongo Band of Mission Indians, California Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business and residential leases without further BIA approval.

DATES: BIA issued the approval on April 14, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Carla Clark, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *carla.clark@bia.gov,* (702) 484–3233.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational,

religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal Leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Morongo Band of Mission Indians, California. II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Morongo Band of Mission Indians, California.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–08410 Filed 4–19–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033713; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Beloit College, Logan Museum of Anthropology, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Beloit College, Logan Museum of Anthropology has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written

request to Beloit College, Logan Museum of Anthropology. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request Beloit College, Logan Museum of Anthropology at the address in this notice by May 20, 2022.

FOR FURTHER INFORMATION CONTACT: Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Beloit College, Logan Museum of Anthropology, Beloit, WI. The human remains were removed from the Nemec Site (47Fr118) (LMA 21458W), Nashville, Forest County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Beloit College, Logan Museum of Anthropology professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Shakopee Mdewakanton Sioux Community of Minnesota; Shawnee Tribe; and the Stockbridge Munsee Community, Wisconsin.

An invitation to consult was extended to the Absentee-Shawnee Tribe of Indians of Oklahoma; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cayuga Nation; Cherokee Nation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Flandreau Santee Sioux Tribe of South Dakota; Hannahville Indian Community, Michigan; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Menominee Indian Tribe of Wisconsin; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Omaha Tribe of Nebraska; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Quapaw Nation [*previously* listed as The Quapaw Tribe of Indians]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; The Muscogee (Creek) Nation; The Osage Nation [*previously* listed as Osage Tribe]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; Wyandotte Nation; Yankton Sioux Tribe of South Dakota; and four non-federally recognized Indian groups, the Abenaki Nation of Missisquoi; Brothertown Indian Nation; Burt Lake Band of Ottawa and Chippewa Indians; and the Grand River Band of Ottawa Indians.

Hereafter, all Indian Tribes and groups listed in this section are referred to as ''The Consulted and Notified Tribes and Groups.''

History and Description of the Remains

Sometime after 1968, human remains representing, at minimum, one individual were removed from the Nemec Site (47Fr118) (LMA 21458W), Nashville, Forest County, WI. In 1968, the human remains (21458W.1) were encountered during the Wild Rivers Project Site Survey. According to a field school student paper located in the museum's archive, ''Though we were unable to collect any debris or other artifactual material on the surface, the owner, Mr. Otto Nemec of Crandon, has a large collection of points which he has found on this site through the years, and showed us a human femur which came from a historic period burial which was destroyed during the construction of the landing strip.'' Mr. Nemec presumably gave the human remains to Dr. Robert J.

Salzer, Beloit College Professor of Anthropology, who directed the survey. No known individual was identified. No associated funerary objects are present.

Determinations Made by Beloit College, Logan Museum of Anthropology

Officials of Beloit College, Logan Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on their archeological context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota.
- According to other authoritative government sources, the land from which the Native American human remains were removed is the aboriginal land of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Otoe-Missouria Tribe of Indians, Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band);

Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Otoe-Missouria Tribe of Indians, Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu,* by May 20, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

Beloit College, Logan Museum of Anthropology is responsible for notifying The Consulted and Notified Tribes and Groups that this notice has been published.

Dated: April 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–08356 Filed 4–19–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033716; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Beloit College, Logan Museum of Anthropology, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Beloit College, Logan Museum of Anthropology has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Beloit College, Logan Museum of Anthropology. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Beloit College, Logan Museum of Anthropology at the address in this notice by May 20, 2022.

FOR FURTHER INFORMATION CONTACT: Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of Beloit College, Logan Museum of Anthropology, Beloit, WI. The human remains and associated funerary objects were removed from Rock County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Beloit College, Logan Museum of Anthropology professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Shakopee Mdewakanton Sioux Community of Minnesota; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Stockbridge Munsee Community, Wisconsin.

An invitation to consult was extended to the Absentee-Shawnee Tribe of Indians of Oklahoma; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cayuga Nation; Cherokee Nation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Flandreau Santee Sioux Tribe of South Dakota; Hannahville Indian Community,

Michigan; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Onondaga Nation; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Quapaw Nation [*previously* listed as The Quapaw Tribe of Indians]; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; The Muscogee (Creek) Nation; The Osage Nation [*previously* listed as Osage Tribe]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; Wyandotte Nation; Yankton Sioux Tribe of South Dakota; and four non-federally recognized Indian groups—the Abenaki Nation of Missisquoi; Brothertown Indian Nation; Burt Lake Band of Ottawa and Chippewa Indians; and the Grand River Band of Ottawa Indians.

Hereafter, all Indian Tribes and groups listed in this section are referred to as ''The Consulted and Notified Tribes and Groups.''

History and Description of the Remains

Between 1942 and 1971, human remains representing, at minimum, six individuals were removed from Beloit College Mound Group (47Ro15) by Beloit College Anthropology faculty members Paul Nesbitt, Moreau Maxwell, William Godfrey, and Robert Alberts. The Beloit College Mound Group is located on the Beloit College campus in Beloit, WI, and it is situated on a bluff overlooking the Rock River. The site originally consisted of 25 mounds. Nineteen conical and linear mounds, and one effigy mound remain on the Beloit College campus. The human remains (16496; 17451; 17453; 17454; 17452; 17455; 17456; 17457; 23104; 23120; 23231; 23241; 2005.7.1; 2011.4.1; 2011.4.2; 2020.4.1a; 2020.4.1b; 2020.4.1c; TR73.65; TR73.66) were removed from Mounds 2, 3, 4, and 6.

Sometime prior to 2011, human remains (16496; Ro3–4) were found in the Beloit College Anthropology Department. The catalog contained no geographic information on these human remains. In 2011, records dating to 1949 and 1950 were found. These records contained notations referring to Ro3–1 as being from ''Beloit campus, small conical mound.'' ''Ro'' most likely is a designation for Rock County. Based on these lines of evidence, ''Ro3'' most likely was an old, internal museum notation for the campus mounds. The nearly complete human remains, which most likely derive from the 1947–1948 excavations at Mound 3, belong to a young female.

In 2010, fragmentary human remains—2011.4.1 and 2011.4.2.—were found at the University of Wisconsin—Madison (UW-Madison) repository during a renovation project. These human remains had been removed from Burials 1 and 2 at Mound 6 of the Beloit College Mound Group and loaned to the University of Wisconsin-Madison Department of Anthropology for stable carbon isotope measurement in the early 1980s. Human remains from Burial 1 were tested, and the results were published in Baerreis and Bender (1984). In 2011, the human remains were returned to Beloit College, Logan Museum of Anthropology.

On June 20, 2019, three vials of human remains (2020.4.1a; 2020.4.1b; 2020.4.1c) were found at UW-Madison. They were sampled by the former University of Wisconsin Radiocarbon Lab, which operated from 1963 to the mid-1990s. Most likely, these human remains derive from 2011.4.1 and 2011.4.2. On November 10, 2020, UW-Madison transferred the human remains to the Logan Museum of Anthropology.

In 1979, a Beloit alumna used human remains (TR73.65; TR73.66) in an educational program on ''Turtle Indian culture'' presented to fourth graders in the Beloit School District. The alumna recalled that the human remains were from the Beloit College Mound Group. Museum staff contacted the alumna's then-Beloit College supervisor and then-Logan Museum director to inquire whether they remembered the provenience of these human remains, but neither of them was able to recall details. Based on their use in programming about local Native American prehistory and their purported provenience, these human remains most likely derive from the Beloit College Mound Group. In June 2020, the Beloit College alumna returned these human remains to the Logan Museum.

No known individuals were identified. The two associated funerary objects are two lots of soil samples from Mound 2 (2005.3.1) and Mound 6 (2005.4.19).

In October 1963, human remains representing, at minimum, one individual were removed from Yost Mound (47Ro23), Beloit, Rock County, WI. The human remains (2004.12.2a; 2004.12.2b) were excavated by a Beloit College student as a special project. No known individual was identified. The two associated funerary objects are one distal half of a chert projectile point (2004.12.1) and one lot of soil samples (2004.12.3).

Sometime prior to 1912 or 1913, human remains representing, at minimum, one individual were removed from Mound 3, Hillcrest Group/Beloit Junction Mound Group (47Ro41 and 47Ro147), which overlook Turtle Creek in Beloit, Rock County, WI. A catalog card states that the human remains (23270) were ''found by Beloit College students in 1932.'' As there is no record of fieldwork in 1932, most likely these human remains derive from Robert H. Becker's 1912 or 1913 work at the Hillcrest group overlooking Turtle Creek. According to Robert Becker's 1913 article titled ''Turtle Creek Mounds and Village Sites'' (*The*

Wisconsin Archaeologist (Vol. 12, No. 1)), ''[o]ne skeleton was disinterred [from Mound 3], also one fine stone celt and several arrow points.'' The associated funerary objects are not in the possession or under the control of the Beloit College, Logan Museum of Anthropology. In 1919, Ira Buell published an article titled ''Beloit Mound Groups'' in *The Wisconsin Archaeologist* (Vol. 18, No. 4), which included a map of the Hillcrest Group/Beloit Junction Mound Group. This map identified six mounds, including three conical mound, one linear mound, and two effigy mounds. No known individual was identified. No associated funerary objects are present.

Determinations Made by Logan Museum of Anthropology, Beloit College

Officials of Beloit College, Logan Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archeological context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of eight individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the four objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Otoe-Missouria Tribe of Indians, Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; and the Winnebago Tribe of Nebraska.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Winnebago Tribe of Nebraska.
- According to other authoritative government sources, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Peoria Tribe of Indians of Oklahoma; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; The Osage Nation [*previously* listed as Osage Tribe]; Upper Sioux Community, Minnesota; and the Yankton Sioux Tribe of South Dakota.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac

Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; The Osage Nation [*previously* listed as Osage Tribe]; Turtle Mountain Band of Chippewa Indians of North Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511 telephone (608) 363–2305, email *meistern@beloit.edu,* by May 20, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

Beloit College, Logan Museum of Anthropology is responsible for notifying The Consulted and Notified Tribes and Groups that this notice has been published.

Dated: April 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–08354 Filed 4–19–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033709; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Beloit College, Logan Museum of Anthropology, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Beloit College, Logan Museum of Anthropology has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Beloit College, Logan Museum of Anthropology. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Beloit College, Logan Museum of Anthropology at the address in this notice by May 20, 2022.

FOR FURTHER INFORMATION CONTACT: Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Beloit College, Logan Museum of Anthropology, Beloit, WI. The human remains were removed from Winnebago County, IL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Beloit College, Logan Museum of Anthropology professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Shakopee Mdewakanton Sioux Community of Minnesota; Shawnee Tribe; and the Stockbridge Munsee Community, Wisconsin.

An invitation to consult was extended to the Absentee-Shawnee Tribe of Indians of Oklahoma; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cayuga Nation; Cherokee Nation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky

Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Flandreau Santee Sioux Tribe of South Dakota; Hannahville Indian Community, Michigan; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Menominee Indian Tribe of Wisconsin; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Omaha Tribe of Nebraska; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Quapaw Nation [*previously* listed as The Quapaw Tribe of Indians]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; The Muscogee (Creek) Nation; The Osage Nation [*previously* listed as Osage Tribe]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; Wyandotte Nation; Yankton Sioux Tribe of South Dakota; and four non-federally recognized Indian groups, the Abenaki Nation of Missisquoi; Brothertown Indian Nation; Burt Lake Band of Ottawa and Chippewa Indians; and the Grand River Band of Ottawa Indians.

Hereafter, all the Indian Tribes and groups listed in this section are referred to as ''The Consulted and Notified Tribes and Groups.''

History and Description of the Remains

On an unknown date, human remains representing, at minimum, two individuals were removed from Rockford, Winnebago County, IL. On an unknown date, Beloit College, Logan Museum of Anthropology acquired the human remains from an unidentified donor (acquisition number 2301). A folder labeled ''2301 American Indian Girl—Rockford 9–10 years'' contains a graph showing the age of one of these individuals. The human remains belong to one female of unknown age and a juvenile of undetermined sex between 10 and 15 years old. No known individuals were identified. No associated funerary objects are present.

Determinations Made by Beloit College, Logan Museum of Anthropology

Officials of Beloit College, Logan Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on biological evidence.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Otoe-Missouria Tribe of Indians, Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; and the Winnebago Tribe of Nebraska.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band

of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Winnebago Tribe of Nebraska.

• According to other authoritative government sources, the land from which the Native American human remains were removed is the aboriginal land of the Cayuga Nation; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Miami Tribe of Oklahoma; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [previously listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Peoria Tribe of Indians of Oklahoma; Prairie Island Indian Community in the State of Minnesota; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Shakopee Mdewakanton Sioux Community of Minnesota; The Osage Nation [*previously* listed as Osage Tribe]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Tuscarora Nation; Upper Sioux Community, Minnesota; and the Yankton Sioux Tribe of South Dakota.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cayuga Nation; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Shakopee Mdewakanton Sioux Community of Minnesota; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; The Osage Nation [*previously* listed as Osage Tribe]; Tonawanda Band of Seneca [previously listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu,* by May 20, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

Beloit College, Logan Museum of Anthropology is responsible for notifying The Consulted and Notified Tribes and Groups that this notice has been published.

Dated: April 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–08353 Filed 4–19–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033715; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Beloit College, Logan Museum of Anthropology, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Beloit College, Logan Museum of Anthropology has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control

of these human remains and associated funerary objects should submit a written request to Beloit College, Logan Museum of Anthropology. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Beloit College, Logan Museum of Anthropology at the address in this notice by May 20, 2022.

FOR FURTHER INFORMATION CONTACT: Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of Beloit College, Logan Museum of Anthropology, Beloit, WI. The human remains and associated funerary objects were removed from the Diamond Bluff Site (47Pi2) located on the Mississippi River bluff, Pierce County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Beloit College, Logan Museum of Anthropology professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Shakopee Mdewakanton Sioux Community of Minnesota; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Stockbridge Munsee Community, Wisconsin.

An invitation to consult was extended to the Absentee-Shawnee Tribe of Indians of Oklahoma; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cayuga Nation; Cherokee Nation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Flandreau Santee Sioux Tribe of South Dakota; Hannahville Indian Community, Michigan; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Onondaga Nation; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Quapaw Nation [*previously* listed as The Quapaw Tribe of Indians]; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; The Muscogee (Creek) Nation; The Osage Nation [*previously* listed as Osage Tribe]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; Wyandotte Nation; Yankton Sioux Tribe of South Dakota; and four non-federally recognized Indian groups—the Abenaki Nation of Missisquoi; Brothertown Indian Nation; Burt Lake Band of Ottawa and Chippewa Indians; and the Grand River Band of Ottawa Indians.

Hereafter, all Indian Tribes and groups listed in this section are referred to as ''The Consulted and Notified Tribes and Groups.''

History and Description of the Remains

Sometime during 1948, human remains representing, at minimum, 10 individuals were excavated and removed from the Diamond Bluff Site (47Pi2) located on the Mississippi River bluff, Pierce County, WI. The excavations were co-sponsored by the Wisconsin Archeological Survey and Beloit College. The project operated as a field school under the direction of Moreau Maxwell, Beloit College

Professor of Anthropology, and Chandler Rowe from Lawrence University, WI. The complex includes remnants of a mound group that once numbered around 500 mounds, two village sites, and smaller occupational settings.

The human remains derive from Mound 4 (2003.2.1.1; 2003.2.1.2; 2003.2.1.4; 2003.2.1.5; 2003.2.1.6), Mound 15 (2003.2.3.1; 2003.2.3.2), and Mound 38 (2003.2.5.1; 2003.2.5.3; 2003.2.5.4; 2003.2.5.5). Mound 4 included four adult burials and one child burial. Mound 15 included the human remains of at least two adults. (As Mound 6 contained no faunal or human remains, and as human remains were present at Mound 15, the human remains identified as deriving from Mound 6 most likely derive from Mound 15.) Mound 38 included three adult burials and a molar. While the molar could possibly belong to one of the burials, most likely it was included with fill used to construct the mound. No known individuals were identified. The three associated funerary objects are one fragmentary stone celt (2003.2.1.7), one rim sherd (2003.2.4.3), and one ceramic jar (22079). The ceramic jar (22079) was restored by the Milwaukee Public Museum. It was excavated from Mound 26 together with a large chunk of charcoal and in association with charred human remains belonging to a juvenile. The human remains and the charcoal are not at the Logan Museum.

Determinations Made by Logan Museum of Anthropology, Beloit College

Officials of Beloit College, Logan Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on their archeological context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 10 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the three objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Upper Sioux Community, Minnesota; and the Yankton Sioux Tribe of South Dakota.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; and the Yankton Sioux Tribe of South Dakota.
- According to other authoritative government sources, the land from which the Native American human remains and associated funerary objects were removed is the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Otoe-Missouria Tribe of Indians, Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Winnebago Tribe of Nebraska.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community,

Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [previously listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Otoe-Missouria Tribe of Indians, Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511 telephone (608) 363–2305, email *meistern@beloit.edu,* by May 20, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

Beloit College, Logan Museum of Anthropology is responsible for notifying The Consulted and Notified Tribes and Groups that this notice has been published.

Dated: April 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–08359 Filed 4–19–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033708; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Beloit College, Logan Museum of Anthropology, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Beloit College, Logan Museum of Anthropology has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Beloit College, Logan Museum of Anthropology. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Beloit College, Logan Museum of Anthropology at the address in this notice by May 20, 2022.

FOR FURTHER INFORMATION CONTACT: Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Beloit College, Logan Museum of Anthropology, Beloit, WI. The human remains were removed from LaSalle County, IL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Beloit College, Logan Museum of Anthropology professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Shakopee Mdewakanton Sioux Community of Minnesota; Shawnee Tribe; and the Stockbridge Munsee Community, Wisconsin.

An invitation to consult was extended to the Absentee-Shawnee Tribe of Indians of Oklahoma; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cayuga Nation; Cherokee Nation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Eastern Shawnee

Tribe of Oklahoma; Flandreau Santee Sioux Tribe of South Dakota; Hannahville Indian Community, Michigan; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Menominee Indian Tribe of Wisconsin; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Omaha Tribe of Nebraska; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Quapaw Nation [*previously* listed as The Quapaw Tribe of Indians]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; The Muscogee (Creek) Nation; The Osage Nation [*previously* listed as Osage Tribe]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; Wyandotte Nation; Yankton Sioux Tribe of South Dakota; and four non-federally recognized Indian groups, the Abenaki Nation of Missisquoi; Brothertown Indian Nation; Burt Lake Band of Ottawa and Chippewa Indians; and the Grand River Band of Ottawa Indians.

Hereafter, all Indian Tribes and groups listed in this section are referred to as ''The Consulted and Notified Tribes and Groups.''

History and Description of the Remains

On an unknown date, human remains representing, at minimum, one individual were removed from a wooded area south of Peru, LaSalle County, IL. Half of the human remains belonging to this individual were exposed and half were still buried. On January 17, 1917, Wayne E. Hess donated the human remains (2008.1.1) to the Logan Museum of Anthropology. No known individual was identified. No associated funerary objects are present.

Determinations Made by Beloit College, Logan Museum of Anthropology

Officials of Beloit College, Logan Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on biological evidence.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and the Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas].
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and

Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota.

• According to other authoritative government sources, the land from which the Native American human remains were removed is the aboriginal land of the Cayuga Nation; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Otoe-Missouria Tribe of Indians, Oklahoma; Prairie Island Indian Community in the State of Minnesota; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Shakopee Mdewakanton Sioux Community of Minnesota; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Tuscarora Nation; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cayuga Nation; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Shakopee Mdewakanton Sioux Community of Minnesota; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511 telephone (608) 363–2305, email *meistern@beloit.edu,* by May 20, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

Beloit College, Logan Museum of Anthropology is responsible for notifying The Consulted and Notified Tribes and Groups that this notice has been published.

Dated: April 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–08358 Filed 4–19–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033710; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Beloit College, Logan Museum of Anthropology, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Beloit College, Logan Museum of Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Beloit College, Logan Museum of Anthropology. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization

not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Beloit College, Logan Museum of Anthropology at the address in this notice by May 20, 2022.

FOR FURTHER INFORMATION CONTACT: Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Beloit College, Logan Museum of Anthropology, Beloit, WI. The human remains most likely were removed from the Miller Site, in Harrison County, IN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Beloit College, Logan Museum of Anthropology professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Shakopee Mdewakanton Sioux Community of Minnesota; Shawnee Tribe; and the Stockbridge Munsee Community, Wisconsin.

An invitation to consult was extended to the Absentee-Shawnee Tribe of Indians of Oklahoma; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cayuga Nation; Cherokee Nation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Flandreau Santee Sioux Tribe of South Dakota; Hannahville Indian Community, Michigan; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Menominee Indian Tribe of Wisconsin; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [previously listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Omaha Tribe of Nebraska; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Quapaw Nation [*previously* listed as The Quapaw Tribe of Indians]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; The Muscogee (Creek) Nation; The Osage Nation [*previously* listed as Osage Tribe]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; Wyandotte Nation; Yankton Sioux Tribe of South Dakota; and four non-federally recognized Indian groups, the Abenaki Nation of Missisquoi; Brothertown Indian Nation; Burt Lake Band of Ottawa and Chippewa Indians; and the Grand River Band of Ottawa Indians.

Hereafter, all Indian Tribes and groups listed in this section are referred to as ''The Consulted and Notified Tribes and Groups.''

History and Description of the Remains

In February of 1970, human remains representing, at minimum, one individual most likely were removed from the Miller Site, in Harrison County, IN. On September 25, 2003, theses human remains were found at the Museum in bags and were assigned temporary identification numbers (TR73.4; TR73.5; TR73.6; TR73.7; TR73.8; TR73.9; TR73.10; TR73.11; and TR73.12). The bags, marked Site 26 or RSVP–26, contained references to ''Jim,'' ''Adele,'' and ''Kurtz,'' and were dated ''February 1970.'' No known individual was identified. No associated funerary objects are present.

Dr. Donald Janzen, former Anthropology Professor at Beloit College, conducted fieldwork at the Miller Site in February of 1970. According to Dr. Janzen, this site dates to the Archaic period and yielded both human and animal remains. Dr. Janzen was assisted by Jim Matthews and Gene Atherton, thus giving context to the ''Jim'' references. Janzen did not recognize the other names or the meaning of the number 26.

Determinations Made by Beloit College, Logan Museum of Anthropology

Officials of Beloit College, Logan Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on museum records.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Delaware Nation, Oklahoma; Delaware Tribe of Indians; Miami Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; and the Stockbridge Munsee Community, Wisconsin.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin.
- According to other authoritative government sources, the land from which the Native American human remains were removed is the aboriginal land of the Absentee-Shawnee Tribe of Indians of Oklahoma; Cayuga Nation; Cherokee Nation; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Shawnee Tribe; The Osage Nation [*previously* listed as Osage Tribe]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Tuscarora Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Absentee-Shawnee Tribe of Indians of Oklahoma; Cayuga Nation; Cherokee Nation; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Miami Tribe of Oklahoma; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Peoria Tribe of Indians of Oklahoma; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Shawnee Tribe; Stockbridge Munsee Community, Wisconsin; The Osage Nation [*previously* listed as Osage Tribe]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Tuscarora Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511 telephone (608) 363–2305, email *meistern@beloit.edu,* by May 20, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

Beloit College, Logan Museum of Anthropology is responsible for notifying The Consulted and Notified Tribes and Groups that this notice has been published.

Dated: April 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–08360 Filed 4–19–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033711; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Beloit College, Logan Museum of Anthropology, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Beloit College, Logan Museum of Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Beloit College, Logan Museum of Anthropology. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Beloit College, Logan Museum of Anthropology at the address in this notice by May 20, 2022.

FOR FURTHER INFORMATION CONTACT: Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Beloit College, Logan Museum of Anthropology, Beloit, WI. The human remains were removed from Mt. Sterling, Madison County, OH.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Beloit College, Logan Museum of Anthropology professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian

Community, Michigan; Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Shakopee Mdewakanton Sioux Community of Minnesota; Shawnee Tribe; and the Stockbridge Munsee Community, Wisconsin.

An invitation to consult was extended to the Absentee-Shawnee Tribe of Indians of Oklahoma; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cayuga Nation; Cherokee Nation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Flandreau Santee Sioux Tribe of South Dakota; Hannahville Indian Community, Michigan; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Menominee Indian Tribe of Wisconsin; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Omaha Tribe of Nebraska; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Quapaw Nation [*previously* listed as The Quapaw Tribe of Indians]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; The Muscogee (Creek) Nation; The Osage Nation [*previously* listed as Osage Tribe]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; Wyandotte Nation; Yankton Sioux Tribe of South Dakota; and four non-federally recognized Indian groups, the Abenaki Nation of Missisquoi; Brothertown Indian Nation; Burt Lake Band of Ottawa and Chippewa Indians; and the Grand River Band of Ottawa Indians.

Hereafter, all Indian Tribes and groups listed in this section are referred to as ''The Consulted and Notified Tribes and Groups.''

History and Description of the Remains

On an unknown date, human remains representing, at minimum, one individual were removed from a gravel pit at Mt. Sterling, Madison County, OH. Collin Hyde—presumably a Beloit College alum of the class of 1913—donated these human remains (2013.5.1) to the Geology Department of Beloit College, which in turn transferred them to the Logan Museum of Anthropology in 2013. As the remains were found in a gravel pit in Ohio, they are most likely associated with the Glacial Kame culture, named for the cultural practice of burial in glacial-deposited gravel hills, or kames. No known individual was identified. No associated funerary objects are present.

Determinations Made by Beloit College, Logan Museum of Anthropology

Officials of Beloit College, Logan Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archaeological context. Because the remains were found in a gravel pit in Ohio, they are likely associated with the Glacial Kame culture, named for burial in glacial-deposited gravel hills or kames.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Absentee-Shawnee Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; and the Shawnee Tribe.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo

Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [previously listed as Huron Potawatomi, Inc.]; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Wyandotte Nation.

• According to other authoritative government sources, the land from which the Native American human remains were removed is the aboriginal land of the Cayuga Nation; Kaw Nation, Oklahoma; Miami Tribe of Oklahoma; Omaha Tribe of Nebraska; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; and the Tuscarora Nation.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cayuga Nation; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Omaha Tribe of Nebraska; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; and the Wyandotte Nation (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu,* by May 20, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

Beloit College, Logan Museum of Anthropology is responsible for notifying The Consulted and Notified Tribes and Groups that this notice has been published.

Dated: April 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–08348 Filed 4–19–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033718; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Beloit College, Logan Museum of Anthropology, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Beloit College, Logan Museum of Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has

determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Beloit College, Logan Museum of Anthropology. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Beloit College, Logan Museum of Anthropology at the address in this notice by May 20, 2022.

FOR FURTHER INFORMATION CONTACT: Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Beloit College, Logan Museum of Anthropology, Beloit, WI. The human remains were removed from an unknown location in Illinois or Wisconsin.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Beloit College, Logan Museum of Anthropology professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Shakopee Mdewakanton Sioux Community of Minnesota; Shawnee Tribe; and the Stockbridge Munsee Community, Wisconsin.

An invitation to consult was extended to the Absentee-Shawnee Tribe of Indians of Oklahoma; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cayuga Nation; Cherokee Nation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Flandreau Santee Sioux Tribe of South Dakota; Hannahville Indian Community, Michigan; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Menominee Indian Tribe of Wisconsin; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Omaha Tribe of Nebraska; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Quapaw Nation [*previously* listed as The Quapaw Tribe of Indians]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; The Muscogee (Creek) Nation; The Osage Nation [*previously* listed as Osage Tribe]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; Wyandotte Nation; Yankton Sioux Tribe of South Dakota; and four non-federally recognized Indian groups, the Abenaki Nation of Missisquoi; Brothertown Indian Nation; Burt Lake Band of Ottawa and Chippewa Indians; and the Grand River Band of Ottawa Indians.

Hereafter, all Indian Tribes and groups listed in this section are referred to as ''The Consulted and Notified Tribes and Groups.''

History and Description of the Remains

On an unknown date, human remains representing, at minimum, one individual were removed from an unknown location in Illinois or Wisconsin. The human remains (number 23110) belong to a male 20–35 years old. No known individual was identified. No associated funerary objects are present.

Determinations Made by Beloit College, Logan Museum of Anthropology

Officials of Beloit College, Logan Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on the donor's collecting history.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land (Illinois) from which the Native American human remains were removed is the aboriginal land of the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Otoe-Missouria Tribe of Indians, Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; and the Winnebago Tribe of Nebraska.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land (Wisconsin) from which the Native American human remains were removed is the aboriginal land of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Otoe-Missouria Tribe of Indians, Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land (Illinois) from which the Native American human remains were removed is the aboriginal land of the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of

Chippewa Indians, Michigan; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; The Muscogee (Creek) Nation; Turtle Mountain Band of Chippewa Indians of North Dakota; Winnebago Tribe of Nebraska; and the Wyandotte Nation.

• Treaties, Acts of Congress, or Executive Orders, indicate that the land (Wisconsin) from which the Native American human remains were removed is the aboriginal land of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cayuga Nation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota.

• According to other authoritative government sources, the land (Illinois) from which the Native American human remains were removed is the aboriginal land of the Cayuga Nation; Cherokee Nation; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Eastern Band of Cherokee Indians; Flandreau Santee Sioux Tribe of South Dakota; Kaw Nation, Oklahoma; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Menominee Indian Tribe of Wisconsin; Omaha Tribe of Nebraska; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Island Indian Community in the State of Minnesota; Quapaw Nation [*previously* listed as The Quapaw Tribe of Indians]; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Shakopee Mdewakanton Sioux Community of Minnesota; The Osage Nation [*previously* listed as Osage Tribe]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Tuscarora Nation; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Sioux Community, Minnesota; and the Yankton Sioux Tribe of South Dakota.

• According to other authoritative government sources, the land (Wisconsin) from which the Native American human remains were removed is the aboriginal land of the Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Miami Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; and The Osage Nation [*previously* listed as Osage Tribe].

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Absentee-Shawnee Tribe of Indians of Oklahoma; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cayuga Nation; Cherokee Nation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of

Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Omaha Tribe of Nebraska; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Quapaw Nation [*previously* listed as The Quapaw Tribe of Indians]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Shakopee Mdewakanton Sioux Community of Minnesota; Shawnee Tribe; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; Stockbridge Munsee Community, Wisconsin; The Muscogee (Creek) Nation; The Osage Nation [*previously* listed as Osage Tribe]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; Wyandotte Nation; and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511 telephone (608) 363–2305, email *meistern@beloit.edu,* by May 20, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

Beloit College, Logan Museum of Anthropology is responsible for notifying The Consulted and Notified Tribes and Groups that this notice has been published.

Dated: April 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–08349 Filed 4–19–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033714; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Beloit College, Logan Museum of Anthropology, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Beloit College, Logan Museum of Anthropology has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Beloit College, Logan Museum of Anthropology. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request Beloit College, Logan Museum of Anthropology at the address in this notice by May 20, 2022.

FOR FURTHER INFORMATION CONTACT: Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains associated funerary objects under the control of Beloit College, Logan Museum of Anthropology, Beloit, WI. The human remains and associated funerary objects were removed from the Robinson Site (47On27) in Nokomis, Oneida County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Beloit College, Logan Museum of Anthropology professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Shakopee Mdewakanton Sioux Community of Minnesota; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Stockbridge Munsee Community, Wisconsin.

An invitation to consult was extended to the Absentee-Shawnee Tribe of Indians of Oklahoma; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cayuga Nation; Cherokee Nation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Flandreau Santee Sioux Tribe of South Dakota; Hannahville Indian Community, Michigan; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Onondaga Nation; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Quapaw Nation [*previously* listed as The Quapaw Tribe of Indians]; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; The Muscogee (Creek) Nation; The Osage Nation [*previously* listed as Osage Tribe]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; Wyandotte Nation; Yankton Sioux Tribe of South Dakota; and four non-federally recognized Indian groups—the Abenaki Nation of Missisquoi; Brothertown Indian Nation; Burt Lake Band of Ottawa and Chippewa Indians; and the Grand River Band of Ottawa Indians.

Hereafter, all Indian Tribes and groups listed in this section are referred to as ''The Consulted and Notified Tribes and Groups.''

History and Description of the Remains

Between 1966 and 1967, human remains representing, at minimum, 82 individuals were removed from the Robinson Site (47On27) in Nokomis, Oneida County, WI. The Robinson Site was excavated as part of the Northern Lakes Project (NLP). Between 1965 and 1969, 88 sites were surveyed or excavated as part of the NLP. The excavations were directed by Dr. Robert Salzer, Beloit College Professor of Anthropology. Work on the Robinson Site concentrated on the systematic excavation of several burial mounds and one living-space-turned-cemetery. No known individuals were identified. The 17 associated funerary objects are two projectile points (21371.8.319), two lots of charcoal samples (21371.A.B–1.1), one lot of bear skull fragments (21371.B–2.1), one lot of mica chips (21371–A.5:6; B10; 21371–A.6:7; B10), three lots of birchbark fragments (21371–A.B4/1; 21371–A.6:7; 21371–A.6:8; D8), two lots of charcoal and wood fragments (21371–A.B4/2; 21371–A.B6/1), one lot of beaver tooth fragments (21371B.B–11.1), one bone pin (21371–S.B–29), and one lot of animal bone intermingled with human bone. Two quartzite projectile points (21371–A.B–10.1; 21371–A.B–10.2) and one triangular point (21371.8.305) are currently missing from museum collections, but upon being located, they will be transferred with the other cultural items listed in this notice.

Determinations Made by Beloit College, Logan Museum of Anthropology

Officials of Beloit College, Logan Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on their archeological context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 82 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 17 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and

associated funerary objects and any present-day Indian Tribe.

• According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota.

• Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota.

• According to other authoritative government sources, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Otoe-Missouria Tribe of Indians, Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Otoe-Missouria Tribe of Indians, Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the

Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511 telephone (608) 363–2305, email *meistern@beloit.edu,* by May 20, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

Beloit College, Logan Museum of Anthropology is responsible for notifying The Consulted and Notified Tribes and Groups that this notice has been published.

Dated: April 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–08351 Filed 4–19–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033712; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Beloit College, Logan Museum of Anthropology, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Beloit College, Logan Museum of Anthropology has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Beloit College, Logan Museum of Anthropology. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Beloit College, Logan Museum of Anthropology at the address in this notice by May 20, 2022.

FOR FURTHER INFORMATION CONTACT: Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511 telephone (608) 363–2305, email *meistern@beloit.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Beloit College, Logan Museum of Anthropology, Beloit, WI. The human remains were removed from Brown County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Beloit College, Logan Museum of Anthropology professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Shakopee Mdewakanton Sioux Community of Minnesota; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Stockbridge Munsee Community, Wisconsin.

An invitation to consult was extended to the Absentee-Shawnee Tribe of Indians of Oklahoma; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cayuga Nation; Cherokee Nation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Flandreau Santee Sioux Tribe of South Dakota; Hannahville Indian Community, Michigan; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed

as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Onondaga Nation; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Quapaw Nation [*previously* listed as The Quapaw Tribe of Indians]; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; The Muscogee (Creek) Nation; The Osage Nation [*previously* listed as Osage Tribe]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; Wyandotte Nation; Yankton Sioux Tribe of South Dakota; and four non-federally recognized Indian groups, the Abenaki Nation of Missisquoi; Brothertown Indian Nation; Burt Lake Band of Ottawa and Chippewa Indians; and the Grand River Band of Ottawa Indians.

Hereafter, all Indian Tribes and groups listed in this section are referred to as ''The Consulted and Notified Tribes and Groups.''

History and Description of the Remains

On an unknown date, human remains representing, at minimum, one individual were removed from Brown County, WI. Sometime around 1940, these human remains—a cranium bowl with four perforations (12)—were purchased by Beloit College from Nick E. Carter of Elkhorn, WI. Carter was a well-known dealer of Native American artifacts. No known individual was identified. No associated funerary objects are present.

Determinations Made by Logan Museum of Anthropology, Beloit College

Officials of Beloit College, Logan Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on museum records and biological evidence.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Otoe-Missouria Tribe of Indians, Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; and the Winnebago Tribe of Nebraska.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cayuga Nation; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Menominee Indian Tribe of Wisconsin; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Otoe-Missouria Tribe of Indians, Oklahoma; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; and the Winnebago Tribe of Nebraska.
- According to other authoritative government sources, the land from which the Native American human remains were removed is the aboriginal land of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Miami Tribe of Oklahoma; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Oneida Indian Nation [*previously* listed as Oneida Nation of

New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Ottawa Tribe of Oklahoma; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; and the Yankton Sioux Tribe of South Dakota.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cayuga Nation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511 telephone (608) 363–2305, email *meistern@beloit.edu,* by May 20, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

Beloit College, Logan Museum of Anthropology is responsible for notifying The Consulted and Notified Tribes and Groups that this notice has been published.

Dated: April 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–08352 Filed 4–19–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033717; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Beloit College, Logan Museum of Anthropology, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Beloit College, Logan Museum of Anthropology has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Beloit College, Logan Museum of Anthropology. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Beloit College, Logan Museum of Anthropology at the address in this notice by May 20, 2022.

FOR FURTHER INFORMATION CONTACT: Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700

College Street, Beloit, WI 53511 telephone (608) 363–2305, email *meistern@beloit.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Beloit College, Logan Museum of Anthropology, Beloit, WI. The human remains were removed from an unknown geographic location in Wisconsin.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Beloit College, Logan Museum of Anthropology professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Shakopee Mdewakanton Sioux Community of Minnesota; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Stockbridge Munsee Community, Wisconsin.

An invitation to consult was extended to the Absentee-Shawnee Tribe of Indians of Oklahoma; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cayuga Nation; Cherokee Nation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Flandreau Santee Sioux Tribe of South Dakota; Hannahville Indian Community, Michigan; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Onondaga Nation; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Quapaw Nation [*previously* listed as The Quapaw Tribe of Indians]; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; The Muscogee (Creek) Nation; The Osage Nation [*previously* listed as Osage Tribe]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; Wyandotte Nation; Yankton Sioux Tribe of South Dakota; and four non-federally recognized Indian groups, the Abenaki Nation of Missisquoi; Brothertown Indian Nation; Burt Lake Band of Ottawa and Chippewa Indians; and the Grand River Band of Ottawa Indians.

Hereafter, all Indian Tribes and groups listed in this section are referred to as ''The Consulted and Notified Tribes and Groups.''

History and Description of the Remains

On an unknown date, human remains representing, at minimum, one individual were removed from an unknown geographic location in Wisconsin. In 1996, the human remains (1996.12.21) were deaccessioned from the Racine (Wisconsin) Historical Society and donated to Beloit College, Logan Museum of Anthropology. Documentation included with the human remains reads ''Thigh bone taken from Indian Grave. Donor—Joseph Tucker.'' No known individual was identified. No associated funerary objects are present.

Determinations Made by Beloit College, Logan Museum of Anthropology

Officials of Beloit College, Logan Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on museum records.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains

were removed is the aboriginal land of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little Shell Tribe of Chippewa Indians of Montana; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Otoe-Missouria Tribe of Indians, Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota.

• Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cayuga Nation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota.

• According to other authoritative government sources, the land from which the Native American human remains were removed is the Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Miami Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; and The Osage Nation [*previously* listed as Osage Tribe].

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human may be to the Assiniboine and Sioux Tribes of the Fort

Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cayuga Nation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]; Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]; Oneida Indian Nation [*previously* listed as Oneida Nation of New York]; Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]; Onondaga Nation; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians of New York]; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]; Seneca-Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; Stockbridge Munsee Community, Wisconsin; The Osage Nation [*previously* listed as Osage Tribe]; Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Nicolette B. Meister, Logan Museum of Anthropology, Beloit College, 700 College Street, Beloit, WI 53511 telephone (608) 363–2305, email *meistern@beloit.edu,* by May 20, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

Beloit College, Logan Museum of Anthropology is responsible for notifying The Consulted and Notified Tribes and Groups that this notice has been published.

Dated: April 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–08361 Filed 4–19–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–679–680 and 731–TA–1585–1586 (Final)]

Sodium Nitrite From India and Russia; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–679–680 and 731–TA–1585–1586 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of sodium nitrite from India and Russia, provided for in subheading 2834.10.10 of the Harmonized Tariff Schedule of the United States, for which imports from Russia have been preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized by the Government of Russia, imports from India and Russia are alleged to be sold at less-than-fair-value, and imports from India are alleged to be subsidized by the Government of India.

DATES: April 15, 2022.

FOR FURTHER INFORMATION CONTACT: Peter Stebbins ((202) 205–2039), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as ''sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by these investigations may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. Sodium nitrite's chemical composition is $NaNO_2$, and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name ''sodium nitrite'' to sodium nitrite. The CAS registry number is 7632–00–0. For purposes of the scope of these investigations, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name, which are provided for convenience and customs purposes.''

Background.—The final phase of these investigations is being scheduled pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), as a result of an affirmative preliminary determination by Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Russia of sodium nitrite. Commerce's determinations with respect to imports of sodium nitrite from India and Russia that are alleged to be sold at less-than-fair-value, and imports from India that are alleged to be subsidized by the Government of India are pending. The investigations were requested in petitions filed on January 13, 2022, by Chemtrade Chemicals US LLC, Parsippany, NJ.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on June 7, 2022, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on June 21, 2022. Information about the place and form of the hearing, including about how to participate in and/or view the hearing, will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.* Interested parties should check the Commission's website periodically for updates. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 14, 2022. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 17, 2022. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is June 14, 2022. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 28, 2022. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before June 28, 2022. On July 19, 2022, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 21, 2022, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as

identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: April 15, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–08435 Filed 4–19–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is a federal advisory committee established pursuant to the Federal Advisory Committee Act (FACA). This meeting announcement is being published as required by Section 10 of the FACA.

DATES: The APB will meet in open session from 8:30 a.m. until 6:00 p.m. on June 8–9, 2022.

ADDRESSES: The meeting will take place at the Renaissance Cleveland Hotel, 24 Public Square, Cleveland, Ohio 44113, telephone 216–696–56500. Due to COVID–19 safety precautions limit meeting space accommodations the CJIS Division is offering a blended participation option that allows for a limited number of individuals to participate in person and additional individuals to participate via a telephone bridge line. The public will be permitted to provide comments and/or questions related to matters of the APB prior to the meeting. In-person gallery participation will be limited to the first 90 external participants who register to attend in person. Additional participants may also participate via a telephone bridge line. Please see details in the supplemental information.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Lorie Doll, Management and Program Analyst, Advisory Process Management Office, Global Law Enforcement Support Section; 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; email *agmu@leo.gov,* telephone 304–625–4845.

SUPPLEMENTARY INFORMATION: The FBI CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Law Enforcement Enterprise Portal, National Crime Information Center, Next Generation Identification, National Instant Criminal Background Check System, National Data Exchange System, and Uniform Crime Reporting.

The meeting will be conducted with a blended participation option. The public may participate as follows: Public registrations will be processed on a first-come, first-served basis. The first 75 individuals to register will be afforded the opportunity to participate in person and are required to check-in at the meeting registration desk. Any additional registrants will be provided with a phone bridge number to participate in a listen-only mode.

Registrations will be taken via email to *agmu@leo.gov.* Information regarding the phone access will be provided prior to the meeting to all registered individuals. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the Designated Federal Officer (DFO).

Any member of the public may file a written statement with the APB. Written comments shall be focused on the APB's current issues under discussion and may not be repetitive of previously submitted written statements. Written comments should be provided to Mr. Nicky J. Megna, DFO, at least seven (7) days in advance of the meeting so the comments may be made available to the APB members for their consideration prior to the meeting.

Individuals requiring special accommodations should contact Mr. Megna by no later than June 3, 2022. Personal registration information will be made publicly available through the minutes for the meeting published on the FACA website.

Nicky J. Megna,

CJIS Designated Federal Officer, Criminal Justice Information, Services Division, Federal Bureau of Investigation.

[FR Doc. 2022–08440 Filed 4–19–22; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Amendment To Consent Decree Under the Safe Drinking Water Act

On April 13, 2022, the Department of Justice lodged a proposed amendment to the consent decree with the United States District Court for the Eastern District of New York in *United States* v. *City of New York and New York City Department of Environmental Protection,* Civil Action No. CV–19–1519 (E.D.N.Y.).

The United States filed this lawsuit in 2019 under the Safe Drinking Water Act (''Act''). The complaint sought injunctive relief and civil penalties for violations of the Act related to the City's failure to install a cover for its Hillview Reservoir, a finished water storage facility located in Yonkers, New York, in violation of the Long Term 2 Enhanced Surface Water Treatment Rule, 40 CFR 141, subpart W. A consent decree was entered by the Court on May 15, 2019, which requires the City to design and construct the cover for the Reservoir, as well as design and construct two major predecessor projects necessary to achieve compliance with the cover requirement.

One of these major predecessor projects is a set of repairs and improvements to the Hillview Reservoir facilities known as the ''Hillview Reservoir Improvements.'' Under the existing consent decree, the Hillview Reservoir Improvements includes the construction of a new hydraulic interconnection between the Hillview Reservoir and two of the City's distribution tunnels (the ''East Basin Interconnection'') as one of the subprojects. Since the entry of the consent decree in 2019, the City has conducted additional studies and design work which indicate that construction of the East Basin Interconnection as part of the Hillview Reservoir Improvements would not facilitate other repairs that are part of the Hillview Reservoir Improvements as originally anticipated and would unnecessarily complicate operation of the East Basin of the Reservoir prior to its shutdown for cover construction. Accordingly, the proposed amendment to the consent decree provides for the deferral of the East Basin Interconnection subproject to the Hillview Cover Project phase of the consent decree, which will allow the East Basin Interconnection to be constructed at a time when the East Basin of the Reservoir would not be in operation anyway as it would be shut down for cover construction. The revised schedule in the amendment to

the consent decree does not eliminate any requirements of the consent decree or change the end date for compliance.

The publication of this notice opens a period for public comment on the amendment to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *City of New York and New York City Department of Environmental Protection,* D.J. Ref. No. 90–5–1–1–10223/1. 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 proposed amendment to the consent decree 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 proposed amendment 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 $2.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–08444 Filed 4–19–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under The Resource Conservation and Recovery Act

On April 13, 2022, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Kentucky, in the lawsuit entitled *United States of America and Commonwealth of Kentucky* v. *Cleveland-Cliffs Steel Corporation,* Civil Action No. 0:22–CV–00029–HRW.

The plaintiffs filed this lawsuit under the Resource Conservation and Recovery Act. 42 U.S.C. 6928(a). The complaint seeks injunctive relief and civil penalties for nine alleged violations that occurred at a former coke production facility in Ashland, Kentucky. The alleged violations occurred between 2010 and 2012 when AK Steel Corporation owned the facility; AK Steel is now known as Cleveland-Cliffs Steel Corporation. The Consent Decree requires the defendant to pay a $490,000 civil penalty, to conduct site-wide sampling and analysis, and to perform injunctive relief to clean up four specific locations at the facility.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al.* v. *Cleveland-Cliffs Steel Corp.,* D.J. Ref. No. 90–5–2–1–09449/1. 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 Consent Decree may be examined at and downloaded from this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree 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 $143.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–08373 Filed 4–19–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP) Docket No. 1798]

Notice of Charter Renewal of the Federal Advisory Committee on Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice.

ACTION: Notice of charter renewal.

SUMMARY: Notice that the charter of the Federal Advisory Committee on Juvenile Justice has been renewed.

FOR FURTHER INFORMATION CONTACT: Visit the website for the Federal Advisory Committee on Juvenile Justice at *www.facjj.ojp.gov* or contact Cara Blair, Designated Federal Official (DFO), Office of Juvenile Justice and Delinquency Prevention, via email at *cara.blair@usdoj.gov,* or telephone at 202–307–5911 (not a toll-free number).

SUPPLEMENTARY INFORMATION: This **Federal Register** Notice notifies the public that the Charter of the Federal Advisory Committee on Juvenile Justice has been renewed in accordance with the Federal Advisory Committee Act, Section 14(a)(1). The Federal Advisory Committee on Juvenile Justice Charter was renewed on February 24, 2022. One can obtain a copy of the renewal Charter by accessing the Federal Advisory Committee on Juvenile Justice's website at *www.facjj.ojp.gov*.

Cara Blair,

Designated Federal Official (DFO), Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 2022–08377 Filed 4–19–22; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Agency Information Collection Activities; Request for Public Comment on Revisions to the National Medical Support Notice—Part B

AGENCY: Employee Benefits Security Administration (EBSA), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal

agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that the data the Department collects can be provided in the desired format, that the reporting burden on the public (time and financial resources) is minimized, that the public understands the Department's collection instruments, and that the Department can accurately assess the impact of its collection requirements on respondents. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments concerning a revision to the information collection contained in the National Medical Support Notice—Part B. A copy of the ICRs may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before June 21, 2022.

ADDRESSES: James Butikofer, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210, or *ebsa.opr@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 609(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), requires each group health plan, as defined in ERISA section 607(1), to provide benefits in accordance with the applicable requirements of any ''qualified medical child support order'' (QMCSO). A QMCSO is, generally, an order issued by a state court or other competent state authority that requires a group health plan to provide group health coverage to a child or children of an employee eligible for coverage under the plan. In accordance with Congressional directives contained in the Child Support Performance and Incentive Act of 1998 (CSPIA), EBSA and the Federal Office of Child Support Enforcement (OCSE) in the Department of Health and Human Services (HHS) cooperated in the development of regulations to create a National Medical Support Notice (NMSN or Notice). The Notice simplifies the issuance and processing of qualified medical child support orders issued by state child support enforcement agencies, provides for standardized communication between state agencies, employers, and plan administrators, and creates a uniform and streamlined process for enforcement of medical child support obligations ordered by state child support enforcement agencies. The NMSN comprises two parts: Part A was promulgated by HHS and pertains to state child support enforcement agencies and employers; Part B was promulgated by the Department and pertains to plan administrators pursuant to ERISA. This solicitation of public comment relates only to Part B of the NMSN, which was promulgated by the Department. In connection with promulgation of Part B of the NMSN, the Department submitted an ICR to the Office of Management and Budget (OMB) for review, and OMB approved the information collections contained in Part B under OMB control number 1210–0113. OMB's approval of this ICR is scheduled to expire on October 31, 2022.

II. Current Actions

This notice requests comments on a revision to the ICR included in Part B of the NMSN. The changes are generally formatting changes and additional spaces intended to facilitate completion of the Form and conform to similar changes made to Part A. Specific changes include check boxes added to the Plan Administrator Response, expanded space on the Form to allow for the identification of up to six children, and minor text edits for clarity. An addendum provides additional space to identify insurance provider information and to list the children that are no longer eligible for coverage because they are above the age at which dependents are eligible for coverage under the plan. Spaces are also added for email contact information for both the issuing agency and the plan administrator. Finally, the changes add an instruction that the Plan Administrator Response must be returned to the child support agency that issued the Form, so as to avoid parties inadvertently providing the response to the Department of Labor.

A summary of the Department's ICR and its current burden estimates follows:

Title: National Medical Support Notice—Part B.

Type of Review: Revision of a currently approved collection of information.

OMB Number: 1210–0113.

Affected Public: Not-for-profit institutions, Businesses or other for-profits.

Respondents: 425,444.

Responses: 10,546,371.

Estimated Total Burden Hours: 878,864.

Estimated Total Burden Cost (Operating and Maintenance): $3,322,107.

III. Focus of Comments

The Department is currently soliciting comments on the information collection contained in the National Medical Support Notice—Part B. The Department is particularly interested in comments that:

- Evaluate whether the collections of information are 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 collections 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.,* by permitting electronic submissions of responses.
- Evaluate the effectiveness of the additional demographic questions.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the information collection; they will also become a matter of public record.

Signed at Washington, DC, this 14th day of April, 2022.

Ali Khawar,

Acting Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2022–08416 Filed 4–19–22; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (22–031)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel (ASAP).

DATES: Thursday, May 12, 2022, 1:30 p.m. to 3:00 p.m., Eastern Time.

ADDRESSES: Meeting will be virtual only. See dial-in information below under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa M. Hackley, ASAP Administrative Officer, NASA Headquarters, Washington, DC 20546, (202) 358–1947 or *lisa.m.hackley@nasa.gov.*

SUPPLEMENTARY INFORMATION: As noted above, this meeting is virtual and will take place telephonically. Any interested person must use a touch-tone phone to participate in this meeting. The USA toll free conference call number is 888–566–6133; passcode 8343253 and then the # sign. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The agenda will include:

—Updates on the International Space Station Program

—Updates on the Commercial Crew Program

—Updates on Exploration System Development Program

—Updates on Advanced Exploration Systems Program

—Updates on Human Lunar Exploration Program

At the beginning of the meeting, members of the public may make a verbal presentation to the Panel on the subject of safety in NASA, not to exceed 5 minutes in length. To do so, members of the public must contact Ms. Lisa M. Hackley at *lisa.m.hackley@nasa.gov* or at (202) 358–1947 at least 48 hours in advance. Any member of the public is permitted to file a written statement with the Panel via electronic submission to Ms. Hackley at the email address previously noted. Verbal presentations and written statements should be limited to the subject of safety in NASA. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2022–08350 Filed 4–19–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: [22–030]]

Name of Information Collection: NASA Science Mission Directorate Workplace Climate Survey

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by May 20, 2022.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review-Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 202–358–2375 or email *claire.a.little@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Science Mission Directorate (SMD) within NASA is undertaking an Inclusion, Diversity, Equity, and Accessibility (IDEA) change effort. SMD seeks to advance these IDEA principles in all SMD programs and activities. This survey will be used as an evidence-building tool baselining SMD staff (civil servants and contractors) views on the SMD cultural climate. The survey will then be periodically (approximately annually) administered to determine whether cultural indicators are improving as IDEA efforts are implemented. Data obtained is intended for SMD internal use only and will not be publicly released. Data will be used to inform and substantiate IDEA strategy, initiatives, and design. This intelligence will be laser-focused on improving SMD's internal environment. This survey will be open to both contractors and civil servants because contractors are integral to and embedded within the SMD workforce. No other data collection mechanism exists to obtain opinions from the contractor portion of the workforce on this topic. The survey will be voluntary and anonymous (the identity of survey respondents will not be collected).

II. Methods of Collection

Electronic.

III. Data

Title: SMD Climate Survey.
OMB Number:
Type of review: New.
Affected Public: Individuals who work as contractors, detailees, or IPAs for NASA SMD.
Estimated Annual Number of Activities: 1.
Estimated Number of Respondents per Activity: 400.
Annual Responses: 400.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 100 hours.
Estimated Total Annual Cost: $3,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2022–08355 Filed 4–19–22; 8:45 am]

BILLING CODE P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal

Regulatory Commission to add a Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: Date of notice: April 20, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 12, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 5 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–52 and CP2022–56.

Joshua J. Hofer,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–08431 Filed 4–19–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* April 20, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 6, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 217 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–50, CP2022–55.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022–08453 Filed 4–19–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* April 20, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 13, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 131 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–53, CP2022–57.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022–08454 Filed 4–19–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94721; File No. SR–PEARL–2022–11]

Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Filing of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase Certain Connectivity Fees; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

April 14, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2022, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Options Fee Schedule (the ''Fee Schedule'') to amend certain connectivity fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV [sic] below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to increase the fees for Members [3] and non-Members to access the Exchange's System Networks [4] via a 10 gigabit (''Gb'') ultra-low latency

[3] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] The Exchange's System Networks consist of the Exchange's extranet, internal network, and external network.

(''ULL'') fiber connection.[5] Specifically, the Exchange proposes to amend Sections 5)a)–b) of the Fee Schedule to increase the 10Gb ULL fee for Members and non-Members from $10,000 per month to $12,000 per month (''10Gb ULL Fee''). Prior to the proposed fee change, the Exchange assessed Members and non-Members a flat monthly fee of $10,000 per 10Gb ULL connection for access to the Exchange's primary and secondary facilities.

The Exchange believes that other exchanges' connectivity fees offer useful examples of alternative approaches to providing and charging for connectivity and includes the below table for comparison purposes only to show how its proposed fees compare to fees currently charged by other options exchanges for similar connectivity. As shown by the below table, the Exchange's proposed fees are less than fees charged for similar connectivity provided by other options exchanges with comparable market share.

Exchange	Type of connection	Monthly fee (per connection)
MIAX Pearl (as proposed) (equity options market share of 4.32% as of March 29, 2022 for the month of March) [6].	10Gb ULL	$12,000.00
The NASDAQ Stock Market LLC (''NASDAQ'') [7] (equity options market share of 8.62% as of March 29, 2022 for the month of March) [8].	10Gb Ultra fiber	15,000.00
Nasdaq ISE LLC (''ISE'') [9] (equity options market share of 5.83% as of March 29, 2022 for the month of March) [10].	10Gb Ultra fiber	15,000.00
NYSE American LLC (''Amex'') [11] (equity options market share of 7.15% as of March 29, 2022 for the month of March) [12].	10Gb LX LCN	22,000.00
Nasdaq GEMX, LLC (''GEMX'') [13] (equity options market share of 2.48% as of March 29, 2022 for the month of March) [14].	10Gb Ultra	15,000.00

The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the primary and secondary facilities in any month the Member or non-Member is credentialed to use any of the Exchange APIs or market data feeds in the production environment. The Exchange proposes to pro-rate the fees when a Member or non-Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the Member or non-Member has been credentialed to utilize any of the Exchange APIs or market data feeds in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate. The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the disaster recovery facility in each month during which the Member or non-Member has established connectivity with the disaster recovery facility.

The Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of both the Exchange and its affiliate, Miami International Securities Exchange, LLC (''MIAX''), via a single, shared connection. Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and MIAX via a single, shared connection will continue to only be assessed one monthly connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

2. Statutory Basis

The Exchange believes that the proposed increase to the 10Gb ULL Fee is consistent with Section 6(b) of the Act [15] in general, and furthers the objectives of Section 6(b)(4) of the Act [16] 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 that the Exchange operates or controls. The Exchange also believes the proposed increase to the 10Gb ULL Fee

[5] The Exchange initially filed a proposal on July 30, 2021 to adopt a tiered-pricing structure for the 10Gb ULL fiber connections. The proposal to adopt a tiered pricing structure was withdrawn and refiled several times, each time providing more detail and additional justification in response to questions raised by the Commission in its Suspension Orders and in response to comments received. Ultimately, in response to questions raised by the Commission in its Suspension Orders and comment letters submitted by SIG on the proposed tiered pricing structure, the Exchange reluctantly withdrew that proposal on March 30, 2022, despite the fact that the proposed a tiered-pricing structure reduced the monthly 10Gb ULL connectivity fees for approximately 60% of the Exchange's subscribers. *See* Securities Exchange Act Release Nos. 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); 93639 (November 22, 2021), 86 FR 67758 (November 29, 2021); 93774 (December 14, 2021), 86 FR 71952 (December 20, 2021) (SR–PEARL–2021–57); 94088 (January 27, 2022), 87 FR 5901 (February 2, 2022) (SR–MIAX–2021–59, SR–PEARL–2021–57); and 94258 (February 15, 2022), 87 FR 9659 (February 22, 2022) (SR–PEARL–2022–03). *See also* letters from Richard J. McDonald, Susquehanna International Group, LLC (''SIG''), to Vanessa Countryman, Secretary, Commission, dated September 7, 2021, October 1, 2021, October 26, 2021, and March 15, 2022. *See* letters from Richard J. McDonald, SIG, to Vanessa Countryman, Secretary, Commission, dated October 1, 2021 (''SIG Letter 2'') and October 26, 2021 (''SIG Letter 3''). *See also* letter from Tyler Gellasch, Executive Director, Healthy Markets Association (''HMA''), to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021 (commenting on SR–CboeEDGA–2021–017, SR–CboeBYX–2021–020, SR–Cboe–BZX–2021–047, SR–CboeEDGX–2021–030, SR–MIAX–2021–41, SR–PEARL–2021–45, and SR–EMERALD–2021–29 and stating that ''MIAX has repeatedly filed to change its connectivity fees in a way that will materially lower costs for many users, while increasing the costs for some of its heaviest of users. These filings have been withdrawn and repeatedly refiled. *Each time, however, the filings contain significantly greater information about who is impacted and how than other filings that have been permitted to take effect without suspension*'') (*emphasis added*) (''HMA Letter''); *and* Ellen Green, Managing Director, Equity and Options Market Structure, Securities Industry and Financial Markets Association (''SIFMA''), to Vanessa Countryman, Secretary, Commission, dated November 26, 2021 (''SIFMA Letter'').

[6] *See* ''The market at a glance,'' *available at https://www.miaxoptions.com/* (last visited March 29, 2022).

[7] *See* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.

[8] *See supra* note 6.

[9] *See* ISE Rules, General 8: Connectivity.

[10] *See supra* note 6.

[11] *See* NYSE American Options Fee Schedule, Section IV.

[12] *See supra* note 6.

[13] *See* GEMX Rules, General 8: Connectivity.

[14] *See supra* note 6.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

furthers the objectives of Section 6(b)(5) of the Act [17] in that it is 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 increase to the 10Gb ULL Fee meets or exceeds the amount of detail required in respect of proposed fee changes as set forth in the recent Commission and Commission Staff guidance. On March 29, 2019, the Commission issued an Order disapproving a proposed fee change by the BOX Market LLC Options Facility to establish connectivity fees for its BOX Network (the ''BOX Order'').[18] 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.'' [19] Based on both the BOX Order and the Guidance, the Exchange believes that the proposed increase to the 10Gb ULL Fee is consistent with the Act because it (i) is reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) complies with the BOX Order and the Guidance; and (iii) is supported by evidence (including comprehensive revenue and cost data and analysis) that the proposed increase to the 10Gb ULL Fee is fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Proposed Increase to the 10Gb ULL Fee Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [20] The Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [21] In the Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supra-competitive profit, specific information, including quantitative information, should be provided to support that argument.'' [22] The Exchange does not assert that the 10Gb ULL Fee is constrained by competitive forces. Rather, the Exchange asserts that the proposed increase to the 10Gb ULL Fee is reasonable because it will permit recovery of the Exchange's costs in providing access services to supply 10Gb ULL connectivity and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [23] The Commission Staff further states in the Guidance that ''the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.'' [24] The Exchange provides this analysis below.

The proposed 10Gb ULL Fee is based on a cost-plus model. A 10Gb ULL connection provides access to each of the three Exchange networks, extranet, internal network, and external network, all of which are necessary for Exchange operations. The Exchange's extranet provides the means by which the Exchange communicates with market participants and includes access to the Member portal and the ability to send and receive daily communications and reports. The internal network connects the extranet to the rest of the Exchange's systems and includes trading systems, market data systems, and network monitoring. The external network includes connectivity between the Exchange and other national securities exchanges, market data providers, and between the Exchange's locations in Princeton, New Jersey, Secaucus, New Jersey (NY4), Miami, Florida, and Chicago, Illinois (CH4). In determining the appropriate fees to charge Members and non-Members to access the Exchange's System Networks via a 10Gb ULL fiber connection, the Exchange considered its costs to provide and maintain its System Networks and connectivity to those System Networks, using costs that are related to providing and maintaining access to the Exchange's System Networks via a 10Gb ULL fiber connection to estimate such costs, and set fees that are designed to cover its costs with a limited return in excess of such costs. The Exchange believes that it is important to demonstrate that the 10Gb ULL Fee is based on its costs and reasonable business needs and believes the proposed increase to the 10Gb ULL Fee will allow the Exchange to continue to offset expenses. However, as discussed more fully below, such fees may also result in the Exchange recouping less than all of its costs of providing and maintaining access to the Exchange's System Networks via a 10Gb ULL fiber connection because of the uncertainty of forecasting subscriber decision making with respect to firms' connectivity needs. The Exchange believes that the proposed increase to the 10Gb ULL Fee will not result in excessive pricing or supra-competitive profit based on the total expenses the Exchange estimates to incur versus the total revenue the Exchange estimates to collect, and therefore meets the standards in the Act as interpreted by the Commission and the Commission Staff in the BOX Order and the Guidance.

The Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the 10Gb ULL Fee, and, if such expense did so relate, what portion (or percentage) of such expense actually supports access to the Exchange's System Networks via a 10Gb ULL fiber connection associated with the 10Gb ULL Fee. In determining what

[17] 15 U.S.C. 78f(b)(5).

[18] *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).

[19] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

portion (or percentage) to allocate to access services, each Exchange department head, in coordination with other Exchange personnel, determined the expenses that support access services and System Networks associated with the 10Gb ULL Fee. This included numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders. The analysis also included each department head meeting with the divisions of teams within each department to determine the amount of time and resources allocated by employees within each division towards the access services and System Networks associated with the 10Gb ULL Fee. The Exchange reviewed each individual expense to determine if such expense was related to the 10Gb ULL Fee. Once the expenses were identified, the Exchange department heads, with the assistance of our internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing access services and the System Networks. The sum of all such portions of expenses represents the total cost to the Exchange to provide access services associated with the 10Gb ULL Fee. For the avoidance of doubt, no expense amount is allocated twice.

The analysis conducted by the Exchange is a proprietary process that is designed to make a fair and reasonable assessment of costs and resources allocated to support the provision of access services associated with the 10Gb ULL Fee. The Exchange acknowledges that this assessment can only capture a moment in time and that costs and resource allocations may change. That is why the Exchange historically, and on an ongoing annual basis, reviews its costs and resource allocations to ensure it appropriately allocates resources to properly provide services to the Exchange's constituents.

The Exchange believes exchanges, like all businesses, should be provided flexibility when developing and applying a methodology to allocate costs and resources they deem necessary to operate their business, including providing market data and access services. The Exchange notes that costs and resource allocations may vary from business to business and, likewise, costs and resource allocations may differ from exchange to exchange when it comes to providing market data and access services. It is a business decision that must be evaluated by each exchange as to how to allocate internal resources and what costs to incur internally or via third parties that it may deem necessary to support its business and its provision of market data and access services to market participants.

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully support access to the Exchange and its System Networks via a 10Gb ULL fiber connection. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI-mandated processes associated with its network technology. Both fixed and variable expenses have significant impact on the Exchange's overall costs to provide and maintain access to the Exchange's System Networks via a 10Gb ULL fiber connection. For example, to accommodate new Members, the Exchange may need to purchase additional hardware to support those Members as well as provide enhanced monitoring and reporting of customer performance that the Exchange and its affiliates currently provide. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the 10Gb ULL Fee is a reasonable attempt to offset a portion of those costs associated with providing and maintaining access to its System Networks' infrastructure and related 10Gb ULL fiber connection.

The Exchange estimated its total annual expense to provide and maintain access to the Exchange's System Networks via a 10Gb ULL fiber connection based on the following general expense categories: (1) External expenses, which include fees paid to third parties for certain products and services; (2) internal expenses relating to the internal costs to provide the services associated with the 10Gb ULL Fee; and (3) general shared expenses.[25] The Guidance does not include any information regarding the methodology that an exchange should use to determine its cost associated with a proposed fee change. The Exchange utilized a methodology in this proposed fee change that it believes is reasonable because the Exchange analyzed its entire cost structure, allocated a percentage of each cost attributable to maintaining its System Networks, then divided those costs according to the cost methodology outlined below.

For 2022, for MIAX and MIAX Pearl Options, the total combined annual expense for providing the access services associated with the 10Gb ULL Fee is estimated to be $19,666,270, or $1,638,855 per month. The Exchange believes it is more appropriate to analyze the 10Gb ULL Fee utilizing its 2022 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[26] The $19,666,270 estimated total annual combined expense is directly related to the access to the Exchange's System Networks via a 10Gb ULL fiber connection, and not any other product or service offered by the Exchange. For example, it does not include general costs of operating matching engines and other trading technology. No expense amount was allocated twice. Each of the categories of expenses are set forth in the following table and details of the individual line-item costs considered by the Exchange for each category are described further below.

[25] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

[26] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87876 (December 31, 2019), 85 FR 757 (January 7, 2020) (SR–PEARL–2019–36). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2022 Form 1 Amendment, which will be filed in 2023.

External expenses	
Category	Percentage of total expense amount allocated
Data Center Provider	62%
Fiber Connectivity Provider	62%
Security Financial Transaction Infrastructure (“SFTI”), and Other Connectivity and Content Services Providers	75%
Hardware and Software Providers	51%
Total of External Expenses	[27] $4,382,307
Internal Expenses	
Category	Expense amount allocated
Employee Compensation	$7,063,801
Depreciation and Amortization	4,184,851
Occupancy	701,437
Total of Internal Expenses	11,950,089
Allocated Shared Expenses	3,333,874

The Exchange notes that it only has two primary sources of revenue, connectivity and port fees, to recover those costs associated with providing and maintaining access to the Exchange's System Networks.

The Exchange notes that, without the specific third-party and internal expense items, the Exchange would not be able to provide and maintain the System Networks and access to the System Networks via a 10Gb ULL fiber connection to Members and non-Members. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, has been identified through a line-by-line item analysis to be integral to providing and maintaining the System Networks and access to System Networks via a 10Gb ULL fiber connection.

For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing and maintaining the System Networks and access to System Networks in connection with 10Gb ULL fiber connectivity. The Exchange describes the analysis conducted for each expense and the resources or determinations that were considered when determining the amount necessary to allocate to each expense. Only a portion of all fees paid to such third-parties is included in the third-party expenses described herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to providing and maintaining the System Networks and access to Exchange's System Networks via a 10Gb ULL fiber connection. This may result in the Exchange under allocating an expense to provide and maintain its System Networks and access to the System Networks via a 10Gb ULL fiber connection, and such expenses may actually be higher than what the Exchange allocated as part of this proposal. The Exchange notes that expenses associated with its affiliates, MIAX Emerald and MIAX Pearl Equities, are accounted for separately and are not included within the scope of this filing.

Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic, thorough review of its expenses and resource allocations which resulted in revised percentage allocations in this filing. The revised percentages are, among other things, the result of the shuffling of internal resources in response to business objectives and changes to fees charged and services provided by third parties. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

External Expense Allocations

For 2022, expenses relating to fees paid by the Exchange and MIAX to third parties for products and services necessary to provide and maintain the System Networks and access to the System Networks via a 10Gb ULL fiber connection are estimated to be $4,382,307. This includes, but is not limited to, a portion of the fees paid to: (1) A third-party data center provider, including for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) a fiber connectivity provider for network services (fiber and bandwidth products and services) linking the Exchange's and its affiliates' office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) SFTI, which supports connectivity feeds for the entire U.S. options industry; (4) various other content and connectivity service providers, which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers that support the production environment in which Members and non-Members connect to the network to trade and receive market data.

Data Center Space and Operations Provider

The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties where the Exchange houses servers, switches and related equipment. Data center costs include an allocation of the

[27] The Exchange does not believe it is appropriate to disclose the actual amount it pays to each individual third-party provider as those fee arrangements are competitive or the Exchange is contractually prohibited from disclosing that number.

costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs. The data center provider operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. Without the retention of a third party data center, the Exchange would not be able to operate its systems and provide a trading platform for market participants. The Exchange does not employ a separate fee to cover its data center expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

The Exchange reviewed its data center footprint, including its total rack space, cage usage, number of servers, switches, cabling within the data center, heating and cooling of physical space, storage space, and monitoring and divided its data center expenses among providing transaction services, market data, and connectivity. Based on this review, the Exchange determined that 62% of the total applicable data center provider expense is applicable to providing and maintaining access services and System Networks associated with the 10Gb ULL Fee. The Exchange believes this allocation is reasonable because 10Gb ULL connectivity is a core means of access to the Exchange's network, providing one method for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's data center expense is due to providing and maintaining connectivity to the Exchange's System Networks, including providing cabling within the data center between market participants and the Exchange. The Exchange excluded from this allocation servers that are dedicated to market data. The Exchange also did not allocate the remainder of the data center expense because it pertains to other areas of the Exchange's operations, such as ports, market data, and transaction services.

Fiber Connectivity Provider

The Exchange engages a third-party service provider that provides the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data center, and office locations in Princeton and Miami. Fiber connectivity is necessary for the Exchange to switch to its secondary data center in the case of an outage in its primary data center. Fiber connectivity also allows the Exchange's National Operations & Control Center (''NOCC'') and Security Operations Center (''SOC'') in Princeton to communicate with the Exchange's primary and secondary data centers. As such, all trade data, including the billions of messages each day, flow through this third-party provider's infrastructure over the Exchange's network. Without these services, the Exchange would not be able to operate and support the network and provide and maintain access services and System Networks associated with the 10Gb ULL Fee to its Members and their customers. Without the retention of a third-party fiber connectivity provider, the Exchange would not be able to communicate between its data centers and office locations. The Exchange does not employ a separate fee to cover its fiber connectivity expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

The Exchange reviewed it costs to retain fiber connectivity from a third party, including the ongoing costs to support fiber connectivity, ensuring adequate bandwidth and infrastructure maintenance to support exchange operations, and ongoing network monitoring and maintenance and determined that 62% of the total fiber connectivity expense was applicable to providing and maintaining access services and System Networks associated with the 10Gb ULL Fee. The Exchange believes this allocation is reasonable because 10Gb ULL connectivity is a core means of access to the Exchange's network, providing one method for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's fiber connectivity expense is due to providing and maintaining connectivity between the Exchange's System Networks, data centers, and office locations and is core to the daily operation of the Exchange. Fiber connectivity is a necessary integral means to disseminate information from the Exchange's primary data center to other Exchange locations. The Exchange excluded from this allocation fiber connectivity usage related to market data or other business lines. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining access services and System Networks associated with the 10Gb ULL Fee. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to retain fiber connectivity and maintain and provide access to its System Networks via a 10Gb ULL fiber connectivity.

Connectivity and Content Services Provided by SFTI and Other Providers

The Exchange relies on SFTI and various other connectivity and content service providers for connectivity and data feeds for the entire U.S. options industry, as well as content, connectivity, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via a 10Gb ULL fiber connection. Specifically, the Exchange utilizes SFTI and other content service provider to connect to other national securities exchanges, the Options Price Reporting Authority (''OPRA''), and to receive market data from other exchanges and market data providers. SFTI is operated by the Intercontinental Exchange, the parent company of five registered exchanges, and has become integral to the U.S. markets. The Exchange understands SFTI provides services to most, if not all, of the other U.S. exchanges and other market participants. Without services from SFTI and various other service providers, the Exchange would not be able to connect to other national securities exchanges, market data providers, or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its SFTI and content service provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

The Exchange reviewed it costs to retain SFTI and other content service providers, including network monitoring and maintenance, remediation of connectivity related issues, and ongoing administrative activities related to connectivity management and determined that 75% of the total applicable SFTI and other service provider expense is allocated to providing the access services associated with the 10Gb ULL Fee. SFTI and other content service providers are key vendors and necessary components in providing connectivity to the Exchange. The primary service SFTI provides for the Exchange is connectivity to other national securities exchanges and their disaster recovery facilities and, therefore, a vast portion of this expense is allocated to providing access to the System Networks via a 10Gb ULL connection. Connectivity via SFTI is necessary for purposes of order routing and accessing disaster recovery facilities in the case of a system outage. Engaging SFTI and other like vendors provides purchasers of 10Gb ULL connectivity to

other national securities exchanges for purposes of order routing and disaster recovery. The Exchange did not allocate a portion of this expense that relates to the receipt of market data from other national securities exchange and OPRA. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining the System Networks or access to its System Networks via 10Gb ULL fiber connection. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide and maintain its System Networks and access to its System Networks via a 10Gb ULL fiber connection, and not any other service, as supported by its cost review.

Hardware and Software Providers

The Exchange relies on dozens of third-party hardware and software providers for equipment necessary to operate its System Networks. This includes either the purchase or licensing of physical equipment, such as servers, switches, cabling, and monitoring devices. It also includes the purchase or license of software necessary for security monitoring, data analysis and Exchange operations. Hardware and software providers are necessary to maintain its System Networks and provide access to its System Networks via a 10Gb ULL fiber connection. Hardware and software equipment and licenses for that equipment are also necessary to operate and monitor physical assets necessary to offer physical connectivity to the Exchange. Hardware and software equipment and licenses are key to the operation of the Exchange and, without them, the Exchange would not be able to operate and support its System Networks and provide access to its Members and their customers. The Exchange does not employ a separate fee to cover its hardware and software expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

The Exchange reviewed it hardware and software related costs, including software patch management, vulnerability management, administrative activities related to equipment and software management, professional services for selection, installation and configuration of equipment and software supporting exchange operations and determined that 51% of the total applicable hardware and software expense is allocated to providing and maintaining access services and System Networks associated with the 10Gb ULL Fee. Hardware and software equipment and licenses are key to the operation of the Exchange and its System Networks. Without them, market participants would not be able to access the System Networks via a 10Gb ULL connection. The Exchange only allocated the portion of this expense to the hardware and software that is related to a market participant's use of a 10Gb ULL connection, such as operating its matching engines. The Exchange, therefore, did not allocate portions of its hardware and software expense that related to other areas of the Exchange's business, such as hardware and software used for market data or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations, such as ports or transaction services, and does not directly relate to providing and maintaining its System Networks and access to its System Networks via a 10Gb ULL fiber connection. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide and maintain its System Networks and access to its System Networks via a 10Gb ULL fiber connection, and not any other service, as supported by its cost review.

Internal Expense Allocations

For 2022, total combined internal expenses relating to the Exchange and MIAX providing and maintaining the System Networks and access to the System Networks via a 10Gb ULL fiber connection are estimated to be $11,950,089. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the System Networks and access to System Networks via a 10Gb ULL fiber connection, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions as well as important system upgrades; (2) depreciation and amortization of hardware and software used to provide and maintain access services and System Networks associated with the 10Gb ULL Fee, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide and maintain the System Networks and access to System Networks via 10G ULL fiber connections. The breakdown of these costs is more fully described below.

Employee Compensation and Benefits

Human personnel are key to exchange operations and supporting the Exchange's ongoing provision and maintenance of the System Networks and access to System Networks via 10Gb ULL fiber connections. The Exchange reviewed its employee compensation and benefits expense and the portion of that expense allocated to providing and maintaining the System Networks and access to System Networks via 10Gb ULL fiber connections. As part of this review, the Exchange considered employees whose functions include providing and maintaining the System Networks and 10Gb ULL connectivity and used a blended rate of compensation reflecting salary, stock and bonus compensation, bonuses, benefits, payroll taxes, and 401K matching contributions.[28]

Based on this review, the Exchange and MIAX determined to allocate a total combined amount of $7,063,801 in employee compensation and benefits expense to providing access to the System Networks. To determine the appropriate allocation the Exchange reviewed the time employees allocated to supporting its System Networks and access to its System Networks via 10Gb ULL fiber connections. Senior staff also reviewed these time allocations with department heads and team leaders to determine whether those allocations were appropriate. These employees are critical to the Exchange to provide and maintain access to its System Networks via 10Gb ULL fiber connections for its Members, non-Members and their customers. The Exchange determined the above allocation based on the personnel whose work focused on functions necessary to provide and maintain the System Networks and access to System Networks via 10Gb ULL fiber connections. The Exchange does not charge a separate fee regarding employees who support 10Gb ULL connectivity and the Exchange seeks to recoup that expense, in part, by charging for 10Gb ULL connections.

[28] For purposes of this allocation, the Exchange did not consider expenses related to supporting employees who support 10Gb ULL connectivity, such as office space and supplies. The Exchange determined cost allocation for employees who perform work in support of offering access services and System Networks to arrive at a full time equivalent (''FTE'') of 8.9 FTEs across all the identified personnel. The Exchange then multiplied the FTE times a blended compensation rate for all relevant Exchange personnel to determine the personnel costs associated with providing the access services and System Networks associated with the 10Gb ULL Fee.

Depreciation and Amortization

A key expense incurred by the Exchange relates to the depreciation and amortization of equipment that the Exchange procured to provide and maintain the System Networks and access to System Networks via 10Gb ULL fiber connections. The Exchange reviewed all of its physical assets and software, owned and leased, and determined whether each asset is related to providing and maintaining its System Networks and access to its System Networks via 10Gb ULL fiber connections, and added up the depreciation of those assets. All physical assets and software, which includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. In determining the amount of depreciation and amortization to apply to providing 10Gb ULL connectivity and the System Networks, the Exchange considered the depreciation of hardware and software that are key to the operation of the Exchange and its System Networks. This includes servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps, that were previously purchased to maintain and provide access to its System Networks via 10Gb ULL fiber connections. Without them, market participants would not be able to access the System Networks. The Exchange seeks to recoup a portion of its depreciation expense by charging for 10Gb ULL connectivity.

Based on this review, the Exchange and MIAX determined to allocate a combined total amount of $4,184,851 in depreciation and amortization expense to providing access to the System Networks via a 10Gb ULL connection. The Exchange only allocated the portion of this depreciation expense to the hardware and software related to a market participant's use of a 10GB ULL connection. The Exchange, therefore, did not allocate portions of depreciation expense that relates to other areas of the Exchange's business, such as the depreciation of hardware and software used for market data or unrelated administrative services.[29]

Occupancy

The Exchange rents and maintains multiple physical locations to house staff and equipment necessary to support access services, System Networks, and exchange operations. The Exchange's occupancy expense is not limited to the housing of personnel and includes locations used to store equipment necessary for Exchange operations. In determining the amount of its occupancy related expense, the Exchange considered actual physical space used to house employees whose functions include providing and maintaining the System Networks and 10Gb ULL connectivity. Similarly, the Exchange also considered the actual physical space used to house hardware and other equipment necessary to provide and maintain the System Networks and 10Gb ULL connectivity. This equipment includes computers, servers, and accessories necessary to support the System Networks and 10Gb ULL connectivity. Based on this review, the Exchange and MIAX determined to allocate a combined total amount of $701,437 of the occupancy expense to provide and maintain the System Networks and 10Gb ULL connectivity. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the System Networks, including providing and maintaining access to its System Networks via 10Gb ULL fiber connections. The Exchange considered the rent paid for the Exchange's Princeton and Miami offices, as well as various related costs, such as physical security, property management fees, property taxes, and utilities at each of those locations. The Exchange did not include occupancy expenses related to housing employees and equipment related to other Exchange operations, such as market data and administrative services.

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The Exchange notes that a material portion of its total overall expense is allocated to the provision and maintenance of access services (including connectivity and ports). The Exchange believes this is reasonable as the Exchange operates a technology-based business that differentiates itself from its competitors based on its more deterministic and resilient trading systems that rely on access to a high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. Thus, the Exchange believes it is reasonable to allocate a material portion of its total overall expense towards providing and maintaining its System Networks and access to its System Networks via 10Gb ULL fiber connections.

Allocated Shared Expense

Finally, a limited portion of general shared expenses was allocated to overall 10Gb ULL connectivity costs as without these general shared costs, the Exchange would not be able to operate in the manner that it does and provide 10Gb ULL connectivity. The costs included in general shared expenses include recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. For 2022, the Exchange's and MIAX's general shared expense allocated to 10Gb ULL connectivity and the System Networks that support those connections is estimated to be $3,333,874. The Exchange used the weighted average of the above allocations to determine the amount of general shared expenses to allocate to the Exchange. Next, based on additional management and expense analysis, these fees are allocated to the proposal.

Revenue and Estimated Profit Margin

The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: Transaction fees, access fees (which includes the 10Gb ULL Fee), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms.

To determine the Exchange's estimated revenue associated with the 10Gb ULL Fee, the Exchange analyzed the number of Members and non-Members currently utilizing the 10Gb ULL fiber connection and used a recent monthly billing cycle representative of current monthly revenue. The Exchange also provided its baseline by analyzing March 2022, the monthly billing cycle prior to the proposed 10Gb ULL Fee and compared this to its expenses for that month. As discussed below, the Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its estimates for purposes of these calculations, given the uncertainty of such estimates due to the continually changing access needs of market

[29] All of the expenses outlined in this proposed fee change refer to the operating expenses of the Exchange. The Exchange did not included any future capital expenditures within these costs. Depreciation and amortization represent the expense of previously purchased hardware and internally developed software spread over the useful life of the assets. Due to the fact that the Exchange has only included operating expense and historical purchases, there is no double counting of expenses in the Exchange's cost estimates.

participants and potential changes in internal and third-party expenses.

For March 2022, prior to the proposed 10Gb ULL Fee, Members and non-Members purchased a total of 172 10Gb ULL connections for which MIAX and MIAX Pearl anticipate charging collectively $1,720,000 (depending on whether Members and non-Members drop or add connections mid-month, resulting in pro-rated charges). This will result in a loss of $81,145 for that month (a margin of −4.70%). For April 2022, the Exchange and MIAX anticipate Members and non-Members purchasing a total of 172 10Gb ULL connections. Assuming the Exchange and MIAX charge the proposed monthly rate of $12,000 per connection, the proposed fees would generate revenue of $2,064,000 for that month (not including potential pro-rated connection charges for mid-month connections). This would result in a profit of $425,145 ($2,064,000 minus $1,638,855) for that month (a modest 24% profit margin increase from March 2022 to April 2022 from −4.70% to 20%).

The Exchange believes that conducting the above analysis on a per month basis is reasonable as the revenue generated from access services subject to the proposed fee generally remains static from month to month. The Exchange also conducted the above analysis on a per month basis to comply with the Commission Staff's Guidance, which requires a baseline analysis to assist in determining whether the proposal generates a supra-competitive profit. The Exchange cautions that this profit margin may also fluctuate from month to month based on the uncertainty of predicting how many connections may be purchased from month to month as Members and non-Members are free to add and drop connections at any time based on their own business decisions.

The Exchange believes the proposed profit margin is reasonable and will not result in a ''supra-competitive'' profit. Until recently, the Exchange operated at a net annual loss since it launched operations in 2017.[30] The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [31] 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 now seeking to raise it fees to near market rates after offering such products as discounted prices.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent such revenue actually produces the revenue estimated. As a generally new entrant to the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from 10 Gb ULL connectivity, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity or obtaining new clients that will purchase such services. To the extent the Exchange is successful in encouraging new clients to connect directly to the Exchange, the Exchange does not believe it should be penalized for such success. The Exchange, like other exchanges, is, after all, a for-profit business. While the Exchange believes in transparency around costs and potential margins, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes its cost analysis and related estimates demonstrate this fact.

Further, the proposed profit margin reflects the Exchange's efforts to keep control of its costs. A profit margin should not be judged alone based on its size, but whether the ultimate fee reflects the value of the services provided and is in line with other exchanges. A profit margin on one exchange should not be deemed excessive where that exchange has been successful in control costs, but not excessive where an exchange is charging the same fee but has a lower profit margin due to higher costs.

The expected profit margin is reasonable because the Exchange offers a premium System Network, System Networks connectivity, and a highly deterministic trading environment. The Exchange is recognized as a leader in network monitoring, determinism, risk protections, and network stability. For example, the Exchange experiences approximately a 95% determinism rate, system throughput of approximately 10.8 million quotes per second and average round trip latency rate of approximately 30.76 microseconds for a single quote. The Exchange provides extreme performance and radical scalability designed to match the unique needs of trading differing asset class/market model combination. Exchange systems offer two customer interfaces, FIX gateway for orders, and ULL interfaces and data feeds with best-in-class wire order determinism. The Exchange also offers automated continuous testing to ensure high reliability, advanced monitoring and systems security, and employs a software architecture that results in minimizing the demands on power, space, and cooling while allowing for rapid scalability, resiliency and fault isolation. The Exchange also provides latency equalized cross-connects in the primary data center ensures fair and cost efficient access to the MIAX systems. The Exchange, therefore, believes the anticipated profit margin is reasonable because it reflect the Exchange cost controls and the quality of the Exchanges systems.

The Exchange also believes its proposed profit margin does not exceed what can be obtained in a competitive market. The Exchange is one of sixteen registered U.S. options exchanges and maintains an average market share of approximately 4.32%.[32] The anticipated rate of return is reasonable because it is based on a rate that likely remains lower than what other exchanges with comparable market share charge for similar connectivity. For example the below table is provided for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar connectivity. As shown by the below table, the Exchange's proposed fee remains less than fees charged for similar connectivity provided by other options exchanges with similar market share, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of connectivity.

[30] The Exchange has incurred a cumulative loss of $86 million since its inception in 2017 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000461.pdf.*

[31] *See supra* note 19.

[32] *See supra* note 6.

Exchange	Type of connection	Monthly fee (per connection)
MIAX Pearl (as proposed) (equity options market share of 4.32% as of March 29, 2022 for the month of March) [33].	10Gb ULL	$12,000.00
NASDAQ [34] (equity options market share of 8.62% as of March 29, 2022 for the month of March) [35] ...	10Gb Ultra fiber	15,000.00
ISE [36] (equity options market share of 5.83% as of March 29, 2022 for the month of March) [37]	10Gb Ultra fiber	15,000.00
Amex [38] (equity options market share of 7.15% as of March 29, 2022 for the month of March) [39]	10Gb LX LCN	22,000.00
GEMX [40] (equity options market share of 2.48% as of March 29, 2022 for the month of March) [41]	10Gb Ultra	15,000.00

Lastly, the Exchange notes that this is a singular potential profit margin from a single revenue source and is not reflective of the Exchange's overall profit margin. This profit margin may be offset by lower or negative profit margins generated by other areas of the Exchange's operations that are not subject to this proposed fee change. The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: Transaction fees, access fees (which includes the 10Gb ULL Fee), regulatory fees, and market data fees. A potential profit margin in one area may be used to offset a potential loss in another area, and, therefore, a potential profit margin from a single product is not representative of the Exchange's overall profitability and whether that singular profit exceeds the profits that can be obtained in a competitive market.

The Proposed Fees Are Reasonable When Compared to the Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other equities exchanges' costs to provide connectivity or their fee markup over those costs, and therefore cannot use other exchange's connectivity fees as a benchmark to determine a reasonable markup over the costs of providing connectivity. Nevertheless, the Exchange believes the other exchanges' connectivity fees are a useful example of alternative approaches to providing and charging for connectivity notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of connectivity. To that end, the Exchange believes the proposed 10Gb ULL Fee is reasonable because the proposed fee is still less than fees charged for similar connectivity provided by other options exchanges with comparable market shares.

As described in the above table, the Exchange's proposed fee remains less than fees charged for similar connectivity provided by other options exchanges with similar market share. In the each of the above cases, the Exchange's proposed fee is still significantly lower than that of competing options exchanges with similar market share. Despite proposing lower or similar fees to that of competing options exchanges with similar market share, the Exchange believes that it provides a premium network experience to its Members and non-Members via a highly deterministic System, enhanced network monitoring and customer reporting, and a superior network infrastructure than markets with higher market shares and more expensive connectivity alternatives. Each of the connectivity rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

The Proposed Fees are Equitably Allocated

The Exchange believes that the proposed 10Gb ULL fees are equitably allocated among users of the network connectivity alternatives, as the users of the 10Gb ULL connections consume the most bandwidth and resources of the network. Specifically, the Exchange notes that these users account for approximately greater than 99% of message traffic over the network, while the users of the 1Gb connections account for approximately less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have a business need for the high performance network solutions required by 10Gb ULL users. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput with the network ability to support access to several distinct options markets and the capacity to handle approximately 38 million quote messages per second. On an average day, the Exchange and MIAX handle over approximately 8,304,500,000 billion total messages. Of that total, users of the 10Gb ULL connections generate approximately 8.3 billion messages, and users of the 1Gb connections generate approximately 4.5 million messages. However, in order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb ULL users pay for the vast majority of the shared network resources from which all Member and non-Member users benefit, but is designed and maintained from a capacity standpoint to specifically handle the message rate and performance requirements of 10Gb and 10Gb ULL users.

The Exchange also believes that the connectivity fees are equitably allocated amongst users of the network connectivity alternatives, when these fees are viewed in the context of the overall trading volume on the Exchange. To illustrate, the purchasers of the 10Gb ULL connectivity account for approximately 94% of the volume on the Exchange. This overall volume percentage (94% of total Exchange volume) is in line with the amount of network connectivity revenue collected from 10Gb ULL purchasers (87% of total Exchange connectivity revenue). For example, utilizing the same recently completed billing cycle described above, Exchange Members and non-Members that purchased 10Gb ULL connections accounted for approximately 87% of the total network connectivity revenue collected by the

[33] *See supra* note 6.
[34] *See supra* note 7.
[35] *See supra* note 6.
[36] *See supra* note 9.
[37] *See supra* note 6.
[38] *See supra* note 11.
[39] *See supra* note 6.
[40] *See supra* note 13.
[41] *See supra* note 6.

Exchange from all connectivity alternatives; and Members and non-Members that purchased 1Gb and 10Gb connections accounted for approximately 13% of the revenue collected by the Exchange from all connectivity alternatives.

Lastly, the Exchange further believes that the 10Gb ULL Fee are reasonable, equitably allocated and not unfairly discriminatory because, for one 10Gb ULL connection, the Exchange provides each Member or non-Member access to all twelve (12) matching engines on MIAX Pearland a vast majority choose to connect to all twelve (12) matching engines. The Exchange believes that other exchanges require firms to connect to multiple matching engines.[42]

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.

With respect to intra-market 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. 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 also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, options market participants are not forced to connect to all options exchanges. There is no reason to believe that our proposed price increase will harm another exchange's ability to compete. There are other options markets of which market participants may connect to trade options. There is also a possible range of alternative strategies, including routing to the exchange through another participant or market center or accessing the Exchange indirectly. Market participants are free to choose which exchange or reseller to use to satisfy their business needs. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[43] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[44] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[45] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [46]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities;[47] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;[48] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[49]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposal to modify fees for certain connectivity options is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[50]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[51]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)[52] and 19(b)(2)(B)[53] of the Act to determine whether the Exchange's proposed rule change should be approved or disapproved.

[42] *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.

[43] 15 U.S.C. 78s(b)(3)(C).

[44] 15 U.S.C. 78s(b)(1).

[45] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[46] *Id.*

[47] 15 U.S.C. 78f(b)(4).

[48] 15 U.S.C. 78f(b)(5).

[49] 15 U.S.C. 78f(b)(8).

[50] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[51] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[52] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[53] 15 U.S.C. 78s(b)(2)(B).

Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[54] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Exchange has sufficiently demonstrated how the proposed rule change is consistent with Sections 6(b)(4),[55] 6(b)(5),[56] and 6(b)(8)[57] of the Act. Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. *Cost Estimates and Allocation.* The Exchange states that it is not asserting that the proposed 10Gb ULL Fee is constrained by competitive forces, but rather set forth a ''cost-plus model,'' employing a ''conservative approach'' in determining the expense and the percentage of that expense to be allocated to providing and maintaining the System Networks and access to System Networks in connection with 10Gb ULL fiber connectivity.[58] Setting forth its costs in providing 10Gb ULL connectivity, and as summarized in greater detail above, the Exchange projects that the total combined annual expense for the Exchange and MIAX Options for providing the access services associated with the 10Gb ULL Fee in 2022 will be $19,666,270, the sum of: (1) $4,382,307 in third-party expenses paid in total to their Data Center Provider (62% of the total applicable expense) for data center services; Fiber Connectivity Provider, for network services (62% of the total applicable expense); SFTI and other connectivity and content service providers for connectivity support (75% of the total applicable expense); and various other hardware and software providers (51% of the total applicable expense), (2) $11,950,089 in internal expenses, allocated to (a) employee compensation and benefit costs ($7,063,801); (b) depreciation and amortization ($4,184,851); and (c) occupancy costs ($701,437) and (3) $3,333,874 of allocated general shared expenses that include recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. Do commenters believe that these allocations are reasonable? Should the Exchange be required to provide more specific information regarding the allocation of third-party expenses, such as the overall estimated cost for each category of external expenses or at minimum the total applicable third-party expenses? Should the Exchange have provided either a percentage allocation or statements regarding the Exchange's overall estimated costs for the internal expense categories and general shared expenses figure? Do commenters believe that the Exchange has provided sufficient detail about how it determined which costs are associated with providing and maintaining 10Gb ULL connectivity and why? Do commenters believe that the Exchange has provided sufficient detail about how it determined ''general shared expenses'' and how it determined what portion should be associated with providing and maintaining 10Gb ULL connectivity? Do commenters believe that the Exchange provided sufficient detail or explanation to support its claim that ''no expense amount is allocated twice,''[59] whether *among* the sub-categories of expenses in this filing, *across* the Exchange's fee filings for other products or services, or *over time*? The Exchange describes a ''proprietary'' process that was applied in making these determinations or arriving at particular allocations. Do commenters believe further explanation is necessary? What are commenters' views on whether the Exchange has provided sufficient detail on the identity and nature of services provided by third parties? Across all of the Exchange's projected costs, what are commenters' views on whether the Exchange has provided sufficient detail on the elements that go into connectivity costs, including how shared costs are allocated and attributed to connectivity expenses, to permit an independent review and assessment of the reasonableness of purported cost-based fees and the corresponding profit margin thereon?

2. *Revenue Estimates and Profit Margin Range.* The Exchange provides a single monthly revenue figure from March 2022 as the basis for calculating the profit margin of 20%. Do commenters believe this is reasonable? If not, why not? The Exchange states that their proposed fee structure is ''designed to cover its costs with a limited return in excess of such costs,'' and believes that a 20% margin is a limited return over such costs.[60] The profit margin is also dependent on the accuracy of the cost projections which, if inflated (intentionally or unintentionally), may render the projected profit margin meaningless. The Exchange acknowledges that this margin may fluctuate from month to month due to changes in the number of connections purchased, and that costs may increase, but that the number of connections has not materially changed over the prior months and so the months that the Exchange has used as a baseline to perform its assessment are representative of reasonably anticipated costs and expenses.[61] The Exchange does not account for the possibility of cost decreases, however. What are commenters' views on the extent to

[54] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[55] 15 U.S.C. 78f(b)(4).

[56] 15 U.S.C. 78f(b)(5).

[57] 15 U.S.C. 78f(b)(8).

[58] *See supra* Section II.A.2.

[59] *See id.*

[60] *See supra* Section II.A.2.

[61] *See id.*

which actual costs (or revenues) deviate from projected costs (or revenues)? Do commenters believe that the Exchange's methodology for estimating the profit margin is reasonable? Should the Exchange provide a range of profit margins that they believe are reasonably possible, and the reasons therefor?

3. *Reasonable Rate of Return.* Do commenters agree with the Exchange that its expected 20% profit margin would constitute a reasonable rate of return over cost for 10GB ULL connectivity, and is not a ''supra-competitive'' profit that exceeds the profits that can be obtained in a competitive market? If not, what would commenters consider to be a reasonable rate of return and/or what methodology would they consider to be appropriate for determining a reasonable rate of return? What are commenters' views regarding what factors should be considered in determining what constitutes a reasonable rate of return for 10Gb ULL connectivity fees? Do commenters believe it relevant to an assessment of reasonableness that the Exchange's proposed fees for 10Gb ULL connections are lower than those of other options exchanges to which the Exchange has compared the 10Gb ULL connectivity fees? Should an assessment of reasonable rate of return include consideration of factors other than costs; and if so, what factors should be considered, and why?

4. *Periodic Reevaluation.* The Exchange has not stated that it would re-evaluate the appropriate level of 10Gb ULL fees if there is a material deviation from the anticipated profit margin. In light of the impact that the number of subscribers has on connectivity profit margins, and the potential for costs to decrease (or increase) over time, what are commenters' views on the need for exchanges to commit to reevaluate, on an ongoing and periodic basis, their cost-based connectivity fees to ensure that they stay in line with their stated profitability target and do not become unreasonable over time, for example, by failing to adjust for efficiency gains, cost increases or decreases, and changes in subscribers? How formal should that process be, how often should that reevaluation occur, and what metrics and thresholds should be considered? How soon after a new connectivity fee change is implemented should an exchange assess whether its subscriber estimates were accurate and at what threshold should an exchange commit to file a fee change if its estimates were inaccurate? Should an initial review take place within the first 30 days after a connectivity fee is implemented? 60 days? 90 days? Some other period?

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [62] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[63] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[64] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.[65]

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, any potential comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[66]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by May 11, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 25, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–PEARL–2022–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2022–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit

[62] 17 CFR 201.700(b)(3).

[63] *See id.*

[64] *See id.*

[65] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 446–47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

[66] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2022–11 and should be submitted on or before May 11, 2022. Rebuttal comments should be submitted by May 25, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[67] that File Number SR–PEARL–2022–11 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[68]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08386 Filed 4–19–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34559; File No. 812–15291]

AGL Separate Account VL–R, et al;

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order (''Order'') approving the substitution of certain securities pursuant to section 26(c) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicants request an order pursuant to Section 26(c) of the Act approving the proposed substitution of shares of the Fidelity VIP Government Money Market Portfolio, Initial Class of Variable Insurance Products Fund V for shares of the VALIC Company I Government Money Market I Fund of VALIC Company I held by certain separate accounts as investment options for certain variable life insurance and variable annuity contracts issued by American General Life Insurance Company and The United States Life Insurance Company in the City of New York.

APPLICANTS: American General Life Insurance Company, The United States Life Insurance Company in the City of New York, AGL Separate Account VL–R, AGL Separate Account D, USL Separate Account USL A, and USL Separate Account USL VL–R.

FILING DATES: The application was filed on December 21, 2021 and amended on March 28, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on May 10, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Suzanne Ragsdale, *suzanne.ragsdale@aglife.com.*

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, or Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' amended and restated application, dated March 28, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, at *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Dated: April 15, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08475 Filed 4–19–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34 94720; File No. SR–MIAX–2022–16]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing of a Proposed Rule Change To Amend Its Fee Schedule To Adopt a Tiered-Pricing Structure for Additional Limited Service MIAX Express Interface Ports; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

April 14, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2022, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to amend certain port fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV [sic] below. The Exchange has prepared summaries,

[67] 15 U.S.C. 78s(b)(3)(C).

[68] 17 CFR 200.30–3(a)(12), (57) and (58).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to adopt a tiered-pricing structure for additional Limited Service MIAX Express Interface (''MEI'') Ports [3] available to Market Makers.[4] The Exchange believes a tiered-pricing structure will encourage Market Makers to be more efficient and economical 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.[5]

The Exchange initially filed the proposed fee changes on August 2, 2021, with the changes being immediately effective (''First Proposed Rule Change'').[6] The First Proposed Rule Change was published for comment in the **Federal Register** on August 19, 2021.[7] The Commission received one comment letter on the First Proposed Rule Change.[8] The Exchange withdrew the First Proposed Rule Change on September 28, 2021 and resubmitted its proposal (''Second Proposed Rule Change'').[9] The Second Proposed Rule Change was published for comment in the **Federal Register** on October 5, 2021.[10] The Second Proposed Rule Change provided additional justification for the proposed fee changes and addressed certain points raised in the single comment letter that was submitted on the First Proposed Rule Change. The Commission received four comment letters from three separate commenters on the Second Proposed Rule Change.[11] The Commission suspended the Second Proposed Rule Change on November 22, 2021.[12] The Exchange withdrew the Second Proposed Rule Change on December 1, 2021 and submitted a revised proposal for immediate effectiveness (''Third Proposed Rule Change'').[13] The Third Proposed Rule Change meaningfully attempted to address issues or questions that have been raised by providing additional justification and explanation for the proposed fee changes and directly respond to the points raised in SIG Letters 1, 2, and 3, as well as the SIFMA Letter submitted on the First and Second Proposed Rule Changes,[14] and feedback provided by Commission Staff during a telephone conversation on November 18, 2021 relating to the Second Proposed Rule Change. The Third Proposed Rule Change was published for comment in the **Federal Register** on December 20, 2021.[15] Although the Commission did not receive any comment letters on the Third Proposed Rule Change, the Commission suspended the Third Proposed Rule Change on January 27, 2022.[16] The Exchange withdrew the Third Proposed Rule Change on February 1, 2022 and submitted a revised proposal for immediate effectiveness, which was noticed and immediately suspended by the Commission on February 15, 2022 (''Fourth Proposed Rule Change'').[17] The Commission received one comment letter on the Fourth Proposed Rule Change.[18] The Exchange withdrew the Fourth Proposed Rule Change on March 30, 2022 and submits this revised proposal to be effective April 1, 2022 (''Fifth Proposed Rule Change'').

Additional Limited Service MEI Port Tiered-Pricing Structure

The Exchange proposes to amend the fees for additional Limited Service MEI Ports. Currently, the Exchange allocates two (2) Full Service MEI Ports [19] and two (2) Limited Service MEI Ports [20] per matching engine [21] to which each

[3] MIAX Express Interface is a connection to MIAX systems that enables Market Makers to submit simple and complex electronic quotes to MIAX. *See* Fee Schedule, note 26.

[4] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* Exchange Rule 100.

[5] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[6] *See* Securities Exchange Act Release No. 92661 (August 13, 2021), 86 FR 46737 (August 19, 2021) (SR–MIAX–2021–37).

[7] *Id.*

[8] *See* Letter from Richard J. McDonald, Susquehanna International Group, LLC (''SIG''), to Vanessa Countryman, Secretary, Commission, dated September 7, 2021 (''SIG Letter 1'').

[9] *See* Securities Exchange Act Release No. 93185 (September 29, 2021), 86 FR 55093 (October 5, 2021) (SR–MIAX–2021–43).

[10] *Id.*

[11] *See* letters from Richard J. McDonald, SIG, to Vanessa Countryman, Secretary, Commission, dated October 1, 2021 (''SIG Letter 2'') and October 26, 2021 (''SIG Letter 3''); *and* Ellen Green, Managing Director, Equity and Options Market Structure, Securities Industry and Financial Markets Association (''SIFMA''), to Vanessa Countryman, Secretary, Commission, dated November 26, 2021 (''SIFMA Letter'').

The Exchange notes that the Healthy Markets Association (''HMA'') submitted a comment letter on a related filing to amend fees for 10Gb ULL connections, on which SIG Letters 1, 2, and 3 as well as the SIFMA Letter also commented. *See* letter from Tyler Gellasch, Executive Director, HMA (''HMA''), to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021 (commenting on SR–CboeEDGA–2021–017, SR–CboeBYX–2021–020, SR–Cboe–BZX–2021–047, SR–CboeEDGX–2021–030, SR–MIAX–2021–41, SR–PEARL–2021–45, and SR–EMERALD–2021–29 and stating that ''MIAX has repeatedly filed to change its connectivity fees in a way that will materially lower costs for many users, while increasing the costs for some of its heaviest of users. These filings have been withdrawn and repeatedly refiled. *Each time, however, the filings contain significantly greater information about who is impacted and how than other filings that have been permitted to take effect without suspension*'') (*emphasis added*) (''HMA Letter'').

[12] *See* Securities Exchange Act Release No. 93640 (November 22, 2021), 86 FR 67745 (November 29, 2021).

[13] *See* Securities Exchange Act Release No. 93771 (December 14, 2021), 86 FR 71940 (December 20, 2021) (SR–MIAX–2021–60).

[14] The Exchange notes that while the HMA Letter applauds the level of disclosure the Exchange included in the First and Second Proposed Rule Changes, the HMA Letter does not raise specific issues with the First or Second Proposed Rule Changes. Rather, it references the Exchange's proposals by way of comparison to show the varying levels of transparency in exchange fees filings and recommends changes to the Commission's review process of exchange fee filings generally. Therefore, the Exchange does not feel it is necessary to address the issues raised in the HMA Letter.

[15] *See supra* note 13.

[16] *See* Securities Exchange Act Release No. 94087 (January 27, 2022), 87 FR 5918 (February 2, 2022) (SR–MIAX–2021–60, SR–EMERALD–2021–43) (Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Changes to Amend Fee Schedules to Adopt Tiered-Pricing Structures for Additional Limited Service MIAX and MIAX Emerald Express Interface Ports).

[17] *See* Securities Exchange Act Release No. 94259 (February 15, 2022), 87 FR 9747 (February 22, 2022) (SR–MIAX–2022–08) (Notice of Filing of a Proposed Rule Change to Amend Its Fee Schedule to Adopt a Tiered-Pricing Structure for Additional Limited Service MIAX Express Interface Ports; Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change).

[18] *See* Letter from Richard J. McDonald, SIG, to Vanessa Countryman, Secretary, Commission, dated March 15, 2022 (''SIG Letter 4'').

[19] 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.

[20] 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.

[21] 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.

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, Limited Service MEI Ports and the additional Limited Service MEI Ports all include access to the Exchange's primary and secondary data centers and its disaster recovery center. Market Makers may request additional Limited Service MEI Ports. Prior to the First Proposed Rule Change, Market Makers were assessed a $100 monthly fee for each additional Limited Service MEI Port for each matching engine. This fee was unchanged since 2016.[22]

The Exchange now proposes to move from a flat monthly fee per additional Limited Service MEI Port for each matching engine to a tiered-pricing structure for additional Limited Service MEI Ports for each matching engine under which the monthly fee would vary depending on the number of additional Limited Service MEI Ports the Market Maker elects to purchase. Specifically, the Exchange will continue to provide the first and second additional [sic] Limited Service MEI Ports for each matching engine free of charge, as described above, per the initial allocation of Limited Service MEI Ports that Market Makers receive. The Exchange proposes the following tiered-pricing structure: (i) The third and fourth additional [sic] 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 additional [sic] 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 to the twelfth [sic] additional [sic] Limited Service MEI Ports will increase from the current monthly flat fee of $100 to $250 per port.

The Exchange believes the other exchanges' port fees are useful examples of alternative approaches to providing and charging for port access and provides the below table for comparison purposes only to show how its proposed fees compare to fees currently charged by other options exchanges for similar port access. As shown by the below table, the Exchange's proposed highest tier is still less than fees charged for similar port access provided by other options exchanges.

Exchange	Type of port	Monthly fee (per port)
MIAX (as proposed) (equity options market share of 5.63% as of March 29, 2022 for the month of March).[23]	Limited Service MEI Port	1–2 ports. FREE (not changed in this proposal); 3–4 ports. $150; 5–6 ports. $200; 7 or more ports. $250.
NYSE American, LLC (''Amex'')[24] (equity options market share of 7.15% as of March 29, 2022 for the month of March).[25]	Order/Quote Entry Port	$450.
The NASDAQ Stock Market LLC (''NASDAQ'')[26] (equity options market share of 8.62% as of March 29, 2022 for the month of March).[27]	SQF Port	1–5 ports. $1,500.00; 6–20 ports. $1,000.00; 21 or more ports. $500.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with Section 6(b) of the Act[28] in general, and furthers the objectives of Section 6(b)(4) of the Act[29] 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 that the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[30] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes as set forth in recent Commission and Commission Staff guidance. On March 29, 2019, the Commission issued an Order disapproving a proposed fee change by the BOX Market LLC Options Facility to establish connectivity fees for its BOX Network (the ''BOX Order'').[31] 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.''[32] Based on both the BOX Order and the Guidance, the Exchange believes that the proposed fees are consistent with the Act because they are (i) reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; and (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that the proposed fees are fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Proposed Fees Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

[22] *See* Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR–MIAX–2016–47).

[23] See ''The market at a glance,'' *available at https://www.miaxoptions.com/* (last visited March 29, 2022).

[24] *See* NYSE American Options Fee Schedule, Section V.A., Port Fees.

[25] *See supra note 23.*

[26] *See* Nasdaq Stock Market, Nasdaq Options 7 Pricing Schedule, Section 3, Nasdaq Options Market—Ports and Other Services.

[27] *See supra note 23.*

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(4).

[30] 15 U.S.C. 78f(b)(5).

[31] *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).

[32] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

In the Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [33] The Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [34] In the Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supra-competitive profit, specific information, including quantitative information, should be provided to support that argument.'' [35] The Exchange does not assert that the proposed fees are constrained by competitive forces. Rather, the Exchange asserts that the proposed fees are reasonable because they will permit recovery of the Exchange's costs in providing access services to supply Limited Service MEI Ports and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [36] The Commission Staff further states in the Guidance that ''the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.'' [37] The Exchange provides this analysis below.

The proposed fees are based on a cost-plus model. A Limited Service MEI Port provides access to each of the three Exchange networks, extranet, internal network, and external network, all of which are necessary for Exchange operations. The Exchange's extranet provides the means by which the Exchange communicates with market participants and includes access to the Member portal and the ability to send and receive daily communications and reports. The internal network connects the extranet to the rest of the Exchange's systems and includes trading systems, market data systems, and network monitoring. The external network includes connectivity between the Exchange and other national securities exchanges, market data providers, and between the Exchange's locations in Princeton, New Jersey, Secaucus, New Jersey (NY4), Miami, Florida, and Chicago, Illinois (CH4). In determining the appropriate fees to charge Members and non-Members to access the Exchange's System Networks via Limited Service MEI Ports, the Exchange considered its costs to provide and maintain its System Networks and connectivity to those System Networks, using costs that are related to providing and maintaining access the Exchange's System Networks via Limited Service MEI Ports to estimate such costs, and set fees that are designed to cover its costs with a limited return in excess of such costs. The Exchange believes that it is important to demonstrate that the proposed fees are based on the Exchange's costs and reasonable business needs and believes the proposed fees will allow the Exchange to continue to offset expenses. However, as discussed more fully below, such fees may also result in the Exchange recouping less than all of its costs of providing and maintaining access to the Exchange's System Networks via Limited Service MEI Ports because of the uncertainty of forecasting subscriber decision making with respect to firms' port and access needs. The Exchange believes that the proposed fees will not result in excessive pricing or supra-competitive profit based on the total expenses the Exchange incurs versus the total revenue the Exchange projects to collect, and therefore meets the standards in the Act as interpreted by the Commission and the Commission Staff in the BOX Order and the Guidance.

The Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to Limited Service MEI Ports, and, if such expense did so relate, what portion (or percentage) of such expense actually supports access to the Exchange's System Networks via Limited Service MEI Ports. In determining what portion (or percentage) to allocate to access services, each Exchange department head, in coordination with other Exchange personnel, determined the expenses that support access services and System Networks associated with Limited Service MEI Ports. This included numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders. The analysis also included each department head meeting with the divisions of teams within each department to determine the amount of time and resources allocated by employees within each division towards the access services and System Networks associated with Limited Service MEI Ports. The Exchange reviewed each individual expense to determine if such expense was related to Limited Service MEI Ports. Once the expenses were identified, the Exchange department heads, with the assistance of our internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing access services and the System Networks. The sum of all such portions of expenses represents the total cost to the Exchange to provide access services associated with Limited Service MEI Ports. For the avoidance of doubt, no expense amount is allocated twice.

The analysis conducted by the Exchange is a proprietary process that is designed to make a fair and reasonable assessment of costs and resources allocated to support the provision of access services associated with Limited Service MEI Ports. The Exchange acknowledges that this assessment can only capture a moment in time and that costs and resource allocations may change. That is why the Exchange historically, and on an ongoing annual basis, reviews its costs and resource allocations to ensure it appropriately allocates resources to properly provide services to the Exchange's constituents.

The Exchange believes exchanges, like all businesses, should be provided flexibility when developing and applying a methodology to allocate costs and resources they deem necessary to operate their business, including providing market data and access services. The Exchange notes that costs and resource allocations may vary from business to business and, likewise, costs and resource allocations may differ from exchange to exchange when it comes to providing market data and access services. It is a business decision that must be evaluated by each exchange as to how to allocate internal resources and what costs to incur internally or via third parties that it may deem necessary to support its business and its provision of market data and access services to market participants.

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to

[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*

fully support access to the Exchange and its System Networks via Limited Service MEI Ports. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI-mandated processes associated with its network technology. Both fixed and variable expenses have significant impact on the Exchange's overall costs to provide and maintain access to the Exchange's System Networks via Limited Service MEI Ports. For example, to accommodate new Members, the Exchange may need to purchase additional hardware to support those Members as well as provide enhanced monitoring and reporting of customer performance that the Exchange and its affiliates currently provide. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the proposed fees are a reasonable attempt to offset a portion of those costs associated with providing access to and maintaining its System Networks' infrastructure and related Limited Service MEI Ports.

The Exchange estimated its total annual expense to provide and maintain access to the Exchange's System Networks via Limited Service MEI Ports based on the following general expense categories: (1) External expenses, which include fees paid to third parties for certain products and services; (2) internal expenses relating to the internal costs to provide the services associated with Limited Service MEI Ports; and (3) general shared expenses.[38] The Guidance does not include any information regarding the methodology that an exchange should use to determine its cost associated with a proposed fee change. The Exchange utilized a methodology in this proposed fee change that it believes is reasonable because the Exchange analyzed its entire cost structure, allocated a percentage of each cost attributable to maintaining its System Networks, then divided those costs according to the cost methodology outlined below.

For 2022, the total annual expense for providing the access services associated with the Limited Service MEI Ports is estimated to be $1,741,458, or $145,121 per month. The Exchange believes it is more appropriate to analyze the proposed fees utilizing its estimated 2022 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[39] The $1,741,458 estimated total annual expense is directly related to the access to the Exchange's System Networks via Limited Service MEI Ports and not any other product or service offered by the Exchange. For example, it does not include general costs of operating matching engines and other trading technology. No expense amount was allocated twice. Each of the categories of expenses are set forth in the following table and details of the individual line-item costs considered by the Exchange for each category are described further below.

External expenses

Category	Percentage of total expense amount allocated
Data Center Provider	4.95%
Fiber Connectivity Provider	2.64%
Security Financial Transaction Infrastructure ("SFTI"), and Other Connectivity and Content Service Providers	4.95%
Hardware and Software Providers	4.95%
Total of External Expenses	[40] $174,427

Internal Expenses

Category	Expense amount allocated
Employee Compensation	$1,057,907
Depreciation and Amortization	186,118
Occupancy	37,088
Total of Internal Expenses	1,281,113
Allocated Shared Expenses	285,918

The Exchange notes that it only has two primary sources of revenue, connectivity and port fees, to recover those costs associated with providing and maintaining access to the Exchange's System Networks. The Exchange notes that, without the specific third party and internal expense items, the Exchange would not be able to provide and maintain the System Networks and access to the System Networks via Limited Service MEI Ports to Members. Each of these expense items, including physical hardware, software, employee compensation and

[38] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

[39] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled "Operating Expenses Incurred Directly or Allocated From Parent," in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87875 (December 31, 2019), 85 FR 770 (January 7, 2020) (SR–MIAX–2019–15). Accordingly, the third party expense described in this filing is attributed to the same line item for the Exchange's 2022 Form 1 Amendment, which will be filed in 2023.

[40] The Exchange does not believe it is appropriate to disclose the actual amount it pays to each individual third-party provider as those fee arrangements are competitive or the Exchange is contractually prohibited from disclosing that number.

benefits, occupancy costs, and the depreciation and amortization of equipment, has been identified through a line-by-line item analysis to be integral to providing and maintaining the System Networks and access to System Networks via Limited Service MEI Ports.

For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing and maintaining the System Networks and access to System Networks in connection with Limited Service MEI Ports. The Exchange describes the analysis conducted for each expense and the resources or determinations that were considered when determining the amount necessary to allocate to each expense. Only a portion of all fees paid to such third-parties is included in the third-party expenses described herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to providing and maintaining the System Networks and access to Exchange's System Networks via Limited Service MEI Ports. This may result in the Exchange under allocating an expense to provide and maintain its System Networks and access to the System Networks via Limited Service MEI Ports, and such expenses may actually be higher than what the Exchange allocated as part of this proposal. The Exchange notes that expenses associated with its affiliates, MIAX Pearl and MIAX Emerald, are accounted for separately and are not included within the scope of this filing.

Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic, thorough review of its expenses and resource allocations, which resulted in revised percentage allocations in this filing. The revised percentages are, among other things, the result of the shuffling of internal resources in response to business objectives and changes to fees charged and services provided by third parties. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

External Expense Allocations

For 2022, expenses relating to fees paid by the Exchange to third parties for products and services necessary to provide and maintain the System Networks and access to the System Networks via Limited Service MEI Ports are estimated to be $174,427. This includes, but is not limited to, a portion of the fees paid to: (1) A third party data center provider, including for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) a fiber connectivity provider for network services (fiber and bandwidth products and services) linking the Exchange's and its affiliates' office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) SFTI, which supports connectivity feeds for the entire U.S. options industry; (4) various other content and connectivity service providers, which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers that support the production environment in which Members and non-Members connect to the network to trade and receive market data.

Data Center Space and Operations Provider

The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties where the Exchange houses servers, switches and related equipment. Data center costs include an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs. The data center provider operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. Without the retention of a third-party data center, the Exchange would not be able to operate its systems and provide a trading platform for market participants. The Exchange does not employ a separate fee to cover its data center expense and recoups that expense, in part, by charging for Limited Service MEI Ports.

The Exchange reviewed its data center footprint, including its total rack space, cage usage, number of servers, switches, cabling within the data center, heating and cooling of physical space, storage space, and monitoring and divided its data center expenses among providing transaction services, market data, and connectivity. Based on this review, the Exchange determined that 4.95% of the total applicable data center provider expense is applicable to providing and maintaining access services and System Networks associated with Limited Service MEI Ports. The Exchange believes this allocation is reasonable because Limited Service MEI Ports are a core means of access to the Exchange's network, providing one method for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's data center expense is due to providing and maintaining port access and connectivity to the Exchange's System Networks, including providing cabling within the data center between market participants and the Exchange. The Exchange excluded from this allocation servers that are dedicated to market data. The Exchange also did not allocate the remainder of the data center expense because it pertains to other areas of the Exchange's operations, such as other ports, market data, and transaction services.

Fiber Connectivity Provider

The Exchange engages a third-party service provider that provides the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data center, and office locations in Princeton and Miami. Fiber connectivity is necessary for the Exchange to switch to its secondary data center in the case of an outage in its primary data center. Fiber connectivity also allows the Exchange's National Operations & Control Center (''NOCC'') and Security Operations Center (''SOC'') in Princeton to communicate with the Exchange's primary and secondary data centers. As such, all trade data, including the billions of messages each day, flow through this third-party provider's infrastructure over the Exchange's network. Without these services, the Exchange would not be able to operate and support the network and provide and maintain access services and System Networks associated with the Limited Service MEI Ports to its Members and their customers. Without the retention of a third-party fiber connectivity provider, the Exchange would not be able to communicate between its data centers and office locations. The Exchange does not employ a separate fee to cover its fiber connectivity expense and recoups that expense, in part, by charging for Limited Service MEI Ports.

The Exchange reviewed it costs to retain fiber connectivity from a third party, including the ongoing costs to support fiber connectivity, ensuring adequate bandwidth and infrastructure maintenance to support exchange operations, and ongoing network monitoring and maintenance and

determined that 2.64% of the total fiber connectivity expense was applicable to providing and maintaining access services and System Networks associated with Limited Service MEI Ports. The Exchange believes this allocation is reasonable because Limited Service MEI Ports are a core means of access to the Exchange's network, providing one method for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's fiber connectivity expense is due to providing and maintaining connectivity between the Exchange's System Networks, data centers, and office locations and is core to the daily operation of the Exchange. Fiber connectivity is a necessary integral means to disseminate information from the Exchange's primary data center to other Exchange locations. The Exchange excluded from this allocation fiber connectivity usage related to market data or other business lines. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining access services and System Networks associated with Limited Service MEI Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to retain fiber connectivity and maintain and provide access to its System Networks via Limited Service MEI Ports.

Connectivity and Content Services Provided by SFTI and Other Providers

The Exchange relies on SFTI and various other connectivity and content service providers for connectivity and data feeds for the entire U.S. options industry, as well as content, connectivity, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via Limited Service MEI Ports. Specifically, the Exchange utilizes SFTI and other content service provider to connect to other national securities exchanges, the Options Price Reporting Authority (''OPRA''), and to receive market data from other exchanges and market data providers. SFTI is operated by the Intercontinental Exchange, the parent company of five registered exchanges, and has become integral to the U.S. markets. The Exchange understands SFTI provides services to most, if not all, of the other U.S. exchanges and other market participants. Without services from SFTI and various other service providers, the Exchange would not be able to connect to other national securities exchanges, market data providers, or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its SFTI and content service provider expense and recoups that expense, in part, by charging for Limited Service MEI Ports.

The Exchange reviewed it costs to retain SFTI and other content service providers, including network monitoring and maintenance, remediation of connectivity related issues, and ongoing administrative activities related to connectivity management and determined that 4.95% of the total applicable SFTI and other service provider expense is allocated to providing the access services associated with Limited Service MEI Ports. SFTI and other content service providers are key vendors and necessary components in providing connectivity to the Exchange. The primary service SFTI provides for the Exchange is connectivity to other national securities exchanges and their disaster recovery facilities and, therefore, a vast portion of this expense is allocated to providing access to the System Networks via Limited Service MEI Ports. Connectivity via SFTI is necessary for purposes of order routing and accessing disaster recovery facilities in the case of a system outage. Engaging SFTI and other like vendors provides purchasers of Limited Service MEI Ports connectivity to other national securities exchanges for purposes of order routing and disaster recovery. The Exchange did not allocate a portion of this expense that relates to the receipt of market data from other national securities exchange and OPRA. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining the System Networks or access to its System Networks via Limited Service MEI Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide and maintain its System Networks and access to its System Networks via Limited Service MEI Ports, and not any other service, as supported by its cost review.

Hardware and Software Providers

The Exchange relies on dozens of third-party hardware and software providers for equipment necessary to operate its System Networks. This includes either the purchase or licensing of physical equipment, such as servers, switches, cabling, and monitoring devices. It also includes the purchase or license of software necessary for security monitoring, data analysis and Exchange operations. Hardware and software providers are necessary to maintain its System Networks and provide access to its System Networks via Limited Service MEI Ports. Hardware and software equipment and licenses for that equipment are also necessary to operate and monitor physical assets necessary to offer physical connectivity to the Exchange. Hardware and software equipment and licenses are key to the operation of the Exchange and, without them, the Exchange would not be able to operate and support its System Networks and provide access to its Members and their customers. The Exchange does not employ a separate fee to cover its hardware and software expense and recoups that expense, in part, by charging for Limited Service MEI Ports.

The Exchange reviewed it hardware and software related costs, including software patch management, vulnerability management, administrative activities related to equipment and software management, professional services for selection, installation and configuration of equipment and software supporting exchange operations and determined that 4.95% of the total applicable hardware and software expense is allocated to providing and maintaining access services and System Networks associated with Limited Service MEI Ports. Hardware and software equipment and licenses are key to the operation of the Exchange and its System Networks. Without them, market participants would not be able to access the System Networks via Limited Service MEI Ports. The Exchange only allocated the portion of this expense to the hardware and software that is related to a market participant's use of Limited Service MEI Ports, such as operating its matching engines. The Exchange, therefore, did not allocate portions of its hardware and software expense that related to other areas of the Exchange's business, such as hardware and software used for market data or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations, such as ports or transaction services, and does not directly relate to providing and maintaining its System Networks and access to its System Networks via Limited Service MEI Ports. The Exchange believes this allocation is

reasonable because it represents the Exchange's cost to provide and maintain its System Networks and access to its System Networks via Limited Service MEI Ports, and not any other service, as supported by its cost review.

Internal Expense Allocations

For 2022, total internal expenses relating to the Exchange providing and maintaining its System Networks and access to its System Networks via Limited Service MEI Ports is estimated to be $1,281,113. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the System Networks and access to System Networks via Limited Service MEI Ports, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions as well as important system upgrades; (2) depreciation and amortization of hardware and software used to provide and maintain access services and System Networks associated with Limited Service MEI Ports, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide and maintain the System Networks and access to System Networks via Limited Service MEI Ports. The breakdown of these costs is more fully described below.

Employee Compensation and Benefits

Human personnel are key to exchange operations and supporting the Exchange's ongoing provision and maintenance of the System Networks and access to System Networks via Limited Service MEI Ports. The Exchange reviewed its employee compensation and benefits expense and the portion of that expense allocated to providing and maintaining the System Networks and access to System Networks via Limited Service MEI Ports. As part of this review, the Exchange considered employees whose functions include providing and maintaining the System Networks and Limited Service MEI Ports and used a blended rate of compensation reflecting salary, stock and bonus compensation, bonuses, benefits, payroll taxes, and 401K matching contributions.[41]

Based on this review, the Exchange determined to allocate $1,057,907 in employee compensation and benefits expense to providing access to the System Networks. To determine the appropriate allocation the Exchange reviewed the time employees allocated to supporting its System Networks and access to its System Networks via Limited Service MEI Ports. Senior staff also reviewed these time allocations with department heads and team leaders to determine whether those allocations were appropriate. These employees are critical to the Exchange to provide and maintain access to its System Networks via Limited Service MEI Ports for its Members, non-Members and their customers. The Exchange determined the above allocation based on the personnel whose work focused on functions necessary to provide and maintain the System Networks and access to System Networks via Limited Service MEI Ports. The Exchange does not charge a separate fee regarding employees who support Limited Service MEI Ports and the Exchange seeks to recoup that expense, in part, by charging for Limited Service MEI Ports.

Depreciation and Amortization

A key expense incurred by the Exchange relates to the depreciation and amortization of equipment that the Exchange procured to provide and maintain the System Networks and access to System Networks via Limited Service MEI Ports. The Exchange reviewed all of its physical assets and software, owned and leased, and determined whether each asset is related to providing and maintaining its System Networks and access to its System Networks via Limited Service MEI Ports, and added up the depreciation of those assets. All physical assets and software, which includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. In determining the amount of depreciation and amortization to apply to providing Limited Service MEI Ports and the System Networks, the Exchange considered the depreciation of hardware and software that are key to the operation of the Exchange and its System Networks. This includes servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were previously purchased to maintain and provide access to its System Networks via Limited Service MEI Ports. Without them, market participants would not be able to access the System Networks. The Exchange seeks to recoup a portion of its depreciation expense by charging for Limited Service MEI Ports.

Based on this review, the Exchange determined to allocate $186,118 in depreciation and amortization expense to providing access to the System Networks via Limited Service MEI Ports. The Exchange only allocated the portion of this depreciation expense to the hardware and software related to a market participant's use of M [sic] Limited Service MEI E.O. [sic] Ports. The Exchange, therefore, did not allocate portions of depreciation expense that relates to other areas of the Exchange's business, such as the depreciation of hardware and software used for market data or unrelated administrative services.[42]

Occupancy

The Exchange rents and maintains multiple physical locations to house staff and equipment necessary to support access services, System Networks, and exchange operations. The Exchange's occupancy expense is not limited to the housing of personnel and includes locations used to store equipment necessary for Exchange operations. In determining the amount of its occupancy related expense, the Exchange considered actual physical space used to house employees whose functions include providing and maintaining the System Networks and Limited Service MEI Ports. Similarly, the Exchange also considered the actual physical space used to house hardware and other equipment necessary to provide and maintain the System Networks and Limited Service MEI Ports. This equipment includes computers, servers, and accessories necessary to support the System Networks and Limited Service MEI Ports. Based on this review, the

[41] For purposes of this allocation, the Exchange did not consider expenses related to supporting employees who support Limited Service MEI Ports, such as office space and supplies. The Exchange determined cost allocation for employees who perform work in support of offering access services and System Networks to arrive at a full time equivalent (''FTE'') of 3.1 FTEs across all the identified personnel. The Exchange then multiplied the FTE times a blended compensation rate for all relevant Exchange personnel to determine the personnel costs associated with providing the access services and System Networks associated with Limited Service MEI Ports.

[42] All of the expenses outlined in this proposed fee change refer to the operating expenses of the Exchange. The Exchange did not included any future capital expenditures within these costs. Depreciation and amortization represent the expense of previously purchased hardware and internally developed software spread over the useful life of the assets. Due to the fact that the Exchange has only included operating expense and historical purchases, there is no double counting of expenses in the Exchange's cost estimates.

Exchange determined to allocate $37,088 of its occupancy expense to provide and maintain the System Networks and Limited Service MEI Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the System Networks, including providing and maintaining access to its System Networks via Limited Service MEI Ports. The Exchange considered the rent paid for the Exchange's Princeton and Miami offices, as well as various related costs, such as physical security, property management fees, property taxes, and utilities at each of those locations. The Exchange did not include occupancy expenses related to housing employees and equipment related to other Exchange operations, such as market data and administrative services.

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The Exchange notes that a material portion of its total overall expense is allocated to the provision and maintenance of access services (including connectivity and ports). The Exchange believes this is reasonable as the Exchange operates a technology-based business that differentiates itself from its competitors based on its more deterministic and resilient trading systems that rely on access to a high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. Thus, the Exchange believes it is reasonable to allocate a material portion of its total overall expense towards providing and maintaining its System Networks and access to its System Networks via Limited Service MEI Ports.

Allocated Shared Expense

Finally, a limited portion of general shared expenses was allocated to overall Limited Service MEI Port 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 recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. For 2022, the Exchange's general shared expense allocated to Limited Service MEI Ports and the System Networks that support those connections is estimated to be $285,918. The Exchange used the weighted average of the above allocations to determine the amount of general shared expenses to allocate to the Exchange. Next, based on additional management and expense analysis, these fees are allocated to the proposal.

Revenue and Estimated Profit Margin

The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: Transaction fees, access fees (which includes Limited Service MEI Ports), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms.

To determine the Exchange's estimated revenue associated with Limited Service MEI Ports, the Exchange analyzed the number of Members currently utilizing Limited Service MEI Ports and used a recent monthly billing cycle representative of current monthly revenue. The Exchange also provided its baseline by analyzing March 2022, the monthly billing cycle prior to the proposed fees and compared this to its expenses for that month. As discussed below, the Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its estimates for purposes of these calculations, given the uncertainty of such estimates due to the continually changing access needs of market participants and potential changes in internal and third-party expenses.

For March 2022, prior to the proposed fees, Members purchased 1,645 Limited Service MEI Ports, for which the Exchange anticipates charging $113,300. This will result in a loss of $32,121 ($113,000 in Limited Service MEI Port revenue, minus $145,121 in monthly Limited Service MEI Port expenses). For April 2022, assuming the Exchange charges the proposed fees described herein, the Exchange anticipates Members purchasing 1,645 Limited Service MEI Ports, for which the Exchange anticipates charging $241,450. This will result in a profit of $96,329 ($241,450 in Limited Service MEI Port revenue, minus $145,121 in monthly Limited Service MEI Port expenses) for that month (a 40% profit margin).

The Exchange believes that conducting the above analysis on a per month basis is reasonable as the revenue generated from access services subject to the proposed fee generally remains static from month to month. The Exchange also conducted the above analysis on a per month basis to comply with the Commission Staff's Guidance, which requires a baseline analysis to assist in determining whether the proposal generates a supra-competitive profit. The Exchange cautions that this profit margin may also fluctuate from month to month based on the uncertainty of predicting how many ports may be purchased from month to month as Members are free to add and drop ports at any time based on their own business decisions.

The Exchange believes the proposed margin is reasonable and will not result in a ''supra-competitive'' profit. The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [43] Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2008.[44] 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 Limited Service MEI Ports, 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 now seeking to raise it fees to near market rates after offering such products as discounted prices.

The Exchange notes that its revenue estimate is based on estimates and will only be realized to the extent such revenue actually produces the revenue estimated. As a generally new entrant to the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from Limited Service MEI Ports, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity or obtaining new clients that will purchase such services. To the extent the Exchange is successful in encouraging new clients to connect directly to the Exchange, the Exchange does not believe it should be penalized for such success. The Exchange, like other exchanges, is, after all, a for-profit business. While the Exchange believes in transparency around costs and potential margins, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be

[43] *See supra* note 32.

[44] The Exchange has incurred a cumulative loss of $175 million since its inception in 2008 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000460.pdf.*

adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes its cost analysis and related estimates demonstrate this fact.

Further, the proposed profit margin reflects the Exchange's efforts to keep control its costs. A profit margin should not be judged alone based on its size, but whether the ultimate fee reflects the value of the services provided and is in line with other exchanges. A profit margin on one exchange should not be deemed excessive where that exchange has been successful in control costs, but not excessive where an exchange is charging the same fee but has a lower profit margin due to higher costs.

The expected margin is reasonable because the Exchange offers a premium System Network, System Networks connectivity, and a highly deterministic trading environment. The Exchange is recognized as a leader in network monitoring, determinism, risk protections, and network stability. For example, the Exchange experiences approximately a 95% determinism rate, system throughput of approximately 36 million quotes per second and average round trip latency rate of approximately 19 microseconds for a single quote. The Exchange provides extreme performance and radical scalability designed to match the unique needs of trading differing asset class/market model combination. Exchange systems offer two customer interfaces, FIX gateway for orders, and MEI interfaces and data feeds with best-in-class wire order determinism. The Exchange also offers automated continuous testing to ensure high reliability, advanced monitoring and systems security, and employs a software architecture that results in minimizing the demands on power, space, and cooling while allowing for rapid scalability, resiliency and fault isolation. The Exchange also provides latency equalized cross-connects in the primary data center ensures fair and cost efficient access to the MIAX systems. The Exchange, therefore, believes the anticipated margin is reasonable because it reflect the Exchange cost controls and the quality of the Exchanges systems.

The Exchange also believes its proposed margin does not exceed what can be obtained in a competitive market. The Exchange is one of sixteen registered U.S. options exchanges and maintains an average market share of approximately 5.63%.[45] The anticipated rate of return is reasonable because it is based on a rate that likely remains lower than what other exchanges with comparable market share charge for similar connectivity. For example the below table is provided for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar port access. As shown by the below table, the Exchange's proposed fee remains less than fees charged for similar port access provided by other options exchanges with similar market share, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of ports.

Exchange	Type of port	Monthly fee (per port)
MIAX (as proposed) (equity options market share of 5.63% as of March 29, 2022 for the month of March)[46].	Limited Service MEI Port	1–2 ports. FREE (not changed in this proposal). 3–4 ports. $150. 5–6 ports. $200. 7 or more ports. $250.
Amex[47] (equity options market share of 7.15% as of March 29, 2022 for the month of March)[48].	Order/Quote Entry Port	$450.
NASDAQ[49] (equity options market share of 8.62% as of March 29, 2022 for the month of March)[50].	SQF Port	1–5 ports. $1,500.00. 6–20 ports. $1,000.00. 21 or more ports. $500.

Lastly, the Exchange notes that this is a singular potential profit margin from a single revenue source and is not reflective of the Exchange's overall profit margin. This profit margin may be offset by lower or negative profit margins generated by other areas of the Exchange's operations that are not subject to this proposed fee change. The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: transaction fees, access fees (which includes Limited Service MEI Ports), regulatory fees, and market data fees. A potential profit margin in one area may be used to offset a potential loss in another area, and, therefore, a potential profit margin from a single product is not representative of the Exchange's overall profitability and whether that singular profit exceeds the profits that can be obtained in a competitive market.

The Proposed Fees Are Reasonable When Compared to the Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other exchanges' costs to provide ports or their fee markup over those costs, and therefore cannot use other exchange's port fees as a benchmark to determine a reasonable markup over the costs of providing ports. Nevertheless, the Exchange believes the other exchanges' port fees are useful examples of alternative approaches to providing and charging for ports notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of connectivity. To that end, the Exchange believes the proposed fees are reasonable because the proposed fees are still less than fees charged for similar ports provided by other options exchanges with comparable market shares.

As described in the above table, the Exchange's proposed fees remain less than fees charged for similar ports provided by other options exchanges with similar market share. In the each of the above cases, the Exchange's proposed fees are still significantly lower than that of competing options exchanges with similar market share. Despite proposing lower or similar fees

[45] *See supra* note 23.

[46] *Id.*

[47] *See supra* note 24.

[48] *See supra* note 23.

[49] *See supra* note 26.

[50] *See supra* note 23.

to that of competing options exchanges with similar market share, the Exchange believes that it provides a premium network experience to its Members and non-Members via a highly deterministic System, enhanced network monitoring and customer reporting, and a superior network infrastructure than markets with higher market shares and more expensive connectivity alternatives. Each of the rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

The Proposed Fees Are Equitably Allocated

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, the Exchange notes that the users who take the maximum amount of Limited Service MEI Ports account for approximately greater than 99% of message traffic over the network, while the users of fewer Limited Service MEI Ports account for approximately less than 1% of message traffic over the network. In the Exchange's experience, users who only utilize the two free Limited Service MEI Ports do not have a business need for the high performance network solutions required by users 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 with the network ability to support access to several distinct options markets and the capacity to handle approximately 38 million quote messages per second. On an average day, the Exchange and MIAX Pearl handle over approximately 8,304,500,000 billion total messages. Of that total, users of the maximum amount of Limited Service MEI Ports generate approximately 8.3 billion messages, and users who utilize the two free Limited Service MEI Ports generate approximately 4.5 million messages. However, in order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that users 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 users.

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.

With respect to intra-market 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. As stated above, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that the proposed pricing structure is associated with relative usage of the various market participants. Firms that are primarily order routers seeking best-execution do not utilize Limited Service MEI Ports on MIAX and therefore will not pay the fees associated with the tiered-pricing structure. Rather, the fees described in the proposed tiered-pricing structure will only be allocated to Market Making firms that engage in advanced trading strategies and typically request multiple Limited Service MEI Ports, beyond the two that are free. Accordingly, the firms engaged in a Market Making business generate higher costs by utilizing more of the Exchange's resources. Those Market Making firms that purchase higher amounts of additional Limited Service MEI Ports tend to have specific business oriented market making and trading strategies, as opposed to firms engaging solely in best-execution order routing business. Additionally, the use of such additional Limited Service MEI Ports is entirely voluntary.

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 access all options exchanges. There is no reason to believe that our proposed price increase will harm another exchange's ability to compete. The Exchange operates in a highly competitive environment, and as discussed above, its ability to price access and ports is constrained by competition among exchanges and third parties. There are other options markets of which market participants may access in order to trade options. There is also a possible range of alternative strategies, including routing to the exchange through another participant or market center or accessing the Exchange indirectly. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

One comment letter was submitted on the Fourth Proposed Rule Change [51] and the Exchange responds to issues raised in that comment letter here.

First, SIG Letter 4 asserts that the Exchange's motivation for the proposed fees is not a proper justification and refers to statements included in withdrawn filings about the Exchange's need to recoup initial capital expenditures. SIG Letter 4 does not provided a reason why recoupment of initial capital expenditures is not a proper justification for a proposed rule change. SIG Letter 4 also asserts that enhancing profitability is not an appropriate justification for the proposed fee change. The Exchange never asserted in any of the preceding versions of this proposed fee change that enhancing profitability was a motivation for the proposed fee change. Rather, the Exchange provided numerous reasons for the proposed fee change, including the need to cover ongoing internal and external expenses and anticipated increases in those costs due to ongoing inflationary pressures.

Second, SIG Letter 4 claims that the Exchange omitted the data necessary to assess the proposed fee change under the Exchange Act. SIG Letter 4 also asserts that the Exchange's disclosed cost data is not reliable. With each iteration of this proposed fee change, the Exchange provided more detail about its cost based analysis and rationale. In accordance with the Guidance, the Exchange has provided sufficient detail to support a finding that the proposed fees are consistent with the Exchange Act. The proposal includes a detailed description of the Exchange's costs and how the Exchange

[51] *See supra* note 18.

determined to allocate those costs related to the proposed fees. The Exchange was commended by an industry group regarding the level of transparency and disclosure included in the proposed fee changes and that group was supportive of the efforts made by the Exchange and its affiliates to provide increased transparency and justification for their proposed fees. The commenter specifically noted that:

> MIAX has repeatedly filed to change its connectivity fees in a way that will materially lower costs for many users, while increasing the costs for some of its heaviest of users. These filings have been withdrawn and repeatedly refiled. Each time, however, the filings contain significantly greater information about who is impacted and how than other filings that have been permitted to take effect without suspension. For example, MIAX detailed the associated projected revenues generated from the connectivity fees by user class, again in a clear attempt to comply with the SRO Fee Filing Guidance. [52]

Despite the Exchange refiling its fee proposals to include significantly greater information about the impact of the proposed fees on Members and non-Members, primarily at the request of the Commission Staff and in response to comments from SIG, SIG argues that the data the Exchange provided is insufficient or unreliable. Section 6(b)(4) of the Act [53] requires an exchange to ''provide for the equitable allocation of reasonable dues, fees and other charges.'' The standard set by Congress for the Exchange to establish or amend a certain fee is ''reasonableness,'' and the Exchange provided significant detail in this filing and past filings to support a finding that the proposed fees are reasonable under the Exchange Act.

SIG Letter 4 also claims that the Exchange has not shown that the estimated profit margin is reasonable. In this filing, the Exchange enhanced its justification and support to find that the projected margin is reasonable and would not result in a supra-competitive profit. SIG Letter 4 states that SIG believes exchanges are utilities and utilities should only generate single to low double digit profit margins. This statement assumes that the projected profit margin is reflective of the Exchange's overall profit margin and ignores that this is a single profit margin from a single offering that is offset by lower or negative profit margins for other products and services offered by the Exchange. SIG's statement that utilities should only generate single to low double digit profit margins ignores SIG's own reference to a 14.4%, low double digit profit margin from one of the Exchange's recent proposed fee changes, as well as single digit to negative profit margins in other Exchange filings currently pending before the Commission.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[54] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[55] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

As the Exchange further details above, the Exchange first filed a proposed rule change proposing fee changes as proposed herein on August 2, 2021. That proposal, SR–MIAX–2021–37, was published for comment in the **Federal Register** on August 19, 2021.[56] On September 28, 2021, the Exchange withdrew SR–MIAX–2021–37 and filed a proposed rule change proposing fee changes as proposed herein (SR–MIAX–2021–43). That proposal, SR–MIAX–2021–43, was published for comment in the **Federal Register** on October 5, 2021.[57] The Commission received three comment letters from two separate commenters on SR–MIAX–2021–43.[58] On November 22, 2021, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings to determine whether to approve or disapprove the proposed rule change.[59] On December 1, 2021, the Exchange withdrew SR–MIAX–2021–43 and filed a proposed rule change proposing fee changes as proposed herein (SR–MIAX–2021–60). That filing, SR–MIAX–2021–60, was published for comment in the **Federal Register** on December 20, 2021.[60] On January 27, 2022, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change (SR–MIAX–2021–60); and (2) instituted proceedings to determine whether to approve or disapprove the proposal.[61] On February 1, 2022, the Exchange withdrew SR–MIAX–2021–60 and filed a proposed rule change proposing fee changes as proposed herein (SR–MIAX–2022–08). On February 15, 2022, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change (SR–MIAX–2022–08); and (2) instituted proceedings to determine whether to approve or disapprove the proposal.[62] The Commission received one comment letter on SR–MIAX–2022–08.[63] On March 30, 2022, the Exchange withdrew SR–MIAX–2022–08 and on April 1, 2022, filed the instant filing, which is substantially similar.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[64] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [65]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [66] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the

[52] *See supra* note 11.

[53] 15 U.S.C. 78f(b)(4).

[54] 15 U.S.C. 78s(b)(3)(C).

[55] 15 U.S.C. 78s(b)(1).

[56] *See* Securities Exchange Act Release No. 92661 (August 13, 2021), 86 FR 46737. The Commission received one comment letter on that proposal. Comment on SR–MIAX–2021–37 can be found at: *https://www.sec.gov/comments/sr-miax-2021-37/srmiax202137.htm*.

[57] *See* Securities Exchange Act Release No. 93185 (September 29, 2021), 86 FR 55093.

[58] Comment on SR–MIAX–2021–43 can be found at: *https://www.sec.gov/comments/sr-miax-2021-43/srmiax202143.htm*.

[59] *See* Securities Exchange Act Release No. 93640, 86 FR 67745 (November 29, 2021).

[60] *See* Securities Exchange Act Release No. 93771 (December 14, 2021), 86 FR 71940.

[61] *See* Securities Exchange Act Release No. 94087, 87 FR 5918 (February 2, 2022).

[62] *See* Securities Exchange Act Release No. 94259, 87 FR 9747 (February 22, 2022).

[63] Comment on SR–MIAX–2022–08 can be found at: *https://www.sec.gov/comments/sr-miax-2022-08/srmiax202208.htm*.

[64] *See* 17 CFR 240.19b&4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[65] *See id*.

[66] 15 U.S.C. 78f(b)(4).

public interest, and not permit unfair discrimination between customers, issuers, brokers, or dealers;[67] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[68]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposed additional Limited Service MEI Port fees are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[69]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[70]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)[71] and 19(b)(2)(B)[72] of the Act to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[73] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Exchange has sufficiently demonstrated how the proposed rule change is consistent with Sections 6(b)(4),[74] 6(b)(5),[75] and 6(b)(8)[76] of the Act. Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. *Cost Estimates and Allocation.* The Exchange states that it is not asserting that the proposed fees are constrained by competitive forces. Rather, the Exchange states that its proposed fees are based on a ''cost-plus model,'' employing a ''conservative approach,'' and that the $1,741,458 estimated total annual expense (comprised of $174,427 in allocated third-party expenses, $1,281,113 in allocated internal expenses, and $285,918 in allocated general shared expenses) is ''directly related to the access to the Exchange's System Networks via Limited Service MEI Ports and not any other product or service offered by the Exchange.''[77] *With respect to third-party and internal expenses:* Do commenters believe that the Exchange provided sufficient detail about how it determined which sub-categories of third-party and internal expenses are directly related to Limited Service MEI Ports? Should the Exchange be required to identify the sub-categories of expenses that it deemed *not* to be directly related to Limited Service MEI Ports? Do commenters believe that the Exchange provided sufficient detail about how it determined what percentage or portion of each such sub-category's total annual expense should be allocated as actually supporting access to the Exchange's Systems Networks via Limited Service MEI Ports? The Exchange provided *either* the percentage *or* the portion of a sub-category's total annual expense that it allocated as supporting access to the Exchange's Systems Networks via Limited Service MEI Ports, but not both. Nor did the Exchange provide the total annual expense for each sub-category to which these percentages or portions apply. Do commenters believe that the Exchange provided sufficient context to permit an independent review and assessment of the reasonableness of the selected percentages/portions allocated to Limited Service MEI Ports? Do commenters believe the percentages/portions allocated to Limited Service MEI Ports are reasonable? *With respect to general shared expenses:* Do commenters believe that the Exchange provided sufficient detail about the components of general shared expenses, and why a portion of general shared expenses should be allocated to Limited Service MEI Ports? Do commenters believe that the Exchange provided sufficient detail about how it determined to allocate $285,918 of general shared expenses to Limited Service MEI Ports? Do commenters believe that the Exchange provided sufficient context to permit an independent review and assessment of the reasonableness of this allocation? Do commenters believe that the allocation is reasonable? *In general:* Do commenters believe that the Exchange provided sufficient detail or explanation to support its claim that ''no expense

[67] 15 U.S.C. 78f(b)(5).

[68] 15 U.S.C. 78f(b)(8).

[69] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[70] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[71] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[72] 15 U.S.C. 78s(b)(2)(B).

[73] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[74] 15 U.S.C. 78f(b)(4).

[75] 15 U.S.C. 78f(b)(5).

[76] 15 U.S.C. 78f(b)(8).

[77] *See supra* Section II.A.2.

amount is allocated twice,'' [78] whether *among* the sub-categories of expenses in this filing, *across* the Exchange's fee filings for other products or services, or *over time*? Do commenters believe that the costs projected for 2022 are generally representative of expected costs going forward, or should an exchange present an estimated range of costs with an explanation of how profit margins could vary along the range of estimated costs?

2. *Revenue Estimates and Profit Margin Range.* The Exchange uses a single monthly revenue figure (April 2022) as the basis for calculating its projected profit margin of 40%. The Exchange argues that projecting revenues on a per month basis is reasonable ''as the revenue generated from access services subject to the proposed fee generally remains static from month to month.'' [79] Yet the Exchange also acknowledges that ''profit margin may also fluctuate from month to month based on the uncertainty of predicting how many ports may be purchased from month to month as Members are free to add and drop ports at any time based on their own business decisions.'' [80] Do commenters believe a single month provides a reasonable basis for a revenue projection? If not, why not? Should the Exchange provide a range of profit margins that it believes are reasonably possible, and the reasons therefor? The Exchange also provided its baseline by analyzing March 2022, the monthly billing cycle prior to the proposed fees. Do commenters believe that March 2022 is an appropriate month for a baseline, given that the proposed fees were first introduced in August 2021?

3. *Reasonable Rate of Return.* The Exchange states that its proposed fees are ''designed to cover its costs with a limited return in excess of such costs.'' [81] The Exchange offers several justifications for why its 40% estimated profit margin is not a supra-competitive profit, including: (a) When it launched operations in 2008, it chose to forgo revenue by offering certain products, such as Limited Service MEI Ports, at lower rates than other options exchanges to attract order flow; (b) the Exchange has been successful in controlling its costs; (c) a profit margin should not be judged alone based on its size, but on whether the ultimate fee reflects the value of the services provided, and Exchange offers a premium System Network, System Networks connectivity, and a highly deterministic trading environment; (d) the Exchange's proposed fees remain less than fees charged for similar port access provided by other options exchanges with similar market share; and (e) this is a singular potential profit margin from a single revenue source, and is not reflective of the Exchange's overall profit margin.[82] Do commenters agree with the Exchange that its estimated 40% profit margin would constitute a reasonable rate of return over costs for additional Limited Service MEI Ports? If not, what would commenters consider to be a reasonable rate of return and/or what factors would they consider to be appropriate for determining whether a rate of return is reasonable? Should an assessment of reasonable rate of return include consideration of factors other than costs; and if so, what factors should be considered, and why?

4. *Periodic Reevaluation.* In light of the impact that the number of ports purchased has on profit margins, and the potential for costs to decrease (or increase) over time, what are commenters' views on the need for exchanges to commit to reevaluate, on an ongoing and periodic basis, their cost-based connectivity fees to ensure that the fees stay in line with their stated profitability projections and do not become unreasonable over time, for example, by failing to adjust for efficiency gains, cost increases or decreases, and changes in subscribers? How formal should that process be, how often should that reevaluation occur, and what metrics and thresholds should be considered? How soon after a new connectivity fee change is implemented should an exchange assess whether its revenue and/or cost estimates were accurate and at what threshold should an exchange commit to file a fee change if its estimates were inaccurate? Should an initial review take place within the first 30 days after a connectivity fee is implemented? 60 days? 90 days? Some other period?

5. *Tiered Structure for Additional Limited Service MEI Ports.* The Exchange states that the proposed tiered fee structure is equitably allocated among users of the network connectivity alternatives, because users of Limited Service MEI Ports ''consume the most bandwidth and resources of the network.'' [83] The Exchange states that users of the ''maximum amount of Limited Service MEI Ports'' account for approximately greater than 99% of message traffic over the network (approximately 8.3 billion messages per day handled by the Exchange and its affiliate, MIAX Pearl), while users of ''fewer Limited Service MEI Ports'' account for approximately less than 1% of message traffic over the network (users of the two free Limited Service MEI Ports generate approximately 4.5 million messages per day).[84] According to the Exchange, these billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. Given this difference in network utilization rate, the Exchange believes that its tiered structure is reasonable, equitable, and not unfairly discriminatory.[85] Do commenters believe that the fees for each tier (including the intermediary tiers), as well as the fee differences between the tiers, are supported by the Exchange's assertions? If not, what information do commenters believe would better substantiate, by tier, the demands on the Exchange's resources as a firm increases the number of additional Limited Service MEI Ports that it purchases?

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [86] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[87] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[88] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.[89]

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein,

[78] *See id.*

[79] *See id.*

[80] *See id.*

[81] *See id.*

[82] *See id.*

[83] *See id.*

[84] *See id.*

[85] *See id.*

[86] 17 CFR 201.700(b)(3).

[87] *See id.*

[88] *See id.*

[89] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 446–47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

including as to whether the proposal is consistent with the Act, any potential comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[90]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by May 11, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 25, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–MIAX–2022–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–MIAX–2022–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–MIAX–2022–16 and should be submitted on or before May 11, 2022. Rebuttal comments should be submitted by May 25, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[91] that File No. SR–MIAX–2022–16 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[92]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08385 Filed 4–19–22; 8:45 am]

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[90] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[91] 15 U.S.C. 78s(b)(3)(C).

[92] 17 CFR 200.30–3(a)(12), (57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94719; File No. SR–MIAX–2022–14]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing of a Proposed Rule Change To Amend the MIAX Fee Schedule To Increase Certain Connectivity Fees; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

April 14, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2022, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to amend certain connectivity fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV [sic] below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to increase the fees for Members [3] and non-Members to access the Exchange's System Networks [4] via a 10 gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection.[5] Specifically, the Exchange proposes to amend Sections 5(a)–(b) of the Fee Schedule to increase the 10Gb ULL fee for Members and non-Members from $10,000 per month to $12,000 per month (''10Gb ULL Fee''). Prior to the proposed fee change, the Exchange assessed Members and non-Members a flat monthly fee of $10,000 per 10Gb ULL connection for access to the Exchange's primary and secondary facilities.

The Exchange believes that other exchanges' connectivity fees offer useful examples of alternative approaches to providing and charging for connectivity and includes the below table for comparison purposes only to show how its proposed fees compare to fees currently charged by other options exchanges for similar connectivity. As shown by the below table, the Exchange's proposed fees are less than fees charged for similar connectivity provided by other options exchanges with comparable market share.

Exchange	Type of connection	Monthly fee (per connection)
MIAX (as proposed) (equity options market share of 5.63% as of March 29, 2022 for the month of March).[6]	10Gb ULL	$12,000.00
The NASDAQ Stock Market LLC (''NASDAQ'') [7] (equity options market share of 8.62% as of March 29, 2022 for the month of March).[8]	10Gb Ultra fiber	15,000.00
Nasdaq ISE LLC (''ISE'') [9] (equity options market share of 5.83% as of March 29, 2022 for the month of March).[10]	10Gb Ultra fiber	15,000.00
NYSE American LLC (''Amex'') [11] (equity options market share of 7.15% as of March 29, 2022 for the month of March).[12]	10Gb LX LCN	22,000.00
Nasdaq GEMX, LLC (''GEMX'') [13] (equity options market share of 2.48% as of March 29, 2022 for the month of March).[14]	10Gb Ultra	15,000.00

The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the primary and secondary facilities in any month the Member or non-Member is credentialed to use any of the Exchange APIs or market data feeds in the production environment. The Exchange proposes to pro-rate the fees when a Member or non-Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the Member or non-Member has been credentialed to utilize any of the Exchange APIs or market data feeds in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate. The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the disaster recovery facility in each month during which the Member or non-Member has established connectivity with the disaster recovery facility.

The Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of both the Exchange and its affiliate, MIAX PEARL, LLC (''MIAX Pearl Options''), via a single, shared connection. Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and MIAX Pearl Options via a single, shared connection will continue to only be assessed one monthly connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

[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 Exchange's System Networks consist of the Exchange's extranet, internal network, and external network.

[5] The Exchange initially filed a proposal on July 30, 2021 to adopt a tiered-pricing structure for the 10Gb ULL fiber connections. The proposal to adopt a tiered pricing structure was withdrawn and refiled several times, each time providing more detail and additional justification in response to questions raised by the Commission in its Suspension Orders and in response to comments received. Ultimately, in response to questions raised by the Commission in its Suspension Orders and comment letters submitted by SIG on the proposed tiered pricing structure, the Exchange reluctantly withdrew that proposal on March 30, 2022, despite the fact that the proposed a tiered-pricing structure reduced the monthly 10Gb ULL connectivity fees for approximately 60% of the Exchange's subscribers. *See* Securities Exchange Act Release Nos. 92643 (August 11, 2021), 86 FR 46034 (August 17, 2021) (SR–MIAX–2021–35); 93165 (September 28, 2021), 86 FR 54750 (October 4, 2021) (SR–MIAX–2021–41); 93639 (November 22, 2021), 86 FR 67758 (November 29, 2021) (SR–MIAX–2021–41); 93775 (December 14, 2021), 86 FR 71996 (December 20, 2021) (SR–MIAX–2021–59); 94088 (January 27, 2022), 87 FR 5901 (February 2, 2022) (SR–MIAX–2021–59); and 94256 (February 15, 2022), 87 FR 9711 (February 22, 2022) (SR–MIAX–2022–07). *See also* letters from Richard J. McDonald, Susquehanna International Group, LLC (''SIG''), to Vanessa Countryman, Secretary, Commission, dated September 7, 2021, October 1, 2021, October 26, 2021, and March 15, 2022. *See* letters from Richard J. McDonald, SIG, to Vanessa Countryman, Secretary, Commission, dated October 1, 2021 (''SIG Letter 2'') and October 26, 2021 (''SIG Letter 3''). *See also* letter from Tyler Gellasch, Executive Director, Healthy Markets Association (''HMA''), to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021 (commenting on SR–CboeEDGA–2021–017, SR–CboeBYX–2021–020, SR–Cboe–BZX–2021–047, SR–CboeEDGX–2021–030, SR–MIAX–2021–41, SR–PEARL–2021–45, and SR–EMERALD–2021–29 and stating that ''MIAX has repeatedly filed to change its connectivity fees in a way that will materially lower costs for many users, while increasing the costs for some of its heaviest of users. These filings have been withdrawn and repeatedly refiled. *Each time, however, the filings contain significantly greater information about who is impacted and how than other filings that have been permitted to take effect without suspension*'') (*emphasis added*) (''HMA Letter''); *and* Ellen Green, Managing Director, Equity and Options Market Structure, Securities Industry and Financial Markets Association (''SIFMA''), to Vanessa Countryman, Secretary, Commission, dated November 26, 2021 (''SIFMA Letter'').

[6] *See* ''The market at a glance,'' available at *https://www.miaxoptions.com/* (last visited March 29, 2022).

[7] *See* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.

[8] *See supra* note 6.

[9] *See* ISE Rules, General 8: Connectivity.

[10] *See supra* note 6.

[11] *See* NYSE American Options Fee Schedule, Section IV.

[12] *See supra* note 6.

[13] *See* GEMX Rules, General 8: Connectivity.

[14] *See supra* note 6.

2. Statutory Basis

The Exchange believes that the proposed increase to the 10Gb ULL Fee is consistent with Section 6(b) of the Act [15] in general, and furthers the objectives of Section 6(b)(4) of the Act [16] 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 that the Exchange operates or controls. The Exchange also believes the proposed increase to the 10Gb ULL Fee furthers the objectives of Section 6(b)(5) of the Act [17] in that it is 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 increase to the 10Gb ULL Fee meets or exceeds the amount of detail required in respect of proposed fee changes as set forth in the recent Commission and Commission Staff guidance. On March 29, 2019, the Commission issued an Order disapproving a proposed fee change by the BOX Market LLC Options Facility to establish connectivity fees for its BOX Network (the ''BOX Order'').[18] 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.'' [19] Based on both the BOX Order and the Guidance, the Exchange believes that the proposed increase to the 10Gb ULL Fee is consistent with the Act because it (i) is reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) complies with the BOX Order and the Guidance; and (iii) is supported by evidence (including comprehensive revenue and cost data and analysis) that the proposed increase to the 10Gb ULL Fee is fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Proposed Increase to the 10Gb ULL Fee Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [20] The Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [21] In the Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supra-competitive profit, specific information, including quantitative information, should be provided to support that argument.'' [22] The Exchange does not assert that the 10Gb ULL Fee is constrained by competitive forces. Rather, the Exchange asserts that the proposed increase to the 10Gb ULL Fee is reasonable because it will permit recovery of the Exchange's costs in providing access services to supply 10Gb ULL connectivity and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [23] The Commission Staff further states in the Guidance that ''the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.'' [24] The Exchange provides this analysis below.

The proposed 10Gb ULL Fee is based on a cost-plus model. A 10Gb ULL connection provides access to each of the three Exchange networks, extranet, internal network, and external network, all of which are necessary for Exchange operations. The Exchange's extranet provides the means by which the Exchange communicates with market participants and includes access to the Member portal and the ability to send and receive daily communications and reports. The internal network connects the extranet to the rest of the Exchange's systems and includes trading systems, market data systems, and network monitoring. The external network includes connectivity between the Exchange and other national securities exchanges, market data providers, and between the Exchange's locations in Princeton, New Jersey, Secaucus, New Jersey (NY4), Miami, Florida, and Chicago, Illinois (CH4). In determining the appropriate fees to charge Members and non-Members to access the Exchange's System Networks via a 10Gb ULL fiber connection, the Exchange considered its costs to provide and maintain its System Networks and connectivity to those System Networks, using costs that are related to providing and maintaining access the Exchange's System Networks via a 10Gb ULL fiber connection to estimate such costs, and set fees that are designed to cover its costs with a limited return in excess of such costs. The Exchange believes that it is important to demonstrate that the 10Gb ULL Fee is based on its costs and reasonable business needs and believes the proposed increase to the 10Gb ULL Fee will allow the Exchange to continue to offset expenses. However, as discussed more fully below, such fees may also result in the Exchange recouping less than all of its costs of providing and maintaining access to the Exchange's System Networks via a 10Gb ULL fiber connection because of the uncertainty of forecasting subscriber decision making with respect to firms' connectivity needs. The Exchange believes that the proposed increase to the 10Gb ULL Fee will not result in excessive pricing or supra-competitive profit based on the total expenses the Exchange estimates to incur versus the total revenue the Exchange estimates to collect, and therefore meets the standards in the Act as interpreted by

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78f(b)(5).

[18] *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).

[19] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

the Commission and the Commission Staff in the BOX Order and the Guidance.

The Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the 10Gb ULL Fee, and, if such expense did so relate, what portion (or percentage) of such expense actually supports access to the Exchange's System Networks via a 10Gb ULL fiber connection associated with the 10Gb ULL Fee. In determining what portion (or percentage) to allocate to access services, each Exchange department head, in coordination with other Exchange personnel, determined the expenses that support access services and System Networks associated with the 10Gb ULL Fee. This included numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders. The analysis also included each department head meeting with the divisions of teams within each department to determine the amount of time and resources allocated by employees within each division towards the access services and System Networks associated with the 10Gb ULL Fee. The Exchange reviewed each individual expense to determine if such expense was related to the 10Gb ULL Fee. Once the expenses were identified, the Exchange department heads, with the assistance of our internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing access services and the System Networks. The sum of all such portions of expenses represents the total cost to the Exchange to provide access services associated with the 10Gb ULL Fee. For the avoidance of doubt, no expense amount is allocated twice.

The analysis conducted by the Exchange is a proprietary process that is designed to make a fair and reasonable assessment of costs and resources allocated to support the provision of access services associated with the 10Gb ULL Fee. The Exchange acknowledges that this assessment can only capture a moment in time and that costs and resource allocations may change. That is why the Exchange historically, and on an ongoing annual basis, reviews its costs and resource allocations to ensure it appropriately allocates resources to properly provide services to the Exchange's constituents.

The Exchange believes exchanges, like all businesses, should be provided flexibility when developing and applying a methodology to allocate costs and resources they deem necessary to operate their business, including providing market data and access services. The Exchange notes that costs and resource allocations may vary from business to business and, likewise, costs and resource allocations may differ from exchange to exchange when it comes to providing market data and access services. It is a business decision that must be evaluated by each exchange as to how to allocate internal resources and what costs to incur internally or via third parties that it may deem necessary to support its business and its provision of market data and access services to market participants.

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully support access to the Exchange and its System Networks via a 10Gb ULL fiber connection. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI-mandated processes associated with its network technology. Both fixed and variable expenses have significant impact on the Exchange's overall costs to provide and maintain access to the Exchange's System Networks via a 10Gb ULL fiber connection. For example, to accommodate new Members, the Exchange may need to purchase additional hardware to support those Members as well as provide enhanced monitoring and reporting of customer performance that the Exchange and its affiliates currently provide. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the 10Gb ULL Fee is a reasonable attempt to offset a portion of those costs associated with providing access to and maintaining its System Networks' infrastructure and related 10Gb ULL fiber connection.

The Exchange estimated its total annual expense to provide and maintain access to the Exchange's System Networks via a 10Gb ULL fiber connection based on the following general expense categories: (1) External expenses, which include fees paid to third parties for certain products and services; (2) internal expenses relating to the internal costs to provide the services associated with the 10Gb ULL Fee; and (3) general shared expenses.[25] The Guidance does not include any information regarding the methodology that an exchange should use to determine its cost associated with a proposed fee change. The Exchange utilized a methodology in this proposed fee change that it believes is reasonable because the Exchange analyzed its entire cost structure, allocated a percentage of each cost attributable to maintaining its System Networks, then divided those costs according to the cost methodology outlined below.

For 2022 for MIAX and MIAX Pearl Options, the total combined annual expense for providing the access services associated with the 10Gb ULL Fee is estimated to be $19,666,270, or $1,638,855 per month. The Exchange believes it is more appropriate to analyze the 10Gb ULL Fee utilizing its 2022 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[26] The $19,666,270 estimated total annual combined expense is directly related to the access to the Exchange's System Networks via a 10Gb ULL fiber connection, and not any other product or service offered by the Exchange. For example, it does not include general costs of operating matching engines and other trading technology. No expense amount was allocated twice. Each of the categories of expenses are set forth in the following table and details of the individual line-item costs considered by the Exchange for each category are described further below.

[25] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

[26] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87875 (December 31, 2019), 85 FR 770 (January 7, 2020) (SR–MIAX–2019–51). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2022 Form 1 Amendment, which will be filed in 2023.

External expenses	
Category	Percentage of total expense amount allocated
Data Center Provider	62%
Fiber Connectivity Provider	62%
Security Financial Transaction Infrastructure (“SFTI”), and Other Connectivity and Content Services Providers	75%
Hardware and Software Providers	51%
Total of External expenses	[27] $4,382,307
Internal expenses	
Category	Expense amount allocated
Employee Compensation	$7,063,801
Depreciation and Amortization	4,184,851
Occupancy	701,437
Total of Internal Expenses	11,950,089
Allocated Shared Expenses	3,333,874

The Exchange notes that it only has two primary sources of revenue, connectivity and port fees, to recover those costs associated with providing and maintaining access to the Exchange's System Networks. The Exchange notes that, without the specific third-party and internal expense items, the Exchange would not be able to provide and maintain the System Networks and access to the System Networks via a 10Gb ULL fiber connection to Members and non-Members. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, has been identified through a line-by-line item analysis to be integral to providing and maintaining the System Networks and access to System Networks via a 10Gb ULL fiber connection.

For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing and maintaining the System Networks and access to System Networks in connection with 10Gb ULL fiber connectivity. The Exchange describes the analysis conducted for each expense and the resources or determinations that were considered when determining the amount necessary to allocate to each expense. Only a portion of all fees paid to such third-parties is included in the third-party expenses described herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to providing and maintaining the System Networks and access to Exchange's System Networks via a 10Gb ULL fiber connection. This may result in the Exchange under allocating an expense to provide and maintain its System Networks and access to the System Networks via a 10Gb ULL fiber connection, and such expenses may actually be higher than what the Exchange allocated as part of this proposal. The Exchange notes that expenses associated with its affiliates, MIAX Emerald and MIAX Pearl Equities, are accounted for separately and are not included within the scope of this filing.

Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic, thorough review of its expenses and resource allocations which resulted in revised percentage allocations in this filing. The revised percentages are, among other things, the result of the shuffling of internal resources in response to business objectives and changes to fees charged and services provided by third parties. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

External Expense Allocations

For 2022, expenses relating to fees paid by the Exchange and MIAX Pearl to third parties for products and services necessary to provide and maintain the System Networks and access to the System Networks via a 10Gb ULL fiber connection are estimated to be $4,382,307. This includes, but is not limited to, a portion of the fees paid to: (1) A third party data center provider, including for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) a fiber connectivity provider for network services (fiber and bandwidth products and services) linking the Exchange's and its affiliates' office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) SFTI, which supports connectivity feeds for the entire U.S. options industry; (4) various other content and connectivity service providers, which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers that support the production environment in which Members and non-Members connect to the network to trade and receive market data.

Data Center Space and Operations Provider

The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties where the Exchange houses servers, switches and related equipment. Data center costs include an allocation of the

[27] The Exchange does not believe it is appropriate to disclose the actual amount it pays to each individual third-party provider as those fee arrangements are competitive or the Exchange is contractually prohibited from disclosing that number.

costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs. The data center provider operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. Without the retention of a third-party data center, the Exchange would not be able to operate its systems and provide a trading platform for market participants. The Exchange does not employ a separate fee to cover its data center expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

The Exchange reviewed its data center footprint, including its total rack space, cage usage, number of servers, switches, cabling within the data center, heating and cooling of physical space, storage space, and monitoring and divided its data center expenses among providing transaction services, market data, and connectivity. Based on this review, the Exchange determined that 62% of the total applicable data center provider expense is applicable to providing and maintaining access services and System Networks associated with the 10Gb ULL Fee. The Exchange believes this allocation is reasonable because 10Gb ULL connectivity is a core means of access to the Exchange's network, providing one method for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's data center expense is due to providing and maintaining connectivity to the Exchange's System Networks, including providing cabling within the data center between market participants and the Exchange. The Exchange excluded from this allocation servers that are dedicated to market data. The Exchange also did not allocate the remainder of the data center expense because it pertains to other areas of the Exchange's operations, such as ports, market data, and transaction services.

Fiber Connectivity Provider

The Exchange engages a third-party service provider that provides the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data center, and office locations in Princeton and Miami. Fiber connectivity is necessary for the Exchange to switch to its secondary data center in the case of an outage in its primary data center. Fiber connectivity also allows the Exchange's National Operations & Control Center (''NOCC'') and Security Operations Center (''SOC'') in Princeton to communicate with the Exchange's primary and secondary data centers. As such, all trade data, including the billions of messages each day, flow through this third-party provider's infrastructure over the Exchange's network. Without these services, the Exchange would not be able to operate and support the network and provide and maintain access services and System Networks associated with the 10Gb ULL Fee to its Members and their customers. Without the retention of a third-party fiber connectivity provider, the Exchange would not be able to communicate between its data centers and office locations. The Exchange does not employ a separate fee to cover its fiber connectivity expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

The Exchange reviewed it costs to retain fiber connectivity from a third party, including the ongoing costs to support fiber connectivity, ensuring adequate bandwidth and infrastructure maintenance to support exchange operations, and ongoing network monitoring and maintenance and determined that 62% of the total fiber connectivity expense was applicable to providing and maintaining access services and System Networks associated with the 10Gb ULL Fee. The Exchange believes this allocation is reasonable because 10Gb ULL connectivity is a core means of access to the Exchange's network, providing one method for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's fiber connectivity expense is due to providing and maintaining connectivity between the Exchange's System Networks, data centers, and office locations and is core to the daily operation of the Exchange. Fiber connectivity is a necessary integral means to disseminate information from the Exchange's primary data center to other Exchange locations. The Exchange excluded from this allocation fiber connectivity usage related to market data or other business lines. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining access services and System Networks associated with the 10Gb ULL Fee. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to retain fiber connectivity and maintain and provide access to its System Networks via a 10Gb ULL fiber connectivity.

Connectivity and Content Services Provided by SFTI and Other Providers

The Exchange relies on SFTI and various other connectivity and content service providers for connectivity and data feeds for the entire U.S. options industry, as well as content, connectivity, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via a 10Gb ULL fiber connection. Specifically, the Exchange utilizes SFTI and other content service provider to connect to other national securities exchanges, the Options Price Reporting Authority (''OPRA''), and to receive market data from other exchanges and market data providers. SFTI is operated by the Intercontinental Exchange, the parent company of five registered exchanges, and has become integral to the U.S. markets. The Exchange understands SFTI provides services to most, if not all, of the other U.S. exchanges and other market participants. Without services from SFTI and various other service providers, the Exchange would not be able to connect to other national securities exchanges, market data providers, or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its SFTI and content service provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

The Exchange reviewed it costs to retain SFTI and other content service providers, including network monitoring and maintenance, remediation of connectivity related issues, and ongoing administrative activities related to connectivity management and determined that 75% of the total applicable SFTI and other service provider expense is allocated to providing the access services associated with the 10Gb ULL Fee. SFTI and other content service providers are key vendors and necessary components in providing connectivity to the Exchange. The primary service SFTI provides for the Exchange is connectivity to other national securities exchanges and their disaster recovery facilities and, therefore, a vast portion of this expense is allocated to providing access to the System Networks via a 10Gb ULL connection. Connectivity via SFTI is necessary for purposes of order routing and accessing disaster recovery facilities in the case of a system outage. Engaging SFTI and other like vendors provides purchasers of 10Gb ULL connectivity to

other national securities exchanges for purposes of order routing and disaster recovery. The Exchange did not allocate a portion of this expense that relates to the receipt of market data from other national securities exchange and OPRA. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining the System Networks or access to its System Networks via 10Gb ULL fiber connection. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide and maintain its System Networks and access to its System Networks via a 10Gb ULL fiber connection, and not any other service, as supported by its cost review.

Hardware and Software Providers

The Exchange relies on dozens of third-party hardware and software providers for equipment necessary to operate its System Networks. This includes either the purchase or licensing of physical equipment, such as servers, switches, cabling, and monitoring devices. It also includes the purchase or license of software necessary for security monitoring, data analysis and Exchange operations. Hardware and software providers are necessary to maintain its System Networks and provide access to its System Networks via a 10Gb ULL fiber connection. Hardware and software equipment and licenses for that equipment are also necessary to operate and monitor physical assets necessary to offer physical connectivity to the Exchange. Hardware and software equipment and licenses are key to the operation of the Exchange and, without them, the Exchange would not be able to operate and support its System Networks and provide access to its Members and their customers. The Exchange does not employ a separate fee to cover its hardware and software expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

The Exchange reviewed it hardware and software related costs, including software patch management, vulnerability management, administrative activities related to equipment and software management, professional services for selection, installation and configuration of equipment and software supporting exchange operations and determined that 51% of the total applicable hardware and software expense is allocated to providing and maintaining access services and System Networks associated with the 10Gb ULL Fee. Hardware and software equipment and licenses are key to the operation of the Exchange and its System Networks. Without them, market participants would not be able to access the System Networks via a 10Gb ULL connection. The Exchange only allocated the portion of this expense to the hardware and software that is related to a market participant's use of a 10Gb ULL connection, such as operating its matching engines. The Exchange, therefore, did not allocate portions of its hardware and software expense that related to other areas of the Exchange's business, such as hardware and software used for market data or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations, such as ports or transaction services, and does not directly relate to providing and maintaining its System Networks and access to its System Networks via a 10Gb ULL fiber connection. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide and maintain its System Networks and access to its System Networks via a 10Gb ULL fiber connection, and not any other service, as supported by its cost review.

Internal Expense Allocations

For 2022, total combined internal expenses relating to the Exchange and MIAX Pearl providing and maintaining the System Networks and access to the System Networks via a 10Gb ULL fiber connection are estimated to be $11,950,089. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the System Networks and access to System Networks via a 10Gb ULL fiber connection, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions as well as important system upgrades; (2) depreciation and amortization of hardware and software used to provide and maintain access services and System Networks associated with the 10Gb ULL Fee, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide and maintain the System Networks and access to System Networks via 10G ULL fiber connections. The breakdown of these costs is more fully described below.

Employee Compensation and Benefits

Human personnel are key to exchange operations and supporting the Exchange's ongoing provision and maintenance of the System Networks and access to System Networks via 10Gb ULL fiber connections. The Exchange reviewed its employee compensation and benefits expense and the portion of that expense allocated to providing and maintaining the System Networks and access to System Networks via 10Gb ULL fiber connections. As part of this review, the Exchange considered employees whose functions include providing and maintaining the System Networks and 10Gb ULL connectivity and used a blended rate of compensation reflecting salary, stock and bonus compensation, bonuses, benefits, payroll taxes, and 401K matching contributions.[28]

Based on this review, the Exchange and MIAX Pearl determined to allocate a total combined amount of $7,063,801 in employee compensation and benefits expense to providing access to the System Networks. To determine the appropriate allocation the Exchange reviewed the time employees allocated to supporting its System Networks and access to its System Networks via 10Gb ULL fiber connections. Senior staff also reviewed these time allocations with department heads and team leaders to determine whether those allocations were appropriate. These employees are critical to the Exchange to provide and maintain access to its System Networks via 10Gb ULL fiber connections for its Members, non-Members and their customers. The Exchange determined the above allocation based on the personnel whose work focused on functions necessary to provide and maintain the System Networks and access to System Networks via 10Gb ULL fiber connections. The Exchange does not charge a separate fee regarding employees who support 10Gb ULL connectivity and the Exchange seeks to recoup that expense, in part, by charging for 10Gb ULL connections.

[28] For purposes of this allocation, the Exchange did not consider expenses related to supporting employees who support 10Gb ULL connectivity, such as office space and supplies. The Exchange determined cost allocation for employees who perform work in support of offering access services and System Networks to arrive at a full time equivalent (''FTE'') of 12.0 FTEs across all the identified personnel. The Exchange then multiplied the FTE times a blended compensation rate for all relevant Exchange personnel to determine the personnel costs associated with providing the access services and System Networks associated with the 10Gb ULL Fee.

Depreciation and Amortization

A key expense incurred by the Exchange relates to the depreciation and amortization of equipment that the Exchange procured to provide and maintain the System Networks and access to System Networks via 10Gb ULL fiber connections. The Exchange reviewed all of its physical assets and software, owned and leased, and determined whether each asset is related to providing and maintaining its System Networks and access to its System Networks via 10Gb ULL fiber connections, and added up the depreciation of those assets. All physical assets and software, which includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. In determining the amount of depreciation and amortization to apply to providing 10Gb ULL connectivity and the System Networks, the Exchange considered the depreciation of hardware and software that are key to the operation of the Exchange and its System Networks. This includes servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps, that were previously purchased to maintain and provide access to its System Networks via 10Gb ULL fiber connections. Without them, market participants would not be able to access the System Networks. The Exchange seeks to recoup a portion of its depreciation expense by charging for 10Gb ULL connectivity.

Based on this review, the Exchange and MIAX Pearl determined to allocate a combined total amount of $4,184,851 in depreciation and amortization expense to providing access to the System Networks via a 10Gb ULL connection. The Exchange only allocated the portion of this depreciation expense to the hardware and software related to a market participant's use of a 10GB ULL connection. The Exchange, therefore, did not allocate portions of depreciation expense that relates to other areas of the Exchange's business, such as the depreciation of hardware and software used for market data or unrelated administrative services.[29]

Occupancy

The Exchange rents and maintains multiple physical locations to house staff and equipment necessary to support access services, System Networks, and exchange operations. The Exchange's occupancy expense is not limited to the housing of personnel and includes locations used to store equipment necessary for Exchange operations. In determining the amount of its occupancy related expense, the Exchange considered actual physical space used to house employees whose functions include providing and maintaining the System Networks and 10Gb ULL connectivity. Similarly, the Exchange also considered the actual physical space used to house hardware and other equipment necessary to provide and maintain the System Networks and 10Gb ULL connectivity. This equipment includes computers, servers, and accessories necessary to support the System Networks and 10Gb ULL connectivity. Based on this review, the Exchange and MIAX Pearl determined to allocate a combined total amount of $701,437 of the occupancy expense to provide and maintain the System Networks and 10Gb ULL connectivity. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the System Networks, including providing and maintaining access to its System Networks via 10Gb ULL fiber connections. The Exchange considered the rent paid for the Exchange's Princeton and Miami offices, as well as various related costs, such as physical security, property management fees, property taxes, and utilities at each of those locations. The Exchange did not include occupancy expenses related to housing employees and equipment related to other Exchange operations, such as market data and administrative services.

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The Exchange notes that a material portion of its total overall expense is allocated to the provision and maintenance of access services (including connectivity and ports). The Exchange believes this is reasonable as the Exchange operates a technology-based business that differentiates itself from its competitors based on its more deterministic and resilient trading systems that rely on access to a high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. Thus, the Exchange believes it is reasonable to allocate a material portion of its total overall expense towards providing and maintaining its System Networks and access to its System Networks via 10Gb ULL fiber connections.

Allocated Shared Expense

Finally, a limited portion of general shared expenses was allocated to overall 10Gb ULL connectivity costs as without these general shared costs, the Exchange would not be able to operate in the manner that it does and provide 10Gb ULL connectivity. The costs included in general shared expenses include recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. For 2022, the Exchange's and MIAX Pearl's general shared expense allocated to 10Gb ULL connectivity and the System Networks that support those connections is estimated to be $3,333,874. The Exchange used the weighted average of the above allocations to determine the amount of general shared expenses to allocate to the Exchange. Next, based on additional management and expense analysis, these fees are allocated to the proposal.

Revenue and Estimated Profit Margin

The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: Transaction fees, access fees (which includes the 10Gb ULL Fee), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms.

To determine the Exchange's estimated revenue associated with the 10Gb ULL Fee, the Exchange analyzed the number of Members and non-Members currently utilizing the 10Gb ULL fiber connection and used a recent monthly billing cycle representative of current monthly revenue. The Exchange also provided its baseline by analyzing March 2022, the monthly billing cycle prior to the proposed 10Gb ULL Fee and compared this to its expenses for that month. As discussed below, the Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its estimates for purposes of these calculations, given the uncertainty of such estimates due to the continually changing access needs of market

[29] All of the expenses outlined in this proposed fee change refer to the operating expenses of the Exchange. The Exchange did not included any future capital expenditures within these costs. Depreciation and amortization represent the expense of previously purchased hardware and internally developed software spread over the useful life of the assets. Due to the fact that the Exchange has only included operating expense and historical purchases, there is no double counting of expenses in the Exchange's cost estimates.

participants and potential changes in internal and third-party expenses.

For March 2022, prior to the proposed 10Gb ULL Fee, Members and non-Members purchased a total of 172 10Gb ULL connections for which MIAX and MIAX Pearl anticipate charging collectively $1,720,000 (depending on whether Members and non-Members drop or add connections mid-month, resulting in pro-rated charges). This will result in a loss of $81,145 for that month (a margin of −4.70%). For April 2022, the Exchange and MIAX Pearl anticipate Members and non-Members purchasing a total of 172 10Gb ULL connections. Assuming the Exchange and MIAX Pearl charge the proposed monthly rate of $12,000 per connection, the proposed fees would generate revenue of $2,064,000 for that month (not including potential pro-rated connection charges for mid-month connections). This would result in a profit of $425,145 ($2,064,000 minus $1,638,855) for that month (a modest 24% profit margin increase from March 2022 to April 2022 from −4.70% to 20%).

The Exchange believes that conducting the above analysis on a per month basis is reasonable as the revenue generated from access services subject to the proposed fee generally remains static from month to month. The Exchange also conducted the above analysis on a per month basis to comply with the Commission Staff's Guidance, which requires a baseline analysis to assist in determining whether the proposal generates a supra-competitive profit. The Exchange cautions that this profit margin may also fluctuate from month to month based on the uncertainty of predicting how many connections may be purchased from month to month as Members and non-Members are free to add and drop connections at any time based on their own business decisions.

The Exchange believes the proposed profit margin is reasonable and will not result in a ''supra-competitive'' profit. The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [30] Until recently, the Exchange operated at a net annual loss since it launched operations in 2008.[31] 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 now seeking to raise it fees to near market rates after offering such products as discounted prices.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent such revenue actually produces the revenue estimated. As a generally new entrant to the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from 10 GB ULL connectivity, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity or obtaining new clients that will purchase such services. To the extent the Exchange is successful in encouraging new clients to connect directly to the Exchange, the Exchange does not believe it should be penalized for such success. The Exchange, like other exchanges, is, after all, a for-profit business. While the Exchange believes in transparency around costs and potential margins, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes its cost analysis and related estimates demonstrate this fact.

Further, the proposed profit margin reflects the Exchange's efforts to control its costs. A profit margin should not be judged alone based on its size, but whether the ultimate fee reflects the value of the services provided and is in line with other exchanges. A profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling costs, but not excessive where an exchange is charging the same fee but has a lower profit margin due to higher costs.

The expected profit margin is reasonable because the Exchange offers a premium System Network, System Networks connectivity, and a highly deterministic trading environment. The Exchange is recognized as a leader in network monitoring, determinism, risk protections, and network stability. For example, the Exchange experiences approximately a 95% determinism rate, system throughput of approximately 36 million quotes per second and average round trip latency rate of approximately 19 microseconds for a single quote. The Exchange provides extreme performance and radical scalability designed to match the unique needs of trading differing asset class/market model combinations. Exchange systems offer two customer interfaces, FIX gateway for orders, and ULL interfaces and data feeds with best-in-class wire order determinism. The Exchange also offers automated continuous testing to ensure high reliability, advanced monitoring and systems security, and employs a software architecture that results in minimizing the demands on power, space, and cooling while allowing for rapid scalability, resiliency and fault isolation. The Exchange also provides latency equalized cross-connects in the primary data center ensures fair and cost efficient access to the MIAX systems. The Exchange, therefore, believes the anticipated profit margin is reasonable because it reflects the Exchange's cost controls and the quality of the Exchanges systems.

The Exchange also believes its proposed profit margin does not exceed what can be obtained in a competitive market. The Exchange is one of sixteen registered U.S. options exchanges and maintains an average market share of approximately 5.63%.[32] The anticipated rate of return is reasonable because it is based on a rate that likely remains lower than what other exchanges with comparable market share charge for similar connectivity. For example the below table is provided for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar connectivity. As shown by the below table, the Exchange's proposed fee remains less than fees charged for similar connectivity provided by other options exchanges with similar market share, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of connectivity.

[30] *See supra* note 19.

[31] The Exchange has incurred a cumulative loss of $175 million since its inception in 2008 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000460.pdf.*

[32] *See supra* note 6.

Exchange	Type of connection	Monthly fee (per connection)
MIAX (as proposed) (equity options market share of 5.63% as of March 29, 2022 for the month of March) [33].	10Gb ULL	$12,000.00
NASDAQ [34] (equity options market share of 8.62% as of March 29, 2022 for the month of March) [35] ...	10Gb Ultra fiber	15,000.00
ISE [36] (equity options market share of 5.83% as of March 29, 2022 for the month of March) [37]	10Gb Ultra fiber	15,000.00
Amex [38] (equity options market share of 7.15% as of March 29, 2022 for the month of March) [39]	10Gb LX LCN	22,000.00
GEMX [40] (equity options market share of 2.48% as of March 29, 2022 for the month of March) [41]	10Gb Ultra	15,000.00

Lastly, the Exchange notes that this is a singular potential profit margin from a single revenue source and is not reflective of the Exchange's overall profit margin. This profit margin may be offset by lower or negative profit margins generated by other areas of the Exchange's operations that are not subject to this proposed fee change. The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: Transaction fees, access fees (which includes the 10Gb ULL Fee), regulatory fees, and market data fees. A potential profit margin in one area may be used to offset a potential loss in another area, and, therefore, a potential profit margin from a single product is not representative of the Exchange's overall profitability and whether that singular profit exceeds the profits that can be obtained in a competitive market.

The Proposed Fees Are Reasonable When Compared to the Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other equities exchanges' costs to provide connectivity or their fee markup over those costs, and therefore cannot use other exchange's connectivity fees as a benchmark to determine a reasonable markup over the costs of providing connectivity. Nevertheless, the Exchange believes the other exchanges' connectivity fees are a useful example of alternative approaches to providing and charging for connectivity notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of connectivity. To that end, the Exchange believes the proposed 10Gb ULL Fee is reasonable because the proposed fee is still less than fees charged for similar connectivity provided by other options exchanges with comparable market shares.

As described in the above table, the Exchange's proposed fee remains less than fees charged for similar connectivity provided by other options exchanges with similar market share. In each of the above cases, the Exchange's proposed fee is still significantly lower than that of competing options exchanges with similar market share. Despite proposing lower or similar fees to that of competing options exchanges with similar market share, the Exchange believes that it provides a premium network experience to its Members and non-Members via a highly deterministic System, enhanced network monitoring and customer reporting, and a superior network infrastructure than markets with higher market shares and more expensive connectivity alternatives. Each of the connectivity rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

The Proposed Fees Are Equitably Allocated

The Exchange believes that the proposed 10Gb ULL fees are equitably allocated among users of the network connectivity alternatives, as the users of the 10Gb ULL connections consume the most bandwidth and resources of the network. Specifically, the Exchange notes that these users account for approximately greater than 99% of message traffic over the network, while the users of the 1Gb connections account for approximately less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have a business need for the high performance network solutions required by 10Gb ULL users. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput with the network ability to support access to several distinct options markets and the capacity to handle approximately 38 million quote messages per second. On an average day, the Exchange and MIAX Pearl handle over approximately 8,304,500,000 billion total messages. Of that total, users of the 10Gb ULL connections generate approximately 8.3 billion messages, and users of the 1Gb connections generate approximately 4.5 million messages. However, in order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb ULL users pay for the vast majority of the shared network resources from which all Member and non-Member users benefit, but is designed and maintained from a capacity standpoint to specifically handle the message rate and performance requirements of 10Gb ULL users.

The Exchange also believes that the connectivity fees are equitably allocated amongst users of the network connectivity alternatives, when these fees are viewed in the context of the overall trading volume on the Exchange. To illustrate, the purchasers of the 10Gb ULL connectivity account for approximately 94% of the volume on the Exchange. This overall volume percentage (94% of total Exchange volume) is in line with the amount of network connectivity revenue collected from 10Gb ULL purchasers (87% of total Exchange connectivity revenue). For example, utilizing a recent billing cycle, Exchange Members and non-Members that purchased 10Gb ULL connections accounted for approximately 87% of the total network connectivity revenue collected by the Exchange from all connectivity alternatives; and Members and non-Members that purchased 1Gb and 10Gb connections accounted for approximately 13% of the revenue collected by the Exchange from all connectivity alternatives.

Lastly, the Exchange further believes that the 10Gb ULL Fee are reasonable,

[33] *See supra* note 6.
[34] *See supra* note 7.
[35] *See supra* note 6.
[36] *See supra* note 9.
[37] *See supra* note 6.
[38] *See supra* note 11.
[39] *See supra* note 6.
[40] *See supra* note 13.
[41] *See supra* note 6.

equitably allocated and not unfairly discriminatory because, for one 10Gb ULL connection, the Exchange provides each Member or non-Member access to all twenty-four (24) matching engines on MIAX and a vast majority choose to connect to all twenty-four (24) matching engines. The Exchange believes that other exchanges require firms to connect to multiple matching engines.[42]

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.

With respect to intra-market 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. 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 also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, options market participants are not forced to connect to all options exchanges. There is no reason to believe that our proposed price increase will harm another exchange's ability to compete. There are other options markets of which market participants may connect to trade options. There is also a possible range of alternative strategies, including routing to the exchange through another participant or market center or accessing the Exchange indirectly. Market participants are free to choose which exchange or reseller to use to satisfy their business needs. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[43] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[44] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[45] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [46]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [47] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [48] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[49]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposal to modify fees for certain connectivity options is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[50]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[51]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C) [52] and 19(b)(2)(B) [53] of the Act to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and

[42] *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.

[43] 15 U.S.C. 78s(b)(3)(C).

[44] 15 U.S.C. 78s(b)(1).

[45] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[46] *Id.*

[47] 15 U.S.C. 78f(b)(4).

[48] 15 U.S.C. 78f(b)(5).

[49] 15 U.S.C. 78f(b)(8).

[50] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[51] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[52] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[53] 15 U.S.C. 78s(b)(2)(B).

encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[54] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Exchange has sufficiently demonstrated how the proposed rule change is consistent with Sections 6(b)(4),[55] 6(b)(5),[56] and 6(b)(8)[57] of the Act. Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. *Cost Estimates and Allocation.* The Exchange states that it is not asserting that the proposed 10Gb ULL Fee is constrained by competitive forces, but rather set forth a ''cost-plus model,'' employing a ''conservative approach'' in determining the expense and the percentage of that expense to be allocated to providing and maintaining the System Networks and access to System Networks in connection with 10Gb ULL fiber connectivity.[58] Setting forth its costs in providing 10Gb ULL connectivity, and as summarized in greater detail above, the Exchange projects that the total combined annual expense for the Exchange and MIAX Pearl Options for providing the access services associated with the 10Gb ULL Fee in 2022 will be $19,666,270, the sum of: (1) $4,382,307 in third-party expenses paid in total to their Data Center Provider (62% of the total applicable expense) for data center services; Fiber Connectivity Provider, for network services (62% of the total applicable expense); SFTI and other connectivity and content service providers for connectivity support (75% of the total applicable expense); and various other hardware and software providers (51% of the total applicable expense), (2) $11,950,089 in internal expenses, allocated to (a) employee compensation and benefit costs ($7,063,801); (b) depreciation and amortization ($4,184,851); and (c) occupancy costs ($701,437) and (3) $3,333,874 of allocated general shared expenses that include recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. Do commenters believe that these allocations are reasonable? Should the Exchange be required to provide more specific information regarding the allocation of third-party expenses, such as the overall estimated cost for each category of external expenses or at minimum the total applicable third-party expenses? Should the Exchange have provided either a percentage allocation or statements regarding the Exchange's overall estimated costs for the internal expense categories and general shared expenses figure? Do commenters believe that the Exchange has provided sufficient detail about how it determined which costs are associated with providing and maintaining 10Gb ULL connectivity and why? Do commenters believe that the Exchange has provided sufficient detail about how it determined ''general shared expenses'' and how it determined what portion should be associated with providing and maintaining 10Gb ULL connectivity? Do commenters believe that the Exchange provided sufficient detail or explanation to support its claim that ''no expense amount is allocated twice,''[59] whether *among* the sub-categories of expenses in this filing, *across* the Exchange's fee filings for other products or services, or *over time*? The Exchange describes a ''proprietary'' process that was applied in making these determinations or arriving at particular allocations. Do commenters believe further explanation is necessary? What are commenters' views on whether the Exchange has provided sufficient detail on the identity and nature of services provided by third parties? Across all of the Exchange's projected costs, what are commenters' views on whether the Exchange has provided sufficient detail on the elements that go into connectivity costs, including how shared costs are allocated and attributed to connectivity expenses, to permit an independent review and assessment of the reasonableness of purported cost-based fees and the corresponding profit margin thereon?

2. *Revenue Estimates and Profit Margin Range.* The Exchange provides a single monthly revenue figure from March 2022 as the basis for calculating the profit margin of 20%. Do commenters believe this is reasonable? If not, why not? The Exchange states that their proposed fee structure is ''designed to cover its costs with a limited return in excess of such costs,'' and believes that a 20% margin is a limited return over such costs.[60] The profit margin is also dependent on the accuracy of the cost projections which, if inflated (intentionally or unintentionally), may render the projected profit margin meaningless. The Exchange acknowledges that this margin may fluctuate from month to month due to changes in the number of connections purchased, and that costs may increase, but that the number of connections has not materially changed over the prior months and so the months that the Exchange has used as a baseline to perform its assessment are representative of reasonably anticipated costs and expenses.[61] The Exchange does not account for the possibility of cost decreases, however. What are commenters' views on the extent to which actual costs (or revenues) deviate from projected costs (or revenues)? Do commenters believe that the Exchange's methodology for estimating the profit margin is reasonable? Should the Exchange provide a range of profit margins that they believe are reasonably possible, and the reasons therefor?

[54] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[55] 15 U.S.C. 78f(b)(4).

[56] 15 U.S.C. 78f(b)(5).

[57] 15 U.S.C. 78f(b)(8).

[58] *See supra* Section II.A.2.

[59] *See id.*

[60] *See supra* Section II.A.2.

[61] *See id.*

3. *Reasonable Rate of Return.* Do commenters agree with the Exchange that its expected 20% profit margin would constitute a reasonable rate of return over cost for 10GB ULL connectivity, and is not a ''supra-competitive'' profit that exceeds the profits that can be obtained in a competitive market? If not, what would commenters consider to be a reasonable rate of return and/or what methodology would they consider to be appropriate for determining a reasonable rate of return? What are commenters' views regarding what factors should be considered in determining what constitutes a reasonable rate of return for 10Gb ULL connectivity fees? Do commenters believe it relevant to an assessment of reasonableness that the Exchange's proposed fees for 10Gb ULL connections are lower than those of other options exchanges to which the Exchange has compared the 10Gb ULL connectivity fees? Should an assessment of reasonable rate of return include consideration of factors other than costs; and if so, what factors should be considered, and why?

4. *Periodic Reevaluation.* The Exchange has not stated that it would re-evaluate the appropriate level of 10Gb ULL fees if there is a material deviation from the anticipated profit margin. In light of the impact that the number of subscribers has on connectivity profit margins, and the potential for costs to decrease (or increase) over time, what are commenters' views on the need for exchanges to commit to reevaluate, on an ongoing and periodic basis, their cost-based connectivity fees to ensure that they stay in line with their stated profitability target and do not become unreasonable over time, for example, by failing to adjust for efficiency gains, cost increases or decreases, and changes in subscribers? How formal should that process be, how often should that reevaluation occur, and what metrics and thresholds should be considered? How soon after a new connectivity fee change is implemented should an exchange assess whether its subscriber estimates were accurate and at what threshold should an exchange commit to file a fee change if its estimates were inaccurate? Should an initial review take place within the first 30 days after a connectivity fee is implemented? 60 days? 90 days? Some other period?

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [62] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[63] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[64] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.[65]

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, any potential comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[66]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by May 11, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 25, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–MIAX–2022–14 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–MIAX–2022–14. 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 (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2022–14 and should be submitted on or before May 11, 2022.

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[62] 17 CFR 201.700(b)(3).

[63] *See id.*

[64] *See id.*

[65] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 446–47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

[66] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Rebuttal comments should be submitted by May 25, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[67] that File Number SR–MIAX–2022–14 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[68]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08384 Filed 4–19–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94726; File No. SR–DTC–2022–003]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of and Immediate Effectiveness of Proposed Rule Change To Amend the Reorganizations Service Guide and the Operational Arrangements

April 14, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2022, The Depository Trust Company (''DTC'') 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 clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is to amend the Reorganizations Guide to (i) remove the Eurobond Conversions Service, (ii) clarify and streamline language relating to omnibus proxies[5] and proxy letters, and (iii) make conforming and clarifying changes. DTC is also proposing to amend the Reorganizations Guide and the Operational Arrangements to reflect that an issuer or trustee (each, an ''Issuer'') would only be able to access an omnibus proxy through the SPR Service,[6] as described in greater detail below.[7]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Reorganizations Guide to (i) remove the Eurobond Conversions Service, (ii) clarify and streamline language relating to omnibus proxies[8] and proxy letters, and (iii) make conforming and clarifying changes. DTC is also proposing to amend the Reorganizations Guide and the Operational Arrangements to reflect that an issuer or trustee (each, an ''Issuer'') would only be able to access an omnibus proxy through the SPR Service,[9] as discussed more fully below.

(i) Remove Eurobond Conversions Service

A. Background

Pursuant to the proposed rule change, DTC would amend the Reorganization Guide to remove the Eurobond Conversions Service. The Eurobond Conversions Service allowed Participants to convert convertible Eurobonds into the underlying securities. The Eurobond Conversions Service began in the early 1980s. The service was a manual process whereby DTC received a hardcopy conversion instruction from the conversion agent that identified the applicable Participant and included the physical certificate for conversion. DTC then manually credited the Participant's account with the shares.

The Eurobond Conversions Services was never widely used, and there has not been any demand for the service for many years. As the industry moved away from physical certificates and physical processing, the Eurobond Conversions Service became unnecessary. Today, a Participant can convert its Eurobond position at the agent, which then adds the underlying equity to the Participant's DTC account via a Deposit and Withdrawal at Custodian (DWAC) request. Accordingly, DTC is proposing to amend the Reorganizations Guide to remove the Eurobond Conversions Service.

B. Proposed Rule Change

Pursuant to the proposed rule change with respect to the Eurobond Conversions Service, DTC is proposing to amend the Reorganizations Guide as follows:

1. In the ''About the Service'' subsection of the ''Conversions'' section, delete the third bullet, ''Process

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[67] 15 U.S.C. 78s(b)(3)(C).

[68] 17 CFR 200.30–3(a)(12), (57) and (58).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] Securities held at DTC are registered in the name of DTC's nominee Cede & Co. DTC does not vote securities registered in the name of Cede & Co. Instead, DTC provides the Issuer with an omnibus proxy, which assigns Cede & Co.'s voting rights to those Participants that have position credit to their DTC account at the close of business on the record date.

[6] In order for Issuers or their third party agents (collectively, ''Users'') to receive listings of Participants' holdings of a security of an Issuer as of a specific date (a ''securities position report'' or ''SPR''), Users are required to register for the SPR Service with respect to the specific CUSIP. Users need access to SPRs to identify Participants holding securities in order to conduct functions they perform relating to security holders, including but not limited to record date functions. All Users must be registered and all requests for subscriptions or individual copies of SPRs must be made through the SPR Service. For further information on the SPR Service, *see* Securities Exchange Act Release No. 52393 (September 8, 2005), 70 FR 54598 (September 15, 2005) (SR–DTC–2005–12).

[7] Each term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of DTC (the ''Rules''), The Reorganizations Service Guide (''Reorganizations Guide''), and the Operational Arrangements (''OA''), *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[8] Securities held at DTC are registered in the name of DTC's nominee Cede & Co. DTC does not vote securities registered in the name of Cede & Co. Instead, DTC provides the Issuer with an omnibus proxy, which assigns Cede & Co.'s voting rights to those Participants that have position credit to their DTC account at the close of business on the record date.

[9] In order for Issuers or their third party agents (collectively, ''Users'') to receive listings of Participants' holdings of a security of an Issuer as of a specific date (a ''securities position report'' or ''SPR''), Users are required to register for the SPR Service with respect to the specific CUSIP. Users need access to SPRs to identify Participants holding securities in order to conduct functions they perform relating to security holders, including but not limited to record date functions. All Users must be registered and all requests for subscriptions or individual copies of SPRs must be made through the SPR Service. For further information on the SPR Service, *see* Securities Exchange Act Release No. 52393 (September 8, 2005), 70 FR 54598 (September 15, 2005) (SR–DTC–2005–12).

instructions from U.S. agents to convert Eurobonds into DTC-eligible securities,'' because the Eurobond Conversions Service would no longer be offered.

2. Delete the ''Eurobond Conversions'' section in its entirety.

3. In the ''Forms for Instructions Outside PTS/PBS'' table, delete the row for Eurobond Conversions.

(ii) Hardcopy Omnibus Proxy

A. Background

Pursuant to the proposed rule change, DTC would amend the Reorganizations Guide and the Operational Arrangements to reflect that an Issuer would only be able to access an omnibus proxy through the SPR Service and would no longer be able to receive a physical copy directly from DTC.

For proxy solicitations where a record date has been established, DTC assigns the voting rights of Cede & Co. to the Participants which, on the record date, have the security credited to their account at DTC.[10] Shortly after record date, DTC generates an omnibus proxy, which includes an SPR of Participant positions in the security on the record date, and then makes the omnibus proxy available for download by the Issuer through the SPR Service.[11]

However, from time to time there is a record date proxy solicitation where the Issuer had not registered for the SPR Service. In these cases, DTC printed out a copy of the omnibus proxy and mailed the physical copy of the omnibus proxy to the address of the Issuer on DTC's records.

DTC is proposing to eliminate the delivery of a hardcopy omnibus proxy and to require that Issuers access the omnibus proxy electronically through the SPR Service. First, doing so would improve efficiency and security of the omnibus proxy process by replacing the manually intensive physical mailing with a secure method of electronic access by an authorized person. Second, the elimination of the hardcopy delivery method should not have a significant impact on Issuers because the percentage of Issuers that send meeting notices to DTC but are not registered for the SPR Service is less than five percent. Further, DTC has been performing outreach to facilitate Issuer registration for the SPR Service. When an Issuer sends in a meeting notice for a CUSIP and the Issuer is not registered, DTC obtains a contact of an authorized party for a related CUSIP or of the Issuer's investor relations group. DTC sends an email informing the Issuer that it needs to register for the SPR Service to obtain the omnibus proxy. The email contains directions on how to register. To date, those Issuers that received the email have registered for the SPR Service.

Finally, the SPR Service does not require special connectivity because it can be accessed through the web. Registration in the SPR Service is free and an Issuer's access to the omnibus proxy is free as well.[12] Accordingly, the proposed rule change would not impose additional costs on Issuers.

B. Proposed Rule Change

Pursuant to the proposed rule change with respect to the delivery of a hardcopy omnibus proxy, DTC is proposing to amend Section VI(E)(3) (Shareholder Meetings) of the Operational Arrangements by (i) replacing the first sentence of the second paragraph with ''Soon after the record date for the meeting, DTC will make an omnibus proxy available to the Issuer, trustee, or authorized third-party agent through the Securities Position Report (SPR) Service,'' and (ii) adding ''For information about registering for the SPR Service, refer to *http://www.dtcc.com/spr*,'' before the last sentence in the second paragraph. In addition, DTC is proposing to replace the term ''are to'' in the second sentence of the first paragraph with ''must,'' to reinforce the requirement that the meeting announcement must be emailed to DTC at the designated email address.

In addition, DTC is proposing to amend the Reorganizations Guide by removing the sentence ''Issuers and trustees who do not register for this service will receive an omnibus proxy and Security Position Report via hard copy mail,'' from the ''Omnibus Proxy'' subsection of the ''Proxy Announcements'' section.

(iii) Other Proposed Rule Changes

DTC is proposing to amend the Reorganizations Guide as follows:

1. On the ''Important Legal Information'' page, change the copyright date from 2021 to 2022.

2. In the ''Omnibus Proxy'' subsection of the ''Proxy Announcements'' section replace ''SPR'' with ''Security Position Reports (SPR).''

3. In the ''Other Securityholder or Bondholder Services'' subsection of the ''Proxy Announcements'' section, update the Guide to reflect that (i) a Participant must submit its instruction letter and Cede & Co. securityholder letter through the MyDTCC portal, (ii) the instruction letter must identify the subject securities, the quantity of the securities involved, the beneficial owner, and the nature of the request, and must include the exact form of the requested securityholder letter, (iii) a user guide for MyDTCC portal is available on the DTCC website, and (iv) DTC will not accept any request from (x) any party other than a Participant or (y) outside of the MyDTCC portal.[13] In addition, DTC is proposing to make changes to clarify that the sample letters on the DTCC website are for illustrative purposes only, and that (i) DTC makes no determination as to whether a letter is sufficient, legally or otherwise, for a Participant's or beneficial owner's intended purpose, and (ii) Participants and beneficial owners must consult with their own counsel to make such determination.

DTC is also proposing to add the following paragraph to remind Participants to timely submit their instructions and form of securityholder letter and to anticipate a DTC processing time of approximately six business days: ''To help ensure timely processing of a Participant's request for a Cede & Co. securityholder letter, a Participant should anticipate a DTC processing time of approximately six business days. Processing time may increase if, for example, a Participant requests notarization of the Cede & Co. letter, or if, once a request is submitted to DTC, DTC needs to return the request to the Participant for technical revisions. In addition, Participants should anticipate longer processing times during periods of high volumes and plan accordingly. DTC is not responsible for a Participant's failure to meet any deadline or cut-off in connection with its request.'' Finally, DTC is also proposing to make minor changes to this subsection for conformity and readability.

4. In the ''Dissenters' Rights/Appraisal Rights'' subsection of the ''Proxy Announcements'' section, DTC is proposing to replace the existing Note and Warning sections, with a Note that conforms to the proposed changes to the ''Other Shareholder or Bondholder Services'' subsection. Specifically, DTC would insert the following:

''There are examples of instruction letters and Assertion Letter on the DTCC website at *http://www.dtcc.com/settlement-and-asset-services/issuer-*

[10] *See* Reorganizations Service Guide, *supra* note 7, at 20.

[11] *See id.*

[12] *See* Security Position Report Pricing, *available at https://www.dtcc.com/settlement-and-asset-services/issuer-services/spr-pricing,* which does not list any fees for SPR Service registration or omnibus proxy access.

[13] Previously, Participants submitted the documents through the DTC Web Inquiry Notification System (''WINS''), which was decommissioned on March 30, 2020. *See* Securities Exchange Act Release No. 88050 (January 27, 2020), 85 FR 5728 (January 31, 2020) (SR–DTC–2020–002).

services/proxy-services. Please note that these example letters are for illustrative purposes only, and DTC makes no determination as to whether a letter is sufficient, legally or otherwise, for a Participant's or beneficial owner's intended purpose. Participants and beneficial owners must consult with their own counsel to make such determination.

Completed forms must be submitted by a Participant via the MyDTCC portal. DTC will not accept the request from any other party or outside of the MyDTCC portal.

A user guide is available at *https://www.dtcc.com/-/media/Files/Downloads/Settlement-Asset-Services/Issuer-Services/Shareholder-Demand-Dissent-MyDTCC-CAWeb.pdf.*''

In addition, to conform with the ''Other Shareholder or Bondholder Services'' subsection. DTC is proposing to add a paragraph to remind Participants to timely submit their dissent/appraisal letter instructions and to anticipate a DTC processing time of approximately six business days. Specifically, DTC is proposing to add the following: ''To help ensure timely processing of a Participant's request for an Assertion Letter, a Participant should anticipate a DTC processing time of approximately six business days. Processing time may increase if, for example, a Participant requests notarization of the Assertion Letter, or if, once a request is submitted to DTC, DTC needs to return the request to the Participant for technical revisions. In addition, Participants should anticipate longer processing times during periods of high volumes and plan accordingly. DTC is not responsible for a Participant's failure to meet any deadline or cut-off in connection with its request.'' Further, DTC is proposing to amend the Reorganizations Guide to expressly state that, upon receipt of an appropriate request for a dissenter/appraisal rights letter involving securities that are participating in the Direct Registration Service (DRS), DTC will deliver a DRS Statement—instead of a physical certificate—to the Participant. Finally, DTC is also proposing to make minor changes to this subsection for conformity and readability.

In the ''Important Considerations'' subsection of the ''Instructions/Expirations'' section: (i) In the fourth bullet, delete ''either return the instructions form to you with a Rejection Notice attached, detailing the reason for the rejection, or,'' because the bullet refers to hardcopy instructions, which are not accepted, (ii) delete the fifth bullet in its entirety, because DTC does not notify Participants of a rejection by phone, and (iii) in the eighth bullet, for clarity, delete ''If you wish to put a unit comprised of a bond and a certificate evidencing a put option right, and you hold the securities in the form of the individual components, you must combine the components into a unit in order to effect the put,'' because this statement only applies to a specific put bond type and any specific requirement appears in the applicable announcement for such event.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act [14] requires that the rules of the clearing agency be designed, *inter alia,* to promote the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.

DTC believes that by deleting an obsolete service that is not being used, the proposed rule change to amend the Reorganizations Guide to remove the Eurobond Conversions Service would clarify the scope of reorganizations services offered by the DTC, thereby promoting the prompt and accurate clearance and settlement of securities transactions relating to reorganizations consistent with Section 17A(b)(3)(F) of the Act.

By eliminating the manually intensive physical mailing of an omnibus proxy in favor of a secure method of electronic access by an authorized person, the proposed rule change would enhance the efficiency and security of the omnibus proxy process and facilitate record date shareholder identification and voting. Therefore, DTC believes that the proposed rule change is designed to protect investors and the public interest, particularly with respect to securityholder rights, consistent with Section 17A(b)(3)(F) of the Act.

DTC believes that the proposed changes to (i) clarify and streamline language relating to omnibus proxies and proxy letters, and (ii) make conforming and clarifying changes in the Reorganizations Guide would enhance the clarity and transparency of the Reorganizations Guide. By enhancing the clarity and transparency of the Reorganizations Guide, the proposed rule change would allow Participants to more efficiently and effectively conduct their business in accordance with the Reorganizations Guide. Therefore, DTC believes that the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions relating to reorganizations consistent with Section 17A(b)(3)(F) of the Act, cited above.

(B) Clearing Agency's Statement on Burden on Competition

DTC believes that the proposed rule change to amend the Reorganizations Guide to remove the Eurobond Conversions Service would not have any impact or impose any burden on competition because it would remove an outdated service that has not been utilized by Participants for several years.

DTC believes that the proposed rule change to require Issuers to access the omnibus proxy electronically through the SPR Service would not have any impact or impose any burden on competition because an Issuer can register for the SPR Service and access the omnibus proxy without charge. In addition, Issuers can download and print their own hardcopies through the SPR Service.

DTC believes that the proposed changes to (i) clarify and streamline language relating to omnibus proxies and proxy letters, and (ii) make conforming and clarifying changes in the Reorganizations Guide would not have any impact on competition because it would enhance the clarity and transparency of the Reorganizations Guide and therefore would not affect the rights or obligations of any party.

In light of the foregoing, DTC does not believe that the proposed rule change would have any impact or impose any burden on competition.[15]

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. If any written comments are received, they would be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 15 U.S.C. 78q–1(b)(3)(I).

https://www.sec.gov/regulatory-actions/how-to-submit-comments. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

DTC reserves the right to not respond to any comments 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) [16] of the Act and paragraph (f) [17] of Rule 19b–4 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2022–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2022–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2022–003 and should be submitted on or before May 11, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08389 Filed 4–19–22; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94716; File No. SR–MIAX–2022–15]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing of a Proposed Rule Change To Establish Fees for the Exchange's cToM Market Data Product; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

April 14, 2022

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2022, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Item II below, which Item has been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to establish fees for the market data product known as MIAX Complex Top of Market (''cToM''). The fees became operative on April 1, 2022. The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Description of the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV [sic] below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 6)a) of the Fee Schedule to establish fees for the cToM data product. The Exchange initially filed this proposal on June 30, 2021 with the proposed fees to be effective beginning July 1, 2021 (''First Proposed Rule Change'').[5] The First Proposed Rule Change was published for comment in the **Federal Register** on July 15, 2021.[6] Although no comment letters were submitted, the Commission suspended the First Proposed Rule Change on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 92359 (July 9, 2021), 86 FR 37393 (July 15, 2021) (SR–MIAX–2021–28).

[6] *Id.*

August 27, 2021.[7] The Exchange withdrew the First Proposed Rule Change on September 30, 2021 [8] and re-submitted the proposal, with the proposed fee changes being immediately effective (''Second Proposed Rule Change'').[9] The Second Proposed Rule Change provided additional justification for the proposed fee changes and addressed comments provided by the Commission Staff. On October 14, 2021, the Exchange withdrew the Second Proposed Rule Change and submitted a revised proposal to again provide additional justification for the proposed fee changes and address additional comments provided by the Commission Staff (''Third Proposed Rule Change'').[10] The Third Proposed Rule Change was published for comment in the **Federal Register** on November 1, 2021.[11] Although the Commission did not again receive any comment letters on the Third Proposed Rule Change, the Exchange withdrew the Third Proposed Rule Change on December 10, 2021 and submitted a revised proposal for immediate effectiveness (''Fourth Proposed Rule Change'').[12] The Fourth Proposed Rule Change was published for comment in the **Federal Register** on December 23, 2021.[13] Although the Commission did not again receive any comment letters on the Fourth Proposed Rule Change, the Exchange withdrew the Fourth Proposed Rule Change on February 7, 2022 and submitted a revised proposal for immediate effectiveness, which was noticed and immediately suspended by the Commission on February 15, 2022 (''Fifth Proposed Rule Change'').[14] Although the Commission did not again receive any comment letters on the Fifth Proposed Rule Change, the Exchange withdrew the Fifth Proposed Rule Change on March 30, 2022 and submits this revised proposal to be effective April 1, 2022 (''Sixth Proposed Rule Change'').

Background

The Exchange previously adopted rules governing the trading of Complex Orders [15] on the MIAX System [16] in 2016.[17] At that time, the Exchange also adopted the market data product cToM and expressly waived fees for cToM to incentivize market participants to subscribe.[18] The Exchange provided cToM free of charge for nearly five years and absorbed all costs associated with producing the cToM data product.

In summary, cToM provides subscribers with the same information as the MIAX Top of Market (''ToM'') data product as it relates to the Strategy Book,[19] *i.e.,* the Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable order and quoting interest in the complex strategy on the Exchange. However, cToM provides subscribers with the following additional information that is not included in ToM: (i) The identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information; and (iii) the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). cToM is therefore a distinct market data product from ToM in that it includes additional information that is not available to subscribers that receive only the ToM data feed. ToM subscribers are not required to subscribe to cToM, and cToM subscribers are not required to subscribe to ToM.[20]

Proposal

The Exchange now proposes to amend Section 6)a) of the Fee Schedule to charge monthly fees to Distributors [21] of cToM. Specifically, the Exchange proposes to assess Internal Distributors $1,250 per month and External Distributors $1,750 per month for the cToM data feed.[22] The Exchange notes that the proposed monthly cToM fees for Internal and External Distributors are identical to the prices the Exchange currently charges for its ToM data product and the prices the Exchange's affiliate, MIAX Emerald, charges for its ToM product, both of which were previously published by the Commission and remain in effect today.[23]

As it does today for ToM, the Exchange proposes to assess cToM fees on Internal and External Distributors in each month the Distributor is credentialed to use cToM in the production environment. Also, as the Exchange does today for ToM, market data fees for cToM will be reduced for new Distributors for the first month during which they subscribe to cToM, based on the number of trading days that have been held during the month prior to the date on which that subscriber has been credentialed to use cToM in the production environment. Such new Distributors will be assessed a pro-rata percentage of the fees in the table in Section 6)a) of the Fee Schedule, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been credentialed to use cToM in the production environment, divided by the total number of trading days in the affected calendar month.

The Exchange believes that other exchanges' fees for complex market data are useful examples and provides the below table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar complex market data. As shown by the below table, the Exchange's proposed fees for cToM are similar to or less than fees charged for similar data products provided by other options exchanges.

[7] *See* Securities Exchange Act Release No. 92789 (August 27, 2021), 86 FR 49364 (September 2, 2021) (SR–MIAX–2021–28, SR–EMERALD–2021–21) (the ''Suspension Order'').

[8] *See* Securities Exchange Act Release No. 93471 (October 29, 2021), 86 FR 60947 (November 4, 2021).

[9] *See* SR–MIAX–2021–44.

[10] *See* Securities Exchange Act Release No. 93426 (October 26, 2021), 86 FR 60314 (November 1, 2021) (SR–MIAX–2021–50).

[11] *Id.*

[12] *See* Securities Exchange Act Release No. 93808 (December 17, 2021), 86 FR 73011 (December 23, 2021) (SR–MIAX–2021–62).

[13] *Id.*

[14] *See* Securities Exchange Act Release No. 94262 (February 15, 2022), 87 FR 9733 (February 22, 2022) (SR–MIAX–2022–10) (Notice of Filing of a Proposed Rule Change To Establish Fees for the Exchange's cToM Market Data Product; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

[15] *See* Exchange Rule 518(a)(5) for the definition of Complex Orders.

[16] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[17] *See* Securities Exchange Act Release No. 79072 (October 7, 2016), 81 FR 71131 (October 14, 2016) (SR–MIAX–2016–26) (Order Approving a Proposed Rule Change to Adopt New Rules to Govern the Trading of Complex Orders).

[18] *See* Securities Exchange Act Release No. 79146 (October 24, 2016), 81 FR 75171 (October 28, 2016) (SR–MIAX–2016–36) (providing a complete description of the cToM data feed).

[19] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[20] *See supra* note 17.

[21] A ''Distributor'' of MIAX Emerald [sic] data is any entity that receives a feed or file of data either directly from MIAX Emerald [sic] or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All Distributors are required to execute a MIAX Emerald [sic] Distributor Agreement. *See* Section 6)a) of the Fee Schedule.

[22] The Exchange also proposes to make a minor related change to remove ''(as applicable)'' from the explanatory paragraph in Section 6)a) as it will not change fees for both the ToM and cToM data feeds.

[23] *See* Securities Exchange Act Release Nos. 91145 (February 17, 2021), 86 FR 11033 (February 23, 2021) (SR–EMERALD–2021–05); 73942 (December 24, 2014), 80 FR 71 (January 2, 2015) (SR–MIAX–2014–66).

Exchange	Monthly fee
MIAX (as proposed)	$1,250—Internal Distributor; $1,750—External Distributor.
NYSE American, LLC (“Amex”)[24]	$1,500 Access Fee; $1,000 Redistribution Fee (this fee is in addition to the Access Fee resulting in a $2,500 monthly fee for external distribution).
NYSE Arca, Inc. (“Arca”)[25]	$1,500 Access Fee; $1,000 Redistribution Fee (this fee is in addition to the Access Fee resulting in a $2,500 monthly fee for external distribution).
NASDAQ PHLX LLC (“PHLX”)[26]	$3,000—Internal Distributor; $3,500—External Distributor.

The Exchange also proposes to amend the paragraph below the table of fees for ToM and cToM in Section 6)a) of the Fee Schedule to make a minor, non-substantive correction by deleting the phrase ‘‘(as applicable)’’ in the first sentence following the table of fees for ToM and cToM. The purpose of this proposed change is to remove unnecessary text from the Fee Schedule.

cToM Content Is Available From Alternative Sources

cToM is also not the exclusive source for Complex Order information from the Exchange and market participants may choose to subscribe to the Exchange’s other data products to receive such information. It is a business decision of market participants whether to subscribe to the cToM data product or not. Market participants that choose not to subscribe to cToM can derive much, if not all, of the same information provided in the cToM feed from other Exchange sources, including, for example, the MIAX Order Feed (‘‘MOR’’).[27] The following cToM information is provided to subscribers of MOR: The Exchange’s best bid and offer for a complex strategy, with aggregate size, based on displayable order and quoting interest in the complex strategy on the Exchange; the identification of the complex strategies currently trading on the Exchange; and the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). In addition to the cToM information contained in MOR, complex strategy last sale information can be derived from the Exchange’s ToM data feed. Specifically, market participants may deduce that last sale information for multiple trades in related options series that are disseminated via the ToM data feed with the same timestamp are likely part of a Complex Order transaction and last sale.

Implementation

The proposed rule change will be effective April 1, 2022.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with Section 6(b) of the Act[28] in general, and furthers the objectives of Section 6(b)(4) of the Act[29] 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[30] in that they are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes as set forth in recent Commission and Commission Staff guidance. On March 29, 2019, the Commission issued an Order disapproving a proposed fee change by the BOX Market LLC Options Facility to establish connectivity fees for its BOX Network (the ‘‘BOX Order’’).[31] 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.’’[32] Based on both the BOX Order and the Guidance, the Exchange believes that the proposed fees are consistent with the Act because they are: (i) Reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable and will not result in excessive pricing or supra-competitive profit; and (iv) identical to the prices the Exchange currently charges for its ToM data product and the prices the Exchange’s affiliate, MIAX, charges for its ToM product, both of which were previously published by the Commission and remain in effect today.[33]

In adopting Regulation NMS, the Commission granted self-regulatory organizations (‘‘SROs’’) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, cToM further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of cToM. Particularly, cToM provides subscribers with the same information as ToM, but includes the following additional information: (i) The identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information;

[24] *See* NYSE American Options Proprietary Market Data Fees, American Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Market_Data_Fee_Schedule.pdf*.

[25] *See* NYSE Arca Options Proprietary Market Data Fees, Arca Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Options_Proprietary_Data_Fee_Schedule.pdf*.

[26] *See* PHLX Price List—U.S. Derivatives Data, PHLX Orders Fees, at *http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#PHLX*.

[27] *See* MIAX website, Market Data & Offerings, at *https://www.miaxoptions.com/market-data-offerings* (last visited April 1, 2022). In general, MOR provides real-time ulta-low latency updates on the following information: New Simple Orders added to the MIAX Order Book; updates to Simple Orders resting on the MIAX Order Book; new Complex Orders added to the Strategy Book (*i.e.,* the book of Complex Orders); updates to Complex Orders resting on the Strategy Book; MIAX listed series updates; MIAX Complex Strategy definitions; the state of the MIAX System; and MIAX’s underlying trading state.

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(4).

[30] 15 U.S.C. 78f(b)(5).

[31] *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).

[32] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ‘‘Guidance’’).

[33] *See supra* note 23.

and (iii) the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). The Exchange believes cToM provides a valuable tool that subscribers can use to gain substantial insight into the trading activity in Complex Orders, but also emphasizes such data is not necessary for trading. Moreover, other exchanges offer similar data products.[34]

The Proposed Fees Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [35] The Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [36] In the Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supra-competitive profit, specific information, including quantitative information, should be provided to support that argument.'' [37] The Exchange does not assert that the proposed fees are constrained by competitive forces. Rather, the Exchange asserts that the proposed fees are reasonable because they will permit recovery of the Exchange's costs in providing cToM data and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [38] The Commission Staff further states in the Guidance that ''the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.'' [39] The Exchange provides this analysis below.

The proposed fees are based on a cost-plus model. The Exchange believes that it is important to demonstrate that the proposed fees are based on its costs and reasonable business needs and believes the proposed fees will allow the Exchange to begin to offset expenses. However, as discussed more fully below, such fees may also result in the Exchange recouping less than all of its costs of providing the cToM data feed because of the uncertainty of forecasting subscriber decision making with respect to firms' market data needs. The Exchange believes that the proposed fees will not result in excessive pricing or supra-competitive profit based on the total expenses the Exchange incurs versus the total revenue the Exchange projects to collect, and therefore meets the standards in the Act as interpreted by the Commission and the Commission Staff in the BOX Order and the Guidance.

The Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the cToM data feed, and, if such expense did so relate, what portion (or percentage) of such expense actually supports t [sic] providing the cToM data feed. In determining what portion (or percentage) to allocate to access services, each Exchange department head, in coordination with other Exchange personnel, determined the expenses that support access services and System Networks associated with the cToM data feed. This included numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders. The analysis also included each department head meeting with the divisions of teams within each department to determine the amount of time and resources allocated by employees within each division towards the access services and System Networks associated with the cToM data feed. The Exchange reviewed each individual expense to determine if such expense was related to providing the cToM data feed. Once the expenses were identified, the Exchange department heads, with the assistance of our internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing access services and the System Networks. The sum of all such portions of expenses represents the total cost to the Exchange to provide access services associated with the cToM market data feed. For the avoidance of doubt, no expense amount is allocated twice. In the Suspension Order, the Commission questioned whether further explanation of the Exchange's cost analysis was necessary. The Exchange provides further details concerning its cost analysis in response to this question.

The analysis conducted by the Exchange is a proprietary process that is designed to make a fair and reasonable assessment of costs and resources allocated to support the provision of access services associated with the cToM data feed. The Exchange acknowledges that this assessment can only capture a moment in time and that costs and resource allocations may change. That is why the Exchange historically, and on an ongoing annual basis, will continue to review its costs and resource allocations to ensure it appropriately allocates resources to properly provide services to the Exchange's constituents.

The Exchange believes exchanges, like all businesses, should be provided flexibility when developing and applying a methodology to allocate costs and resources they deem necessary to operate their business, including providing market data and access services. The Exchange notes that costs and resource allocations may vary from business to business and, likewise, costs and resource allocations may differ from exchange to exchange when it comes to providing market data and access services. It is a business decision that must be evaluated by each exchange as to how to allocate internal resources and what costs to incur internally or via third parties that it may deem necessary to support its business and its provision of market data and access services to market participants.

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully support access to the cToM data feed. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as

[34] *See supra* notes 24 through 26.

[35] *See* Guidance, *supra* note 32.

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

Regulation SCI-mandated processes associated with its network technology. Both fixed and variable expenses have significant impact on the Exchange's overall costs to provide the cToM data feed. For example, to accommodate new Members, the Exchange may need to purchase additional hardware to support those Members and provide the cToM data feed. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the cToM market data feed is a reasonable attempt to offset a portion of those costs associated with providing access to and maintaining its System Networks' infrastructure.

The Exchange estimated its total annual expense to provide the cToM data feed based on the following general expense categories: (1) External expenses, which include fees paid to third parties for certain products and services; (2) internal expenses relating to the internal costs to provide the services associated with the cToM data feed; and (3) general shared expenses.[40] The Guidance does not include any information regarding the methodology that an exchange should use to determine its cost associated with a proposed fee change. The Exchange utilized a methodology in this proposed fee change that it believes is reasonable because the Exchange analyzed its entire cost structure, allocated a percentage of each cost attributable to providing the cToM data feed, then divided those costs according to the cost methodology outlined below.

For 2022, the total annual expense for providing the access services associated with providing the cToM data feed is estimated to be $299,228, or $24,935 per month. The Exchange believes it is more appropriate to analyze the cToM market data feed utilizing its estimated 2022 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[41] The $299,228 estimated total annual expense is directly related to the access to the cToM data feed, and not any other product or service offered by the Exchange. For example, it does not include general costs of operating matching engines and other trading technology. No expense amount was allocated twice. Each of the categories of expenses are set forth in the following table and details of the individual line-item costs considered by the Exchange for each category are described further below.

External expenses

Category	Percentage of total expense amount allocated
Data Center Provider	0.20%
Fiber Connectivity Provider	0.20%
Security Financial Transaction Infrastructure ("SFTI"), and Other Connectivity and Content Service Providers	0%
Hardware and Software Providers	0.20%
Total of External Expenses	[42] $5,379

Internal expenses

Category	Expense amount allocated
Employee Compensation	$270,825
Depreciation and Amortization	3,830
Occupancy	13,925
Total of Internal Expenses	288,580
Allocated Shared Expenses	5,268

In its Suspension Order, the Commission solicited commenters' views on whether the Exchange has provided sufficient detail on the identity and nature of services provided by third parties. The Commission further solicited commenters' views on whether the Exchange has provided sufficient detail on the elements that go into connectivity costs, including how shared costs are allocated and attributed to connectivity expenses, to permit an independent review and assessment of the reasonableness of purported cost-based fees and the corresponding profit margin thereon. Based on the below analysis, the Exchange believes that the cToM data fees are fair and reasonable and that the Exchange has provided sufficient detail surrounding the Commission's questions. In accordance with the Guidance, the Exchange has provided sufficient detail to support a finding that the proposed fees are

[40] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

[41] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87877 (December 31, 2019), 85 FR 738 (January 7, 2020) (SR–EMERALD–2019–39). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2022 Form 1 Amendment, which will be filed in 2023. In its Suspension Order, the Commission also asked should the Exchange to use cost estimates or actual costs estimated for 2021 in a filing made in 2022, or make cost estimates for 2022. The Exchange utilized expenses from its most recent audited financial statement as those numbers are more reliable than more recent unaudited numbers, which may be subject to change.

[42] The Exchange does not believe it is appropriate to disclose the actual amount it pays to each individual third-party provider as those fee arrangements are competitive or the Exchange is contractually prohibited from disclosing that number.

consistent with the Exchange Act. The proposal includes a detailed description of the Exchange's costs and how the Exchange determined to allocate those costs related to the proposed fees. The Exchange notes that it only has a single source of revenue, distribution fees, to recover those costs associated with providing the cToM data feed. The Exchange notes that, without the specific third-party and internal expense items, the Exchange would not be able to provide and maintain the System Networks and access to the System Networks. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, has been identified through a line-by-line item analysis to be integral to providing the cToM data feed.

For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing the cToM data feed. The Exchange describes the analysis conducted for each expense and the resources or determinations that were considered when determining the amount necessary to allocate to each expense. Only a portion of all fees paid to such third-parties is included in the third-party expenses described herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to providing the cToM data feed. This may result in the Exchange under allocating an expense to provide the cToM data feed, and such expenses may actually be higher than what the Exchange allocated as part of this proposal. The Exchange notes that expenses associated with its affiliates, MIAX Emerald and MIAX Pearl (the options and equities markets), are accounted for separately and are not included within the scope of this filing.

Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations, which resulted in revised percentage allocations in this filing. The revised percentages are, among other things, the result of the shuffling of internal resources in response to business objectives and changes to fees charged and services provided by third parties. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

External Expense Allocations

For 2022, expenses relating to fees paid by the Exchange to third parties for products and services necessary to provide the cToM data feed are estimated to be $5,379. This includes, but is not limited to, a portion of the fees paid to: (1) A third party data center provider, including for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) a fiber connectivity provider for network services (fiber and bandwidth products and services) linking the Exchange's and its affiliates' office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) various other content and connectivity service providers, which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (4) various other hardware and software providers which support the production environment in which Members and non-Members connect to the network to trade and receive market data.

Data Center Space and Operations Provider

The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties where the Exchange houses servers, switches and related equipment. Data center costs include an allocation of the costs the Exchange incurs to provide physical connectivity in the third party data centers where it maintains its equipment as well as related costs. The data center provider operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. Without the retention of a third party data center, the Exchange would not be able to operate its systems and provide a trading platform for market participants. The Exchange does not employ a separate fee to cover its data center expense and recoups that expense, in part, by charging for the cToM data feed.

The Exchange reviewed its data center footprint, including its total rack space, cage usage, number of servers, switches, cabling within the data center, heating and cooling of physical space, storage space, and monitoring and divided its data center expenses among providing transaction services, market data, and connectivity. Based on this review, the Exchange determined that 0.20% of the total applicable data center provider expense is applicable to providing the cToM data feed. The Exchange believes this allocation is reasonable because it represents the costs associated with the Exchange's servers and internal cabling dedicated to processing and disseminating market data. The Exchange excluded from this allocation portion of the Exchange's data center expense that is due to providing and maintaining connectivity to the Exchange's System Networks, including providing cabling within the data center between market participants and the Exchange. The Exchange also did not allocate the remainder of the data center expense because it pertains to other areas of the Exchange's operations, such as ports and transaction services.

Fiber Connectivity Provider

The Exchange engages a third-party service provider that provides the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data center, and office locations in Princeton and Miami. Fiber connectivity is necessary for the Exchange to switch to its secondary data center in the case of an outage in its primary data center. Fiber connectivity also allows the Exchange's National Operations & Control Center (''NOCC'') and Security Operations Center (''SOC'') in Princeton to communicate with the Exchange's primary and secondary data centers. As such, all trade data, including the billions of messages each day, flow through this third-party provider's infrastructure over the Exchange's network. Without these services, the Exchange would not be able to operate and support the network and provide the cToM data feed. Without the retention of a third party fiber connectivity provider, they Exchange would not be able to communicate between its data centers and office locations. The Exchange does not employ a separate fee to cover its fiber connectivity expense and recoups that expense, in part, by charging for cToM data feeds.

The Exchange reviewed it costs to retain fiber connectivity from a third party, including the ongoing costs to support fiber connectivity, ensuring adequate bandwidth and infrastructure maintenance to support exchange operations, and ongoing network monitoring and maintenance and determined that 0.20% of the total fiber connectivity expense was applicable to providing the cToM data feed. The Exchange believes this allocation is reasonable because it reflects the portion of the fiber connectivity expense

that relates to maintaining and providing the cToM data feed. The Exchange excluded a large portion of the Exchange's fiber connectivity expense that is due to providing and maintaining connectivity between the Exchange's System Networks, data centers, and office locations and is core to the daily operation of the Exchange. Fiber connectivity is a necessary integral means to disseminate information from the Exchange's primary data center to other Exchange locations. The Exchange excluded from this allocation fiber connectivity usage related to system connectivity or other business lines. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing the cToM data feed. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the cToM data feed.

Connectivity and Content Services Provided by SFTI and Other Providers

The Exchange did not allocate any expense associated with the proposed fees towards SFTI and various other service providers' because the Exchange's architecture takes advantage of an advance in design to eliminate the need for a market data distribution gateway layer. The computation and dissemination via an API is done solely within the match engine environment and is then delivered via the Member and non-Member connectivity infrastructure. This architecture delivers a market data system that is more efficient both in cost and performance. Accordingly, the Exchange determined not to allocate any expense associated with SFTI and various other service providers.

Hardware and Software Providers

The Exchange relies on dozens of third-party hardware and software providers for equipment necessary to operate is System Networks. This includes either the purchase or licensing of physical equipment, such as servers, switches, cabling, and monitoring devices. It also includes the purchase or license of software necessary for security monitoring, data analysis and Exchange operations. Hardware and software providers are necessary to maintain its System Networks and provide the cToM data feed. Hardware and software equipment and licenses for that equipment are also necessary to operate and monitor physical assets necessary to offer the cToM data feed. Hardware and software equipment and licenses are key to the operation of the Exchange and without them the Exchange would not be able to operate and support the cToM data feed. The Exchange does not employ a separate fee to cover its hardware and software expense and recoups that expense, in part, by charging for cToM data feed dissemination.

The Exchange reviewed its hardware and software related costs, including software patch management, vulnerability management, administrative activities related to equipment and software management, professional services for selection, installation and configuration of equipment and software supporting exchange operations and determined that 0.20% of the total applicable hardware and software expense is allocated to providing the cToM data feed. Hardware and software equipment and licenses are key to the operation of the Exchange and its System Networks. Without them, the Exchange would not be able to develop and market participants would not be able to purchase the cToM data feed. The Exchange only allocated the portion of this expense to the hardware and software that is related to the cToM data feed, such as operating servers and equipment necessary to produce the cToM data feed. The Exchange, therefore, did not allocate portions of its hardware and software expense that related to other areas of the Exchange's business, such as hardware and software used for connectivity or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations, such as ports or transaction services, and does not directly relate to providing the cToM data feed. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to the cToM data feed, and not any other service, as supported by its cost review.

Internal Expense Allocations

For 2022, total internal expenses relating to the Exchange providing and maintaining its System Networks and access to its System Networks for cToM data feeds are estimated to be $288,580. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the System Networks and access to System Networks, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions as well as important system upgrades; (2) depreciation and amortization of hardware and software used to provide and maintain access services and System Networks associated with the cToM data feed, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide the cToM data feed. The breakdown of these costs is more fully described below.

Employee Compensation and Benefits

Human personnel are key to exchange operations and supporting the Exchange's ongoing provision the cToM data feed. The Exchange's reviewed its employee compensation and benefits expense and the portion of that expense allocated to providing the cToM data feed. As part of this review, the Exchange considered employees whose functions include providing and maintaining the cToM data feed and used a blended rate of compensation reflecting salary, stock and bonus compensation, bonuses, benefits, payroll taxes, and 401K matching contributions.[43]

Based on this review, the Exchange determined to allocate $270,825 in employee compensation and benefits expense to providing the cToM data feeds. To determine the appropriate allocation the Exchange reviewed the time employees allocated to supporting the cToM data feeds. Senior staff also reviewed these time allocations with department heads and team leaders to determine whether those allocations were appropriate. These employees are critical to the Exchange to provide the cToM data feed. The Exchange determined the above allocation based on the personnel whose work focused on functions necessary to provide and maintain the cToM data feeds. The Exchange does not charge a separate fee regarding employees who support the cToM data feeds and the Exchange seeks to recoup that expense, in part, by charging for the cToM data feed.

[43] For purposes of this allocation, the Exchange did not consider expenses related to supporting employees who support cToM data feeds, such as office space and supplies. The Exchange determined cost allocation for employees who perform work in support of offering access services and System Networks to arrive at a full time equivalent (''FTE'') of 0.8 FTEs across all the identified personnel. The Exchange then multiplied the FTE times a blended compensation rate for all relevant Exchange personnel to determine the personnel costs associated with providing the access services and System Networks associated with the cToM data feeds.

Depreciation and Amortization

A key expense incurred by the Exchange relates to the depreciation and amortization of equipment that the Exchange procured to provide and maintain the cToM data feeds. The Exchange reviewed all of its physical assets and software, owned and leased, and determined whether each asset is related to providing and maintaining the cToM data feeds, and added up the depreciation of those assets. All physical assets and software, which includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. In determining the amount of depreciation and amortization to apply to providing the cToM data feeds, the Exchange considered the depreciation of hardware and software that are key to the operation of the Exchange and its provision of the cToM data feeds. This includes servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps, that were previously purchased to maintain and provide the cToM data feeds. Without them, market participants would not be able to receive the cToM data feeds. The Exchange seeks to recoup a portion of its depreciation expense by charging for the cToM data feeds.

Based on this review, the Exchange determined to allocate $3,830 in depreciation and amortization expense to providing the cToM data feeds. The Exchange only allocated the portion of this depreciation expense to the hardware and software related to providing the cToM data feeds. The Exchange, therefore, did not allocate portions of depreciation expense that relates to other areas of the Exchange's business, such as the depreciation of hardware and software used for connectivity or unrelated administrative services.[44]

Occupancy

The Exchange rents and maintains multiple physical locations to house staff and equipment necessary to support access services, System Networks, and exchange operations. The Exchange's occupancy expense is not limited to the housing of personnel and includes locations used to store equipment necessary for Exchange operations. In determining the amount of its occupancy related expense, the Exchange considered actual physical space used to house employees whose functions include providing and maintaining the cToM data feeds. Similarly, the Exchange also considered the actual physical space used to house hardware and other equipment necessary to provide and maintain the cToM data feeds. This equipment includes computers, servers, and accessories necessary to support the System Networks and cToM data feeds. Based on this review, the Exchange determined to allocate $13,925 of its occupancy expense to provide and maintain the cToM data feeds. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the cToM data feeds. The Exchange considered the rent paid for the Exchange's Princeton and Miami offices, as well as various related costs, such as physical security, property management fees, property taxes, and utilities at each of those locations. The Exchange did not include occupancy expenses related to housing employees and equipment related to other Exchange operations, such as transaction and administrative services.

Allocated Shared Expense

Finally, a limited portion of general shared expenses was allocated to overall cToM data feed costs as without these general shared costs, the Exchange would not be able to operate in the manner that it does and provide the cToM data feeds. The costs included in general shared expenses include recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. For 2022, the Exchange's general shared expense allocated to the cToM data feeds is estimated to be $5,268. The Exchange used the weighted average of the above allocations to determine the amount of general shared expenses to allocate to the Exchange. Next, based on additional management and expense analysis, these fees are allocated to the proposal.

Revenue and Estimated Profit Margin

The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: Transaction fees, access fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms.

To determine the Exchange's estimated revenue associated with the cToM data feed, the Exchange analyzed the number of Members and non-Members currently receiving the cToM data feed and used a recent monthly billing cycle representative of current monthly revenue. The Exchange also provided its baseline by analyzing March 2022, the monthly billing cycle prior to the proposed cToM data fee, and compared this to its expenses for that month. As discussed below, the Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its estimates for purposes of these calculations, given the uncertainty of such estimates due to the continually changing access needs of market participants and potential changes in internal and third party expenses.

For March 2022, prior to the proposed the cToM data fee, Members and non-Members purchased a total of 13 cToM data feeds, for which the Exchange anticipates charging $0. This will result in a loss of $24,935 for that month. For April 2022, the Exchange anticipates Members and non-Members purchasing a total of 13 cToM data feeds. Assuming the Exchange charges its proposed fees for Distributors, the Exchange would generate revenue of $16,250 for that month. This would result in a loss of $8,685 ($16,250 minus $24,935) for that month (a negative 53% margin from March 2022 to April 2022).

The Exchange believes that conducting the above analysis on a per month basis is reasonable as the revenue generated from access services subject to the proposed fee generally remains static from month to month. The Exchange also conducted the above analysis on a per month basis to comply with the Commission Staff's Guidance, which requires a baseline analysis to assist in determining whether the proposal generates a supra-competitive profit. The Exchange cautions that this profit margin may also fluctuate from month to month based on the uncertainty of predicting how many connections may be purchased from month to month as Members and non-Members are free to add and drop connections at any time based on their own business decisions.

The Exchange believes the proposed margin is reasonable and will not result in a ''supra-competitive'' profit. The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive

[44] All of the expenses outlined in this proposed fee change refer to the operating expenses of the Exchange. The Exchange did not included any future capital expenditures within these costs. Depreciation and amortization represent the expense of previously purchased hardware and internally developed software spread over the useful life of the assets. Due to the fact that the Exchange has only included operating expense and historical purchases, there is no double counting of expenses in the Exchange's cost estimates.

market.'' [45] Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2008.[46] 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 market data, at lower rates than other options exchanges to attract order flow and encourage market participants to experience the high determinism, low latency, and resiliency of the Exchange's trading systems. The Exchange previously provided the cToM data feed free of charge and absorbed all costs associated with providing the cToM data feed to market participants. In this proposal, the Exchange would continue to offer the cToM data feed for a fee that that still falls short of covering the Exchange's expenses. The Exchange is not generating a profit, and therefore, cannot be deemed to be generating a ''supra-competitive'' profit by now charging for the cToM data feed. The Exchange should not now be penalized for now seeking to raise it fees to at least cover a portion of its costs after offering the cToM data feed free of charge.

The Exchange notes that its revenue estimate are based on projections and will only be realized to the extent such revenue actually produces the revenue estimated. As a generally new entrant to the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from the cToM data feed, the Exchange will have to be successful in retaining existing clients that wish to receive the cToM data feed or obtaining new clients that will purchase such data. To the extent the Exchange is successful in encouraging new clients to receive the cToM data feed, the Exchange does not believe it should be penalized for such success. The Exchange, like other exchanges, is, after all, a for-profit business. While the Exchange believes in transparency around costs and potential margins, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes its cost analysis and related estimates demonstrate this fact.

The Proposed Fees Are Reasonable When Compared to the Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other equities exchanges' costs to provide market data or their fee markup over those costs, and therefore cannot use other exchange's market data fees as a benchmark to determine a reasonable markup over the costs of providing market data. Nevertheless, the Exchange believes the other exchanges' market data fees are a useful example of alternative approaches to providing and charging for connectivity notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of market data. To that end, the Exchange believes the proposed cToM market data fees are reasonable because the proposed fees are still less than fees charged for similar connectivity provided by other options exchanges with comparable market shares.

As described in the below table, the Exchange's proposed fee remains less than fees charged for similar market data products provided by other options exchanges with similar market share. In the each of the above cases, the Exchange's proposed fees are still significantly lower than that of competing options exchanges with similar market share. Each of the market data rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

Exchange	Monthly fee
MIAX (as proposed)	$1,250—Internal Distributor; $1,750—External Distributor.
NYSE American, LLC (''Amex'') [47]	$1,500 Access Fee; $1,000 Redistribution Fee (this fee is in addition to the Access Fee resulting in a $2,500 monthly fee for external distribution).
NYSE Arca, Inc. (''Arca'') [48]	$1,500 Access Fee; $1,000 Redistribution Fee (this fee is in addition to the Access Fee resulting in a $2,500 monthly fee for external distribution).
NASDAQ PHLX LLC (''PHLX'') [49]	$3,000—Internal Distributor; $3,500—External Distributor.

The Proposed Pricing Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess Internal Distributors fees that are less than the fees assessed for External Distributors for subscriptions to the cToM data feed because Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights. All Members and non-Members that determine to receive any market data feed of the Exchange (or its affiliates, MIAX Pearl and MIAX Emerald), must first execute, among other things, the MIAX Exchange Group Exchange Data Agreement (the ''Exchange Data Agreement'').[50] Pursuant to the Exchange Data Agreement, Internal Distributors are restricted to the ''internal use'' of any market data they receive. This means that Internal Distributors may only distribute the Exchange's market data to the recipient's officers and employees and its affiliates.[51] External Distributors may distribute the Exchange's market data to persons who are not officers, employees or affiliates of the External Distributor,[52] and may charge their own fees for the redistribution of such market data. Accordingly, the Exchange

[45] *See supra* note 32.

[46] The Exchange has incurred a cumulative loss of $175 million since its inception in 2008 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000460.pdf.*

[47] *See* NYSE American Options Proprietary Market Data Fees, American Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Market_Data_Fee_Schedule.pdf.*

[48] *See* NYSE Arca Options Proprietary Market Data Fees, Arca Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Options_Proprietary_Data_Fee_Schedule.pdf.*

[49] *See* PHLX Price List—U.S. Derivatives Data, PHLX Orders Fees, at *http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#PHLX.*

[50] *See* Exchange Data Agreement, available at *https://miaxweb2.pairsite.com/sites/default/files/page-files/MIAX_Exchange_Group_Data_Agreement_09032020.pdf.*

[51] *See id.*

[52] *See id.*

believes it is fair, reasonable and not unfairly discriminatory to assess External Distributors a higher fee for the Exchange's market data products as External Distributors have greater usage rights to commercialize such market data and can adjust their own fee structures if necessary. The Exchange also utilizes more resources to support External Distributors versus Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of Exchange staff. The Exchange believes the proposed cToM fees are equitable and not unfairly discriminatory because the fee level results in a reasonable and equitable allocation of fees amongst subscribers for similar services, depending on whether the subscriber is an Internal or External Distributor. Moreover, the decision as to whether or not to purchase market data is entirely optional to all market participants. Potential purchasers are not required to purchase the market data, and the Exchange is not required to make the market data available. Purchasers may request the data at any time or may decline to purchase such data. The allocation of fees among users is fair and reasonable because, if market participants determine not to subscribe to the data feed, firms can discontinue their use of the cToM data.

Further, the Exchange believes that the proposal is equitable and not unfairly discriminatory because the proposed cToM fees will apply to all market participants of the Exchange on a uniform basis. The Exchange also notes that the proposed monthly cToM fees for Internal and External Distributors are the same prices that the Exchange charges for its ToM data product.

The Exchange believes the proposed change to delete certain text from Section 6)a) of the Fee Schedule promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because the proposed change is a non-substantive edit to the Fee Schedule to remove unnecessary text. The Exchange believes that this proposed change will provide greater clarity to Members and the public regarding the Exchange's Fee Schedule and that it is in the public interest for the Fee Schedule to be accurate and concise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing cToM to market participants. As described above, the Exchange has operated at a cumulative net annual loss since it launched operations in 2008 [53] due to providing a low cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very marginal cost, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low cost exchange alternative to the options industry, which resulted in lower initial revenues. An example of this is cToM, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Since the Exchange launched Complex Order functionality in 2016, all Exchange Members and non-Members have had the ability to receive the Exchange's cToM data free of charge for the past five years.[54] Since 2016, when the Exchange adopted Complex Order functionality, the Exchange has spent time and resources building out various Complex Order functionality in its System to provide better trading strategies and risk functionality for market participants in order to better compete with other exchanges' complex functionality and similar data products focused on complex orders.[55] The Exchange now seeks to recoup its costs for providing cToM to market participants and believes the proposed fees will not result in excessive pricing or supra-competitive profit.

Inter-Market Competition

The Exchange also does not believe the proposed fees would cause any unnecessary or in appropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. There is no reason to believe that the newly proposed fees for receive the cToM data feed would impair other exchange's ability to compete or cause any unnecessary or inappropriate burden on inter-market competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that purchase cToM. The proposed fees are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

The Exchange does not believe that the proposed rule change to make a minor, non-substantive edit to Section 6)a) of the Fee Schedule by deleting unnecessary text will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This proposed rule change is not being made for competitive reasons, but rather is designed to remedy a minor non-substantive issue and will provide added clarity to the Fee Schedule. The Exchange believes that it is in the public interest for the Fee Schedule to be accurate and concise so as to eliminate the potential for confusion on the part of market participants. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency regarding the Exchange's Fee Schedule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[56] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the

[53] *See supra* note 49.

[54] *See supra* note 17.

[55] *See supra* notes 24 through 26.

[56] 15 U.S.C. 78s(b)(3)(C).

Act,[57] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

As the Exchange further details above, the Exchange first filed a proposed rule change proposing fee changes as proposed herein on June 30, 2021, with the proposed fee changes effective beginning July 1, 2021. That proposal, MIAX–2021–28, was published for comment in the **Federal Register** on July 15, 2021.[58] On August 27, 2021, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings to determine whether to approve or disapprove the proposal.[59] On September 30, 2021, the Exchange withdrew the proposed rule change,[60] and filed two other proposed rule changes proposing fee changes as proposed herein,[61] which were each also subsequently withdrawn. On February 7, 2022, the Exchange filed a proposed rule change proposing fee changes as proposed herein and, on February 15, 2022, the Commission issued a notice of the proposed rule change and, pursuant to Section 19(b)(3)(C) of the Act, simultaneously: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings to determine whether to approve or disapprove the proposal.[62] The instant filing is substantially similar.[63]

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[64] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [65]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [66] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [67] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[68]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposed fees for the cToM market data feed are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[69]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[70]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C) [71] and 19(b)(2)(B) of the Act [72] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[73] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Exchange has sufficiently demonstrated how the proposed rule change is consistent with Sections 6(b)(4),[74] 6(b)(5),[75] and 6(b)(8) [76] of the Act. Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[57] 15 U.S.C. 78s(b)(1).

[58] *See supra* note 5, and accompanying text.

[59] *See* Securities Exchange Act Release No. 92789, 86 FR 49364 (September 2, 2021).

[60] *See* Securities Exchange Act Release No. 93471 (October 29, 2021), 86 FR 60947 (November 4, 2021).

[61] *See* Securities Exchange Act Release Nos. 93426 (October 26, 2021), 86 FR 60314 (November 1, 2021); 93808 (December 17, 2021), 86 FR 73011 (December 23, 2021).

[62] *See* Securities Exchange Act Release No. 94262 (February 15, 2022), 87 FR 9733 (February 22, 2022).

[63] *See id.*

[64] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[65] *Id.*

[66] 15 U.S.C. 78f(b)(4).

[67] 15 U.S.C. 78f(b)(5).

[68] 15 U.S.C. 78f(b)(8).

[69] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[70] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[71] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[72] 15 U.S.C. 78s(b)(2)(B).

[73] *Id.*

[74] 15 U.S.C. 78f(b)(4).

[75] 15 U.S.C. 78f(b)(5).

[76] 15 U.S.C. 78f(b)(8).

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth above, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. *Cost Estimates and Allocation.* The Exchange states that it is not asserting that the proposed fees are constrained by competitive forces, but rather sets forth a ''cost-plus model,'' and states that the proposed fees are ''reasonable because they will permit recovery of the Exchange's costs in providing cToM data and will not result in the Exchange generating a supra-competitive profit.'' [77] Setting forth its costs in providing the cToM data product, and as summarized in greater detail above, MIAX projects $299,228 in aggregate annual estimated costs for 2022 as the sum of: (1) $5,379 in external expenses paid in total to its data center provider (0.20% of the total applicable expense) for data center services; its fiber connectivity provider for network services (0.20% of the total applicable expense); and various other hardware and software providers (0.20% of the total applicable expense) supporting the production environment; (2) $288,580 in internal expenses, allocated to (a) employee compensation costs ($270,825); (b) depreciation and amortization ($3,830); and (c) occupancy costs ($13,925); and (3) $5,268 in allocated shared expenses, including recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. Do commenters believe that these allocations are reasonable? Should the Exchange be required to provide more specific information regarding the allocation of third-party expenses, such as the overall estimated cost for each category of external expenses or at minimum the total applicable third-party expenses? Should the Exchange have provided either a percentage allocation or statements regarding the Exchange's overall estimated costs for the internal expense categories and general shared expenses figure? Do commenters believe that the Exchange has provided sufficient detail about how it determined which costs are associated with providing and maintaining the cToM data product and why? Do commenters believe that the Exchange provided sufficient detail or explanation to support its claim that ''no expense amount is allocated twice,'' [78] whether *among* the sub-categories of expenses in this filing, *across* the Exchange's fee filings for other products or services, or *over time*? Do commenters believe that the Exchange has provided sufficient detail about how it determined ''general shared expenses'' and how it determined what portion should be associated with providing and maintaining the cToM data product? The Exchange describes a ''proprietary'' process that was applied in making these determinations or arriving at particular allocations. Do commenters believe further explanation is necessary? What are commenters' views on whether the Exchange has provided sufficient detail on the identity and nature of services provided by third parties? Across all of the Exchange's projected costs, what are commenters' views on whether the Exchange has provided sufficient detail on the elements that go into market data costs, including how shared costs are allocated and attributed to market data expenses, to permit an independent review and assessment of the reasonableness of purported cost-based fees and the corresponding profit margin thereon?

2. *Revenue Estimates and Profit Margin Range.* The Exchange provides a single monthly revenue figure from March 2022 as the basis for calculating the profit margin of –53%. Do commenters believe this is reasonable? If not, why not? The profit margin is also dependent on the accuracy of the cost projections which, if inflated (intentionally or unintentionally), may render the projected profit margin meaningless. The Exchange acknowledges that this margin may fluctuate from month to month as Members and non-Members add and drop subscriptions,[79] and that costs may increase. The Exchange does not account for the possibility of cost decreases, however. What are commenters' views on the extent to which actual costs (or revenues) deviate from projected costs (or revenues)? Do commenters believe that the Exchange's methodology for estimating the profit margin is reasonable? Should the Exchange provide a range of profit margins that it believes are reasonably possible, and the reasons therefor?

3. *Reasonable Rate of Return.* The Exchange states that its expected profit margin is –53% and that the proposed fees are reasonable because the Exchange is operating at a negative margin for this product. Further, the Exchange states that it chose to initially provide the cToM data product for free and to forego revenue that they otherwise could have generated from assessing any fees.[80] What are commenters' views regarding what factors should be considered in determining what constitutes a reasonable rate of return for the cToM market data product? Do commenters believe it relevant to an assessment of reasonableness that, according to the Exchange, the Exchange's proposed fees are similar to or lower than fees charged by competing options exchanges with similar market share? Should an assessment of reasonable rate of return include consideration of factors other than costs; and if so, what factors should be considered, and why?

4. *Periodic Reevaluation.* The Exchange has not stated that it would reevaluate the appropriate level of cToM data product fees if there is a material deviation from the anticipated profit margin. In light of the impact that the number of subscriptions has on profit margins, and the potential for costs to decrease (or increase) over time, what are commenters' views on the need for exchanges to commit to reevaluate, on an ongoing and periodic basis, their cost-based data fees to ensure that the fees stay in line with their stated profitability projections and do not become unreasonable over time, for example, by failing to adjust for efficiency gains, cost increases or decreases, and changes in subscribers? How formal should that process be, how often should that reevaluation occur, and what metrics and thresholds should be considered? How soon after a new data fee change is implemented should an exchange assess whether its revenue and/or cost estimates were accurate and at what threshold should an exchange commit to file a fee change if its estimates were inaccurate? Should an initial review take place within the first 30 days after a data fee is implemented? 60 days? 90 days? Some other period?

5. *Fees for Internal Distributors versus External Distributors.* The Exchange argues that it is reasonable, equitable, and not unfairly discriminatory to assess Internal Distributors fees that are lower than the fees assessed for External Distributors for subscriptions to the cToM data feed ($1,250 per month for Internal Distributors versus $1,750 per month for External Distributors), since Internal Distributors have limited, restricted usage rights to the market data, as compared to External

[77] *See supra* Section II.A.2.

[78] *See id.*

[79] *See id.*

[80] *See id.*

Distributors, which have more expansive usage rights, including rights to commercialize such market data.[81] In addition, the Exchange states that it ''utilizes more resources'' to support External Distributors as compared to Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring ''additional time and effort'' of the Exchange's staff.[82] What are commenters' views on the adequacy of the information the Exchange provides regarding the differential between the Internal Distributor and External Distributor fees? Do commenters believe that the fees for Internal Distributors and External Distributors, as well as the fee differences between Distributors, are supported by the Exchange's assertions that it sets the differentiated pricing structure in a manner that is equitable and not unfairly discriminatory? Do commenters believe that the Exchange should demonstrate how the proposed Distributor fee levels correlate with different costs to better substantiate how the Exchange ''utilizes more resources'' to support External Distributors versus Internal Distributors and permit an assessment of the Exchange's statement that ''External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of Exchange staff''? [83]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [84] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[85] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[86] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.[87]

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, any potential comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

V. Request for Written Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above, as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[88]

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MIAX–2022–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2022–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2022–15 and should be submitted on or before May 11, 2022. Rebuttal comments should be submitted by May 25, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[89] that File Number SR–MIAX–2022–15 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[90]

J. Matthew DeLesDernier,

Assistant Secretary.

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[81] *See* text accompanying *supra* notes 50–52.

[82] *See id.*

[83] *See id.*

[84] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[85] *See id.*

[86] *See id.*

[87] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 446–47 (DC Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

[88] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[89] 15 U.S.C. 78s(b)(3)(C).

[90] 17 CFR 200.30–3(a)(12), (57), and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94723; File No. SR–CBOE–2022–015]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 10.3 Regarding Margin Requirements

April 14, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 30, 2022, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 13, 2022, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 10.3 regarding margin requirements. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 10.3. Margin Requirements

(a)–(b) No change.

(c) *Customer Margin Account—Exception.* The foregoing requirements are subject to the following exceptions. Nothing in this paragraph (c) shall prevent a broker-dealer from requiring margin from any account in excess of the amounts specified in these provisions.

(1)–(4) No change.

(5) *Initial and Maintenance Margin Requirements on Short Options, Stock Index Warrants, Currency Index Warrants and Currency Warrants.*

(A)–(B) No change.

(C) *Related Securities Positions—Listed or OTC Options.* Unless otherwise specified, margin must be deposited and maintained in the following amounts for each of the following types of positions.

(i)–(ii) No change.

(iii) *Covered Calls/Covered Puts.* [(a)] No margin is required for a call (put) option contract or warrant carried in a short position where there is carried in the same account a long (short) position in equivalent units of the underlying security.

[(b) No margin is required for a call (put) index option contract or warrant carried in a short position where there is carried in the same account a long (short) position in an (1) underlying stock basket, (2) index mutual fund, (3) IPR, or (4) IPS, that is based on the same index underlying the index option or warrant and having a market value at least equal to the aggregate current index value.

(c)] In order for th[e]*is* exception[s in subparagraphs (a) and (b) above] to apply, in computing margin on positions in the underlying security[, underlying stock basket, index mutual fund, IPR or IPS, as applicable], ([1]*a*) in the case of a call, the current market value to be used shall not be greater than the exercise price, and ([2]*b*) in the case of a put, margin shall be the amount required by subparagraph (b)(2) of this Rule, plus the amount, if any, by which the exercise price exceeds the current market value.

(iv) *Exceptions.* The following paragraphs set forth the minimum amount of margin which must be maintained in margin accounts of customers having positions in components underlying options, stock index warrants, currency index warrants or currency warrant when such components are held in conjunction with certain positions in the overlying option or warrant. In respect of an option or warrant on a market index, an underlying stock basket is an eligible underlying component. The option or warrant must be listed or guaranteed by the carrying broker dealer. In the case of a call option or warrant carried in a short position, a related long position in the underlying component shall be valued at no more than the call option/warrant exercise price for margin equity purposes.

(a) *Long Option Offset.* When a component underlying an option or warrant is carried long (short) in [an] *the same* account [in which there is also carried] *as* a long put (call) option or warrant specifying equivalent units of the underlying component, the minimum amount of margin which must be maintained on the underlying component is 10% of the option/warrant exercise price plus the out-of-the-money amount not to exceed the minimum maintenance required pursuant to paragraph (b) of this Rule.

(b) *Conversion.* When a call option or warrant carried in a short position is covered by a long position in equivalent units of the underlying component and there is [also] carried *in the same account* a long put option or warrant specifying equivalent units of the same underlying component and having the same exercise price and expiration date as the short call option or warrant, the minimum amount of margin which must be maintained for the underlying component shall be 10% of the exercise price.

(c) *Reverse Conversion.* When a put option or warrant carried in a short position is covered by a short position in equivalent units of the underlying component and there is [also] carried *in the same account* a long call option or warrant specifying equivalent units of the same underlying component and having the same exercise price and expiration date as the short put option or warrant, the minimum amount of margin which must be maintained for the underlying component shall be 10% of the exercise price plus the amount by which the exercise price of the put exceeds the current market value of the underlying, if any.

(d) *Collar.* When a call option or warrant carried in a short position is covered by a long position in equivalent units of the underlying component and there is [also] carried *in the same account* a long put option or warrant specifying equivalent units of the same underlying component and having a lower exercise price than, and same expiration date as, the short call option/warrant, the minimum amount of margin which must be maintained for the underlying component shall be the lesser of 10% of the exercise price of the put plus the put out-of- the-money amount or 25% of the call exercise price.

(e) Protected Option. When an in-the-money index call (put) option contract or warrant is carried in a short position and there is carried in the same account a long (short) position in an underlying stock basket, non-leveraged index mutual fund or non-leveraged exchange-traded fund that is based on the same index underlying the index option or warrant, the minimum amount of margin which must be maintained on a short index call option is 100% of the amount, if any, by which the aggregate current index value exceeds the market value of the basket or fund; and in the case of a short index put option, 100% of the amount, if any, by which the aggregate current index value is below the market value of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

basket or fund. If the index call (put) option contract or warrant carried short is at- or out-of-the-money and there is carried in the same account a long (short) position in any underlying stock basket, non-leveraged index mutual fund or non-leveraged ETF that is based on the same index underlying the index option or warrant, no margin is required.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends Rule 10.3 regarding margin requirements. Specifically, the Exchange proposes to amend Rule 10.3(c)(5)(C)(iii)(b) to update the provisions that provide margin relief for a cash-settled index option written against a holding in an exchange-traded fund that tracks the same index as the index underlying the index option. Rule 10.3 sets forth margin requirements, and certain exceptions to those requirements, applicable to security positions of Trading Permit Holders' (''TPHs'') customers. Rule 10.3(c)(5)(C)(iii) currently requires no margin for covered calls and puts. Specifically, that rule provides the following:

- No margin is required for a call (put) option contract or warrant carried in a short position where there is carried in the same account a long (short) position in equivalent units of the underlying security.[3]
- No margin is required for a call (put) index option contract or warrant carried in a short position where there is carried in the same account a long (short) position in an (1) underlying stock basket,[4] (2) index mutual fund, (3) index portfolio receipt (''IPR''),[5] or (4) index portfolio share (''IPS''),[6] that is based on the same index underlying the index option or warrant and having a market value at least equal to the aggregate current index value.
- In order for the exceptions in the previous bullets to apply, in computing margin on positions in the underlying security, underlying stock basket, index mutual fund, IPR or IPS, as applicable,[7] (1) in the case of a call, the current market value to be used shall not be greater than the exercise price, and (2) in the case of a put, margin shall be the amount required by subparagraph (b)(2) of Rule 10.3, plus the amount, if any, by which the exercise price exceeds the current market value.

Rule 10.3(c)(5) generally requires TPHs to obtain from a customer, and maintain, a margin deposit for short cash-settled index options in an amount equal to 100% of the current market value of the option plus 15% (if overlying a broad-based index) or 20% (if overlying a narrow-based index) of the amount equal to the index value multiplied by the index multiplier minus the amount, if any, by which the option is out-of-the-money.[8] The minimum margin required for such an option is 100% of the option current market value plus 10% of the index value multiplied by the index multiplier for a call or 10% of the exercise price multiplied by the index multiplier for a put.

Pursuant to current Rule 10.3(c)(5)(C)(iii)(b) and (c), however, a TPH needs to require no margin deposit for a short cash-settled index call option if the TPH is holding in the same account a long position in an ETF that tracks the same index underlying the index option[9] if the current market value of the ETF for margin purposes (1) is at least equal to the aggregate current index value and (2) is not greater than the exercise price. If an account is short a cash-settled index put option and is holding in the same account a short position in the ETF, a TPH needs to require a margin deposit for the amount required by Rule 10.3(b)(2)[10] plus the

[3] In computing margin on such a position in the underlying security, (a) in the case of a call, the current market value to be used shall not be greater than the exercise price and (b) in the case of a put, margin will be the amount required by Rule 10.3(b)(2), plus the amount, if any, by which the exercise price of the put exceeds the current market value of the underlying.

[4] An ''underlying stock basket'' means a group of securities that includes each of the component securities of the applicable index and which meets the following conditions: (a) The quantity of each stock in the basket is proportional to its representation in the index, (b) the total market value of the basket is equal to the underlying index value of the index options or warrants to be covered, (c) the securities in the basket cannot be used to cover more than the number of index options or warrants represented by that value and (d) the securities in the basket shall be unavailable to support any other option or warrant transaction in the account. *See* Rule 10.3(a)(7).

[5] IPRs are securities that (a) represent an interest in a unit investment trust (''UIT'') which holds the securities that comprise an index on which a series of IPRs is based; (b) are issued by the UIT in a specified aggregate minimum number in return for a ''Portfolio Deposit'' consisting of specified numbers of shares of stock plus a cash amount; (c) when aggregated in the same specified minimum number, may be redeemed from the UIT, which will pay to the redeeming holder the stock and cash then comprising the Portfolio Deposit; and (d) pay holders a periodic cash payment corresponding to the regular cash dividends or distributions declared and paid with respect to the component securities of the stock index on which the IPRs are based, less certain expenses and other charges as set forth in the UIT prospectus. IPRs are ''UIT interests'' within the meaning of the Rules. *See* Rule 1.1. A UIT Interest is any share, unit, or other interest in or relating to a unit investment trust, including any component resulting from the subdivision or separation of such an interest.

[6] IPSs are securities that (a) are issued by an open-end management investment company based on a portfolio of stocks or fixed income securities designed to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index or fixed income securities index; (b) are issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified number of shares of stock and/or a cash amount, or a specified portfolio of fixed income securities and/or a cash amount, with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end management investment company, which will pay to the redeeming holder stock and/or cash, or a specified portfolio of fixed income securities and/or cash with a value equal to the next determined net asset value. *See* Rule 1.1.

[7] IPRs and IPSs are commonly referred to as ETFs.

[8] The out-of-the-money amount for a call is any excess of the aggregate exercise price of the option or warrant over the product of the current (spot or cash) index value and the applicable multiplier. The out-of-the-money amount for a put is any excess of the product of the current (spot or cash) index value and the applicable multiplier over the aggregate exercise price of the option or warrant.

[9] This is the same margin treatment that applies to an option on an equity security written against the underlying security. *See* current Rule 10.3(c)(5)(C)(iii)(a).

[10] Rule 10.3(b)(2) provides the minimum amount of margin that must be maintained in customer margin accounts having positions in securities is: (1) With respect to long positions, 25% of the current market value of all long in the account; plus (2) with respect to short positions, (a) $2.50 per share or 100% of the current market value, whichever is greater, of each security short in the account that has a current market value of less than $5.00 per share; plus (b) $5.00 per share or 30% of the current market value, whichever is greater, of each security short in the account that has a current market value of $5.00 per share or more.

amount, if any, by which the exercise price of the option exceeds the market value of the ETF if the market value of the ETF is at least equal to the aggregate current index value.

The Exchange proposes to amend this exception to margin requirements applicable to short option positions or warrants on indexes that are offset by positions in an underlying stock basket, non-leveraged index mutual fund, or non-leveraged exchange-traded fund (collectively referred to as ''ETFs'') that is based on the same index option, as well as move it within Rule 10.3 to Rule 10.3(c)(5)(C)(iv).[11] Specifically, the proposed rule change adopts the following as Rule 10.3(c)(5)(C)(iv)(e):[12]

When an in-the-money index call (put) option contract or warrant is carried in a short position and there is carried in the same account a long (short) position in an underlying stock basket, non-leveraged index mutual fund or non-leveraged exchange-traded fund that is based on the same index underlying the index option or warrant, the minimum amount of margin which must be maintained on a short index call option is 100% of the amount, if any, by which the aggregate current index value exceeds the market value of the basket or fund; and in the case of a short index put option, 100% of the amount, if any, by which the aggregate current index value is below the market value of the basket or fund. If the index call (put) option contract or warrant carried short is at- or out-of-the-money and there is carried in the same account a long (short) position in any underlying stock basket, non-leveraged index mutual fund or non-leveraged ETF that is based on the same index underlying the index option or warrant, no margin is required.[13]

The proposed rule change amends the form of margin a TPH is required to hold in an account for a short in-the-money index call (put) option if there is a long position in an ETF based on the same index to be the amount by which the value of an ETF is below (above) the aggregate index value. Rather than necessitating the purchase or deposit of additional ETF shares to address a deficiency in the value of the ETF compared to the aggregate index value (regardless of the amount of the deficiency), as required by current rules, the proposed rule change will enable excess maintenance margin equity in a margin account to support the requirement. If excess maintenance margin is insufficient or nonexistent, the TPH would need to require a deposit of margin which can be in any form (*e.g.,* cash and/or marginable securities) from the account owner in an amount equal to any deficit.[14] Additionally, the proposed rule change will require no margin when an option is at- or out-of-the-money, regardless of whether the ETF market value is at least equal to the aggregate index value.

The Exchange believes the proposed rule change is more reasonable and practical than the current requirements, as clearing firms will no longer need to constantly monitor the value of an ETF and compare it to the aggregate current index value and see to it that an account owner deposits or purchases additional ETF shares to address any deficiencies in order to satisfy the margin exception in the rule. As a result, the Exchange believes the proposed rule may reduce the operational cost of the protected option strategy, which may make this strategy more beneficial to customers. While the structure of ETFs and market forces may cause an ETF's price to differ slightly in value from the index value, the Exchange has observed that these values are highly correlated and do not deviate significantly. Therefore, the Exchange believes the proposed margin requirement for protected in-the-money index options is an effective safeguard against the risk of a short option position.

The proposed rule change also eliminates the need for margin for an at-the-money or out-of-the-money protected index option, regardless of the value of the ETF. Currently, if the market value of an ETF was less (if a call) or more (if a put) than the current aggregate index value, the ETF position must be supplemented to address the deficiency. Due to the high correlation between the values of an ETF and an index, as noted above, the amount of margin necessary to address such deficiency would be minimal. In addition, given that options are unlikely to be assigned/exercised when they are at- or out-of-the-money, the need for such margin is also minimal. Therefore, the Exchange believes the cost to TPHs to monitor the need for margin for options that are unlikely to be assigned/exercised is not justified and unnecessary given the minimal margin amounts that would ultimately be necessary to cover the likely small deficiencies between the values of an ETF and index.

Additionally, the proposed rule change eliminates the requirement to mark the price of a long ETF with an index call option written against it at the lower of the ETF's market value or the index option strike price. With covered call options, this requirement is intended to cap favorable moves in the price of the underlying security at the strike price because moves above the strike price will not be realized. Currently, the Exchange applies this same requirement to protected options written against ETF holdings to maintain equivalency with the treatment of covered options. However, unlike stocks, favorable moves in the price of an underlying ETF may be realized because, if a short index option is assigned, the ETF shares are not sold (in the case of a long ETF/short call) or purchased (in the case of a short ETF/short put). Thus, favorable moves in the ETF price are not capped at the strike price. As a result, the Exchange believes it is appropriate to no longer apply this requirement to protected options written against ETF holdings.

In connection with this change, the proposed rule change deletes Rule 10.3(c)(5)(C)(iii)(b), as well as the cross-reference to such paragraph and the references to underlying stock basket, index mutual fund, IPR or IPS, as applicable,[15] in current subparagraph (c), as those terms relate specifically to current subparagraph (b). Because this would leave only one section in Rule 10.3(c)(5)(C)(iii), the proposed rule change deletes subparagraph lettering and combines current subparagraph (iii)(a) and current subparagraph (iii)(c) into a single provision as subparagraph

[11] Proposed paragraph (e) limits the margin relief to index options written against an underlying stock basket, non-leveraged index mutual fund or non-leveraged exchange-traded fund (compared to underlying stock basket, index mutual fund, IPR, or IPS in current subparagraph (iii)(b)). The Exchange proposes to add the non-leveraged limitation to clarify that this exception is not intended to and does not apply to leveraged instruments. Additionally, the Exchange excludes IPRs and IPSs from being eligible for the margin relief in paragraph (e), as the Exchange understands that the use and availability of these products has diminished and has not observed the writing of index options against them.

[12] The proposed rule change identifies the strategy described in proposed subparagraph (e) as a ''protected option,'' which is a strategy of writing an index option against a holding in an ETF based on the same index as the index option, to differentiate it from a ''covered call,'' which is a strategy of writing an option against a position in an underlying security (the margin treatment for which is described in current subparagraph (iii)(a)).

[13] The Exchange understands that FINRA intends to submit a proposed rule change to adopt the same provision in its rules following Commission approval of this proposed rule change.

[14] Pursuant to the current Rules, if the ETF market value is not at least equal to the aggregate index value, and additional shares are not purchased or deposited, then the required margin is equal to the amount of the option current market value plus 15% (if a broad-based index) or 20% (if a narrow-based index) of the aggregate index value minus any out-of-the-money amount, subject to a minimum requirement.

[15] These terms are related only to current subparagraph (b).

(iii) and makes corresponding conforming changes.

The proposed rule change also makes clarifying, nonsubstantive changes in each subparagraph of Rule 10.3(c)(5)(C)(iv) to conform language in those subparagraphs to language used throughout Rule 10.3. Specifically, the proposed rule change amends the provision of each subparagraph to state that the minimum amount of required margin in the circumstances described in each subparagraph applies when the applicable long position is carried ''in the same account as'' the applicable short position, rather than ''also carried.'' This language is consistent with the language in, for example, current Rule 10.3(c)(5)(C)(iii), as margin requirements are determined generally based on positions held in the same account.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[17] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[18] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes the proposed rule change furthers the objectives of Section 6(c)(3) of the Act,[19] which authorizes the Exchange to, among other things, prescribe standards of financial responsibility or operational capability and standards of training, experience and competence for its Trading Permit Holders and person associated with Trading Permit Holders.

In particular, the proposed rule change amends a specific margin treatment related to short index options written against ETFs in the same manner. Given the difference described above between short stock options written against the underlying stock and short index options written against ETFs, the Exchange believes it is reasonable to apply different margin treatments to these different strategies. While the economic outcomes of covered options and protected options are similar, as described above, the Exchange believes it promotes just and equitable principles of trade to apply margin slightly differently to protected options than covered options given the possibility of realizing gains in ETFs above the exercise prices that is not a possibility for covered options. While the proposed rule change may result in lower margin requirements for protected option strategies, the Exchange believes the proposed margin amounts are more reasonable than the current requirements, as they are more tailored to these strategies and reflect the potential deficiencies between the value of the ETF and the value of the index. As a result, the Exchange believes the proposed margin required will still be sufficient for protected option strategies. Given the high correlation between these values, the Exchange believes it is appropriate to require margin in an amount necessary to only cover this deficiency, as ultimately that is the risk against which the margin requirement is protecting. Additionally, the Exchange believes the burdens associated with the current margin requirements for short at- and out-of-the-money index options outweigh the benefits of the likely minimal margin that is required for options that are unlikely to be assigned/exercised. Additionally, as discussed above, the proposed rule change may reduce the operational burden of protected option strategies, which the Exchange believes may make the strategies more beneficial for customers and thus remove impediments to and perfect the mechanism of a free and open market, as well as reduce the margin required for such strategies, which will potentially free up capital that can be put back into the market, which ultimately benefits investors.

The proposed clarifying, nonsubstantive changes provide for more consistent language in similar rule provisions, which will ultimately benefit investors.

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 intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as it will apply the same margin treatment to all TPHs. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition, as the Exchange expects FINRA to adopt a similar rule change, and several other options exchanges incorporate by reference the Exchange's margin rules into their rules (and thus apply them to their members). Additionally, as discussed above, the proposed rule change may reduce the operational burden of protected option strategies, as well as reduce the margin required for such strategies, which may make the strategies more beneficial for customers. The proposed rule change is not intended as a competitive filing, but rather to modify margin requirements for a certain option strategy to be more reasonable and practical.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

[19] 15 U.S.C. 78f(c)(3).

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2022–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2022–015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2022–015 and should be submitted on or before May 11, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08388 Filed 4–19–22; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94718; File No. SR–EMERALD–2022–15]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing of a Proposed Rule Change To Amend Its Fee Schedule To Adopt a Tiered-Pricing Structure for Additional Limited Service MIAX Emerald Express Interface Ports; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

April 14, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Options Fee Schedule (the ''Fee Schedule'') to amend certain port fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV [sic] below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to adopt a tiered-pricing structure for additional Limited Service MIAX Emerald Express Interface (''MEI'') Ports [3] available to Market Makers.[4] The Exchange believes a tiered-pricing structure will encourage Market Makers to be more efficient and economical 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.[5]

The Exchange initially filed the proposed fee changes on August 2, 2021, with the changes being immediately effective (''First Proposed Rule Change'').[6] The First Proposed Rule Change was published for comment in the **Federal Register** on August 19, 2021.[7] The Commission received one comment letter on the First Proposed Rule Change.[8] The Exchange withdrew the First Proposed Rule Change on September 27, 2021 and resubmitted its proposal (''Second Proposed Rule Change'').[9] On September 28, 2021, the Exchange withdrew the Second Proposed Rule Change and re-submitted the proposal on September 28, 2021, with the proposed fee changes being immediately effective (''Third Proposed Rule Change'').[10] The Third Proposed Rule Change was published for comment in the **Federal Register** on October 5,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The MIAX Emerald Express Interface (''MEI'') is a connection to the MIAX Emerald System that enables Market Makers to submit simple and complex electronic quotes to MIAX Emerald. *See* the Definitions Section of the Fee Schedule.

[4] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[5] 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.

[6] *See* Securities Exchange Act Release No. 92662 (August 13, 2021), 86 FR 46726 (August 19, 2021) (SR–EMERALD–2021–25).

[7] *Id.*

[8] *See* Letter from Richard J. McDonald, Susquehanna International Group, LLC (''SIG''), to Vanessa Countryman, Secretary, Commission, dated September 7, 2021 (''SIG Letter 1'').

[9] *See* SR–EMERALD–2021–30.

[10] *See* Securities Exchange Act Release No. 93188 (September 29, 2021), 86 FR 55052 (October 5, 2021) (SR–EMERALD–2021–31).

2021.[11] The Third Proposed Rule Change provided additional justification for the proposed fee changes and addressed certain points raised in the single comment letter that was submitted on the First Proposed Rule Change. The Commission received four comment letters from three separate commenters on the Third Proposed Rule Change.[12] The Commission suspended the Third Proposed Rule Change on November 22, 2021.[13] The Exchange withdrew the Third Proposed Rule Change on December 1, 2021 and submitted a revised proposal for immediate effectiveness (''Fourth Proposed Rule Change'').[14] The Fourth Proposed Rule Change meaningfully attempted to address issues or questions that have been raised by providing additional justification and explanation for the proposed fee changes and directly respond to the points raised in SIG Letters 1, 2, and 3, as well as the SIFMA Letter submitted on the First and Second [sic] Proposed Rule Changes,[15] and feedback provided by Commission Staff during a telephone conversation on November 18, 2021 relating to the Third Proposed Rule Change. The Fourth Proposed Rule Change was published for comment in the **Federal Register** on December 20, 2021.[16] Although the Commission did not receive any comment letters on the Fourth Proposed Rule Change, the Commission suspended the Fourth Proposed Rule Change on January 27, 2022.[17] The Exchange withdrew the Fourth Proposed Rule Change on February 1, 2022 and submitted a revised proposal for immediate effectiveness, which was noticed and immediately suspended by the Commission on February 15, 2022 (''Fifth Proposed Rule Change'').[18] The Commission received one comment letter on the Fifth Proposed Rule Change.[19] The Exchange withdrew the Fifth Proposed Rule Change on March 30, 2022 and submits this revised proposal to be effective April 1, 2022 (''Sixth Proposed Rule Change'').

Additional Limited Service MEI Port Tiered-Pricing Structure

The Exchange proposes to amend the fees for additional Limited Service MEI Ports. Currently, the Exchange allocates two (2) Full Service MEI Ports[20] and two (2) Limited Service MEI Ports[21] per matching engine[22] 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, Limited Service MEI Ports and the additional Limited Service MEI Ports all include access to the Exchange's primary and secondary data centers and its disaster recovery center. Market Makers may request additional Limited Service MEI Ports. Prior to the First Proposed Rule Change, Market Makers were assessed a $100 monthly fee for each additional Limited Service MEI Port for each matching engine.

The Exchange now proposes to move from a flat monthly fee per additional Limited Service MEI Port for each matching engine to a tiered-pricing structure for additional Limited Service MEI Ports for each matching engine under which the monthly fee would vary depending on the number of additional Limited Service MEI Ports the Market Maker elects to purchase. Specifically, the Exchange will continue to provide the first and second additional [sic] Limited Service MEI Ports for each matching engine free of charge, as described above, per the initial allocation of Limited Service MEI Ports that Market Makers receive. The Exchange now proposes the following tiered-pricing structure: (i) The third and fourth additional [sic] 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 additional [sic] 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 to the twelfth [sic] additional [sic] Limited Service MEI Ports will increase from the current monthly flat fee of $100 to $400 per port.

The Exchange believes the other exchanges' port fees are useful examples of alternative approaches to providing and charging for port access and provides the below table for comparison purposes only to show how its proposed fees compare to fees currently charged by other options exchanges for similar port access. As shown by the below

[11] *Id.*

[12] *See* letters from Richard J. McDonald, SIG, to Vanessa Countryman, Secretary, Commission, dated October 1, 2021 (''SIG Letter 2'') and October 26, 2021 (''SIG Letter 3''); *and* Ellen Green, Managing Director, Equity and Options Market Structure, Securities Industry and Financial Markets Association (''SIFMA''), to Vanessa Countryman, Secretary, Commission, dated November 26, 2021 (''SIFMA Letter'').

The Exchange notes that the Healthy Markets Association (''HMA'') submitted a comment letter on a related filing to amend fees for 10Gb ULL connections, on which SIG Letters 1, 2, and 3 as well as the SIFMA Letter also commented. *See* letter from Tyler Gellasch, Executive Director, HMA (''HMA''), to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021 (commenting on SR–CboeEDGA–2021–017, SR–CboeBYX–2021–020, SR–Cboe–BZX–2021–047, SR–CboeEDGX–2021–030, SR–MIAX–2021–41, SR–PEARL–2021–45, and SR–EMERALD–2021–29 and stating that ''MIAX has repeatedly filed to change its connectivity fees in a way that will materially lower costs for many users, while increasing the costs for some of its heaviest of users. These filings have been withdrawn and repeatedly refiled. *Each time, however, the filings contain significantly greater information about who is impacted and how than other filings that have been permitted to take effect without suspension*'') (*emphasis added*) (''HMA Letter'').

[13] *See* Securities Exchange Act Release No. 93644 (November 22, 2021), 86 FR 67745 (November 29, 2021).

[14] *See* Securities Exchange Act Release No. 93772 (December 14, 2021), 86 FR 71965 (December 20, 2021) (SR–EMERALD–2021–43).

[15] The Exchange notes that while the HMA Letter applauds the level of disclosure the Exchange included in the First and Second Proposed Rule Changes, the HMA Letter does not raise specific issues with the First or Second Proposed Rule Changes. Rather, it references the Exchange's proposals by way of comparison to show the varying levels of transparency in exchange fees filings and recommends changes to the Commission's review process of exchange fee filings generally. Therefore, the Exchange does not feel it is necessary to address the issues raised in the HMA Letter.

[16] *See supra* note 14.

[17] *See* Securities Exchange Act Release No. 94087 (January 27, 2022), 87 FR 5918 (February 2, 2022) (SR–MIAX–2021–60, SR–EMERALD–2021–43) (Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Changes to Amend Fee Schedules to Adopt Tiered-Pricing Structures for Additional Limited Service MIAX and MIAX Emerald Express Interface Ports).

[18] *See* Securities Exchange Act Release No. 94260 (February 15, 2022), 87 FR 9695 (February 22, 2022) (SR–EMERALD–2022–05) (Notice of Filing of a Proposed Rule Change to Amend Its Fee Schedule to Adopt a Tiered-Pricing Structure for Additional Limited Service MIAX Emerald Express Interface Ports; Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change).

[19] *See* Letter from Richard J. McDonald, SIG, to Vanessa Countryman, Secretary, Commission, dated March 15, 2022 (''SIG Letter 4'').

[20] ''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.

[21] ''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.

[22] ''Matching Engine'' means a part of the MIAX Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. *See* the Definitions Section of the Fee Schedule.

table, the Exchange's proposed highest tier is still less than fees charged for similar port access provided by other options exchanges.

Exchange	Type of port	Monthly fee (per port)
MIAX Emerald (as proposed) (equity options market share of 3.95% as of March 29, 2022 for the month of March) [23].	Limited Service MEI Port	1–2 ports. FREE (not changed in this proposal). 3–4 ports. $200. 5–6 ports. $300. 7–12 [sic]. $400.
NYSE American, LLC (''Amex'') [24] (equity options market share of 7.15% as of March 29, 2022 for the month of March) [25].	Order/Quote Entry Port	$450.
The NASDAQ Stock Market LLC (''NASDAQ'') [26] (equity options market share of 8.62% as of March 29, 2022 for the month of March) [27].	SQF Port	1–5 ports. $1,500.00. 6–20 ports. $1,000.00. 21 or more ports. $500.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with Section 6(b) of the Act [28] in general, and furthers the objectives of Section 6(b)(4) of the Act [29] 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 that the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [30] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes as set forth in recent Commission and Commission Staff guidance. On March 29, 2019, the Commission issued an Order disapproving a proposed fee change by the BOX Market LLC Options Facility to establish connectivity fees for its BOX Network (the ''BOX Order'').[31] 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.'' [32] Based on both the BOX Order and the Guidance, the Exchange believes that the proposed fees are consistent with the Act because they are (i) reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; and (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that the proposed fees are fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Proposed Fees Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [33] The Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [34] In the Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supra-competitive profit, specific information, including quantitative information, should be provided to support that argument.'' [35] The Exchange does not assert that the proposed fees are constrained by competitive forces. Rather, the Exchange asserts that the proposed fees are reasonable because they will permit recovery of the Exchange's costs in providing access services to supply Limited Service MEI Ports and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [36] The Commission Staff further states in the Guidance that ''the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.'' [37] The Exchange provides this analysis below.

The proposed fees are based on a cost-plus model. A Limited Service MEI Port provides access to each of the three Exchange networks, extranet, internal

[23] See ''The market at a glance,'' available at *https://www.miaxoptions.com/* (last visited March 29, 2022).

[24] *See* NYSE American Options Fee Schedule, Section V.A., Port Fees.

[25] *See supra* note 23.

[26] *See* Nasdaq Stock Market, Nasdaq Options 7 Pricing Schedule, Section 3, Nasdaq Options Market—Ports and Other Services.

[27] *See supra* note 23.

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(4).

[30] 15 U.S.C. 78f(b)(5).

[31] *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).

[32] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

network, and external network, all of which are necessary for Exchange operations. The Exchange's extranet provides the means by which the Exchange communicates with market participants and includes access to the Member portal and the ability to send and receive daily communications and reports. The internal network connects the extranet to the rest of the Exchange's systems and includes trading systems, market data systems, and network monitoring. The external network includes connectivity between the Exchange and other national securities exchanges, market data providers, and between the Exchange's locations in Princeton, New Jersey, Secaucus, New Jersey (NY4), Miami, Florida, and Chicago, Illinois (CH4). In determining the appropriate fees to charge Members and non-Members to access the Exchange's System Networks via Limited Service MEI Ports, the Exchange considered its costs to provide and maintain its System Networks and connectivity to those System Networks, using costs that are related to providing and maintaining access the Exchange's System Networks via Limited Service MEI Ports to estimate such costs, and set fees that are designed to cover its costs with a limited return in excess of such costs. The Exchange believes that it is important to demonstrate that the proposed fees are based on the Exchange's costs and reasonable business needs and believes the proposed fees will allow the Exchange to continue to offset expenses. However, as discussed more fully below, such fees may also result in the Exchange recouping less than all of its costs of providing and maintaining access to the Exchange's System Networks via Limited Service MEI Ports because of the uncertainty of forecasting subscriber decision making with respect to firms' port and access needs. The Exchange believes that the proposed fees will not result in excessive pricing or supra-competitive profit based on the total expenses the Exchange incurs versus the total revenue the Exchange projects to collect, and therefore meets the standards in the Act as interpreted by the Commission and the Commission Staff in the BOX Order and the Guidance.

The Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to Limited Service MEI Ports, and, if such expense did so relate, what portion (or percentage) of such expense actually supports access to the Exchange's System Networks via Limited Service MEI Ports. In determining what portion (or percentage) to allocate to access services, each Exchange department head, in coordination with other Exchange personnel, determined the expenses that support access services and System Networks associated with Limited Service MEI Ports. This included numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders. The analysis also included each department head meeting with the divisions of teams within each department to determine the amount of time and resources allocated by employees within each division towards the access services and System Networks associated with Limited Service MEI Ports. The Exchange reviewed each individual expense to determine if such expense was related to Limited Service MEI Ports. Once the expenses were identified, the Exchange department heads, with the assistance of our internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing access services and the System Networks. The sum of all such portions of expenses represents the total cost to the Exchange to provide access services associated with Limited Service MEI Ports. For the avoidance of doubt, no expense amount is allocated twice.

The analysis conducted by the Exchange is a proprietary process that is designed to make a fair and reasonable assessment of costs and resources allocated to support the provision of access services associated with Limited Service MEI Ports. The Exchange acknowledges that this assessment can only capture a moment in time and that costs and resource allocations may change. That is why the Exchange historically, and on an ongoing annual basis, reviews its costs and resource allocations to ensure it appropriately allocates resources to properly provide services to the Exchange's constituents.

The Exchange believes exchanges, like all businesses, should be provided flexibility when developing and applying a methodology to allocate costs and resources they deem necessary to operate their business, including providing market data and access services. The Exchange notes that costs and resource allocations may vary from business to business and, likewise, costs and resource allocations may differ from exchange to exchange when it comes to providing market data and access services. It is a business decision that must be evaluated by each exchange as to how to allocate internal resources and what costs to incur internally or via third parties that it may deem necessary to support its business and its provision of market data and access services to market participants.

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully support access to the Exchange and its System Networks via Limited Service MEI Ports. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI-mandated processes associated with its network technology. Both fixed and variable expenses have significant impact on the Exchange's overall costs to provide and maintain access to the Exchange's System Networks via Limited Service MEI Ports. For example, to accommodate new Members, the Exchange may need to purchase additional hardware to support those Members as well as provide enhanced monitoring and reporting of customer performance that the Exchange and its affiliates currently provide. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the proposed fees are a reasonable attempt to offset a portion of those costs associated with providing access to and maintaining its System Networks' infrastructure and related Limited Service MEI Ports.

The Exchange estimated its total annual expense to provide and maintain access to the Exchange's System Networks via Limited Service MEI Ports based on the following general expense categories: (1) External expenses, which include fees paid to third parties for certain products and services; (2) internal expenses relating to the internal costs to provide the services associated with Limited Service MEI Ports; and (3) general shared expenses.[38] The

[38] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

Guidance does not include any information regarding the methodology that an exchange should use to determine its cost associated with a proposed fee change. The Exchange utilized a methodology in this proposed fee change that it believes is reasonable because the Exchange analyzed its entire cost structure, allocated a percentage of each cost attributable to maintaining its System Networks, then divided those costs according to the cost methodology outlined below.

For 2022, the total annual expense for providing the access services associated with the Limited Service MEI Ports is estimated to be $1,394,961, or $116,246 per month. The Exchange believes it is more appropriate to analyze the proposed fees utilizing its estimated 2022 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[39] The $1,394,961 estimated total annual expense is directly related to the access to the Exchange's System Networks via Limited Service MEI Ports and not any other product or service offered by the Exchange. For example, it does not include general costs of operating matching engines and other trading technology. No expense amount was allocated twice. Each of the categories of expenses are set forth in the following table and details of the individual line-item costs considered by the Exchange for each category are described further below.

External expenses	
Category	Percentage of total expense amount allocated
Data Center Provider	4.95%
Fiber Connectivity Provider	2.64%
Security Financial Transaction Infrastructure ("SFTI"), and Other Connectivity and Content Service Providers	4.95%
Hardware and Software Providers	4.95%
Total of External Expenses	[40] $64,417
Internal Expenses	
Category	Expense amount allocated
Employee Compensation	$916,303
Depreciation and Amortization	81,932
Occupancy	10,501
Total of Internal Expenses	1,008,736
Allocated Shared Expenses	321,808

The Exchange notes that it only has two primary sources of revenue, connectivity and port fees, to recover those costs associated with providing and maintaining access to the Exchange's System Networks. The Exchange notes that, without the specific third party and internal expense items, the Exchange would not be able to provide and maintain the System Networks and access to the System Networks via Limited Service MEI Ports to Members. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, has been identified through a line-by-line item analysis to be integral to providing and maintaining the System Networks and access to System Networks via Limited Service MEI Ports.

For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing and maintaining the System Networks and access to System Networks in connection with Limited Service MEI Ports. The Exchange describes the analysis conducted for each expense and the resources or determinations that were considered when determining the amount necessary to allocate to each expense. Only a portion of all fees paid to such third-parties is included in the third-party expenses described herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to providing and maintaining the System Networks and access to Exchange's System Networks via Limited Service MEI Ports. This may result in the Exchange under allocating an expense to provide and maintain its System Networks and access to the System Networks via Limited Service MEI Ports, and such expenses may actually be higher than what the Exchange allocated as part of this proposal. The Exchange notes that expenses associated with its affiliates, MIAX Pearl and MIAX, are accounted for separately and are not included within the scope of this filing.

Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic, thorough review of its expenses and resource allocations, which resulted in revised percentage allocations in this

[39] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87877 (December 31, 2019), 85 FR 738 (January 7, 2020) (SR–EMERALD–2019–39). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2022 Form 1 Amendment, which will be filed in 2023. In its Suspension Order, the Commission also asked should the Exchange to use cost projections or actual costs estimated for 2021 in a filing made in 2022, or make cost projections for 2022. The Exchange utilized expenses from its most recent audited financial statement as those numbers are more reliable than more recent unaudited numbers, which may be subject to change.

[40] The Exchange does not believe it is appropriate to disclose the actual amount it pays to each individual third-party provider as those fee arrangements are competitive or the Exchange is contractually prohibited from disclosing that number.

filing. The revised percentages are, among other things, the result of the shuffling of internal resources in response to business objectives and changes to fees charged and services provided by third parties. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

External Expense Allocations

For 2022, expenses relating to fees paid by the Exchange to third parties for products and services necessary to provide and maintain the System Networks and access to the System Networks via Limited Service MEI Ports are estimated to be $64,417. This includes, but is not limited to, a portion of the fees paid to: (1) A third party data center provider, including for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) a fiber connectivity provider for network services (fiber and bandwidth products and services) linking the Exchange's and its affiliates' office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) SFTI, which supports connectivity feeds for the entire U.S. options industry; (4) various other content and connectivity service providers, which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers that support the production environment in which Members and non-Members connect to the network to trade and receive market data.

Data Center Space and Operations Provider

The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties where the Exchange houses servers, switches and related equipment. Data center costs include an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs. The data center provider operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. Without the retention of a third-party data center, the Exchange would not be able to operate its systems and provide a trading platform for market participants. The Exchange does not employ a separate fee to cover its data center expense and recoups that expense, in part, by charging for Limited Service MEI Ports.

The Exchange reviewed its data center footprint, including its total rack space, cage usage, number of servers, switches, cabling within the data center, heating and cooling of physical space, storage space, and monitoring and divided its data center expenses among providing transaction services, market data, and connectivity. Based on this review, the Exchange determined that 4.95% of the total applicable data center provider expense is applicable to providing and maintaining access services and System Networks associated with Limited Service MEI Ports. The Exchange believes this allocation is reasonable because Limited Service MEI Ports are a core means of access to the Exchange's network, providing one method for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's data center expense is due to providing and maintaining port access and connectivity to the Exchange's System Networks, including providing cabling within the data center between market participants and the Exchange. The Exchange excluded from this allocation servers that are dedicated to market data. The Exchange also did not allocate the remainder of the data center expense because it pertains to other areas of the Exchange's operations, such as other ports, market data, and transaction services.

Fiber Connectivity Provider

The Exchange engages a third-party service provider that provides the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data center, and office locations in Princeton and Miami. Fiber connectivity is necessary for the Exchange to switch to its secondary data center in the case of an outage in its primary data center. Fiber connectivity also allows the Exchange's National Operations & Control Center (''NOCC'') and Security Operations Center (''SOC'') in Princeton to communicate with the Exchange's primary and secondary data centers. As such, all trade data, including the billions of messages each day, flow through this third-party provider's infrastructure over the Exchange's network. Without these services, the Exchange would not be able to operate and support the network and provide and maintain access services and System Networks associated with the Limited Service MEI Ports to its Members and their customers. Without the retention of a third-party fiber connectivity provider, the Exchange would not be able to communicate between its data centers and office locations. The Exchange does not employ a separate fee to cover its fiber connectivity expense and recoups that expense, in part, by charging for Limited Service MEI Ports.

The Exchange reviewed its costs to retain fiber connectivity from a third party, including the ongoing costs to support fiber connectivity, ensuring adequate bandwidth and infrastructure maintenance to support exchange operations, and ongoing network monitoring and maintenance and determined that 2.64% of the total fiber connectivity expense was applicable to providing and maintaining access services and System Networks associated with Limited Service MEI Ports. The Exchange believes this allocation is reasonable because Limited Service MEI Ports are a core means of access to the Exchange's network, providing one method for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's fiber connectivity expense is due to providing and maintaining connectivity between the Exchange's System Networks, data centers, and office locations and is core to the daily operation of the Exchange. Fiber connectivity is a necessary integral means to disseminate information from the Exchange's primary data center to other Exchange locations. The Exchange excluded from this allocation fiber connectivity usage related to market data or other business lines. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining access services and System Networks associated with Limited Service MEI Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to retain fiber connectivity and maintain and provide access to its System Networks via Limited Service MEI Ports.

Connectivity and Content Services Provided by SFTI and Other Providers

The Exchange relies on SFTI and various other connectivity and content service providers for connectivity and data feeds for the entire U.S. options industry, as well as content, connectivity, and infrastructure services for critical components of the network

that are necessary to provide and maintain its System Networks and access to its System Networks via Limited Service MEI Ports. Specifically, the Exchange utilizes SFTI and other content service provider to connect to other national securities exchanges, the Options Price Reporting Authority (''OPRA''), and to receive market data from other exchanges and market data providers. SFTI is operated by the Intercontinental Exchange, the parent company of five registered exchanges, and has become integral to the U.S. markets. The Exchange understands SFTI provides services to most, if not all, of the other U.S. exchanges and other market participants. Without services from SFTI and various other service providers, the Exchange would not be able to connect to other national securities exchanges, market data providers, or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its SFTI and content service provider expense and recoups that expense, in part, by charging for Limited Service MEI Ports.

The Exchange reviewed it costs to retain SFTI and other content service providers, including network monitoring and maintenance, remediation of connectivity related issues, and ongoing administrative activities related to connectivity management and determined that 4.95% of the total applicable SFTI and other service provider expense is allocated to providing the access services associated with Limited Service MEI Ports. SFTI and other content service providers are key vendors and necessary components in providing connectivity to the Exchange. The primary service SFTI provides for the Exchange is connectivity to other national securities exchanges and their disaster recovery facilities and, therefore, a vast portion of this expense is allocated to providing access to the System Networks via Limited Service MEI Ports. Connectivity via SFTI is necessary for purposes of order routing and accessing disaster recovery facilities in the case of a system outage. Engaging SFTI and other like vendors provides purchasers of Limited Service MEI Ports connectivity to other national securities exchanges for purposes of order routing and disaster recovery. The Exchange did not allocate a portion of this expense that relates to the receipt of market data from other national securities exchange and OPRA. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining the System Networks or access to its System Networks via Limited Service MEI Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide and maintain its System Networks and access to its System Networks via Limited Service MEI Ports, and not any other service, as supported by its cost review.

Hardware and Software Providers

The Exchange relies on dozens of third-party hardware and software providers for equipment necessary to operate its System Networks. This includes either the purchase or licensing of physical equipment, such as servers, switches, cabling, and monitoring devices. It also includes the purchase or license of software necessary for security monitoring, data analysis and Exchange operations. Hardware and software providers are necessary to maintain its System Networks and provide access to its System Networks via Limited Service MEI Ports. Hardware and software equipment and licenses for that equipment are also necessary to operate and monitor physical assets necessary to offer physical connectivity to the Exchange. Hardware and software equipment and licenses are key to the operation of the Exchange and, without them, the Exchange would not be able to operate and support its System Networks and provide access to its Members and their customers. The Exchange does not employ a separate fee to cover its hardware and software expense and recoups that expense, in part, by charging for Limited Service MEI Ports.

The Exchange reviewed it hardware and software related costs, including software patch management, vulnerability management, administrative activities related to equipment and software management, professional services for selection, installation and configuration of equipment and software supporting exchange operations and determined that 4.95% of the total applicable hardware and software expense is allocated to providing and maintaining access services and System Networks associated with Limited Service MEI Ports. Hardware and software equipment and licenses are key to the operation of the Exchange and its System Networks. Without them, market participants would not be able to access the System Networks via Limited Service MEI Ports. The Exchange only allocated the portion of this expense to the hardware and software that is related to a market participant's use of Limited Service MEI Ports, such as operating its matching engines. The Exchange, therefore, did not allocate portions of its hardware and software expense that related to other areas of the Exchange's business, such as hardware and software used for market data or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations, such as ports or transaction services, and does not directly relate to providing and maintaining its System Networks and access to its System Networks via Limited Service MEI Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide and maintain its System Networks and access to its System Networks via Limited Service MEI Ports, and not any other service, as supported by its cost review.

Internal Expense Allocations

For 2022, total internal expenses relating to the Exchange providing and maintaining its System Networks and access to its System Networks via Limited Service MEI Ports is estimated to be $1,008,736. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the System Networks and access to System Networks via Limited Service MEI Ports, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions as well as important system upgrades; (2) depreciation and amortization of hardware and software used to provide and maintain access services and System Networks associated with Limited Service MEI Ports, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide and maintain the System Networks and access to System Networks via Limited Service MEI Ports. The breakdown of these costs is more fully described below.

Employee Compensation and Benefits

Human personnel are key to exchange operations and supporting the Exchange's ongoing provision and maintenance of the System Networks and access to System Networks via

Limited Service MEI Ports. The Exchange reviewed its employee compensation and benefits expense and the portion of that expense allocated to providing and maintaining the System Networks and access to System Networks via Limited Service MEI Ports. As part of this review, the Exchange considered employees whose functions include providing and maintaining the System Networks and Limited Service MEI Ports and used a blended rate of compensation reflecting salary, stock and bonus compensation, bonuses, benefits, payroll taxes, and 401K matching contributions.[41]

Based on this review, the Exchange determined to allocate $916,303 in employee compensation and benefits expense to providing access to the System Networks. To determine the appropriate allocation the Exchange reviewed the time employees allocated to supporting its System Networks and access to its System Networks via Limited Service MEI Ports. Senior staff also reviewed these time allocations with department heads and team leaders to determine whether those allocations were appropriate. These employees are critical to the Exchange to provide and maintain access to its System Networks via Limited Service MEI Ports for its Members, non-Members and their customers. The Exchange determined the above allocation based on the personnel whose work focused on functions necessary to provide and maintain the System Networks and access to System Networks via Limited Service MEI Ports. The Exchange does not charge a separate fee regarding employees who support Limited Service MEI Ports and the Exchange seeks to recoup that expense, in part, by charging for Limited Service MEI Ports.

Depreciation and Amortization

A key expense incurred by the Exchange relates to the depreciation and amortization of equipment that the Exchange procured to provide and maintain the System Networks and access to System Networks via Limited Service MEI Ports. The Exchange reviewed all of its physical assets and software, owned and leased, and determined whether each asset is related to providing and maintaining its System Networks and access to its System Networks via Limited Service MEI Ports, and added up the depreciation of those assets. All physical assets and software, which includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. In determining the amount of depreciation and amortization to apply to providing Limited Service MEI Ports and the System Networks, the Exchange considered the depreciation of hardware and software that are key to the operation of the Exchange and its System Networks. This includes servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were previously purchased to maintain and provide access to its System Networks via Limited Service MEI Ports. Without them, market participants would not be able to access the System Networks. The Exchange seeks to recoup a portion of its depreciation expense by charging for Limited Service MEI Ports.

Based on this review, the Exchange determined to allocate $81,932 in depreciation and amortization expense to providing access to the System Networks via Limited Service MEI Ports. The Exchange only allocated the portion of this depreciation expense to the hardware and software related to a market participant's use of M [sic] Limited Service MEI EO [sic] Ports. The Exchange, therefore, did not allocate portions of depreciation expense that relates to other areas of the Exchange's business, such as the depreciation of hardware and software used for market data or unrelated administrative services.[42]

Occupancy

The Exchange rents and maintains multiple physical locations to house staff and equipment necessary to support access services, System Networks, and exchange operations. The Exchange's occupancy expense is not limited to the housing of personnel and includes locations used to store equipment necessary for Exchange operations. In determining the amount of its occupancy related expense, the Exchange considered actual physical space used to house employees whose functions include providing and maintaining the System Networks and Limited Service MEI Ports. Similarly, the Exchange also considered the actual physical space used to house hardware and other equipment necessary to provide and maintain the System Networks and Limited Service MEI Ports. This equipment includes computers, servers, and accessories necessary to support the System Networks and Limited Service MEI Ports. Based on this review, the Exchange determined to allocate $10,501 of its occupancy expense to provide and maintain the System Networks and Limited Service MEI Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the System Networks, including providing and maintaining access to its System Networks via Limited Service MEI Ports. The Exchange considered the rent paid for the Exchange's Princeton and Miami offices, as well as various related costs, such as physical security, property management fees, property taxes, and utilities at each of those locations. The Exchange did not include occupancy expenses related to housing employees and equipment related to other Exchange operations, such as market data and administrative services.

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The Exchange notes that a material portion of its total overall expense is allocated to the provision and maintenance of access services (including connectivity and ports). The Exchange believes this is reasonable as the Exchange operates a technology-based business that differentiates itself from its competitors based on its more deterministic and resilient trading systems that rely on access to a high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. Thus, the Exchange believes it is reasonable to allocate a material portion of its total overall expense towards providing and maintaining its System Networks and access to its System Networks via Limited Service MEI Ports.

[41] For purposes of this allocation, the Exchange did not consider expenses related to supporting employees who support Limited Service MEI Ports, such as office space and supplies. The Exchange determined cost allocation for employees who perform work in support of offering access services and System Networks to arrive at a full time equivalent (''FTE'') of 2.8 FTEs across all the identified personnel. The Exchange then multiplied the FTE times a blended compensation rate for all relevant Exchange personnel to determine the personnel costs associated with providing the access services and System Networks associated with Limited Service MEI Ports.

[42] All of the expenses outlined in this proposed fee change refer to the operating expenses of the Exchange. The Exchange did not included any future capital expenditures within these costs. Depreciation and amortization represent the expense of previously purchased hardware and internally developed software spread over the useful life of the assets. Due to the fact that the Exchange has only included operating expense and historical purchases, there is no double counting of expenses in the Exchange's cost estimates.

Allocated Shared Expense

Finally, a limited portion of general shared expenses was allocated to overall Limited Service MEI Port 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 recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. For 2022, the Exchange's general shared expense allocated to Limited Service MEI Ports and the System Networks that support those connections is estimated to be $321,808. The Exchange used the weighted average of the above allocations to determine the amount of general shared expenses to allocate to the Exchange. Next, based on additional management and expense analysis, these fees are allocated to the proposal.

Revenue and Estimated Profit Margin

The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: Transaction fees, access fees (which includes Limited Service MEI Ports), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms.

To determine the Exchange's estimated revenue associated with Limited Service MEI Ports, the Exchange analyzed the number of Members currently utilizing Limited Service MEI Ports and used a recent monthly billing cycle representative of current monthly revenue. The Exchange also provided its baseline by analyzing March 2022, the monthly billing cycle prior to the proposed fees and compared this to its expenses for that month. As discussed below, the Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its estimates for purposes of these calculations, given the uncertainty of such estimates due to the continually changing access needs of market participants and potential changes in internal and third-party expenses.

For March 2022, prior to the proposed fees, Members purchased 877 Limited Service MEI Ports, for which the Exchange anticipates charging $64,100. This will result in a loss of $52,146 ($64,100 in Limited Service MEI Port revenue, minus $116,246 in monthly Limited Service MEI Port expenses). For April 2022, assuming the Exchange charges the proposed fees described herein, the Exchange anticipates Members purchasing 877 Limited Service MEI Ports, for which the Exchange anticipates charging $223,400. This will result in a profit of $107,154 ($223,400 in Limited Service MEI Port revenue, minus $116,246 in monthly Limited Service MEI Port expenses) for that month (a 48% profit margin).

The Exchange believes that conducting the above analysis on a per month basis is reasonable as the revenue generated from access services subject to the proposed fee generally remains static from month to month. The Exchange also conducted the above analysis on a per month basis to comply with the Commission Staff's Guidance, which requires a baseline analysis to assist in determining whether the proposal generates a supra-competitive profit. The Exchange cautions that this profit margin may also fluctuate from month to month based on the uncertainty of predicting how many ports may be purchased from month to month as Members are free to add and drop ports at any time based on their own business decisions.

The Exchange believes the proposed margin is reasonable and will not result in a ''supra-competitive'' profit. The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [43] Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2019.[44] 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 Limited Service MEI Ports, 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 now seeking to raise it fees to near market rates after offering such products as discounted prices.

The Exchange notes that its revenue estimate is based on estimates and will only be realized to the extent such revenue actually produces the revenue estimated. As a generally new entrant to the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from Limited Service MEI Ports, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity or obtaining new clients that will purchase such services. To the extent the Exchange is successful in encouraging new clients to connect directly to the Exchange, the Exchange does not believe it should be penalized for such success. The Exchange, like other exchanges, is, after all, a for-profit business. While the Exchange believes in transparency around costs and potential margins, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes its cost analysis and related estimates demonstrate this fact.

Further, the proposed profit margin reflects the Exchange's efforts to control its costs. A profit margin should not be judged alone based on its size, but whether the ultimate fee reflects the value of the services provided and is in line with other exchanges. A profit margin on one exchange should not be deemed excessive where that exchange has been successful in control costs, but not excessive where an exchange is charging the same fee but has a lower profit margin due to higher costs.

The expected margin is reasonable because the Exchange offers a premium System Network, System Networks connectivity, and a highly deterministic trading environment. The Exchange is recognized as a leader in network monitoring, determinism, risk protections, and network stability. For example, the Exchange experiences approximately a 95% determinism rate, system throughput of approximately 18 million quotes per second and average round trip latency rate of approximately 17 microseconds for a single quote. The Exchange provides extreme performance and radical scalability designed to match the unique needs of trading differing asset class/market model combination. Exchange systems offer two customer interfaces, FIX gateway for orders, and MEI interfaces and data feeds with best-in-class wire order determinism. The Exchange also offers automated continuous testing to ensure high reliability, advanced monitoring and systems security, and employs a software architecture that results in minimizing the demands on power,

[43] *See supra* note 32.

[44] The Exchange has incurred a cumulative loss of $22 million since its inception in 2019 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at https://sec.report/Document/9999999997-21-004557/.*

space, and cooling while allowing for rapid scalability, resiliency and fault isolation. The Exchange also provides latency equalized cross-connects in the primary data center ensures fair and cost efficient access to the MIAX systems. The Exchange, therefore, believes the anticipated margin is reasonable because it reflect the Exchange cost controls and the quality of the Exchanges systems.

The Exchange also believes its proposed margin does not exceed what can be obtained in a competitive market. The Exchange is one of sixteen registered U.S. options exchanges and maintains an average market share of approximately 3.95%.[45] The anticipated rate of return is reasonable because it is based on a rate that likely remains lower than what other exchanges with comparable market share charge for similar connectivity. For example the below table is provided for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar port access. As shown by the below table, the Exchange's proposed fee remains less than fees charged for similar port access provided by other options exchanges with similar market share, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of ports.

Exchange	Type of port	Monthly fee (per port)
MIAX Emerald (as proposed) (equity options market share of 3.95% as of March 29, 2022 for the month of March).[46]	Limited Service MEI Port	1–2 ports. FREE (not changed in this proposal); 3–4 ports. $200; 5–6 ports. $300; 7–12 [sic]. $400.
Amex[47] (equity options market share of 7.15% as of March 29, 2022 for the month of March).[48]	Order/Quote Entry Port	$450.
NASDAQ[49] (equity options market share of 8.62% as of March 29, 2022 for the month of March).[50]	SQF Port	1–5 ports. $1,500.00; 6–20 ports. $1,000.00; 21 or more ports. $500.

Lastly, the Exchange notes that this is a singular potential profit margin from a single revenue source and is not reflective of the Exchange's overall profit margin. This profit margin may be offset by lower or negative profit margins generated by other areas of the Exchange's operations that are not subject to this proposed fee change. The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: transaction fees, access fees (which includes Limited Service MEI Ports), regulatory fees, and market data fees. A potential profit margin in one area may be used to offset a potential loss in another area, and, therefore, a potential profit margin from a single product is not representative of the Exchange's overall profitability and whether that singular profit exceeds the profits that can be obtained in a competitive market.

The Proposed Fees Are Reasonable When Compared to The Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other exchanges' costs to provide ports or their fee markup over those costs, and therefore cannot use other exchange's port fees as a benchmark to determine a reasonable markup over the costs of providing ports. Nevertheless, the Exchange believes the other exchanges' port fees are useful examples of alternative approaches to providing and charging for ports notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of connectivity. To that end, the Exchange believes the proposed fees are reasonable because the proposed fees are still less than fees charged for similar ports provided by other options exchanges with comparable market shares.

As described in the above table, the Exchange's proposed fees remain less than fees charged for similar ports provided by other options exchanges with similar market share. In each of the above cases, the Exchange's proposed fees are still significantly lower than that of competing options exchanges with similar market share. Despite proposing lower or similar fees to that of competing options exchanges with similar market share, the Exchange believes that it provides a premium network experience to its Members and non-Members via a highly deterministic System, enhanced network monitoring and customer reporting, and a superior network infrastructure than markets with higher market shares and more expensive connectivity alternatives. Each of the rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

The Proposed Fees Are Equitably Allocated

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, the Exchange notes that the users who take the maximum amount of Limited Service MEI Ports account for approximately greater than 99% of message traffic over the network, while the users of fewer Limited Service MEI Ports account for approximately less than 1% of message traffic over the network. In the Exchange's experience, users who only utilize the two free Limited Service MEI Ports do not have a business need for the high performance network solutions required by users who take the maximum amount of Limited Service MEI Ports. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 18 million quote messages per second. On an average day, the Exchange handles over approximately 3 billion total messages. Of that total, users of the maximum amount of Limited Service MEI Ports generate approximately 3 billion messages, and users who utilize the two free Limited Service MEI Ports generate 500,000 messages. However, in

[45] *See supra* note 23.

[46] *See* ''*The market at a glance,*'' *available at https//www.miaxoptions.com/* (last visited March 29, 2022).

[47] *See* NYSE American Options Fee Schedule, Section V.A., Port Fees.

[48] *See supra* note 23.

[49] *See* Nasdaq Stock Market, Nasdaq Options 7 Pricing Schedule, Section 3, Nasdaq Options Market—Ports and Other Services.

[50] *See supra* note 23.

order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that users 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 users.

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.

With respect to intra-market 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. As stated above, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that the proposed pricing structure is associated with relative usage of the various market participants. Firms that are primarily order routers seeking best-execution do not utilize Limited Service MEI Ports on the Exchange and therefore will not pay the fees associated with the tiered-pricing structure. Rather, the fees described in the proposed tiered-pricing structure will only be allocated to Market Making firms that engage in advanced trading strategies and typically request multiple Limited Service MEI Ports, beyond the two that are free. Accordingly, the firms engaged in a Market Making business generate higher costs by utilizing more of the Exchange's resources. Those Market Making firms that purchase higher amounts of additional Limited Service MEI Ports tend to have specific business oriented market making and trading strategies, as opposed to firms engaging solely in best-execution order routing business. Additionally, the use of such additional Limited Service MEI Ports is entirely voluntary.

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 access all options exchanges. There is no reason to believe that our proposed price increase will harm another exchange's ability to compete. The Exchange operates in a highly competitive environment, and as discussed above, its ability to price access and ports is constrained by competition among exchanges and third parties. There are other options markets of which market participants may access in order to trade options. There is also a possible range of alternative strategies, including routing to the exchange through another participant or market center or accessing the Exchange indirectly. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

One comment letter was submitted on the Fifth Proposed Rule Change [51] and the Exchange responds to issues raised in that comment letter here.

First, SIG Letter 4 asserts that the Exchange's motivation for the proposed fees is not a proper justification and refers to statements included in withdrawn filings about the Exchange's need to recoup initial capital expenditures. SIG Letter 4 does not provided a reason why recoupment of initial capital expenditures is not a proper justification for a proposed rule change. SIG Letter 4 also asserts that enhancing profitability is not an appropriate justification for the proposed fee change. The Exchange never asserted in any of the preceding versions of this proposed fee change that enhancing profitability was a motivation for the proposed fee change. Rather, the Exchange provided numerous reasons for the proposed fee change, including the need to cover ongoing internal and external expenses and anticipated increases in those costs due to ongoing inflationary pressures.

Second, SIG Letter 4 claims that the Exchange omitted the data necessary to assess the proposed fee change under the Exchange Act. SIG Letter 4 also asserts that the Exchange's disclosed cost data is not reliable. With each iteration of this proposed fee change, the Exchange provided more detail about its cost based analysis and rationale. In accordance with the Guidance, the Exchange has provided sufficient detail to support a finding that the proposed fees are consistent with the Exchange Act. The proposal includes a detailed description of the Exchange's costs and how the Exchange determined to allocate those costs related to the proposed fees. The Exchange was commended by an industry group regarding the level of transparency and disclosure included in the proposed fee changes and that group was supportive of the efforts made by the Exchange and its affiliates to provide increased transparency and justification for their proposed fees. The commenter specifically noted that:

> ''MIAX has repeatedly filed to change its connectivity fees in a way that will materially lower costs for many users, while increasing the costs for some of its heaviest of users. These filings have been withdrawn and repeatedly refiled. Each time, however, the filings contain significantly greater information about who is impacted and how than other filings that have been permitted to take effect without suspension. For example, MIAX detailed the associated projected revenues generated from the connectivity fees by user class, again in a clear attempt to comply with the SRO Fee Filing Guidance.'' [52]

Despite the Exchange refiling its fee proposals to include significantly greater information about the impact of the proposed fees on Members and non-Members, primarily at the request of the Commission Staff and in response to comments from SIG, SIG argues that the data the Exchange provided is insufficient or unreliable. Section 6(b)(4) of the Act [53] requires an exchange to ''provide for the equitable allocation of reasonable dues, fees and other charges.'' The standard set by Congress for the Exchange to establish or amend a certain fee is ''reasonableness,'' and the Exchange provided significant detail in this filing and past filings to support a finding that the proposed fees are reasonable under the Exchange Act.

SIG Letter 4 also claims that the Exchange has not shown that the

[51] *See supra* note 19.

[52] *See* letter from Tyler Gellasch, Executive Director, Healthy Markets Association (''HMA''), to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021 (commenting on SR–CboeEDGA–2021–017, SR–CboeBYX–2021–020, SR–Cboe–BZX–2021–047, SR–CboeEDGX–2021–030, SR–MIAX–2021–41, SR–PEARL–2021–45, and SR–EMERALD–2021–29) (''HMA Letter'').

[53] 15 U.S.C. 78f(b)(4).

estimated profit margin is reasonable. In this filing, the Exchange enhanced its justification and support to find that the projected margin is reasonable and would not result in a supra-competitive profit. SIG Letter 4 states that SIG believes exchanges are utilities and utilities should only generate single to low double digit profit margins. This statement assumes that the projected profit margin is reflective of the Exchange's overall profit margin and ignores that this is a single profit margin from a single offering that is offset by lower or negative profit margins for other products and services offered by the Exchange. SIG's statement that utilities should only generate single to low double digit profit margins ignores SIG's own reference to a 14.4%, low double digit profit margin from one of the Exchange's recent proposed fee changes, as well as single digit to negative profit margins in other Exchange filings currently pending before the Commission.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[54] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[55] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

As the Exchange further details above, the Exchange first filed a proposed rule change proposing fee changes as proposed herein on August 2, 2021. That proposal, SR–EMERALD–2021–25, was published for comment in the **Federal Register** on August 19, 2021.[56] On September 24, 2021, the Exchange withdrew SR–EMERALD–2021–25 and re-filed its proposal on September 27, 2021 (SR–EMERALD–2021–30). On September 28, 2021, the Exchange withdrew SR–EMERALD–2021–30 and filed a proposed rule change proposing fee changes as proposed herein (SR–EMERALD–2021–31). That proposal, SR–EMERALD–2021–31, was published for comment in the **Federal Register** on October 5, 2021.[57] The Commission received three comment letters from two separate commenters on SR–EMERALD–2021–31.[58] On November 22, 2021, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings to determine whether to approve or disapprove the proposed rule change.[59] On December 1, 2021, the Exchange withdrew SR–EMERALD–2021–31 and filed a proposed rule change proposing fee changes as proposed herein (SR–EMERALD–2021–43). That filing, SR–EMERALD–2021–43, was published for comment in the **Federal Register** on December 20, 2021.[60] On January 27, 2022, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change (SR–EMERALD–2021–43); and (2) instituted proceedings to determine whether to approve or disapprove the proposal.[61] On February 1, 2022, the Exchange withdrew SR–EMERALD–2021–43 and filed a proposed rule change proposing fee changes as proposed herein (SR–EMERALD–2022–05). On February 15, 2022, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change (SR–EMERALD–2022–05); and (2) instituted proceedings to determine whether to approve or disapprove the proposal.[62] The Commission received one comment letter on SR–EMERALD–2022–05.[63] On March 30, 2022, the Exchange withdrew SR–EMERALD–2022–05 and on April 1, 2022, filed the instant filing, which is substantially similar.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[64] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [65]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [66] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not permit unfair discrimination between customers, issuers, brokers, or dealers; [67] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[68]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposed additional Limited Service MEI Port fees are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[69]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[70]

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[54] 15 U.S.C. 78s(b)(3)(C).

[55] 15 U.S.C. 78s(b)(1).

[56] *See* Securities Exchange Act Release No. 92662 (August 13, 2021), 86 FR 46726. The Commission received one comment letter on that proposal. Comment on SR–EMERALD–2021–25 can be found at: *https://www.sec.gov/comments/sr-emerald-2021-25/sremerald202125.htm.*

[57] *See* Securities Exchange Act Release No. 93188 (September 29, 2021), 86 FR 55052.

[58] Comment on SR–EMERALD–2021–31 can be found at: *https://www.sec.gov/comments/sr-emerald-2021-31/sremerald202131.htm.*

[59] *See* Securities Exchange Act Release No. 93640, 86 FR 67745 (November 29, 2021).

[60] *See* Securities Exchange Act Release No. 93772 (December 14, 2021), 86 FR 71965.

[61] *See* Securities Exchange Act Release No. 94087, 87 FR 5918 (February 2, 2022).

[62] *See* Securities Exchange Act Release No. 94260, 87 FR 9695 (February 22, 2022).

[63] Comment on SR–EMERALD–2022–05 can be found at: *https://www.sec.gov/comments/sr-emerald-2022-05/sremerald202205.htm.*

[64] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[65] *See id.*

[66] 15 U.S.C. 78f(b)(4).

[67] 15 U.S.C. 78f(b)(5).

[68] 15 U.S.C. 78f(b)(8).

[69] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[70] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)[71] and 19(b)(2)(B)[72] of the Act to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[73] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Exchange has sufficiently demonstrated how the proposed rule change is consistent with Sections 6(b)(4),[74] 6(b)(5),[75] and 6(b)(8)[76] of the Act. Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. *Cost Estimates and Allocation.* The Exchange states that it is not asserting that the proposed fees are constrained by competitive forces. Rather, the Exchange states that its proposed fees are based on a ''cost-plus model,'' employing a ''conservative approach,'' and that the $1,394,961 estimated total annual expense (comprised of $64,417 in allocated third-party expenses, $1,008,736 in allocated internal expenses, and $321,808 in allocated general shared expenses) is ''directly related to the access to the Exchange's System Networks via Limited Service MEI Ports and not any other product or service offered by the Exchange.''[77] *With respect to third-party and internal expenses:* Do commenters believe that the Exchange provided sufficient detail about how it determined which sub-categories of third-party and internal expenses are directly related to Limited Service MEI Ports? Should the Exchange be required to identify the sub-categories of expenses that it deemed *not* to be directly related to Limited Service MEI Ports? Do commenters believe that the Exchange provided sufficient detail about how it determined what percentage or portion of each such sub-category's total annual expense should be allocated as actually supporting access to the Exchange's Systems Networks via Limited Service MEI Ports? The Exchange provided *either* the percentage *or* the portion of a sub-category's total annual expense that it allocated as supporting access to the Exchange's Systems Networks via Limited Service MEI Ports, but not both. Nor did the Exchange provide the total annual expense for each sub-category to which these percentages or portions apply. Do commenters believe that the Exchange provided sufficient context to permit an independent review and assessment of the reasonableness of the selected percentages/portions allocated to Limited Service MEI Ports? Do commenters believe the percentages/portions allocated to Limited Service MEI Ports are reasonable? *With respect to general shared expenses:* Do commenters believe that the Exchange provided sufficient detail about the components of general shared expenses, and why a portion of general shared expenses should be allocated to Limited Service MEI Ports? Do commenters believe that the Exchange provided sufficient detail about how it determined to allocate $321,808 of general shared expenses to Limited Service MEI Ports? Do commenters believe that the Exchange provided sufficient context to permit an independent review and assessment of the reasonableness of this allocation? Do commenters believe that the allocation is reasonable? *In general:* Do commenters believe that the Exchange provided sufficient detail or explanation to support its claim that ''no expense amount is allocated twice,''[78] whether *among* the sub-categories of expenses in this filing, *across* the Exchange's fee filings for other products or services, or *over time*? Do commenters believe that the costs projected for 2022 are generally representative of expected costs going forward, or should an exchange present an estimated range of costs with an explanation of how profit margins could vary along the range of estimated costs?

2. *Revenue Estimates and Profit Margin Range.* The Exchange uses a single monthly revenue figure (April 2022) as the basis for calculating its projected profit margin of 48%. The Exchange argues that projecting revenues on a per month basis is reasonable ''as the revenue generated from access services subject to the proposed fee generally remains static from month to month.''[79] Yet the Exchange also acknowledges that ''profit margin may also fluctuate from month to month based on the uncertainty of predicting how many ports may be purchased from month to month as Members are free to add and drop ports at any time based on their own business decisions.''[80] Do commenters believe a single month provides a reasonable basis for a revenue projection? If not, why not? Should the Exchange provide a range of profit margins that it believes are reasonably possible, and the reasons therefor? The Exchange also provided its baseline by analyzing March 2022, the monthly billing cycle prior to the proposed fees. Do commenters believe

[71] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[72] 15 U.S.C. 78s(b)(2)(B).

[73] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[74] 15 U.S.C. 78f(b)(4).

[75] 15 U.S.C. 78f(b)(5).

[76] 15 U.S.C. 78f(b)(8).

[77] *See supra* Section II.A.2.

[78] *See id.*

[79] *See id.*

[80] *See id.*

that March 2022 is an appropriate month for a baseline, given that the proposed fees were first introduced in August 2021?

3. *Reasonable Rate of Return.* The Exchange states that its proposed fees are ''designed to cover its costs with a limited return in excess of such costs.'' [81] The Exchange offers several justifications for why its 48% estimated profit margin is not a supra-competitive profit, including: (a) When it launched operations in 2019, it chose to forgo revenue by offering certain products, such as Limited Service MEI Ports, at lower rates than other options exchanges to attract order flow; (b) the Exchange has been successful in controlling its costs; (c) a profit margin should not be judged alone based on its size, but on whether the ultimate fee reflects the value of the services provided, and Exchange offers a premium System Network, System Networks connectivity, and a highly deterministic trading environment; (d) the Exchange's proposed fees remain less than fees charged for similar port access provided by other options exchanges with similar market share; and (e) this is a singular potential profit margin from a single revenue source, and is not reflective of the Exchange's overall profit margin.[82] Do commenters agree with the Exchange that its estimated 48% profit margin would constitute a reasonable rate of return over costs for additional Limited Service MEI Ports? If not, what would commenters consider to be a reasonable rate of return and/or what factors would they consider to be appropriate for determining whether a rate of return is reasonable? Should an assessment of reasonable rate of return include consideration of factors other than costs; and if so, what factors should be considered, and why?

4. *Periodic Reevaluation.* In light of the impact that the number of ports purchased has on profit margins, and the potential for costs to decrease (or increase) over time, what are commenters' views on the need for exchanges to commit to reevaluate, on an ongoing and periodic basis, their cost-based connectivity fees to ensure that the fees stay in line with their stated profitability projections and do not become unreasonable over time, for example, by failing to adjust for efficiency gains, cost increases or decreases, and changes in subscribers? How formal should that process be, how often should that reevaluation occur, and what metrics and thresholds should be considered? How soon after a new connectivity fee change is implemented should an exchange assess whether its revenue and/or cost estimates were accurate and at what threshold should an exchange commit to file a fee change if its estimates were inaccurate? Should an initial review take place within the first 30 days after a connectivity fee is implemented? 60 days? 90 days? Some other period?

5. *Tiered Structure for Additional Limited Service MEI Ports.* The Exchange states that the proposed tiered fee structure is equitably allocated among users of the network connectivity alternatives, because users of Limited Service MEI Ports ''consume the most bandwidth and resources of the network.'' [83] The Exchange states that users of the ''maximum amount of Limited Service MEI Ports'' account for approximately greater than 99% of message traffic over the network (approximately 3 billion messages per day handled by the Exchange), while users of ''fewer Limited Service MEI Ports'' account for approximately less than 1% of message traffic over the network (users of the two free Limited Service MEI Ports generate approximately 500,000 messages per day).[84] According to the Exchange, these billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. Given this difference in network utilization rate, the Exchange believes that its tiered structure is reasonable, equitable, and not unfairly discriminatory.[85] Do commenters believe that the fees for each tier (including the intermediary tiers), as well as the fee differences between the tiers, are supported by the Exchange's assertions? If not, what information do commenters believe would better substantiate, by tier, the demands on the Exchange's resources as a firm increases the number of additional Limited Service MEI Ports that it purchases?

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [86] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[87] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[88] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.[89]

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, any potential comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[90]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or

[81] *See id.*

[82] *See id.*

[83] *See id.*

[84] *See id.*

[85] *See id.*

[86] 17 CFR 201.700(b)(3).

[87] *See id.*

[88] *See id.*

[89] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 446–47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

[90] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

disapproved by May 11, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 25, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–EMERALD–2022–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–EMERALD–2022–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publ. All submissions should refer to File No. SR–EMERALD–2022–15 and should be submitted on or before May 11, 2022. Rebuttal comments should be submitted by May 25, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[91] that File No. SR–EMERALD–2022–15 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[92]

J. Matthew DeLesDernier,

Assistant Secretary.

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[91] 15 U.S.C. 78s(b)(3)(C).

[92] 17 CFR 200.30–3(a)(12), (57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–603; OMB Control No. 3235–0658]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 22e–3

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 22(e) of the Investment Company Act [15 U.S.C. 80a–22(e)] (''Act'') generally prohibits funds, including money market funds, from suspending the right of redemption, and from postponing the payment or satisfaction upon redemption of any redeemable security for more than seven days. The provision was designed to prevent funds and their investment advisers from interfering with the redemption rights of shareholders for improper purposes, such as the preservation of management fees. Although section 22(e) permits funds to postpone the date of payment or satisfaction upon redemption for up to seven days, it does not permit funds to suspend the right of redemption for any amount of time, absent certain specified circumstances or a Commission order.

Rule 22e–3 under the Act [17 CFR 270.22e–3] exempts money market funds from section 22(e) to permit them to suspend redemptions in order to facilitate an orderly liquidation of the fund. Specifically, rule 22e–3 permits a money market fund to suspend redemptions and postpone the payment of proceeds pending board-approved liquidation proceedings if: (i) The fund's board of directors, including a majority of disinterested directors, determines pursuant to § 270.2a–7(c)(8)(ii)(C) that the extent of the deviation between the fund's amortized cost price per share and its current net asset value per share calculated using available market quotations (or an appropriate substitute that reflects current market conditions) may result in material dilution or other unfair results to investors or existing shareholders; (ii) the fund's board of directors, including a majority of disinterested directors, irrevocably approves the liquidation of the fund; and (iii) the fund, prior to suspending redemptions, notifies the Commission of its decision to liquidate and suspend redemptions. Rule 22e–3 also provides an exemption from section 22(e) for registered investment companies that own shares of a money market fund pursuant to section 12(d)(1)(E) of the Act (''conduit funds''), if the underlying money market fund has suspended redemptions pursuant to the rule. A conduit fund that suspends redemptions in reliance on the exemption provided by rule 22e–3 is required to provide prompt notice of the suspension of redemptions to the Commission. Notices required by the rule must be provided by electronic mail, directed to the attention of the Director of the Division of Investment Management or the Director's designee.[1] Compliance with the notification requirement is mandatory for money market funds and conduit funds that rely on rule 22e–3 to suspend redemptions and postpone payment of proceeds pending a liquidation, and are not kept confidential.

Commission staff estimates that, on average, one fund would be required to make the required notice every year.[2] Commission staff further estimates that a money market fund or conduit fund would spend approximately one hour of an in-house attorney's time to prepare and submit the notice required by the rule. Given these estimates, the total annual burden of the notification requirement of rule 22e–3 for all money market funds and conduit funds would be approximately one hour at a cost of $425.[3] The Commission staff estimates

[1] *See* rule 22e–3(a)(3).

[2] The Commission has not received any notices invoking rule 22e–3 to halt redemptions. However, for administrative purposes, we are reporting one respondent and one annual response.

[3] This figure for an Attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and

Continued

that there is no cost burden associated with the information collection requirement of rule 22e–3 other than this cost.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule. 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 the background documentation for this information collection at the following website, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Written comments and recommendations for the proposed information collection should be sent within 30 days May 20, 2022 of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Dated: April 14, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08402 Filed 4–19–22; 8:45 am]

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inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94717; File No. SR–EMERALD–2022–13]

Self-Regulatory Organizations; MIAX Emerald LLC; Notice of Filing of a Proposed Rule Change To Amend the MIAX Emerald Fee Schedule To Increase Certain Connectivity Fees; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

April 14, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Options Fee Schedule (the ''Fee Schedule'') to amend certain connectivity fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV [sic] below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[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 to increase the fees for Members [3] and non-Members to access the Exchange's System Networks [4] via a 10 gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection.[5] Specifically, the Exchange proposes to amend Sections 5(a)–(b) of the Fee Schedule to increase the 10Gb ULL fee for Members

[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 Exchange's System Networks consist of the Exchange's extranet, internal network, and external network.

[5] The Exchange initially filed a proposal on July 30, 2021 to adopt a tiered-pricing structure for the 10Gb ULL fiber connections. The proposal to adopt a tiered pricing structure was withdrawn and refiled several times, each time providing more detail and additional justification in response to questions raised by the Commission in its Suspension Orders and in response to comments received. Ultimately, in response to questions raised by the Commission in its Suspension Orders and comment letters submitted by SIG on the proposed tiered pricing structure, the Exchange reluctantly withdrew that proposal on March 30, 2022, despite the fact that the proposed a tiered-pricing structure reduced the monthly 10Gb ULL connectivity fees for approximately 60% of the Exchange's subscribers. *See* Securities Exchange Act Release Nos. 92645 (August 11, 2021), 86 FR 46048 (August 17, 2021) (SR–EMERALD–2021–23); 93166 (September 28, 2021), 86 FR 54760 (October 4, 2021) (SR–EMERALD–2021–29); 93644 (November 22, 2021), 86 FR 67750 (November 29, 2021); 93776 (December 14, 2021), 86 FR 71983 (December 20, 2021) (SR–EMERALD–2021–42); 94089 (January 27, 2022); 94257 (February 15, 2022), 87 FR 9678 (February 22, 2022) (SR–EMERALD–2022–04). *See also* letters from Richard J. McDonald, Susquehanna International Group, LLC (''SIG''), to Vanessa Countryman, Secretary, Commission, dated September 7, 2021, October 1, 2021, October 26, 2021, and March 15, 2022. *See* letters from Richard J. McDonald, SIG, to Vanessa Countryman, Secretary, Commission, dated October 1, 2021 (''SIG Letter 2'') and October 26, 2021 (''SIG Letter 3''). *See also* letter from Tyler Gellasch, Executive Director, Healthy Markets Association (''HMA''), to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021 (commenting on SR–CboeEDGA–2021–017, SR–CboeBYX–2021–020, SR–Cboe–BZX–2021–047, SR–CboeEDGX–2021–030, SR–MIAX–2021–41, SR–PEARL–2021–45, and SR–EMERALD–2021–29 and stating that ''MIAX has repeatedly filed to change its connectivity fees in a way that will materially lower costs for many users, while increasing the costs for some of its heaviest of users. These filings have been withdrawn and repeatedly refiled. *Each time, however, the filings contain significantly greater information about who is impacted and how than other filings that have been permitted to take effect without suspension*'') (*emphasis added*) (''HMA Letter''); *and* Ellen Green, Managing Director, Equity and Options Market Structure, Securities Industry and Financial Markets Association (''SIFMA''), to Vanessa Countryman, Secretary, Commission, dated November 26, 2021 (''SIFMA Letter'').

and non-Members from $10,000 per month to $12,000 per month (''10Gb ULL Fee''). Prior to the proposed fee change, the Exchange assessed Members and non-Members a flat monthly fee of $10,000 per 10Gb ULL connection for access to the Exchange's primary and secondary facilities.

The Exchange believes that other exchanges' connectivity fees offer useful examples of alternative approaches to providing and charging for connectivity and includes the below table for comparison purposes only to show how its proposed fees compare to fees currently charged by other options exchanges for similar connectivity. As shown by the below table, the Exchange's proposed fees are less than fees charged for similar connectivity provided by other options exchanges with comparable market share.

Exchange	Type of connection	Monthly fee (per connection)
MIAX Emerald (as proposed) (equity options market share of 3.95% as of March 29, 2022 for the month of March) [6].	10Gb ULL	$12,000.00
The NASDAQ Stock Market LLC (''NASDAQ'') [7] (equity options market share of 8.62% as of March 29, 2022 for the month of March) [8].	10Gb Ultra fiber	15,000.00
Nasdaq ISE LLC (''ISE'') [9] (equity options market share of 5.83% as of March 29, 2022 for the month of March) [10].	10Gb Ultra fiber	15,000.00
NYSE American LLC (''Amex'') [11] (equity options market share of 7.15% as of March 29, 2022 for the month of March) [12].	10Gb LX LCN	22,000.00
Nasdaq GEMX, LLC (''GEMX'') [13] (equity options market share of 2.48% as of March 29, 2022 for the month of March) [14].	10Gb Ultra	15,000.00

The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the primary and secondary facilities in any month the Member or non-Member is credentialed to use any of the Exchange APIs or market data feeds in the production environment. The Exchange proposes to pro-rate the fees when a Member or non-Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the Member or non-Member has been credentialed to utilize any of the Exchange APIs or market data feeds in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate. The Exchange will continue to assess monthly Member and non-Member network connectivity fees for connectivity to the disaster recovery facility in each month during which the Member or non-Member has established connectivity with the disaster recovery facility.

2. Statutory Basis

The Exchange believes that the proposed increase to the 10Gb ULL Fee is consistent with Section 6(b) of the Act [15] in general, and furthers the objectives of Section 6(b)(4) of the Act [16] 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 that the Exchange operates or controls. The Exchange also believes the proposed increase to the 10Gb ULL Fee furthers the objectives of Section 6(b)(5) of the Act [17] in that it is 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 increase to the 10Gb ULL Fee meets or exceeds the amount of detail required in respect of proposed fee changes as set forth in recent Commission and Commission Staff guidance. On March 29, 2019, the Commission issued an Order disapproving a proposed fee change by the BOX Market LLC Options Facility to establish connectivity fees for its BOX Network (the ''BOX Order'').[18] 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.'' [19] Based on both the BOX Order and the Guidance, the Exchange believes that the proposed increase to the 10Gb ULL Fee is consistent with the Act because it (i) is reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) complies with the BOX Order and the Guidance; and (iii) is supported by evidence (including comprehensive revenue and cost data and analysis) that the proposed increase to the 10Gb ULL Fee is fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Proposed Increase to the 10Gb ULL Fee Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

[6] See ''The market at a glance,'' available at *https://www.miaxoptions.com/* (last visited March 29, 2022).

[7] *See* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.

[8] *See supra note 6.*

[9] *See* ISE Rules, General 8: Connectivity.

[10] *See supra note 6.*

[11] *See* NYSE American Options Fee Schedule, Section IV.

[12] *See supra note 6.*

[13] *See* GEMX Rules, General 8: Connectivity.

[14] *See supra note 6.*

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78f(b)(5).

[18] *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).

[19] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

In the Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [20] The Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [21] In the Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supra-competitive profit, specific information, including quantitative information, should be provided to support that argument.'' [22] The Exchange does not assert that the 10Gb ULL Fee is constrained by competitive forces. Rather, the Exchange asserts that the proposed increase to the 10Gb ULL Fee is reasonable because it will permit recovery of the Exchange's costs in providing access services to supply 10Gb ULL connectivity and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [23] The Commission Staff further states in the Guidance that ''the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.'' [24] The Exchange provides this analysis below.

The proposed 10Gb ULL Fee is based on a cost-plus model. A 10Gb ULL connection provides access to each of the three Exchange networks, extranet, internal network, and external network, all of which are necessary for Exchange operations. The Exchange's extranet provides the means by which the Exchange communicates with market participants and includes access to the Member portal and the ability to send and receive daily communications and reports. The internal network connects the extranet to the rest of the Exchange's systems and includes trading systems, market data systems, and network monitoring. The external network includes connectivity between the Exchange and other national securities exchanges, market data providers, and between the Exchange's locations in Princeton, New Jersey, Secaucus, New Jersey (NY4), Miami, Florida, and Chicago, Illinois (CH4). In determining the appropriate fees to charge Members and non-Members to access the Exchange's System Networks via a 10Gb ULL fiber connection, the Exchange considered its costs to provide and maintain its System Networks and connectivity to those System Networks, using costs that are related to providing and maintaining access the Exchange's System Networks via a 10Gb ULL fiber connection to estimate such costs, and set fees that are designed to cover its costs with a limited return in excess of such costs. The Exchange believes that it is important to demonstrate that the 10Gb ULL Fee is based on its costs and reasonable business needs and believes the proposed increase to the 10Gb ULL Fee will allow the Exchange to continue to offset expenses. However, as discussed more fully below, such fees may also result in the Exchange recouping less than all of its costs of providing and maintaining access to the Exchange's System Networks via a 10Gb ULL fiber connection because of the uncertainty of forecasting subscriber decision making with respect to firms' connectivity needs. The Exchange believes that the proposed increase to the 10Gb ULL Fee will not result in excessive pricing or supra-competitive profit based on the total expenses the Exchange incurs versus the total revenue the Exchange projects to collect, and therefore meets the standards in the Act as interpreted by the Commission and the Commission Staff in the BOX Order and the Guidance.

The Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the 10Gb ULL Fee, and, if such expense did so relate, what portion (or percentage) of such expense actually supports access to the Exchange's System Networks via a 10Gb ULL fiber connection associated with the 10Gb ULL Fee. In determining what portion (or percentage) to allocate to access services, each Exchange department head, in coordination with other Exchange personnel, determined the expenses that support access services and System Networks associated with the 10Gb ULL Fee. This included numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders. The analysis also included each department head meeting with the divisions of teams within each department to determine the amount of time and resources allocated by employees within each division towards the access services and System Networks associated with the 10Gb ULL Fee. The Exchange reviewed each individual expense to determine if such expense was related to the 10Gb ULL Fee. Once the expenses were identified, the Exchange department heads, with the assistance of our internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing access services and the System Networks. The sum of all such portions of expenses represents the total cost to the Exchange to provide access services associated with the 10Gb ULL Fee. For the avoidance of doubt, no expense amount is allocated twice.

The analysis conducted by the Exchange is a proprietary process that is designed to make a fair and reasonable assessment of costs and resources allocated to support the provision of access services associated with the 10Gb ULL Fee. The Exchange acknowledges that this assessment can only capture a moment in time and that costs and resource allocations may change. That is why the Exchange historically, and on an ongoing annual basis, reviews its costs and resource allocations to ensure it appropriately allocates resources to properly provide services to the Exchange's constituents.

The Exchange believes exchanges, like all businesses, should be provided flexibility when developing and applying a methodology to allocate costs and resources they deem necessary to operate their business, including providing market data and access services. The Exchange notes that costs and resource allocations may vary from business to business and, likewise, costs and resource allocations may differ from exchange to exchange when it comes to providing market data and access services. It is a business decision that must be evaluated by each exchange as to how to allocate internal resources and what costs to incur internally or via third parties that it may deem necessary to support its business and its provision of market data and access services to market participants.

The Exchange notes that there are material costs associated with providing

[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*

the infrastructure and headcount to fully support access to the Exchange and its System Networks via a 10Gb ULL fiber connection. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI-mandated processes associated with its network technology. Both fixed and variable expenses have significant impact on the Exchange's overall costs to provide and maintain access to the Exchange's System Networks via a 10Gb ULL fiber connection. For example, to accommodate new Members, the Exchange may need to purchase additional hardware to support those Members as well as provide enhanced monitoring and reporting of customer performance that the Exchange and its affiliates currently provide. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the 10Gb ULL Fee is a reasonable attempt to offset a portion of those costs associated with providing access to and maintaining its System Networks' infrastructure and related 10Gb ULL fiber connection.

The Exchange estimated its total annual expense to provide and maintain access to the Exchange's System Networks via a 10Gb ULL fiber connection based on the following general expense categories: (1) External expenses, which include fees paid to third parties for certain products and services; (2) internal expenses relating to the internal costs to provide the services associated with the 10Gb ULL Fee; and (3) general shared expenses.[25] The Guidance does not include any information regarding the methodology that an exchange should use to determine its cost associated with a proposed fee change. The Exchange utilized a methodology in this proposed fee change that it believes is reasonable because the Exchange analyzed its entire cost structure, allocated a percentage of each cost attributable to maintaining its System Networks, then divided those costs according to the cost methodology outlined below.

For 2022, the total annual expense for providing the access services associated with the 10Gb ULL Fee is estimated to be $9,088,382, or $757,365 per month. The Exchange believes it is more appropriate to analyze the 10Gb ULL Fee utilizing its estimated 2022 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[26] The $9,088,382 estimated total annual expense is directly related to the access to the Exchange's System Networks via a 10Gb ULL fiber connection, and not any other product or service offered by the Exchange. For example, it does not include general costs of operating matching engines and other trading technology. No expense amount was allocated twice. Each of the categories of expenses are set forth in the following table and details of the individual line-item costs considered by the Exchange for each category are described further below.

External expenses

Category	Percentage of total expense amount allocated
Data Center Provider	62%
Fiber Connectivity Provider	62%
Security Financial Transaction Infrastructure ("SFTI"), and Other Connectivity and Content Service Providers	89%
Hardware and Software Providers	51%
Total of External Expenses	[27] $1,946,869

Internal Expenses

Category	Expense amount allocated
Employee Compensation	$3,259,251
Depreciation and Amortization	2,164,610
Occupancy	284,947
Total of Internal Expenses	5,708,808
Allocated Shared Expenses	1,432,705

The Exchange notes that it only has two primary sources of revenue, connectivity and port fees, to recover those costs associated with providing and maintaining access to the Exchange's System Networks. The Exchange notes that, without the specific third-party and internal expense items, the Exchange would not be able to provide and maintain the System Networks and access to the System Networks via a 10Gb ULL fiber connection to Members and non-Members. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, has

[25] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

[26] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled "Operating Expenses Incurred Directly or Allocated From Parent," in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87877 (December 31, 2019), 85 FR 738 (January 7, 2020) (SR–EMERALD–2019–39). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2022 Form 1 Amendment, which will be filed in 2023.

[27] The Exchange does not believe it is appropriate to disclose the actual amount it pays to each individual third-party provider as those fee arrangements are competitive or the Exchange is contractually prohibited from disclosing that number.

been identified through a line-by-line item analysis to be integral to providing and maintaining the System Networks and access to System Networks via a 10Gb ULL fiber connection.

For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing and maintaining the System Networks and access to System Networks in connection with 10Gb ULL fiber connectivity. The Exchange describes the analysis conducted for each expense and the resources or determinations that were considered when determining the amount necessary to allocate to each expense. Only a portion of all fees paid to such third-parties is included in the third-party expenses described herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to providing and maintaining the System Networks and access to Exchange's System Networks via a 10Gb ULL fiber connection. This may result in the Exchange under allocating an expense to provide and maintain its System Networks and access to the System Networks via a 10Gb ULL fiber connection, and such expenses may actually be higher than what the Exchange allocated as part of this proposal. The Exchange notes that expenses associated with its affiliates, MIAX and MIAX Pearl (the options and equities markets), are accounted for separately and are not included within the scope of this filing.

Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic, thorough review of its expenses and resource allocations which resulted in revised percentage allocations in this filing. The revised percentages are, among other things, the result of the shuffling of internal resources in response to business objectives and changes to fees charged and services provided by third parties. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third-parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.[28]

External Expense Allocations

For 2022, expenses relating to fees paid by the Exchange to third parties for products and services necessary to provide and maintain the System Networks and access to the System Networks via a 10Gb ULL fiber connection are estimated to be $1,946,869. This includes, but is not limited to, a portion of the fees paid to: (1) A third-party data center provider, including for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) a fiber connectivity provider for network services (fiber and bandwidth products and services) linking the Exchange's and its affiliates' office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) SFTI, which supports connectivity feeds for the entire U.S. options industry; (4) various other content and connectivity service providers, which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers that support the production environment in which Members and non-Members connect to the network to trade and receive market data.

Data Center Space and Operations Provider

The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties where the Exchange houses servers, switches and related equipment. Data center costs include an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs. The data center provider operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. Without the retention of a third-party data center, the Exchange would not be able to operate its systems and provide a trading platform for market participants. The Exchange does not employ a separate fee to cover its data center expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

The Exchange reviewed its data center footprint, including its total rack space, cage usage, number of servers, switches, cabling within the data center, heating and cooling of physical space, storage space, and monitoring and divided its data center expenses among providing transaction services, market data, and connectivity. Based on this review, the Exchange determined that 62% of the total applicable data center provider expense is applicable to providing and maintaining access services and System Networks associated with the 10Gb ULL Fee. The Exchange believes this allocation is reasonable because 10Gb ULL connectivity is a core means of access to the Exchange's network, providing one method for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's data center expense is due to providing and maintaining connectivity to the Exchange's System Networks, including providing cabling within the data center between market participants and the Exchange. The Exchange excluded from this allocation servers that are dedicated to market data. The Exchange also did not allocate the remainder of the data center expense because it pertains to other areas of the Exchange's operations, such as ports, market data, and transaction services.

Fiber Connectivity Provider

The Exchange engages a third-party service provider that provides the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data center, and office locations in Princeton and Miami. Fiber connectivity is necessary for the Exchange to switch to its secondary data center in the case of an outage in its primary data center. Fiber connectivity also allows the Exchange's National Operations & Control Center (''NOCC'') and Security Operations Center (''SOC'') in Princeton to communicate with the Exchange's primary and secondary data centers. As such, all trade data, including the billions of messages each day, flow through this third-party provider's infrastructure over the Exchange's network. Without these services, the Exchange would not be able to operate and support the network and provide and maintain access services and System Networks associated with the 10Gb ULL Fee to its Members and their customers. Without the retention of a third-party fiber connectivity provider, the Exchange would not be able to communicate between its data centers and office locations. The Exchange does not employ a separate fee to cover its

[28] The Exchange notes that the expense allocations differ from the Exchange's filing earlier in 2021, SR–EMERALD–2021–11, because that prior filing pertained to several different access fees, which the Exchange had not been charging for since the Exchange launched operations in March 2019. *See* Securities Exchange Act Release No. 91460 (April 2, 2021), 86 FR 18349 (April 8, 2021) (SR–EMERALD–2021–11). In SR–EMERALD–2021–11, the Exchange sought to adopt fees for FIX Ports, MEI Ports, Purge Ports, Clearing Trade Drop Ports, and FIX Drop Copy Ports, all of which had been free for market participants for over two years since inception.

fiber connectivity expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

The Exchange reviewed it costs to retain fiber connectivity from a third party, including the ongoing costs to support fiber connectivity, ensuring adequate bandwidth and infrastructure maintenance to support exchange operations, and ongoing network monitoring and maintenance and determined that 62% of the total fiber connectivity expense was applicable to providing and maintaining access services and System Networks associated with the 10Gb ULL Fee. The Exchange believes this allocation is reasonable because 10Gb ULL connectivity is a core means of access to the Exchange's network, providing one method for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's fiber connectivity expense is due to providing and maintaining connectivity between the Exchange's System Networks, data centers, and office locations and is core to the daily operation of the Exchange. Fiber connectivity is a necessary integral means to disseminate information from the Exchange's primary data center to other Exchange locations. The Exchange excluded from this allocation fiber connectivity usage related to market data or other business lines. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining access services and System Networks associated with the 10Gb ULL Fee. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to retain fiber connectivity and maintain and provide access to its System Networks via a 10Gb ULL fiber connectivity.

Connectivity and Content Services Provided by SFTI and Other Providers

The Exchange relies on SFTI and various other connectivity and content service providers for connectivity and data feeds for the entire U.S. options industry, as well as content, connectivity, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via a 10Gb ULL fiber connection. Specifically, the Exchange utilizes SFTI and other content service provider to connect to other national securities exchanges, the Options Price Reporting Authority (''OPRA''), and to receive market data from other exchanges and market data providers. SFTI is operated by the Intercontinental Exchange, the parent company of five registered exchanges, and has become integral to the U.S. markets. The Exchange understands SFTI provides services to most, if not all, of the other U.S. exchanges and other market participants. Without services from SFTI and various other service providers, the Exchange would not be able to connect to other national securities exchanges, market data providers, or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its SFTI and content service provider expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

The Exchange reviewed it costs to retain SFTI and other content service providers, including network monitoring and maintenance, remediation of connectivity related issues, and ongoing administrative activities related to connectivity management and determined that 89% of the total applicable SFTI and other service provider expense is allocated to providing the access services associated with the 10Gb ULL Fee. SFTI and other content service providers are key vendors and necessary components in providing connectivity to the Exchange. The primary service SFTI provides for the Exchange is connectivity to other national securities exchanges and their disaster recovery facilities and, therefore, a vast portion of this expense is allocated to providing access to the System Networks via a 10Gb ULL connection. Connectivity via SFTI is necessary for purposes of order routing and accessing disaster recovery facilities in the case of a system outage. Engaging SFTI and other like vendors provides purchasers of 10Gb ULL connectivity to other national securities exchanges for purposes of order routing and disaster recovery. The Exchange did not allocate a portion of this expense that relates to the receipt of market data from other national securities exchange and OPRA. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining the System Networks or access to its System Networks via 10Gb ULL fiber connection. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide and maintain its System Networks and access to its System Networks via a 10Gb ULL fiber connection, and not any other service, as supported by its cost review.

Hardware and Software Providers

The Exchange relies on dozens of third-party hardware and software providers for equipment necessary to operate its System Networks. This includes either the purchase or licensing of physical equipment, such as servers, switches, cabling, and monitoring devices. It also includes the purchase or license of software necessary for security monitoring, data analysis and Exchange operations. Hardware and software providers are necessary to maintain its System Networks and provide access to its System Networks via a 10Gb ULL fiber connection. Hardware and software equipment and licenses for that equipment are also necessary to operate and monitor physical assets necessary to offer physical connectivity to the Exchange. Hardware and software equipment and licenses are key to the operation of the Exchange and, without them, the Exchange would not be able to operate and support its System Networks and provide access to its Members and their customers. The Exchange does not employ a separate fee to cover its hardware and software expense and recoups that expense, in part, by charging for 10Gb ULL connectivity.

The Exchange reviewed it hardware and software related costs, including software patch management, vulnerability management, administrative activities related to equipment and software management, professional services for selection, installation and configuration of equipment and software supporting exchange operations and determined that 51% of the total applicable hardware and software expense is allocated to providing and maintaining access services and System Networks associated with the 10Gb ULL Fee. Hardware and software equipment and licenses are key to the operation of the Exchange and its System Networks. Without them, market participants would not be able to access the System Networks via a 10Gb ULL connection. The Exchange only allocated the portion of this expense to the hardware and software that is related to a market participant's use of a 10Gb ULL connection, such as operating its matching engines. The Exchange, therefore, did not allocate portions of its hardware and software expense that related to other areas of the Exchange's business, such as hardware and software used for market data or unrelated

administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations, such as ports or transaction services, and does not directly relate to providing and maintaining its System Networks and access to its System Networks via a 10Gb ULL fiber connection. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide and maintain its System Networks and access to its System Networks via a 10Gb ULL fiber connection, and not any other service, as supported by its cost review.

Internal Expense Allocations

For 2022, total internal expenses relating to the Exchange providing and maintaining its System Networks and access to its System Networks via a 10Gb ULL fiber connection are estimated to be $5,708,808. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the System Networks and access to System Networks via a 10Gb ULL fiber connection, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions as well as important system upgrades; (2) depreciation and amortization of hardware and software used to provide and maintain access services and System Networks associated with the 10Gb ULL Fee, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide and maintain the System Networks and access to System Networks via 10G ULL fiber connections. The breakdown of these costs is more fully described below.

Employee Compensation and Benefits

Human personnel are key to exchange operations and supporting the Exchange's ongoing provision and maintenance of the System Networks and access to System Networks via 10Gb ULL fiber connections. The Exchange reviewed its employee compensation and benefits expense and the portion of that expense allocated to providing and maintaining the System Networks and access to System Networks via 10Gb ULL fiber connections. As part of this review, the Exchange considered employees whose functions include providing and maintaining the System Networks and 10Gb ULL connectivity and used a blended rate of compensation reflecting salary, stock and bonus compensation, bonuses, benefits, payroll taxes, and 401K matching contributions.[29]

Based on this review, the Exchange determined to allocate $3,259,251 in employee compensation and benefits expense to providing access to the System Networks. To determine the appropriate allocation the Exchange reviewed the time employees allocated to supporting its System Networks and access to its System Networks via 10Gb ULL fiber connections. Senior staff also reviewed these time allocations with department heads and team leaders to determine whether those allocations were appropriate. These employees are critical to the Exchange to provide and maintain access to its System Networks via 10Gb ULL fiber connections for its Members, non-Members and their customers. The Exchange determined the above allocation based on the personnel whose work focused on functions necessary to provide and maintain the System Networks and access to System Networks via 10Gb ULL fiber connections. The Exchange does not charge a separate fee regarding employees who support 10Gb ULL connectivity and the Exchange seeks to recoup that expense, in part, by charging for 10Gb ULL connections.

Depreciation and Amortization

A key expense incurred by the Exchange relates to the depreciation and amortization of equipment that the Exchange procured to provide and maintain the System Networks and access to System Networks via 10Gb ULL fiber connections. The Exchange reviewed all of its physical assets and software, owned and leased, and determined whether each asset is related to providing and maintaining its System Networks and access to its System Networks via 10Gb ULL fiber connections, and added up the depreciation of those assets. All physical assets and software, which includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. In determining the amount of depreciation and amortization to apply to providing 10Gb ULL connectivity and the System Networks, the Exchange considered the depreciation of hardware and software that are key to the operation of the Exchange and its System Networks. This includes servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps, that were previously purchased to maintain and provide access to its System Networks via 10Gb ULL fiber connections. Without them, market participants would not be able to access the System Networks. The Exchange seeks to recoup a portion of its depreciation expense by charging for 10Gb ULL connectivity.

Based on this review, the Exchange determined to allocate $2,164,610 in depreciation and amortization expense to providing access to the System Networks via a 10Gb ULL connection. The Exchange only allocated the portion of this depreciation expense to the hardware and software related to a market participant's use of a 10GB ULL connection. The Exchange, therefore, did not allocate portions of depreciation expense that relates to other areas of the Exchange's business, such as the depreciation of hardware and software used for market data or unrelated administrative services.[30]

Occupancy

The Exchange rents and maintains multiple physical locations to house staff and equipment necessary to support access services, System Networks, and exchange operations. The Exchange's occupancy expense is not limited to the housing of personnel and includes locations used to store equipment necessary for Exchange operations. In determining the amount of its occupancy related expense, the Exchange considered actual physical space used to house employees whose functions include providing and maintaining the System Networks and 10Gb ULL connectivity. Similarly, the

[29] For purposes of this allocation, the Exchange did not consider expenses related to supporting employees who support 10Gb ULL connectivity, such as office space and supplies. The Exchange determined cost allocation for employees who perform work in support of offering access services and System Networks to arrive at a full time equivalent (''FTE'') of 9.9 FTEs across all the identified personnel. The Exchange then multiplied the FTE times a blended compensation rate for all relevant Exchange personnel to determine the personnel costs associated with providing the access services and System Networks associated with the 10Gb ULL Fee.

[30] All of the expenses outlined in this proposed fee change refer to the operating expenses of the Exchange. The Exchange did not included any future capital expenditures within these costs. Depreciation and amortization represent the expense of previously purchased hardware and internally developed software spread over the useful life of the assets. Due to the fact that the Exchange has only included operating expense and historical purchases, there is no double counting of expenses in the Exchange's cost estimates.

Exchange also considered the actual physical space used to house hardware and other equipment necessary to provide and maintain the System Networks and 10Gb ULL connectivity. This equipment includes computers, servers, and accessories necessary to support the System Networks and 10Gb ULL connectivity. Based on this review, the Exchange determined to allocate $284,947 of its occupancy expense to provide and maintain the System Networks and 10Gb ULL connectivity. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the System Networks, including providing and maintaining access to its System Networks via 10Gb ULL fiber connections. The Exchange considered the rent paid for the Exchange's Princeton and Miami offices, as well as various related costs, such as physical security, property management fees, property taxes, and utilities at each of those locations. The Exchange did not include occupancy expenses related to housing employees and equipment related to other Exchange operations, such as market data and administrative services.

* * * * *

The Exchange notes that a material portion of its total overall expense is allocated to the provision and maintenance of access services (including connectivity and ports). The Exchange believes this is reasonable as the Exchange operates a technology-based business that differentiates itself from its competitors based on its more deterministic and resilient trading systems that rely on access to a high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. Thus, the Exchange believes it is reasonable to allocate a material portion of its total overall expense towards providing and maintaining its System Networks and access to its System Networks via 10Gb ULL fiber connections.

Allocated Shared Expense

Finally, a limited portion of general shared expenses was allocated to overall 10Gb ULL connectivity costs as without these general shared costs, the Exchange would not be able to operate in the manner that it does and provide 10Gb ULL connectivity. The costs included in general shared expenses include recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. For 2022, the Exchange's general shared expense allocated to 10Gb ULL connectivity and the System Networks that support those connections is estimated to be $1,432,705. The Exchange used the weighted average of the above allocations to determine the amount of general shared expenses to allocate to the Exchange. Next, based on additional management and expense analysis, these fees are allocated to the proposal.

Revenue and Estimated Profit Margin

The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: Transaction fees, access fees (which includes the 10Gb ULL Fee), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms.

To determine the Exchange's estimated revenue associated with the 10Gb ULL Fee, the Exchange analyzed the number of Members and non-Members currently utilizing the 10Gb ULL fiber connection and used a recent monthly billing cycle representative of current monthly revenue. The Exchange also provided its baseline by analyzing March 2022, the monthly billing cycle prior to the proposed 10Gb ULL Fee and compared this to its expenses for that month. As discussed below, the Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its estimates for purposes of these calculations, given the uncertainty of such estimates due to the continually changing access needs of market participants and potential changes in internal and third-party expenses.

For March 2022, prior to the proposed 10Gb ULL Fee, Members and non-Members purchased a total of 98 10Gb ULL connections for which the Exchange anticipates charging $980,000 (depending on whether Members and non-Members drop or add connections mid-month, resulting in pro-rated charges). This will result in a profit of $222,635 for that month (a profit margin of 33%). For April 2022, the Exchange anticipates Members and non-Members purchasing a total of 98 10Gb ULL connections. Assuming the Exchange charges its proposed monthly rate of $12,000 per connection, the Exchange would generate revenue of $1,176,000 for that month (not including potential pro-rated connection charges for mid-month connections). This would result in a profit of $418,6335 ($1,176,000 minus $757,365) for that month (a modest 3% profit margin increase from March 2022 to April 2022 from 33% to 36%).

The Exchange believes that conducting the above analysis on a per month basis is reasonable as the revenue generated from access services subject to the proposed fee generally remains static from month to month. The Exchange also conducted the above analysis on a per month basis to comply with the Commission Staff's Guidance, which requires a baseline analysis to assist in determining whether the proposal generates a supra-competitive profit. The Exchange cautions that this profit margin may also fluctuate from month to month based on the uncertainty of predicting how many connections may be purchased from month to month as Members and non-Members are free to add and drop connections at any time based on their own business decisions.

The Exchange believes the proposed profit margin is reasonable and will not result in a ''supra-competitive'' profit. The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [31] Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2019.[32] 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 now seeking to raise it fees to near market rates after offering such products as discounted prices.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent such revenue actually produces the revenue estimated. As a generally new entrant to the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the

[31] *See supra* note 19.

[32] The Exchange has incurred a cumulative loss of $22 million since its inception in 2019 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at https://sec.report/Document/9999999997-21-004557/*.

revenue expected from 10 GB ULL connectivity, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity or obtaining new clients that will purchase such services. To the extent the Exchange is successful in encouraging new clients to connect directly to the Exchange, the Exchange does not believe it should be penalized for such success. The Exchange, like other exchanges, is, after all, a for-profit business. While the Exchange believes in transparency around costs and potential margins, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes its cost analysis and related estimates demonstrate this fact.

Further, the proposed profit margin reflects the Exchange's efforts to control its costs. A profit margin should not be judged alone based on its size, but whether the ultimate fee reflects the value of the services provided and is in line with other exchanges. A profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling costs, but not excessive where an exchange is charging the same fee but has a lower profit margin due to higher costs.

The expected profit margin is reasonable because the Exchange offers a premium System Network, System Networks connectivity, and a highly deterministic trading environment. The Exchange is recognized as a leader in network monitoring, determinism, risk protections, and network stability. For example, the Exchange experiences approximately a 95% determinism rate, system throughput of approximately 18 million quotes and average round trip latency rate of approximately 18 microseconds for a single quote. The Exchange provides extreme performance and radical scalability designed to match the unique needs of trading differing asset class/market model combinations. Exchange systems offer two customer interfaces, FIX gateway for orders, and ULL interfaces and data feeds with best-in-class wire order determinism. The Exchange also offers automated continuous testing to ensure high reliability, advanced monitoring and systems security, and employs a software architecture that results in minimizing the demands on power, space, and cooling while allowing for rapid scalability, resiliency and fault isolation. The Exchange also provides latency equalized cross-connects in the primary data center ensures fair and cost efficient access to the MIAX systems. The Exchange, therefore, believes the anticipated profit margin is reasonable because it reflects the Exchange's cost controls and the quality of the Exchanges systems.

The Exchange also believes its proposed profit margin does not exceed what can be obtained in a competitive market. The Exchange is one of sixteen registered U.S. options exchanges and maintains an average market share of approximately 3.50%.[33] The anticipated rate of return is reasonable because it is based on a rate that likely remains lower than what other exchanges with comparable market share charge for similar connectivity. For example the below table is provided for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar connectivity. As shown by the below table, the Exchange's proposed fee remains less than fees charged for similar connectivity provided by other options exchanges with similar market share, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of connectivity.

Exchange	Type of connection	Monthly fee (per connection)
MIAX Emerald (as proposed) (equity options market share of 3.95% as of March 29, 2022 for the month of March)[34].	10Gb ULL	$12,000.00
NASDAQ[35] (equity options market share of 8.62% as of March 29, 2022 for the month of March)[36].	10Gb Ultra fiber	15,000.00
ISE[37] (equity options market share of 5.83% as of March 29, 2022 for the month of March)[38]	10Gb Ultra fiber	15,000.00
Amex[39] (equity options market share of 7.15% as of March 29, 2022 for the month of March)[40]	10Gb LX LCN	22,000.00
GEMX[41] (equity options market share of 2.48% as of March 29, 2022 for the month of March)[42]	10Gb Ultra	15,000.00

Lastly, the Exchange notes that this is a singular potential profit margin from a single revenue source and is not reflective of the Exchange's overall profit margin. This profit margin may be offset by lower or negative profit margins generated by other areas of the Exchange's operations that are not subject to this proposed fee change. The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: transaction fees, access fees (which includes the 10Gb ULL Fee), regulatory fees, and market data fees. A potential profit margin in one area may be used to offset a potential loss in another area, and, therefore, a potential profit margin from a single product is not representative of the Exchange's overall profitability and whether that singular profit exceeds the profits that can be obtained in a competitive market.

The Proposed Fees Are Reasonable When Compared to the Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other equities exchanges' costs to provide connectivity or their fee markup over those costs, and therefore cannot use other exchange's connectivity fees as a benchmark to determine a reasonable markup over the costs of providing connectivity. Nevertheless, the Exchange believes the other exchanges' connectivity fees are a useful example of alternative approaches to providing and charging for connectivity notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of connectivity. To that end, the Exchange believes the proposed 10Gb ULL Fee is reasonable because the proposed fee is still less than fees charged for similar connectivity provided by other options

[33] *See supra* note 6.

[34] *See supra* note 6.

[35] *See supra* note 7.

[36] *See supra* note 6.

[37] *See supra* note 9.

[38] *See supra* note 6.

[39] *See supra* note 11.

[40] *See supra* note 6.

[41] *See supra* note 13.

[42] *See supra* note 6.

exchanges with comparable market shares.

As described in the above table, the Exchange's proposed fee remains less than fees charged for similar connectivity provided by other options exchanges with similar market share. In each of the above cases, the Exchange's proposed fee is still significantly lower than that of competing options exchanges with similar market share. Despite proposing lower or similar fees to that of competing options exchanges with similar market share, the Exchange believes that it provides a premium network experience to its Members and non-Members via a highly deterministic System, enhanced network monitoring and customer reporting, and a superior network infrastructure than markets with higher market shares and more expensive connectivity alternatives. Each of the connectivity rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

The Proposed Fees Are Equitably Allocated

The Exchange believes that the proposed 10Gb ULL fees are equitably allocated among users of the network connectivity alternatives, as the users of the 10Gb ULL connections consume the most bandwidth and resources of the network. Specifically, the Exchange notes that these users account for approximately greater than 99% of message traffic over the network, while the users of the 1Gb connections account for approximately less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have a business need for the high performance network solutions required by 10Gb ULL users. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 18 million quote messages per second. On an average day, the Exchange handles over approximately 3 billion total messages. Of those, users of the 10Gb ULL connections generate approximately 3 billion messages, and users of the 1Gb connections generate 500,000 messages. However, in order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb ULL users pay for the vast majority of the shared network resources from which all Member and non-Member users benefit, but is designed and maintained from a capacity standpoint to specifically handle the message rate and performance requirements of 10Gb ULL users.

The Exchange also believes that the connectivity fees are equitably allocated amongst users of the network connectivity alternatives, when these fees are viewed in the context of the overall trading volume on the Exchange. To illustrate, the purchasers of the 10Gb ULL connectivity account for approximately 98% of the volume on the Exchange. This overall volume percentage (98% of total Exchange volume) is in line with the amount of network connectivity revenue collected from 10Gb ULL purchasers (99% of total Exchange connectivity revenue). For example, utilizing a recent billing cycle, Exchange Members and non-Members that purchased 10Gb ULL connections accounted for approximately 99% of the total network connectivity revenue collected by the Exchange from all connectivity alternatives; and (ii) Members and non-Members that purchased 1Gb connections accounted for approximately 1% of the revenue collected by the Exchange from all connectivity alternatives.

Lastly, the Exchange further believes that the 10Gb ULL Fee are reasonable, equitably allocated and not unfairly discriminatory because, for one 10Gb ULL connection, the Exchange provides each Member or non-Member access to all twelve (12) matching engines on MIAX Emerald and a vast majority choose to connect to all twelve (12) matching engines. The Exchange believes that other exchanges require firms to connect to multiple matching engines.[43]

[43] *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.

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.

With respect to intra-market 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. 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 also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, options market participants are not forced to connect to all options exchanges. There is no reason to believe that our proposed price increase will harm another exchange's ability to compete. There are other options markets of which market participants may connect to trade options. There is also a possible range of alternative strategies, including routing to the exchange through another participant or market center or accessing the Exchange indirectly. Market participants are free to choose which exchange or reseller to use to satisfy their business needs. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[44] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the

[44] 15 U.S.C. 78s(b)(3)(C).

Act,[45] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[46] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [47]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [48] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [49] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[50]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposal to modify fees for certain connectivity options is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[51]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[52]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C) [53] and 19(b)(2)(B) [54] of the Act to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[55] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Exchange has sufficiently demonstrated how the proposed rule change is consistent with Sections 6(b)(4),[56] 6(b)(5),[57] and 6(b)(8) [58] of the Act. Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. *Cost Estimates and Allocation.* The Exchange states that it is not asserting that the proposed 10Gb ULL Fee is constrained by competitive forces, but rather set forth a ''cost-plus model,'' employing a ''conservative approach'' in determining the expense and the percentage of that expense to be allocated to providing and maintaining the System Networks and access to System Networks in connection with 10Gb ULL fiber connectivity.[59] Setting forth its costs in providing 10Gb ULL connectivity, and as summarized in greater detail above, the Exchange projects that the total combined annual expense for providing the access services associated with the 10Gb ULL Fee in 2022 will be $9,088,382, the sum of: (1) $1,946,869 in third-party expenses paid in total to their Data Center Provider (62% of the total applicable expense) for data center services; Fiber Connectivity Provider, for network services (62% of the total applicable expense); SFTI and other connectivity and content service

[45] 15 U.S.C. 78s(b)(1).

[46] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[47] *Id.*

[48] 15 U.S.C. 78f(b)(4).

[49] 15 U.S.C. 78f(b)(5).

[50] 15 U.S.C. 78f(b)(8).

[51] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[52] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[53] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[54] 15 U.S.C. 78s(b)(2)(B).

[55] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[56] 15 U.S.C. 78f(b)(4).

[57] 15 U.S.C. 78f(b)(5).

[58] 15 U.S.C. 78f(b)(8).

[59] *See supra* Section II.A.2.

providers for connectivity support (89% of the total applicable expense); and various other hardware and software providers (51% of the total applicable expense), (2) $5,708,808 in internal expenses, allocated to (a) employee compensation and benefit costs ($3,259,251); (b) depreciation and amortization ($2,164,610); and (c) occupancy costs ($284,947) and (3) $1,432,705 of allocated general shared expenses that include recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. Do commenters believe that these allocations are reasonable? Should the Exchange be required to provide more specific information regarding the allocation of third-party expenses, such as the overall estimated cost for each category of external expenses or at minimum the total applicable third-party expenses? Should the Exchange have provided either a percentage allocation or statements regarding the Exchange's overall estimated costs for the internal expense categories and general shared expenses figure? Do commenters believe that the Exchange has provided sufficient detail about how it determined which costs are associated with providing and maintaining 10Gb ULL connectivity and why? Do commenters believe that the Exchange has provided sufficient detail about how it determined ''general shared expenses'' and how it determined what portion should be associated with providing and maintaining 10Gb ULL connectivity? Do commenters believe that the Exchange provided sufficient detail or explanation to support its claim that ''no expense amount is allocated twice,'' [60] whether *among* the sub-categories of expenses in this filing, *across* the Exchange's fee filings for other products or services, or *over time*? The Exchange describes a ''proprietary'' process that was applied in making these determinations or arriving at particular allocations. Do commenters believe further explanation is necessary? What are commenters' views on whether the Exchange has provided sufficient detail on the identity and nature of services provided by third parties? Across all of the Exchange's projected costs, what are commenters' views on whether the Exchange has provided sufficient detail on the elements that go into connectivity costs, including how shared costs are allocated and attributed to connectivity expenses, to permit an independent review and assessment of the reasonableness of purported cost-based fees and the corresponding profit margin thereon?

2. *Revenue Estimates and Profit Margin Range.* The Exchange provides a single monthly revenue figure from March 2022 as the basis for calculating the profit margin of 36%. Do commenters believe this is reasonable? If not, why not? The Exchange states that their proposed fee structure is ''designed to cover its costs with a limited return in excess of such costs,'' and believes that a 36% margin is a limited return over such costs.[61] The profit margin is also dependent on the accuracy of the cost projections which, if inflated (intentionally or unintentionally), may render the projected profit margin meaningless. The Exchange acknowledges that this margin may fluctuate from month to month due to changes in the number of connections purchased, and that costs may increase, but that the number of connections has not materially changed over the prior months and so the months that the Exchange has used as a baseline to perform its assessment are representative of reasonably anticipated costs and expenses.[62] The Exchange does not account for the possibility of cost decreases, however. What are commenters' views on the extent to which actual costs (or revenues) deviate from projected costs (or revenues)? Do commenters believe that the Exchange's methodology for estimating the profit margin is reasonable? Should the Exchange provide a range of profit margins that they believe are reasonably possible, and the reasons therefor?

3. *Reasonable Rate of Return.* Do commenters agree with the Exchange that its expected 36% profit margin would constitute a reasonable rate of return over cost for 10GB ULL connectivity, and is not a ''supra-competitive'' profit that exceeds the profits that can be obtained in a competitive market? If not, what would commenters consider to be a reasonable rate of return and/or what methodology would they consider to be appropriate for determining a reasonable rate of return? What are commenters' views regarding what factors should be considered in determining what constitutes a reasonable rate of return for 10Gb ULL connectivity fees? Do commenters believe it relevant to an assessment of reasonableness that the Exchange's proposed fees for 10Gb ULL connections are lower than those of other options exchanges to which the Exchange has compared the 10Gb ULL connectivity fees? Should an assessment of reasonable rate of return include consideration of factors other than costs; and if so, what factors should be considered, and why?

4. *Periodic Reevaluation.* The Exchange has not stated that it would re-evaluate the appropriate level of 10Gb ULL fees if there is a material deviation from the anticipated profit margin. In light of the impact that the number of subscribers has on connectivity profit margins, and the potential for costs to decrease (or increase) over time, what are commenters' views on the need for exchanges to commit to reevaluate, on an ongoing and periodic basis, their cost-based connectivity fees to ensure that they stay in line with their stated profitability target and do not become unreasonable over time, for example, by failing to adjust for efficiency gains, cost increases or decreases, and changes in subscribers? How formal should that process be, how often should that reevaluation occur, and what metrics and thresholds should be considered? How soon after a new connectivity fee change is implemented should an exchange assess whether its subscriber estimates were accurate and at what threshold should an exchange commit to file a fee change if its estimates were inaccurate? Should an initial review take place within the first 30 days after a connectivity fee is implemented? 60 days? 90 days? Some other period?

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [63] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[64] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[65] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change would not be sufficient to justify

[60] *See id.*

[61] *See supra* Section II.A.2.

[62] *See id.*

[63] 17 CFR 201.700(b)(3).

[64] *See id.*

[65] *See id.*

Commission approval of a proposed rule change.[66]

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, any potential comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[67]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by May 11, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 25, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–EMERALD–2022–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2022–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2022–13 and should be submitted on or before May 11, 2022. Rebuttal comments should be submitted by May 25, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[68] that File Number SR–EMERALD–2022–13 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

J. Matthew DeLesDernier,

Assistant Secretary.

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[66] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 446–47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

[67] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[68] 15 U.S.C. 78s(b)(3)(C).

[69] 17 CFR 200.30–3(a)(12), (57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94722; File No. SR–PEARL–2022–12]

Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Filing of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

April 14, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2022, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Pearl Options Fee Schedule (the ''Fee Schedule'') to amend the fees for the Exchange's MIAX Express Network Full Service (''MEO'') [3] Ports.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''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.

proposed rule change. The text of these statements may be examined at the places specified in Item IV [sic] below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to increase the fees for its Full Service MEO Ports, Bulk and Single, which allow Members [4] to submit electronic orders in all products to the Exchange. The Exchange initially filed this proposal on July 1, 2021, with the proposed fee changes being immediately effective (''First Proposed Rule Change'').[5] The First Proposed Rule Change was published for comment in the **Federal Register** on July 15, 2021.[6] The Commission received one comment letter on the First Proposed Rule Change [7] and subsequently suspended the Frist [sic] Proposed Rule Change on August 27, 2021.[8] The Exchange withdrew First Proposed Rule Change on October 12, 2021 and re-submitted the proposal on November 1, 2021, with the proposed fee changes being immediately effective (''Second Proposed Rule Change'').[9] The Second Proposed Rule Change provided additional justification for the proposed fee changes and addressed certain points raised in the single comment letter that was submitted on the First Proposed Rule Change. The Second Proposed Rule Change was published for comment in the **Federal Register** on November 17, 2021.[10] The Commission received no comment letters on the Second Proposed Rule Change. Nonetheless, the Exchange withdrew the Second Proposed Rule Change on December 20, 2021 and submitted a revised proposal for immediate effectiveness (''Third Proposed Rule Change'').[11] The Third Proposed Rule Change was published for comment in the **Federal Register** on January 10, 2022.[12] Although the Commission again did not receive any comment letters on the Third Proposed Rule Change, the Exchange withdrew the Third Proposed Rule Change on February 15, 2022 and submitted a revised proposal for immediate effectiveness, which was noticed and immediately suspended by the Commission on February 18, 2022 (''Fourth Proposed Rule Change'').[13] The Commission received one comment letter on the Fourth Proposed Rule Change.[14] The Exchange withdrew the Fourth Proposed Rule Change on March 30, 2022 and submits this revised proposal to be effective April 1, 2022 (''Fifth Proposed Rule Change'').

Full Service MEO Port Fee Changes

The Exchange currently offers different types of MEO Ports depending on the services required by the Member, including a Full Service MEO Port-Bulk,[15] a Full Service MEO Port-Single,[16] and a Limited Service MEO Port.[17] For one monthly price, a Member may be allocated two (2) Full-Service MEO Ports of either type per matching engine [18] and may request Limited Service MEO Ports for which MIAX Pearl will assess Members Limited Service MEO Port fees per matching engine based on a sliding scale for the number of Limited Service MEO Ports utilized each month. The two (2) Full-Service MEO Ports that may be allocated per matching engine to a Member may consist of: (a) Two (2) Full Service MEO Ports—Bulk; (b) two (2) Full Service MEO Ports—Single; or (c) one (1) Full Service MEO Port—Bulk and one (1) Full Service MEO Port—Single.

Unlike other options exchanges that provide similar port functionality and charge fees on a per port basis,[19] the Exchange offers Full Service MEO Ports as a package and provides Members with the option to receive up to two Full Service MEO Ports (described above) per matching engine to which that Member connects. The Exchange currently has twelve (12) matching engines, which means Members may receive up to twenty-four (24) Full Service MEO Ports for a single monthly fee, that can vary based on certain volume percentages, as described below. For illustrative purposes and as described in more detail below, the Exchange currently assesses a fee of $5,000 per month for Members that

[4] ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[5] *See* Securities Exchange Act Release No. 92365 (July 9, 2021), 86 FR 37347 (July 15, 2021) (SR–PEARL–2021–33).

[6] *See id.*

[7] *See* Letter from Richard J. McDonald, Susquehanna International Group, LLC (''SIG''), to Vanessa Countryman, Secretary, Commission, dated September 7, 2021 (''SIG Letter 1'').

[8] *See* Securities Exchange Act Release No. 92798 (August 27, 2021), 86 FR 49360 (September 2, 2021).

[9] *See* Securities Exchange Act Release No. 93556 (November 10, 2021), 86 FR 64235 (November 17, 2021) (SR–PEARL–2021–53).

[10] *See id.*

[11] Securities Exchange Act Release No. 93894 (January 4, 2022), 87 FR 1203 (January 10, 2022) (SR–PEARL–2021–58).

[12] *Id.*

[13] *See* Securities Exchange Act Release No. 94286 (February 18, 2022), 87 FR 10860 (February 25, 2022) (SR–PEARL–2022–04) (Notice of Filing of a Proposed Rule Change to Amend the MIAX PEARL Options Fee Schedule to Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change).

[14] *See* Letter from Richard J. McDonald, SIG, to Vanessa Countryman, Secretary, Commission, dated March 15, 2022 (''SIG Letter 2'').

[15] ''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.

[16] ''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.

[17] ''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.

[18] A ''Matching Engine'' is a part of the MIAX Pearl electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol. A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. *See* the Definitions Section of the Fee Schedule.

[19] *See* NYSE American Options Fee Schedule, Section V.A., Port Fees (each port charged on a per matching engine basis, with NYSE American having 17 match engines). *See* NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020) (providing a link to an Excel file detailing the number of matching engines per options exchange); NYSE Arca Options Fee Schedule, Port Fees (each port charged on a per matching engine basis, NYSE Arca having 19 match engines); *and* NYSE Technology FAQ and Best Practices: Options, Section 5.1 (How many matching engines are used by each exchange?) (September 2020) (providing a link to an Excel file detailing the number of matching engines per options exchange). *See* NASDAQ Fee Schedule, Nasdaq Options 7 Pricing Schedule, Section 3, Nasdaq Options Market—Ports and Other Services (each port charged on a per matching engine basis, with Nasdaq having multiple matching engines). *See* Nasdaq Specialized Quote Interface (SQF) Specification, Version 6.5b (updated February 13, 2020), Section 2, Architecture, *available at https://www.nasdaq.com/docs/2020/02/18/Specialized-Quote-Interface-SQI-6.5b.pdf* (the ''NASDAQ SQF Interface Specification''). The NASDAQ SQF Interface Specification also provides that NASDAQ's affiliates, Nasdaq PHLX LLC (''Nasdaq Phlx'') and Nasdaq BX, Inc. (''Nasdaq BX''), have trading infrastructures that may consist of multiple matching engines with each matching engine trading only a range of option underlyings. Further, the NASDAQ SQF Interface Specification provides that the SQF infrastructure is such that the firms connect to one or more servers residing directly on the matching engine infrastructure. Since there may be multiple matching engines, firms will need to connect to each engine's infrastructure in order to establish the ability to quote the symbols handled by that engine.

reach the highest Full Service MEO Port—Bulk Tier, regardless of the number of Full Service MEO Ports allocated to the Member. For example, assuming a Member connects to all twelve (12) matching engines during a month, with two Full Service MEO Ports per matching engine, this results in a cost of $208.33 per Full Service MEO Port ($5,000 divided by 24) for the month. This fee had been unchanged since the Exchange adopted Full Service MEO Port fees in 2018.[20] The Exchange proposes to increase Full Service MEO Port fees as further described below, with the highest monthly fee of $10,000 for the Full Service MEO Port—Bulk. Members will continue to receive two (2) Full Service MEO Ports to each matching engine to which they connect for the single flat monthly fee. Assuming a Member connects to all twelve (12) matching engines during the month, with two Full Service MEO Ports per matching engine, this would result in a cost of $416.67 per Full Service MEO Port ($10,000 divided by 24).

The Exchange assesses Members Full Service MEO Port Fees, either for a Full Service MEO Port—Bulk and/or for a Full Service MEO Port—Single, based upon the monthly total volume executed by a Member and its Affiliates[21] on the Exchange across all origin types, not including Excluded Contracts,[22] as compared to the Total Consolidated Volume (''TCV''),[23] in all MIAX Pearl-listed options. The Exchange adopted a tier-based fee structure based upon the volume-based tiers detailed in the definition of ''Non-Transaction Fees Volume-Based Tiers'' described in the Definitions section of the Fee Schedule. The Exchange assesses these and other monthly Port fees to Members in each month the market participant is credentialed to use a Port in the production environment.

Current Full Service MEO Port—Bulk Fees. The Exchange currently assesses Members monthly Full Service MEO Port—Bulk fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $3,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $4,500; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $5,000.

Proposed Full Service MEO Port—Bulk Fees. The Exchange proposes to assess Members monthly Full Service MEO Port—Bulk fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $5,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $7,500; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $10,000.

Current Full Service MEO Port—Single Fees. The Exchange currently assesses Members monthly Full Service MEO Port—Single fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $2,000;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $3,375; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $3,750.

Proposed Full Service MEO Port—Single Fees. The Exchange proposes to assess Members monthly Full Service MEO Port—Single fees as follows:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $2,500;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $3,500; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $4,500.

The Exchange offers various types of ports with differing prices because each port accomplishes different tasks, are suited to different types of Members, and consume varying capacity amounts of the network. For instance, MEO ports allow for a higher throughput and can handle much higher quote/order rates than FIX ports. Members that are Market Makers[24] or high frequency trading firms utilize these ports (typically coupled with 10Gb ULL connectivity) because they transact in significantly higher amounts of messages being sent to and from the Exchange, versus FIX port users, who are traditionally customers sending only orders to the Exchange (typically coupled with 1Gb connectivity). The different types of ports cater to the different types of Exchange Memberships and different capabilities of the various Exchange Members. Certain Members need ports and connections that can handle using far more of the network's capacity for message throughput, risk protections, and the amount of information that the System has to assess. Those Members may account for the vast majority of network capacity utilization and volume executed on the Exchange, as discussed throughout.

The Exchange proposes to increase its monthly Full Service MEO Port fees

[20] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[21] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Pearl Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the following process. A MIAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to *membership@miaxoptions.com* no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. *See* the Definitions Section of the Fee Schedule.

[22] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[23] ''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.

[24] 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.

since it has not done so since the fees were adopted in 2018,[25] which are designed to recover a portion of the costs associated with directly accessing the Exchange. The Exchange notes that its affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald''), charge fees for their high throughput, low latency MIAX Express Interface (''MEI'') Ports in a similar fashion as the Exchange charges for its MEO Ports—generally, the more active user the Member (*i.e.,* the greater number/greater national ADV of classes assigned to quote on MIAX and MIAX Emerald), the higher the MEI Port fee.[26] This concept is not new or novel. The Exchange also notes that the proposed increased fees for the Exchange's Full Service MEO Ports are in line with, or cheaper than, the similar port fees for similar membership fees charged by other options exchanges.[27]

The Exchange has historically undercharged for Full Service MEO Ports as compared to other options exchanges because the Exchange provides Full Service MEO Ports as a package for a single monthly fee. As described above, this package includes two Full Service MEO Ports for each of the Exchange's twelve (12) matching engines. The Exchange understands other options exchanges charge fees on a per port basis. The Exchange believes other exchanges' port fees are useful examples of alternative approaches to providing and charging for port access and provides the below table for comparison purposes only to show how its proposed fees compare to fees currently charged by other options exchanges for similar port access.

Exchange	Type of port	Monthly fee
MIAX Pearl (as proposed) (equity options market share of 4.32% as of March 29, 2022 for the month of March).[28]	MEO Full Service—Bulk	Tier 1: $5,000 (or $208.33 per Matching Engine). Tier 2: $7,500 (or $312.50 per Matching Engine). Tier 3: $10,000 (or $416.66 per Matching Engine).
	MEO Full Service—Single	Tier 1: $2,500 (or $104.16 per Matching Engine). Tier 2: $3,500 (or $145.83 per Matching Engine). Tier 3: $4,500 (or $187.50 per Matching Engine).
The NASDAQ Stock Market LLC (''NASDAQ'')[29] (equity options market share of 8.62% as of March 29, 2022 for the month of March).[30]	Order/Quote Entry	Ports 1–40: $450 each. Ports 41 or more: $150 each.
Nasdaq ISE LLC (''ISE'')[31] (equity options market share of 5.83% as of March 29, 2022 for the month of March).[32]	Order/Quote Entry	Ports 1–40: $450 each. Ports 41 or more: $150 each.
NYSE American LLC (''Amex'')[33] (equity options market share of 7.15% as of March 29, 2022 for the month of March).[34]	Specialized Quote Interface ..	Ports 1–5: $1,500 each. Ports 6–20: $1,000 each. Ports 21 or more: $500.

Implementation

The proposed fees are effective beginning April 1, 2022.

2. Statutory Basis

The Exchange believes that the proposed increase to the MEO Port fees is consistent with Section 6(b) of the Act[35] in general, and furthers the objectives of Section 6(b)(4) of the Act[36] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using any facility or system that the Exchange operates or controls. The Exchange also believes the proposed MEO Port fees furthers the objectives of Section 6(b)(5) of the Act[37] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes as set forth in recent Commission and Commission Staff guidance. On March 29, 2019, the Commission issued an Order disapproving a proposed fee change by the BOX Market LLC Options Facility to establish connectivity fees for its BOX Network (the ''BOX Order'').[38] On May 21, 2019, the Commission Staff issued guidance ''to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act.''[39] Based on both the BOX Order and the Guidance, the Exchange believes that the proposed MEO Port fees is consistent with the Act because it (i) is reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) complies with the BOX Order and the Guidance; and (iii) is supported by evidence (including comprehensive revenue and cost data and analysis) that the proposed fees are fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Proposed Fees Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange

[25] *See supra* note 20.

[26] *See* MIAX Fee Schedule, Section 5)d)ii); MIAX Emerald Fee Schedule, Section 5)d)ii).

[27] *See* NYSE American Options Fee Schedule, Section V.A., Port Fees; NYSE Arca Options Fee Schedule, Port Fees; Nasdaq Stock Market LLC (''NASDAQ''), Options 7, Pricing Schedule, Section 3.

[28] *See ''The market at a glance,'' available at https://www.miaxoptions.com/(last visited March 29, 2022).*

[29] *See* NASDAQ Rules, General 8: Connectivity, Section 1. Co-Location Services.

[30] *See supra note 28.*

[31] *See* ISE Rules, General 8: Connectivity.

[32] *See supra note 28.*

[33] *See* NYSE American Options Fee Schedule, Section IV.

[34] *See supra note 28.*

[35] 15 U.S.C. 78f(b).

[36] 15 U.S.C. 78f(b)(4).

[37] 15 U.S.C. 78f(b)(5).

[38] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04) (Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network).

[39] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [40] The Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [41] In the Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supra-competitive profit, specific information, including quantitative information, should be provided to support that argument.'' [42] The Exchange does not assert that the proposed fees are constrained by competitive forces. Rather, the Exchange asserts that the proposed fees are reasonable because they will permit recovery of the Exchange's costs in providing access services to supply MEO Ports and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [43] The Commission Staff further states in the Guidance that ''the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.'' [44] The Exchange provides this analysis below.

The proposed fees are based on a cost-plus model. An MEO Port provides access to each of the three Exchange networks, extranet, internal network, and external network, all of which are necessary for Exchange operations. The Exchange's extranet provides the means by which the Exchange communicates with market participants and includes access to the Member portal and the ability to send and receive daily communications and reports. The internal network connects the extranet to the rest of the Exchange's systems and includes trading systems, market data systems, and network monitoring. The external network includes connectivity between the Exchange and other national securities exchanges, market data providers, and between the Exchange's locations in Princeton, New Jersey, Secaucus, New Jersey (NY4), Miami, Florida, and Chicago, Illinois (CH4). In determining the appropriate fees to charge Members and non-Members to access the Exchange's System Networks via MEO Ports, the Exchange considered its costs to provide and maintain its System Networks and connectivity to those System Networks, using costs that are related to providing and maintaining access the Exchange's System Networks via MEO Ports to estimate such costs, and set fees that are designed to cover its costs with a limited return in excess of such costs. The Exchange believes that it is important to demonstrate that the proposed fees are based on the Exchange's costs and reasonable business needs and believes the proposed fees will allow the Exchange to continue to offset expenses. However, as discussed more fully below, such fees may also result in the Exchange recouping less than all of its costs of providing and maintaining access to the Exchange's System Networks via MEO Ports because of the uncertainty of forecasting subscriber decision making with respect to firms' port and access needs. The Exchange believes that the proposed fees will not result in excessive pricing or supra-competitive profit based on the total expenses the Exchange incurs versus the total revenue the Exchange projects to collect, and therefore meets the standards in the Act as interpreted by the Commission and the Commission Staff in the BOX Order and the Guidance.

The Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to MEO Ports, and, if such expense did so relate, what portion (or percentage) of such expense actually supports access to the Exchange's System Networks via MEO Ports. In determining what portion (or percentage) to allocate to access services, each Exchange department head, in coordination with other Exchange personnel, determined the expenses that support access services and System Networks associated with MEO Ports. This included numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders. The analysis also included each department head meeting with the divisions of teams within each department to determine the amount of time and resources allocated by employees within each division towards the access services and System Networks associated with MEO Ports. The Exchange reviewed each individual expense to determine if such expense was related to MEO Ports. Once the expenses were identified, the Exchange department heads, with the assistance of our internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing access services and the System Networks. The sum of all such portions of expenses represents the total cost to the Exchange to provide access services associated with MEO Ports. For the avoidance of doubt, no expense amount is allocated twice.

The analysis conducted by the Exchange is a proprietary process that is designed to make a fair and reasonable assessment of costs and resources allocated to support the provision of access services associated with MEO Ports. The Exchange acknowledges that this assessment can only capture a moment in time and that costs and resource allocations may change. That is why the Exchange historically, and on an ongoing annual basis, reviews its costs and resource allocations to ensure it appropriately allocates resources to properly provide services to the Exchange's constituents.

The Exchange believes exchanges, like all businesses, should be provided flexibility when developing and applying a methodology to allocate costs and resources they deem necessary to operate their business, including providing market data and access services. The Exchange notes that costs and resource allocations may vary from business to business and, likewise, costs and resource allocations may differ from exchange to exchange when it comes to providing market data and access services. It is a business decision that must be evaluated by each exchange as to how to allocate internal resources and what costs to incur internally or via third parties that it may deem necessary to support its business and its provision of market data and access services to market participants.

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to

[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*

fully support access to the Exchange and its System Networks via MEO Ports. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI-mandated processes associated with its network technology. Both fixed and variable expenses have significant impact on the Exchange's overall costs to provide and maintain access to the Exchange's System Networks via MEO Ports. For example, to accommodate new Members, the Exchange may need to purchase additional hardware to support those Members as well as provide enhanced monitoring and reporting of customer performance that the Exchange and its affiliates currently provide. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the proposed fees are a reasonable attempt to offset a portion of those costs associated with providing access to and maintaining its System Networks' infrastructure and related MEO Ports.

The Exchange estimated its total annual expense to provide and maintain access to the Exchange's System Networks via MEO Ports based on the following general expense categories: (1) External expenses, which include fees paid to third parties for certain products and services; (2) internal expenses relating to the internal costs to provide the services associated with MEO Ports; and (3) general shared expenses.[45] The Guidance does not include any information regarding the methodology that an exchange should use to determine its cost associated with a proposed fee change. The Exchange utilized a methodology in this proposed fee change that it believes is reasonable because the Exchange analyzed its entire cost structure, allocated a percentage of each cost attributable to maintaining its System Networks, then divided those costs according to the cost methodology outlined below.

For 2022, the total annual expense for providing the access services associated with the MEO Ports is estimated to be $2,923,534, or $243,627 per month. The Exchange believes it is more appropriate to analyze the proposed fees utilizing its estimated 2022 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[46] The $2,923,534 estimated total annual expense is directly related to the access to the Exchange's System Networks via MEO Ports and not any other product or service offered by the Exchange. For example, it does not include general costs of operating matching engines and other trading technology. No expense amount was allocated twice. Each of the categories of expenses are set forth in the following table and details of the individual line-item costs considered by the Exchange for each category are described further below.

External expenses

Category	Percentage of total expense amount allocated
Data Center Provider	1.80%
Fiber Connectivity Provider	0.90%
Security Financial Transaction Infrastructure ("SFTI"), and Other Connectivity and Content Service Providers	0.90%
Hardware and Software Providers	0.90%
Total of External Expenses	[47] $295,184

Internal expenses

Category	Expense amount allocated
Employee Compensation	$2,066,488
Depreciation and Amortization	161,578
Occupancy	62,531
Total of Internal expenses	2,290,597
Allocated Shared Expenses	337,753

The Exchange notes that it only has two primary sources of revenue, connectivity and port fees, to recover those costs associated with providing and maintaining access to the Exchange's System Networks. The Exchange notes that, without the specific third party and internal expense items, the Exchange would not be able to provide and maintain the System Networks and access to the System Networks via MEO Ports to Members. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, has been identified through a line-by-line item analysis to be integral to providing and maintaining the System Networks and

[45] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

[46] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled "Operating Expenses Incurred Directly or Allocated From Parent," in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87876 (December 31, 2019), 85 FR 757 (January 7, 2020) (SR–PEARL–2019–36). Accordingly, the third party expense described in this filing is attributed to the same line item for the Exchange's 2022 Form 1 Amendment, which will be filed in 2023.

[47] The Exchange does not believe it is appropriate to disclose the actual amount it pays to each individual third-party provider as those fee arrangements are competitive or the Exchange is contractually prohibited from disclosing that number.

access to System Networks via MEO Ports.

For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing and maintaining the System Networks and access to System Networks in connection with MEO Ports. The Exchange describes the analysis conducted for each expense and the resources or determinations that were considered when determining the amount necessary to allocate to each expense. Only a portion of all fees paid to such third-parties is included in the third-party expenses described herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to providing and maintaining the System Networks and access to Exchange's System Networks via MEO Ports. This may result in the Exchange under allocating an expense to provide and maintain its System Networks and access to the System Networks via MEO Ports, and such expenses may actually be higher than what the Exchange allocated as part of this proposal. The Exchange notes that expenses associated with its affiliates, MIAX and MIAX Emerald, as well as the Exchange's equities market, are accounted for separately and are not included within the scope of this filing.

Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic, thorough review of its expenses and resource allocations, which resulted in revised percentage allocations in this filing. The revised percentages are, among other things, the result of the shuffling of internal resources in response to business objectives and changes to fees charged and services provided by third parties. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

External Expense Allocations

For 2022, expenses relating to fees paid by the Exchange to third parties for products and services necessary to provide and maintain the System Networks and access to the System Networks via a MEO Port are estimated to be $295,184. This includes, but is not limited to, a portion of the fees paid to: (1) A third party data center provider, including for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) a fiber connectivity provider for network services (fiber and bandwidth products and services) linking the Exchange's and its affiliates' office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) SFTI, which supports connectivity feeds for the entire U.S. options industry; (4) various other content and connectivity service providers, which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers that support the production environment in which Members and non-Members connect to the network to trade and receive market data.

Data Center Space and Operations Provider

The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties where the Exchange houses servers, switches and related equipment. Data center costs include an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs. The data center provider operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. Without the retention of a third-party data center, the Exchange would not be able to operate its systems and provide a trading platform for market participants. The Exchange does not employ a separate fee to cover its data center expense and recoups that expense, in part, by charging for MEO Ports.

The Exchange reviewed its data center footprint, including its total rack space, cage usage, number of servers, switches, cabling within the data center, heating and cooling of physical space, storage space, and monitoring and divided its data center expenses among providing transaction services, market data, and connectivity. Based on this review, the Exchange determined that 1.80% of the total applicable data center provider expense is applicable to providing and maintaining access services and System Networks associated with MEO Ports. The Exchange believes this allocation is reasonable because MEO Ports are a core means of access to the Exchange's network, providing one method for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's data center expense is due to providing and maintaining port access and connectivity to the Exchange's System Networks, including providing cabling within the data center between market participants and the Exchange. The Exchange excluded from this allocation servers that are dedicated to market data. The Exchange also did not allocate the remainder of the data center expense because it pertains to other areas of the Exchange's operations, such as other ports, market data, and transaction services.

Fiber Connectivity Provider

The Exchange engages a third-party service provider that provides the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data center, and office locations in Princeton and Miami. Fiber connectivity is necessary for the Exchange to switch to its secondary data center in the case of an outage in its primary data center. Fiber connectivity also allows the Exchange's National Operations & Control Center (''NOCC'') and Security Operations Center (''SOC'') in Princeton to communicate with the Exchange's primary and secondary data centers. As such, all trade data, including the billions of messages each day, flow through this third-party provider's infrastructure over the Exchange's network. Without these services, the Exchange would not be able to operate and support the network and provide and maintain access services and System Networks associated with the MEO Ports to its Members and their customers. Without the retention of a third-party fiber connectivity provider, the Exchange would not be able to communicate between its data centers and office locations. The Exchange does not employ a separate fee to cover its fiber connectivity expense and recoups that expense, in part, by charging for MEO Ports.

The Exchange reviewed it costs to retain fiber connectivity from a third party, including the ongoing costs to support fiber connectivity, ensuring adequate bandwidth and infrastructure maintenance to support exchange operations, and ongoing network monitoring and maintenance and determined that 0.90% of the total fiber connectivity expense was applicable to providing and maintaining access services and System Networks associated with MEO Ports. The Exchange believes this allocation is reasonable because MEO Ports are a core means of access to the Exchange's

network, providing one method for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's fiber connectivity expense is due to providing and maintaining connectivity between the Exchange's System Networks, data centers, and office locations and is core to the daily operation of the Exchange. Fiber connectivity is a necessary integral means to disseminate information from the Exchange's primary data center to other Exchange locations. The Exchange excluded from this allocation fiber connectivity usage related to market data or other business lines. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining access services and System Networks associated with MEO Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to retain fiber connectivity and maintain and provide access to its System Networks via MEO Ports.

Connectivity and Content Services Provided by SFTI and Other Providers

The Exchange relies on SFTI and various other connectivity and content service providers for connectivity and data feeds for the entire U.S. options industry, as well as content, connectivity, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via MEO Ports. Specifically, the Exchange utilizes SFTI and other content service provider to connect to other national securities exchanges, the Options Price Reporting Authority (''OPRA''), and to receive market data from other exchanges and market data providers. SFTI is operated by the Intercontinental Exchange, the parent company of five registered exchanges, and has become integral to the U.S. markets. The Exchange understands SFTI provides services to most, if not all, of the other U.S. exchanges and other market participants. Without services from SFTI and various other service providers, the Exchange would not be able to connect to other national securities exchanges, market data providers, or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its SFTI and content service provider expense and recoups that expense, in part, by charging for MEO Ports.

The Exchange reviewed it costs to retain SFTI and other content service providers, including network monitoring and maintenance, remediation of connectivity related issues, and ongoing administrative activities related to connectivity management and determined that 0.90% of the total applicable SFTI and other service provider expense is allocated to providing the access services associated with MEO Ports. SFTI and other content service providers are key vendors and necessary components in providing connectivity to the Exchange. The primary service SFTI provides for the Exchange is connectivity to other national securities exchanges and their disaster recovery facilities and, therefore, a vast portion of this expense is allocated to providing access to the System Networks via MEO Ports. Connectivity via SFTI is necessary for purposes of order routing and accessing disaster recovery facilities in the case of a system outage. Engaging SFTI and other like vendors provides purchasers of MEO Ports connectivity to other national securities exchanges for purposes of order routing and disaster recovery. The Exchange did not allocate a portion of this expense that relates to the receipt of market data from other national securities exchange and OPRA. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining the System Networks or access to its System Networks via MEO Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide and maintain its System Networks and access to its System Networks via MEO Ports, and not any other service, as supported by its cost review.

Hardware and Software Providers

The Exchange relies on dozens of third-party hardware and software providers for equipment necessary to operate its System Networks. This includes either the purchase or licensing of physical equipment, such as servers, switches, cabling, and monitoring devices. It also includes the purchase or license of software necessary for security monitoring, data analysis and Exchange operations. Hardware and software providers are necessary to maintain its System Networks and provide access to its System Networks via MEO Ports. Hardware and software equipment and licenses for that equipment are also necessary to operate and monitor physical assets necessary to offer physical connectivity to the Exchange. Hardware and software equipment and licenses are key to the operation of the Exchange and, without them, the Exchange would not be able to operate and support its System Networks and provide access to its Members and their customers. The Exchange does not employ a separate fee to cover its hardware and software expense and recoups that expense, in part, by charging for MEO Ports.

The Exchange reviewed it hardware and software related costs, including software patch management, vulnerability management, administrative activities related to equipment and software management, professional services for selection, installation and configuration of equipment and software supporting exchange operations and determined that 0.90% of the total applicable hardware and software expense is allocated to providing and maintaining access services and System Networks associated with MEO Ports. Hardware and software equipment and licenses are key to the operation of the Exchange and its System Networks. Without them, market participants would not be able to access the System Networks via MEO Ports. The Exchange only allocated the portion of this expense to the hardware and software that is related to a market participant's use of MEO Ports, such as operating its matching engines. The Exchange, therefore, did not allocate portions of its hardware and software expense that related to other areas of the Exchange's business, such as hardware and software used for market data or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations, such as ports or transaction services, and does not directly relate to providing and maintaining its System Networks and access to its System Networks via MEO Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide and maintain its System Networks and access to its System Networks via MEO Ports, and not any other service, as supported by its cost review.

Internal Expense Allocations

For 2022, total internal expenses relating to the Exchange providing and maintaining its System Networks and access to its System Networks via a MEO Port connection are estimated to be $2,290,597. This includes, but is not limited to, costs associated with: (1)

Employee compensation and benefits for full-time employees that support the System Networks and access to System Networks via MEO Ports, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions as well as important system upgrades; (2) depreciation and amortization of hardware and software used to provide and maintain access services and System Networks associated with MEO Ports, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide and maintain the System Networks and access to System Networks via MEO Ports. The breakdown of these costs is more fully described below.

Employee Compensation and Benefits

Human personnel are key to exchange operations and supporting the Exchange's ongoing provision and maintenance of the System Networks and access to System Networks via MEO Ports. The Exchange reviewed its employee compensation and benefits expense and the portion of that expense allocated to providing and maintaining the System Networks and access to System Networks via MEO Ports. As part of this review, the Exchange considered employees whose functions include providing and maintaining the System Networks and MEO Ports and used a blended rate of compensation reflecting salary, stock and bonus compensation, bonuses, benefits, payroll taxes, and 401K matching contributions.[48]

Based on this review, the Exchange determined to allocate $2,066,488 in employee compensation and benefits expense to providing access to the System Networks. To determine the appropriate allocation the Exchange reviewed the time employees allocated to supporting its System Networks and access to its System Networks via MEO Ports. Senior staff also reviewed these time allocations with department heads and team leaders to determine whether those allocations were appropriate. These employees are critical to the Exchange to provide and maintain access to its System Networks via MEO Ports for its Members, non-Members and their customers. The Exchange determined the above allocation based on the personnel whose work focused on functions necessary to provide and maintain the System Networks and access to System Networks via MEO Ports. The Exchange does not charge a separate fee regarding employees who support MEO Ports and the Exchange seeks to recoup that expense, in part, by charging for MEO Ports.

Depreciation and Amortization

A key expense incurred by the Exchange relates to the depreciation and amortization of equipment that the Exchange procured to provide and maintain the System Networks and access to System Networks via MEO Ports. The Exchange reviewed all of its physical assets and software, owned and leased, and determined whether each asset is related to providing and maintaining its System Networks and access to its System Networks via MEO Ports, and added up the depreciation of those assets. All physical assets and software, which includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. In determining the amount of depreciation and amortization to apply to providing MEO Ports and the System Networks, the Exchange considered the depreciation of hardware and software that are key to the operation of the Exchange and its System Networks. This includes servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps, that were previously purchased to maintain and provide access to its System Networks via MEO Ports. Without them, market participants would not be able to access the System Networks. The Exchange seeks to recoup a portion of its depreciation expense by charging for MEO Ports.

Based on this review, the Exchange determined to allocate $161,578 in depreciation and amortization expense to providing access to the System Networks via a MEO Port fees. The Exchange only allocated the portion of this depreciation expense to the hardware and software related to a market participant's use of MEO Ports. The Exchange, therefore, did not allocate portions of depreciation expense that relates to other areas of the Exchange's business, such as the depreciation of hardware and software used for market data or unrelated administrative services.[49]

Occupancy

The Exchange rents and maintains multiple physical locations to house staff and equipment necessary to support access services, System Networks, and exchange operations. The Exchange's occupancy expense is not limited to the housing of personnel and includes locations used to store equipment necessary for Exchange operations. In determining the amount of its occupancy related expense, the Exchange considered actual physical space used to house employees whose functions include providing and maintaining the System Networks and MEO Ports. Similarly, the Exchange also considered the actual physical space used to house hardware and other equipment necessary to provide and maintain the System Networks and MEO Ports. This equipment includes computers, servers, and accessories necessary to support the System Networks and MEO Ports. Based on this review, the Exchange determined to allocate $62,531 of its occupancy expense to provide and maintain the System Networks and MEO Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the System Networks, including providing and maintaining access to its System Networks via MEO Ports. The Exchange considered the rent paid for the Exchange's Princeton and Miami offices, as well as various related costs, such as physical security, property management fees, property taxes, and utilities at each of those locations. The Exchange did not include occupancy expenses related to housing employees and equipment related to other Exchange operations, such as market data and administrative services.

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The Exchange notes that a material portion of its total overall expense is

[48] For purposes of this allocation, the Exchange did not consider expenses related to supporting employees who support MEO Ports, such as office space and supplies. The Exchange determined cost allocation for employees who perform work in support of offering access services and System Networks to arrive at a full time equivalent (''FTE'') of 6.3 FTEs across all the identified personnel. The Exchange then multiplied the FTE times a blended compensation rate for all relevant Exchange personnel to determine the personnel costs associated with providing the access services and System Networks associated with MEO Ports.

[49] All of the expenses outlined in this proposed fee change refer to the operating expenses of the Exchange. The Exchange did not included any future capital expenditures within these costs. Depreciation and amortization represent the expense of previously purchased hardware and internally developed software spread over the useful life of the assets. Due to the fact that the Exchange has only included operating expense and historical purchases, there is no double counting of expenses in the Exchange's cost estimates.

allocated to the provision and maintenance of access services (including connectivity and ports). The Exchange believes this is reasonable as the Exchange operates a technology-based business that differentiates itself from its competitors based on its more deterministic and resilient trading systems that rely on access to a high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. Thus, the Exchange believes it is reasonable to allocate a material portion of its total overall expense towards providing and maintaining its System Networks and access to its System Networks via MEO Ports.

Allocated Shared Expense

Finally, a limited portion of general shared expenses was allocated to overall MEO Port costs as without these general shared costs, the Exchange would not be able to operate in the manner that it does and provide MEO Ports. The costs included in general shared expenses include recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. For 2022, the Exchange's general shared expense allocated to MEO Ports and the System Networks that support those connections is estimated to be $337,753. The Exchange used the average of the above allocations to determine the amount of general shared expenses to allocate to this proposal. The Exchange believes this ensures that the allocation correlates to the percentage of the above internal and external expense applied to the proposed fee change.

Revenue and Estimated Profit Margin

The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: Transaction fees, access fees (which includes MEO Ports), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms.

To determine the Exchange's estimated revenue associated with MEO Ports, the Exchange analyzed the number of Members currently utilizing MEO Ports and used a recent monthly billing cycle representative of current monthly revenue. The Exchange also provided its baseline by analyzing March 2022, the monthly billing cycle prior to the proposed fees and compared this to its expenses for that month. As discussed below, the Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its estimates for purposes of these calculations, given the uncertainty of such estimates due to the continually changing access needs of market participants and potential changes in internal and third-party expenses.

For March 2022, prior to the proposed fees, Members purchased 15 Full Service MEO Port—Bulk, for which the Exchange anticipates charging $60,500, and 4 Full Service MEO Port—Single, for which the Exchange anticipates charging $11,125, for a total of $71,625 for that month. This will result in a loss of $171,999 ($71,625 in MEO Port revenue, minus $243,627 in monthly MEO Port expenses). For April 2022, assuming the Exchange charges the proposed fees described herein, the Exchange anticipates Members purchasing 15 Full Service MEO Port—Bulk, for which the Exchange anticipates charging $112,500, and 4 Full Service MEO Port—Single, for which the Exchange anticipates charging $13,000, for a total of $125,500 for that month. This will result in a loss of $118,127 ($125,500 in MEO Port revenue, minus $243,627 in monthly MEO Port expenses).

The Exchange believes that conducting the above analysis on a per month basis is reasonable as the revenue generated from access services subject to the proposed fee generally remains static from month to month. The Exchange also conducted the above analysis on a per month basis to comply with the Commission Staff's Guidance, which requires a baseline analysis to assist in determining whether the proposal generates a supra-competitive profit. The Exchange cautions that this profit margin may also fluctuate from month to month based on the uncertainty of predicting how many ports may be purchased from month to month as Members are free to add and drop ports at any time based on their own business decisions.

The Exchange believes the proposed margin is reasonable and will not result in a ''supra-competitive'' profit. The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [50] Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2017.[51] 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 MEO Ports, 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 is not generating a profit, and therefore, cannot be deemed to be generating a ''supra-competitive'' profit by now increasing the fees for MEO Ports while still sustaining a loss. The Exchange should not now be penalized for now seeking to raise it fees to near market rates after offering such products as discounted prices.

The Exchange notes that its revenue estimate is based on estimates and will only be realized to the extent such revenue actually produces the revenue estimated. As a generally new entrant to the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from MEO Ports, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity or obtaining new clients that will purchase such services. To the extent the Exchange is successful in encouraging new clients to connect directly to the Exchange, the Exchange does not believe it should be penalized for such success. The Exchange, like other exchanges, is, after all, a for-profit business. While the Exchange believes in transparency around costs and potential margins, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes its cost analysis and related estimates demonstrate this fact.

The Proposed Fees Are Reasonable When Compared to the Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other exchanges' costs to provide ports or their fee markup over those costs, and therefore cannot use other exchange's port fees as a benchmark to

[50] *See supra* note 35.

[51] The Exchange has incurred a cumulative loss of $86 million since its inception in 2017 to 2020. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000461.pdf.*

determine a reasonable markup over the costs of providing ports. Nevertheless, the Exchange believes the other exchanges' port fees are useful examples of alternative approaches to providing and charging for ports notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of connectivity. To that end, the Exchange believes the proposed fees are reasonable because the proposed fees are still less than fees charged for similar ports provided by other options exchanges with comparable market shares.

As described in the above table, the Exchange's proposed fees remain less than fees charged for similar ports provided by other options exchanges with similar market share. In the each of the above cases, the Exchange's proposed fees are still significantly lower than that of competing options exchanges with similar market share. Despite proposing lower or similar fees to that of competing options exchanges with similar market share, the Exchange believes that it provides a premium network experience to its Members and non-Members via a highly deterministic System, enhanced network monitoring and customer reporting, and a superior network infrastructure than markets with higher market shares and more expensive connectivity alternatives. Each of the rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

The Proposed Fees Are Equitably Allocated

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,[52] 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.[53] The Exchange now proposes to increase the Full Service MEO Port fees, with the highest Tier fee for a Full Service MEO Port—Bulk of $10,000 per month. Members will continue to receive two (2) Full Service MEO Ports to each matching engine to which they are connected for the single flat monthly fee. Assuming a Member connects to all twelve (12) matching engines during the month, and achieves the highest Tier for that month, with two Full Service MEO Ports—Bulk per matching engine, this would result in a cost of $416.67 per Full Service MEO Port ($10,000 divided by 24).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete.

Intra-Market Competition

The Exchange believes that the proposed fees do not place certain market participants at a relative disadvantage to other market participants because the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed fees reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the proposed fees do not place an undue burden on competition on other options exchanges that is not necessary or appropriate. In particular, options market participants are not forced to connect to (and purchase MEO Ports from) all options exchanges. The Exchange also notes that it has far less Members as compared to the much greater number of members at other options exchanges. Not only does MIAX Pearl have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX Pearl. There are a number of large users of the MEO Interface and broker-dealers that are members of other options exchange but not Members of MIAX Pearl. The Exchange is also unaware of any assertion that its existing fee levels or the proposed fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

One comment letter was submitted on the Fourth Proposed Rule Change[54] and the Exchange responds to issues raised in that comment letter here.

First, SIG Letter 2 asserts that the Exchange's motivation for the proposed fees is not a proper justification and refers to statements included in withdrawn filings about the Exchange's need to recoup initial capital expenditures. SIG Letter 2 does not provided a reason why recoupment of initial capital expenditures is not a proper justification for a proposed rule change. SIG Letter 2 also asserts that enhancing profitability is not an appropriate justification for the proposed fee change. The Exchange never asserted in any of the preceding versions of this proposed fee change that enhancing profitability was a motivation for the proposed fee change. Rather, the Exchange provided numerous reasons for the proposed fee change, including the need to cover ongoing internal and external expenses and anticipated increases in those costs due to ongoing inflationary pressures.

Second, SIG Letter 2 claims that the Exchange omitted the data necessary to assess the proposed fee change under the Exchange Act. SIG Letter 2 also asserts that the Exchange's disclosed cost data is not reliable. With each iteration of this proposed fee change, the Exchange provided more detail about its cost based analysis and rationale. In accordance with the Guidance, the Exchange has provided sufficient detail to support a finding that the proposed fees are consistent with the Exchange Act. The proposal includes a detailed description of the

[52] *See supra* note 19.

[53] *See supra* note 20.

[54] *See supra* note 14.

Exchange's costs and how the Exchange determined to allocate those costs related to the proposed fees. The Exchange was commended by an industry group regarding the level of transparency and disclosure included in the proposed fee changes and that group was supportive of the efforts made by the Exchange and its affiliates to provide increased transparency and justification for their proposed fees. The commenter specifically noted that:

> MIAX has repeatedly filed to change its connectivity fees in a way that will materially lower costs for many users, while increasing the costs for some of its heaviest of users. These filings have been withdrawn and repeatedly refiled. Each time, however, the filings contain significantly greater information about who is impacted and how than other filings that have been permitted to take effect without suspension. For example, MIAX detailed the associated projected revenues generated from the connectivity fees by user class, again in a clear attempt to comply with the SRO Fee Filing Guidance. [55]

Despite the Exchange refiling its fee proposals to include significantly greater information about the impact of the proposed fees on Members and non-Members, primarily at the request of the Commission Staff and in response to comments from SIG, SIG argues that the data the Exchange provided is insufficient or unreliable. Section 6(b)(4) of the Act [56] requires an exchange to ''provide for the equitable allocation of reasonable dues, fees and other charges.'' The standard set by Congress for the Exchange to establish or amend a certain fee is ''reasonableness,'' and the Exchange provided significant detail in this filing and past filings to support a finding that the proposed fees are reasonable under the Exchange Act.

SIG Letter 2 also claims that the Exchange has not shown that the estimated profit margin is reasonable. In this filing, the Exchange enhanced its justification and support to find that the projected margin is reasonable and would not result in a supra-competitive profit. SIG Letter 2 states that SIG believes exchanges are utilities and utilities should only generate single to low double digit profit margins. This statement assumes that the projected profit margin is reflective of the Exchange's overall profit margin and ignores that this is a single profit margin from a single offering that is offset by lower or negative profit margins for other products and services offered by the Exchange. SIG's statement that utilities should only generate single to low double digit profit margins ignores SIG's own reference to a 14.4%, low double digit profit margin from one of the Exchange's recent proposed fee changes, as well as single digit to negative profit margins in other Exchange filings currently pending before the Commission.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[57] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[58] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

As the Exchange further details above, the Exchange first filed a proposed rule change proposing fee changes as proposed herein on July 1, 2021, with the proposed fee changes being immediately effective. That proposal, SR–PEARL–2021–33, was published for comment in the **Federal Register** on July 15, 2021.[59] On August 27, 2021, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change (SR–PEARL–2021–33) and (2) instituted proceedings to determine whether to approve or disapprove the proposed rule change.[60] On October 12, 2021, the Exchange withdrew SR–PEARL–2021–33. On November 1, 2021, the Exchange filed a proposed rule change proposing fee changes as proposed herein (SR–PEARL–2021–53). That proposal, SR–PEARL–2021–53, was published for comment in the **Federal Register** on November 17, 2021.[61] On December 20, 2021, the Exchange withdrew SR–PEARL–2021–53 and filed a proposed rule change proposing fee changes as proposed herein on December 20, 2021 (PEARL–2022–58). That filing, SR–PEARL–2021–58, was published for comment in the **Federal Register** on January 10, 2022.[62] On February 15, 2022, the Exchange withdrew SR–PEARL–2021–58 and filed a proposed rule change proposing fee changes as proposed herein (SR–PEARL–2022–04). On February 18, 2022, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change (SR–PEARL–2022–04); and (2) instituted proceedings to determine whether to approve or disapprove the proposal.[63] The Commission received one comment letter on SR–PEARL–2022–04.[64] On April 1, 2022, the Exchange withdrew SR–PEARL–2022–04 and filed the instant filing, which is substantially similar.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[65] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [66]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [67] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not permit unfair discrimination between customers,

[55] *See* letter from Tyler Gellasch, Executive Director, Healthy Markets Association (''HMA''), to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021 (commenting on SR–CboeEDGA–2021–017, SR–CboeBYX–2021–020, SR–Cboe–BZX–2021–047, SR–CboeEDGX–2021–030, SR–MIAX–2021–41, SR–PEARL–2021–45, and SR–EMERALD–2021–29) (''HMA Letter'').

[56] 15 U.S.C. 78f(b)(4).

[57] 15 U.S.C. 78s(b)(3)(C).

[58] 15 U.S.C. 78s(b)(1).

[59] *See* Securities Exchange Act Release No. 92365 (July 9, 2021), 86 FR 37347. The Commission received one comment letter on that proposal. Comment for SR–PEARL–2021–33 can be found at: *https://www.sec.gov/comments/sr-pearl-2021-33/srpearl202133-9208443-250011.pdf.*

[60] *See* Securities Exchange Act Release No. 93556, 86 FR 49360 (September 2, 2021).

[61] *See* Securities Exchange Act Release No. 93556 (November 19, 2021), 86 FR 64235.

[62] *See* Securities Exchange Act Release No. 93894 (January 4, 2022), 87 FR 1203.

[63] *See* Securities Exchange Act Release No. 94286, 87 FR 10860 (February 25, 2022).

[64] Comment on SR–PEARL–2022–04 can be found at: *https://www.sec.gov/comments/sr-emerald-2022-05/sremerald202205-20119633-272460.pdf.*

[65] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[66] *Id.*

[67] 15 U.S.C. 78f(b)(4).

issuers, brokers, or dealers;[68] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[69]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposal to increase the monthly fees for MIAX Express Network Full Service Ports is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not be designed to permit unfair discrimination between customers, issuers, brokers or dealers; and not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[70]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[71]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)[72] and 19(b)(2)(B)[73] of the Act to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[74] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Exchange has sufficiently demonstrated how the proposed rule change is consistent with Sections 6(b)(4),[75] 6(b)(5),[76] and 6(b)(8)[77] of the Act. Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. *Cost Estimates and Allocation.* The Exchange states that it is not asserting that the proposed MEO Port fee is constrained by competitive forces, but rather set forth a ''cost-plus model,'' employing a ''conservative approach'' in determining the expense and the percentage of that expense to be allocated to providing and maintaining the System Networks and access to System Networks in connection with MEO Ports.[78] Setting forth its costs in providing MEO Ports, and as summarized in greater detail above, the Exchange projects that the total combined annual expense for providing the access services associated with the MEO Ports in 2022 will be $2,923,534, the sum of: (1) $295,184 In third-party expenses paid in total to their Data Center Provider (1.8% of the total applicable expense) for data center services; Fiber Connectivity Provider, for network services (0.90% of the total applicable expense); SFTI and other connectivity and content service providers for connectivity support (0.90% of the total applicable expense); and various other hardware and software providers (0.90% of the total applicable expense), (2) $2,290,597 in internal expenses, allocated to (a) employee compensation and benefit costs ($2,066,488); (b) depreciation and amortization ($161,578); and (c) occupancy costs ($62,531) and (3) $337,753 of allocated general shared expenses that include recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. Do commenters believe that these allocations are reasonable? Should the Exchange be required to provide more specific information regarding the allocation of third-party expenses, such as the overall estimated cost for each category of external expenses or at minimum the total applicable third-party expenses? Should the Exchange have provided either a percentage allocation or statements regarding the Exchange's overall estimated costs for the internal expense categories and general shared expenses figure? Do commenters believe that the Exchange has provided sufficient detail about how it determined which costs are associated with providing and maintaining MEO Ports and why? Do commenters believe that the Exchange has provided sufficient detail about how it determined ''general shared expenses'' and how it determined what portion should be associated with providing and maintaining MEO Ports? The Exchange describes a ''proprietary'' process that was applied in making these determinations or arriving at particular allocations. Do commenters believe further explanation is necessary? What are commenters' views on whether the Exchange has provided sufficient detail on the identity and nature of services

[68] 15 U.S.C. 78f(b)(5).

[69] 15 U.S.C. 78f(b)(8).

[70] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[71] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[72] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[73] 15 U.S.C. 78s(b)(2)(B).

[74] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[75] 15 U.S.C. 78f(b)(4).

[76] 15 U.S.C. 78f(b)(5).

[77] 15 U.S.C. 78f(b)(8).

[78] *See supra* Section II.A.2.

provided by third parties? Across all of the Exchange's projected costs, what are commenters' views on whether the Exchange has provided sufficient detail on the elements that go into MEO Port costs, including how shared costs are allocated and attributed to MEO Port expenses, to permit an independent review and assessment of the reasonableness of purported cost-based fees and the corresponding profit margin thereon?

2. *Revenue Estimates and Profit Margin Range.* The Exchange provides a single monthly revenue figure from March 2022 as the basis for calculating a revenue loss of $118,127 for April 2022. Previously, the Exchange stated an estimated profit margin of 38%. What are commenters views on the significant increases in expenses allocated for this product? If not, why not? The Exchange states that their proposed margin is reasonable and is ''designed recover a portion of the costs associated with directly accessing the Exchange.'' [79] The profit margin is also dependent on the accuracy of the cost projections which, if inflated (intentionally or unintentionally), may render the projected profit margin meaningless. The Exchange acknowledges that this margin may fluctuate from month to month due to changes in the number of ports purchased, and that costs may increase, but that the number of ports has not materially changed over the prior months and so the months that the Exchange has used as a baseline to perform its assessment are representative of reasonably anticipated costs and expenses.[80] The Exchange does not account for the possibility of cost decreases, however. What are commenters' views on the extent to which actual costs (or revenues) deviate from projected costs (or revenues)? Do commenters believe that the Exchange's methodology for estimating the profit or loss margin is reasonable? Should the Exchange provide a range of profit or loss margins that they believe are reasonably possible, and the reasons therefor?

3. *Reasonable Rate of Return.* As noted, the Exchange previously stated an estimated profit margin of 38% and now states a loss. What would commenters consider to be a reasonable rate of return and/or what methodology would they consider to be appropriate for determining a reasonable rate of return? What are commenters' views regarding what factors should be considered in determining what constitutes a reasonable rate of return for MEO Port fees? Do commenters believe it relevant to an assessment of reasonableness that the Exchange's proposed fees for MEO Ports are lower than those of other options exchanges to which the Exchange has compared? Should an assessment of reasonable rate of return include consideration of factors other than costs; and if so, what factors should be considered, and why?

4. *Periodic Reevaluation.* The Exchange has not stated that it would re-evaluate the appropriate level of MEO Ports if there is a material deviation from the anticipated profit margin. In light of the impact that the number of subscribers has on MEO Port profit margins, and the potential for costs to decrease (or increase) over time, what are commenters' views on the need for exchanges to commit to reevaluate, on an ongoing and periodic basis, their cost-based MEO Port fees to ensure that they stay in line with their stated profitability target and do not become unreasonable over time, for example, by failing to adjust for efficiency gains, cost increases or decreases, and changes in subscribers? How formal should that process be, how often should that reevaluation occur, and what metrics and thresholds should be considered? How soon after a new MEO Port fee change is implemented should an exchange assess whether its subscriber estimates were accurate and at what threshold should an exchange commit to file a fee change if its estimates were inaccurate? Should an initial review take place within the first 30 days after a MEO Port fee is implemented? 60 days? 90 days? Some other period?

5. *Tiered Structure for Full Service MEO Ports Fees.* The Exchange states that proposed tiered-pricing structure is reasonable, equitably allocated, and not unfairly discriminatory because for a flat fee the Exchange provides each Member two Full Service MEO Ports for each matching engine to which the Member is connected, and further, it is the model adopted by the Exchange when it launched operations for its Full Service MEO Port fees.[81] What are commenters' views on the adequacy of the information the Exchange provides regarding the proposed differentials in fees? Do commenters believe that the proposed price differences are supported by the Exchange's assertions that it set the level of each proposed new fee in a manner that it equitable and not unfairly discriminatory?

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [82] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[83] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[84] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.[85]

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, any potential comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any

[79] *See supra* Section II.A.2.

[80] *See id.*

[81] *See id.*

[82] 17 CFR 201.700(b)(3).

[83] *See id.*

[84] *See id.*

[85] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 446–47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

request for an opportunity to make an oral presentation.[86]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by May 11, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 25, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–PEARL–2022–12 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–PEARL–2022–12. 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 (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2022–12 and should be submitted on or before May 11, 2022. Rebuttal comments should be submitted by May 25, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[87] that File Number SR–PEARL–2022–12 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[88]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08387 Filed 4–19–22; 8:45 am]

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[86] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[87] 15 U.S.C. 78s(b)(3)(C).

[88] 17 CFR 200.30–3(a)(12), (57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94715; File No. SR–EMERALD–2022–14]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing of a Proposed Rule Change To Establish Fees for the Exchange's cToM Market Data Product; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

April 14, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Item II below, which Item has been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the Exchange's Fee Schedule (''Fee Schedule'') to establish fees for the market data product known as MIAX Emerald Complex Top of Market (''cToM''). The fees became operative on April 1, 2022. The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Description of the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV [sic] below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 6)(a) of the Fee Schedule to establish fees for the cToM data product. The Exchange initially filed this proposal on June 30, 2021 with the proposed fees to be effective beginning July 1, 2021 (''First Proposed Rule Change'').[5] The First Proposed Rule Change was published for comment in the **Federal Register** on July 15, 2021.[6] Although no comment letters were submitted, the Commission suspended the First Proposed Rule Change on August 27, 2021.[7] The Exchange withdrew the First Proposed Rule Change on September 30, 2021 [8] and re-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 92358 (July 9, 2021), 86 FR 37361 (July 15, 2021) (SR–EMERALD–2021–21).

[6] *Id.*

[7] *See* Securities Exchange Act Release No. 92789 (August 27, 2021), 86 FR 49364 (September 2, 2021) (SR–MIAX–2021–28, SR–EMERALD–2021–21) (the ''Suspension Order'').

[8] *See* Securities Exchange Act Release No. 93471 (October 29, 2021), 86 FR 60947 (November 4, 2021).

submitted the proposal, with the proposed fee changes being immediately effective (''Second Proposed Rule Change'').[9] The Second Proposed Rule Change provided additional justification for the proposed fee changes and addressed comments provided by the Commission Staff. On October 14, 2021, the Exchange withdrew the Second Proposed Rule Change and submitted a revised proposal to again provide additional justification for the proposed fee changes and address additional comments provided by the Commission Staff (''Third Proposed Rule Change'').[10] The Third Proposed Rule Change was published for comment in the **Federal Register** on November 1, 2021.[11] Although the Commission did not again receive any comment letters on the Third Proposed Rule Change, the Exchange withdrew the Third Proposed Rule Change on December 10, 2021 and submitted a revised proposal for immediate effectiveness (''Fourth Proposed Rule Change'').[12] The Fourth Proposed Rule Change was published for comment in the **Federal Register** on December 23, 2021.[13] Although the Commission did not again receive any comment letters on the Fourth Proposed Rule Change, the Exchange withdrew the Fourth Proposed Rule Change on February 7, 2022 and submitted a revised proposal for immediate effectiveness, which was noticed and immediately suspended by the Commission on February 15, 2022 (''Fifth Proposed Rule Change'').[14] Although the Commission did not again receive any comment letters on the Fifth Proposed Rule Change, the Exchange withdrew the Fifth Proposed Rule Change on March 30, 2022 and submits this revised proposal to be effective April 1, 2022 (''Sixth Proposed Rule Change'').

Background

The Exchange previously adopted rules governing the trading of Complex Orders[15] on the MIAX Emerald System[16] in 2018,[17] ahead of the Exchange's planned launch, which took place on March 1, 2019. Shortly thereafter, the Exchange adopted the market data product, cToM, and provided cToM free of charge to incentivize market participants to subscribe.[18] The Exchange provided cToM free of charge for nearly three years and absorbed all costs associated with producing the cToM data product.

In summary, cToM provides subscribers with the same information as the MIAX Emerald Top of Market (''ToM'') data product as it relates to the Strategy Book,[19] *i.e.,* the Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable order and quoting interest in the complex strategy on the Exchange. However, cToM provides subscribers with the following additional information that is not included in ToM: (i) The identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information; and (iii) the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). cToM is therefore a distinct market data product from ToM in that it includes additional information that is not available to subscribers that receive only the ToM data feed. ToM subscribers are not required to subscribe to cToM, and cToM subscribers are not required to subscribe to ToM.[20]

Proposal

The Exchange now proposes to amend Section 6)a) of the Fee Schedule to charge monthly fees to Distributors[21] of cToM. Specifically, the Exchange proposes to assess Internal Distributors $1,250 per month and External Distributors $1,750 per month for the cToM data feed.[22] The Exchange notes that the proposed monthly cToM fees for Internal and External Distributors are identical to the prices the Exchange currently charges for its ToM data product and the prices the Exchange's affiliate, MIAX, charges for its ToM product, both of which were previously published by the Commission and remain in effect today.[23]

As it does today for ToM, the Exchange proposes to assess cToM fees on Internal and External Distributors in each month the Distributor is credentialed to use cToM in the production environment. Also, as the Exchange does today for ToM, market data fees for cToM will be reduced for new Distributors for the first month during which they subscribe to cToM, based on the number of trading days that have been held during the month prior to the date on which that subscriber has been credentialed to use cToM in the production environment. Such new Distributors will be assessed a pro-rata percentage of the fees in the table in Section 6)a) of the Fee Schedule, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been credentialed to use cToM in the production environment, divided by the total number of trading days in the affected calendar month.

The Exchange believes that other exchanges' fees for complex market data are useful examples and provides the below table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar complex market data. As shown by the below table, the Exchange's proposed fees for cToM are similar to or less than fees charged for similar data products provided by other options exchanges.

[9] *See* SR–EMERALD–2021–32.

[10] *See* Securities Exchange Act Release No. 93427 (October 26, 2021), 86 FR 60310 (November 1, 2021) (SR–EMERALD–2021–34).

[11] *Id.*

[12] *See* Securities Exchange Act Release No. 93811 (December 17, 2021), 86 FR 73051 (December 23, 2021) (SR–EMERALD–2021–44).

[13] *Id.*

[14] *See* Securities Exchange Act Release No. 94263 (February 15, 2022), 87 FR 9766 (February 22, 2022) (SR–EMERALD–2022–06) (Notice of Filing of a Proposed Rule Change To Establish Fees for the Exchange's cToM Market Data Product; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

[15] *See* Exchange Rule 518(a)(5) for the definition of Complex Orders.

[16] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[17] *See* Securities Exchange Act Release Nos. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (In the Matter of the Application of MIAX EMERALD, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission); *and* 85345(March 18, 2019), 84 FR 10848 (March 22, 2019) (SR–EMERALD–2019–13) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 518, Complex Orders).

[18] *See* Securities Exchange Act Release No. 85207 (February 27, 2019), 84 FR 7963 (March 5, 2019) (SR–EMERALD–2019–09) (providing a complete description of the cToM data feed).

[19] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[20] *See supra* note 18.

[21] A ''Distributor'' of MIAX Emerald data is any entity that receives a feed or file of data either directly from MIAX Emerald or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All Distributors are required to execute a MIAX Emerald Distributor Agreement. *See* Section 6)a) of the Fee Schedule.

[22] The Exchange also proposes to make a minor related change to remove ''(as applicable)'' from the explanatory paragraph in Section 6)a) as it will not change fees for both the ToM and cToM data feeds.

[23] *See* Securities Exchange Act Release Nos. 91145 (February 17, 2021), 86 FR 11033 (February 23, 2021) (SR–EMERALD–2021–05); 73942 (December 24, 2014), 80 FR 71 (January 2, 2015) (SR–MIAX–2014–66).

[24] *See* NYSE American Options Proprietary Market Data Fees, American Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Market_Data_Fee_Schedule.pdf.*

[25] *See* NYSE Arca Options Proprietary Market Data Fees, Arca Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Options_Proprietary_Data_Fee_Schedule.pdf.*

Continued

Exchange	Monthly fee
MIAX Emerald (as proposed)	$1,250—Internal Distributor; $1,750—External Distributor.
NYSE American, LLC (''Amex'')[24] ..	$1,500 Access Fee; $1,000 Redistribution Fee (this fee is in addition to the Access Fee resulting in a $2,500 monthly fee for external distribution).
NYSE Arca, Inc. (''Arca'')[25]	$1,500 Access Fee; $1,000 Redistribution Fee (this fee is in addition to the Access Fee resulting in a $2,500 monthly fee for external distribution)
NASDAQ PHLX LLC (''PHLX'')[26] ...	$3,000—Internal Distributor; $3,500—External Distributor.

The Exchange also proposes to amend the paragraph below the table of fees for ToM and cToM in Section 6)a) of the Fee Schedule to make a minor, non-substantive correction by deleting the phrase ''(as applicable)'' in the first sentence following the table of fees for ToM and cToM. The purpose of this proposed change is to remove unnecessary text from the Fee Schedule.

cToM Content Is Available From Alternative Sources

cToM is also not the exclusive source for Complex Order information from the Exchange and market participants may choose to subscribe to the Exchange's other data products to receive such information. It is a business decision of market participants whether to subscribe to the cToM data product or not. Market participants that choose not to subscribe to cToM can derive much, if not all, of the same information provided in the cToM feed from other Exchange sources, including, for example, the MIAX Emerald Order Feed (''MOR'').[27] The following cToM information is provided to subscribers of MOR: The Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable order and quoting interest in the complex strategy on the Exchange; the identification of the complex strategies currently trading on the Exchange; and the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). In addition to the cToM information contained in MOR, complex strategy last sale information can be derived from the Exchange's ToM data feed. Specifically, market participants may deduce that last sale information for multiple trades in related options series that are disseminated via the ToM data feed with the same timestamp are likely part of a Complex Order transaction and last sale.

Implementation

The proposed rule change will be effective April 1, 2022.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with Section 6(b) of the Act[28] in general, and furthers the objectives of Section 6(b)(4) of the Act[29] 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[30] in that they are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes as set forth in recent Commission and Commission Staff guidance. On March 29, 2019, the Commission issued an Order disapproving a proposed fee change by the BOX Market LLC Options Facility to establish connectivity fees for its BOX Network (the ''BOX Order'').[31] 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.''[32] Based on both the BOX Order and the Guidance, the Exchange believes that the proposed fees are consistent with the Act because they are: (i) Reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable and will not result in excessive pricing or supra-competitive profit; and (iv) identical to the prices the Exchange currently charges for its ToM data product and the prices the Exchange's affiliate, MIAX, charges for its ToM product, both of which were previously published by the Commission and remain in effect today.[33]

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, cToM further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of cToM. Particularly, cToM provides subscribers with the same information as ToM, but includes the following additional information: (i) The identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information; and (iii) the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). The

[26] *See* PHLX Price List—U.S. Derivatives Data, PHLX Orders Fees, at *http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#PHLX.*

[27] *See* MIAX website, Market Data & Offerings, at *https://www.miaxoptions.com/market-data-offerings* (last visited April 1, 2022). In general, MOR provides real-time ulta-low latency updates on the following information: New Simple Orders added to the MIAX Emerald Order Book; updates to Simple Orders resting on the MIAX Emerald Order Book; new Complex Orders added to the Strategy Book (*i.e.,* the book of Complex Orders); updates to Complex Orders resting on the Strategy Book; MIAX Emerald listed series updates; MIAX Emerald Complex Strategy definitions; the state of the MIAX Emerald System; and MIAX Emerald's underlying trading state.

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(4).

[30] 15 U.S.C. 78f(b)(5).

[31] *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).

[32] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[33] *See supra* note 23.

Exchange believes cToM provides a valuable tool that subscribers can use to gain substantial insight into the trading activity in Complex Orders, but also emphasizes such data is not necessary for trading. Moreover, other exchanges offer similar data products.[34]

The Proposed Fees Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [35] The Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [36] In the Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supra-competitive profit, specific information, including quantitative information, should be provided to support that argument.'' [37] The Exchange does not assert that the proposed fees are constrained by competitive forces. Rather, the Exchange asserts that the proposed fees are reasonable because they will permit recovery of the Exchange's costs in providing cToM data and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [38] The Commission Staff further states in the Guidance that ''the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question.'' [39] The Exchange provides this analysis below.

The proposed fees are based on a cost-plus model. The Exchange believes that it is important to demonstrate that the proposed fees are based on its costs and reasonable business needs and believes the proposed fees will allow the Exchange to begin to offset expenses. However, as discussed more fully below, such fees may also result in the Exchange recouping less than all of its costs of providing the cToM data feed because of the uncertainty of forecasting subscriber decision making with respect to firms' market data needs. The Exchange believes that the proposed fees will not result in excessive pricing or supra-competitive profit based on the total expenses the Exchange incurs versus the total revenue the Exchange projects to collect, and therefore meets the standards in the Act as interpreted by the Commission and the Commission Staff in the BOX Order and the Guidance.

The Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the cToM data feed, and, if such expense did so relate, what portion (or percentage) of such expense actually supports t [sic] providing the cToM data feed. In determining what portion (or percentage) to allocate to access services, each Exchange department head, in coordination with other Exchange personnel, determined the expenses that support access services and System Networks associated with the cToM data feed. This included numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders. The analysis also included each department head meeting with the divisions of teams within each department to determine the amount of time and resources allocated by employees within each division towards the access services and System Networks associated with the cToM data feed. The Exchange reviewed each individual expense to determine if such expense was related to the cToM data feed. Once the expenses were identified, the Exchange department heads, with the assistance of our internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing access services and the System Networks. The sum of all such portions of expenses represents the total cost to the Exchange to provide access services associated with the cToM market data feed. For the avoidance of doubt, no expense amount is allocated twice. In the Suspension Order, the Commission questioned whether further explanation of the Exchange's cost analysis was necessary. The Exchange provides further details concerning its cost analysis in response to this question.

The analysis conducted by the Exchange is a proprietary process that is designed to make a fair and reasonable assessment of costs and resources allocated to support the provision of access services associated with the cToM data feed. The Exchange acknowledges that this assessment can only capture a moment in time and that costs and resource allocations may change. That is why the Exchange historically, and on an ongoing annual basis, will continue to review its costs and resource allocations to ensure it appropriately allocates resources to properly provide services to the Exchange's constituents.

The Exchange believes exchanges, like all businesses, should be provided flexibility when developing and applying a methodology to allocate costs and resources they deem necessary to operate their business, including providing market data and access services. The Exchange notes that costs and resource allocations may vary from business to business and, likewise, costs and resource allocations may differ from exchange to exchange when it comes to providing market data and access services. It is a business decision that must be evaluated by each exchange as to how to allocate internal resources and what costs to incur internally or via third parties that it may deem necessary to support its business and its provision of market data and access services to market participants.

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully support access to the cToM data feed. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI-mandated processes associated with its network technology. Both fixed and variable expenses have significant impact on the Exchange's

[34] *See supra* notes 24 through 26.

[35] *See* Guidance, *supra* note 32.

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

overall costs to provide the cToM data feed. For example, to accommodate new Members, the Exchange may need to purchase additional hardware to support those Members and provide the cToM data feed. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the cToM market data feed is a reasonable attempt to offset a portion of those costs associated with providing access to and maintaining its System Networks' infrastructure.

The Exchange estimated its total annual expense to provide the cToM data feed based on the following general expense categories: (1) External expenses, which include fees paid to third parties for certain products and services; (2) internal expenses relating to the internal costs to provide the services associated with the cToM data feed; and (3) general shared expenses.[40] The Guidance does not include any information regarding the methodology that an exchange should use to determine its cost associated with a proposed fee change. The Exchange utilized a methodology in this proposed fee change that it believes is reasonable because the Exchange analyzed its entire cost structure, allocated a percentage of each cost attributable to providing the cToM data feed, then divided those costs according to the cost methodology outlined below.

For 2022, the total annual expense for providing the access services associated with providing the cToM data feed is estimated to be $236,284, or $19,690 per month. The Exchange believes it is more appropriate to analyze the cToM market data feed utilizing its estimated 2022 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[41] The $236,284 estimated total annual expense is directly related to the access to the cToM data feed, and not any other product or service offered by the Exchange. For example, it does not include general costs of operating matching engines and other trading technology. No expense amount was allocated twice. Each of the categories of expenses are set forth in the following table and details of the individual line-item costs considered by the Exchange for each category are described further below.

External expenses

Category	Percentage of total expense amount allocated
Data Center Provider	0.20%
Fiber Connectivity Provider	0.20%
Security Financial Transaction Infrastructure ("SFTI"), and Other Connectivity and Content Service Providers	0%
Hardware and Software Providers	0.20%
Total of External Expenses	[42] $5,434

Internal expenses

Category	Expense amount allocated
Employee Compensation	$209,610
Depreciation and Amortization	4,055
Occupancy	11,410
Total of Internal Expenses	225,075
Allocated Shared Expenses	5,775

In its Suspension Order, the Commission solicited commenters' views on whether the Exchange has provided sufficient detail on the identity and nature of services provided by third parties. The Commission further solicited commenters' views on whether the Exchange has provided sufficient detail on the elements that go into connectivity costs, including how shared costs are allocated and attributed to connectivity expenses, to permit an independent review and assessment of the reasonableness of purported cost-based fees and the corresponding profit margin thereon. Based on the below analysis, the Exchange believes that the cToM market data fees are fair and reasonable and that the Exchange has provided sufficient detail surrounding the Commission's questions. In accordance with the Guidance, the Exchange has provided sufficient detail to support a finding that the proposed fees are consistent with the Exchange Act. The proposal includes a detailed description of the Exchange's costs and

[40] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

[41] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87877 (December 31, 2019), 85 FR 738 (January 7, 2020) (SR–EMERALD–2019–39). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2022 Form 1 Amendment, which will be filed in 2023. In its Suspension Order, the Commission also asked should the Exchange to use cost projections or actual costs estimated for 2021 in a filing made in 2022, or make cost projections for 2022. The Exchange utilized expenses from its most recent audited financial statement as those numbers are more reliable than more recent unaudited numbers, which may be subject to change.

[42] The Exchange does not believe it is appropriate to disclose the actual amount it pays to each individual third party provider as those fee arrangements are competitive or the Exchange is contractually prohibited from disclosing that number.

how the Exchange determined to allocate those costs related to the proposed fees. The Exchange notes that its only has a single source of revenue, distribution fees, to recover those costs associated with providing the cToM data feed. The Exchange notes that, without the specific third party and internal expense items, the Exchange would not be able to provide and maintain the System Networks and access to the System Networks. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, has been identified through a line-by-line item analysis to be integral to providing the cToM data feed.

For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing the cToM data feed. The Exchange describes the analysis conducted for each expense and the resources or determinations that were considered when determining the amount necessary to allocate to each expense. Only a portion of all fees paid to such third parties is included in the third-party expenses described herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to providing the cToM data feed. This may result in the Exchange under allocating an expense to provide the cToM data feed, and such expenses may actually be higher than what the Exchange allocated as part of this proposal. The Exchange notes that expenses associated with its affiliates, MIAX and MIAX Pearl (the options and equities markets), are accounted for separately and are not included within the scope of this filing.

Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic thorough review of its expenses and resource allocations, which resulted in revised percentage allocations in this filing. The revised percentages are, among other things, the result of the shuffling of internal resources in response to business objectives and changes to fees charged and services provided by third parties. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.[43]

External Expense Allocations

For 2022, expenses relating to fees paid by the Exchange to third parties for products and services necessary to provide the cToM market data feed are estimated to be $5,434.[44] This includes, but is not limited to, a portion of the fees paid to: (1) A third party data center provider, including for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) a fiber connectivity provider for network services (fiber and bandwidth products and services) linking the Exchange's and its affiliates' office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) various other content and connectivity service providers, which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (4) various other hardware and software providers which support the production environment in which Members and non-Members connect to the network to trade and receive market data.[45]

Data Center Space and Operations Provider

The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties where the Exchange houses servers, switches and related equipment. Data center costs include an allocation of the costs the Exchange incurs to provide physical connectivity in the third party data centers where it maintains its equipment as well as related costs. The data center provider operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. Without the retention of a third party data center, the Exchange would not be able to operate its systems and provide a trading platform for market participants. The Exchange does not employ a separate fee to cover its data center expense and recoups that expense, in part, by charging for the cToM data feed.

The Exchange reviewed its data center footprint, including its total rack space, cage usage, number of servers, switches, cabling within the data center, heating and cooling of physical space, storage space, and monitoring and divided its data center expenses among providing transaction services, market data, and connectivity. Based on this review, the Exchange determined that 0.20% of the total applicable data center provider expense is applicable to providing the cToM data feed. The Exchange believes this allocation is reasonable because it represents the costs associated with the Exchange's servers and internal cabling dedicated to processing and disseminating market data. The Exchange excluded from this allocation portion of the Exchange's data center expense that is due to providing and maintaining connectivity to the Exchange's System Networks, including providing cabling within the data center between market participants and the Exchange. The Exchange also did not allocate the remainder of the data center expense because it pertains to other areas of the Exchange's operations, such as ports and transaction services.

Fiber Connectivity Provider

The Exchange engages a third-party service provider that provides the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data center, and office locations in Princeton and Miami. Fiber connectivity is necessary for the Exchange to switch to its secondary data center in the case of an outage in its primary data center. Fiber connectivity also allows the Exchange's National Operations & Control Center (''NOCC'') and Security Operations Center (''SOC'') in Princeton to communicate with the Exchange's primary and secondary data centers. As such, all trade data, including the billions of messages each day, flow through this third-party provider's infrastructure over the Exchange's network. Without these services, the Exchange would not be able to operate and support the network and provide the cToM data feed. Without the retention of a third party fiber connectivity provider, they Exchange would not be able to communicate between its data centers and office locations. The Exchange does not employ a separate fee to cover its fiber connectivity expense and recoups that expense, in part, by charging for cToM data feeds.

[43] The Exchange notes that the expense allocations differ from the Exchange's filing earlier in 2021, SR–EMERALD–2021–11, because that prior filing pertained to several different access fees, which the Exchange had not been charging for since the Exchange launched operations in March 2019. *See* Securities Exchange Act Release No. 91460 (April 2, 2021), 86 FR 18349 (April 8, 2021) (SR–EMERALD–2021–11). In SR–EMERALD–2021–11, the Exchange sought to adopt fees for FIX Ports, MEI Ports, Purge Ports, Clearing Trade Drop Ports, and FIX Drop Copy Ports, all of which had been free for market participants for over two years since inception.

[44] *See supra* note 42.

[45] *Id.*

The Exchange reviewed it costs to retain fiber connectivity from a third party, including the ongoing costs to support fiber connectivity, ensuring adequate bandwidth and infrastructure maintenance to support exchange operations, and ongoing network monitoring and maintenance and determined that 0.20% of the total fiber connectivity expense was applicable to providing the cToM data feed. The Exchange believes this allocation is reasonable because it reflects the portion of the fiber connectivity expense that relates to maintaining and providing the cToM data feed. The Exchange excluded a large portion of the Exchange's fiber connectivity expense that is due to providing and maintaining connectivity between the Exchange's System Networks, data centers, and office locations and is core to the daily operation of the Exchange. Fiber connectivity is a necessary integral means to disseminate information from the Exchange's primary data center to other Exchange locations. The Exchange excluded from this allocation fiber connectivity usage related to system connectivity or other business lines. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing the cToM data feed. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the cToM data feed.

Connectivity and Content Services Provided by SFTI and Other Providers

The Exchange did not allocate any expense associated with the proposed fees towards SFTI and various other service providers' because the Exchange's architecture takes advantage of an advance in design to eliminate the need for a market data distribution gateway layer. The computation and dissemination via an API is done solely within the match engine environment and is then delivered via the Member and non-Member connectivity infrastructure. This architecture delivers a market data system that is more efficient both in cost and performance. Accordingly, the Exchange determined not to allocate any expense associated with SFTI and various other service providers.

Hardware and Software Providers

The Exchange relies on dozens of third-party hardware and software providers for equipment necessary to operate is System Networks. This includes either the purchase or licensing of physical equipment, such as servers, switches, cabling, and monitoring devices. It also includes the purchase or license of software necessary for security monitoring, data analysis and Exchange operations. Hardware and software providers are necessary to maintain its System Networks and provide the cToM data feed. Hardware and software equipment and licenses for that equipment are also necessary to operate and monitor physical assets necessary to offer the cToM data feed. Hardware and software equipment and licenses are key to the operation of the Exchange and without them the Exchange would not be able to operate and support the cToM data feed. The Exchange does not employ a separate fee to cover its hardware and software expense and recoups that expense, in part, by charging for cToM data feed dissemination.

The Exchange reviewed its hardware and software related costs, including software patch management, vulnerability management, administrative activities related to equipment and software management, professional services for selection, installation and configuration of equipment and software supporting exchange operations and determined that 0.20% of the total applicable hardware and software expense is allocated to providing the cToM data feed. Hardware and software equipment and licenses are key to the operation of the Exchange and its System Networks. Without them, the Exchange would not be able to develop and market participants would not be able to purchase the cToM data feed. The Exchange only allocated the portion of this expense to the hardware and software that is related to the cToM data feed, such as operating servers and equipment necessary to produce the cToM data feed. The Exchange, therefore, did not allocate portions of its hardware and software expense that related to other areas of the Exchange's business, such as hardware and software used for connectivity or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations, such as ports or transaction services, and does not directly relate to providing the cToM data feed. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to the cToM data feed, and not any other service, as supported by its cost review.

Internal Expense Allocations

For 2022, total internal expenses relating to the Exchange providing and maintaining its System Networks and access to its System Networks for cToM data feeds are estimated to be $225,075. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the System Networks and access to System Networks, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions as well as important system upgrades; (2) depreciation and amortization of hardware and software used to provide and maintain access services and System Networks associated with the cToM data feed, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide the cToM data feed. The breakdown of these costs is more fully described below.

Employee Compensation and Benefits

Human personnel are key to exchange operations and supporting the Exchange's ongoing provision the cToM data feed. The Exchange's reviewed its employee compensation and benefits expense and the portion of that expense allocated to providing the cToM data feed. As part of this review, the Exchange considered employees whose functions include providing and maintaining the cToM data feed and used a blended rate of compensation reflecting salary, stock and bonus compensation, bonuses, benefits, payroll taxes, and 401K matching contributions.[46]

Based on this review, the Exchange determined to allocate $209,610 in employee compensation and benefits expense to providing the cToM data feeds. To determine the appropriate allocation the Exchange reviewed the time employees allocated to supporting the cToM data feeds. Senior staff also reviewed these time allocations with department heads and team leaders to

[46] For purposes of this allocation, the Exchange did not consider expenses related to supporting employees who support cToM data feeds, such as office space and supplies. The Exchange determined cost allocation for employees who perform work in support of offering access services and System Networks to arrive at a full time equivalent (''FTE'') of 0.6 FTEs across all the identified personnel. The Exchange then multiplied the FTE times a blended compensation rate for all relevant Exchange personnel to determine the personnel costs associated with providing the access services and System Networks associated with the cToM data feeds.

determine whether those allocations were appropriate. These employees are critical to the Exchange to provide the cToM data feeds. The Exchange determined the above allocation based on the personnel whose work focused on functions necessary to provide and maintain the cToM data feeds. The Exchange does not charge a separate fee regarding employees who support the cToM data feeds and the Exchange seeks to recoup that expense, in part, by charging for the cToM data feeds.

Depreciation and Amortization

A key expense incurred by the Exchange relates to the depreciation and amortization of equipment that the Exchange procured to provide and maintain the cToM data feeds. The Exchange reviewed all of its physical assets and software, owned and leased, and determined whether each asset is related to providing and maintaining the cToM data feeds, and added up the depreciation of those assets. All physical assets and software, which includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. In determining the amount of depreciation and amortization to apply to providing the cToM data feeds, the Exchange considered the depreciation of hardware and software that are key to the operation of the Exchange and its provision of the cToM data feeds. This includes servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were previously purchased to maintain and provide the cToM data feeds. Without them, market participants would not be able to receive the cToM data feeds. The Exchange seeks to recoup a portion of its depreciation expense by charging for the cToM data feeds.

Based on this review, the Exchange determined to allocate $4,055 in depreciation and amortization expense to providing the cToM data feeds. The Exchange only allocated the portion of this depreciation expense to the hardware and software related to providing the cToM data feeds. The Exchange, therefore, did not allocate portions of depreciation expense that relates to other areas of the Exchange's business, such as the depreciation of hardware and software used for connectivity or unrelated administrative services.[47]

Occupancy

The Exchange rents and maintains multiple physical locations to house staff and equipment necessary to support access services, System Networks, and exchange operations. The Exchange's occupancy expense is not limited to the housing of personnel and includes locations used to store equipment necessary for Exchange operations. In determining the amount of its occupancy related expense, the Exchange considered actual physical space used to house employees whose functions include providing and maintaining the cToM data feeds. Similarly, the Exchange also considered the actual physical space used to house hardware and other equipment necessary to provide and maintain the cToM data feeds. This equipment includes computers, servers, and accessories necessary to support the System Networks and cToM data feeds. Based on this review, the Exchange determined to allocate $11,410 of its occupancy expense to provide and maintain the cToM data feeds. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the cToM data feeds. The Exchange considered the rent paid for the Exchange's Princeton and Miami offices, as well as various related costs, such as physical security, property management fees, property taxes, and utilities at each of those locations. The Exchange did not include occupancy expenses related to housing employees and equipment related to other Exchange operations, such as transaction and administrative services.

Allocated Shared Expense

Finally, a limited portion of general shared expenses was allocated to overall the cToM data feed costs as without these general shared costs, the Exchange would not be able to operate in the manner that it does and provide the cToM data feeds. The costs included in general shared expenses include recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. For 2022, the Exchange's general shared expense allocated to the cToM data feeds is estimated to be $5,755. The Exchange used the weighted average of the above allocations to determine the amount of general shared expenses to allocate to the Exchange. Next, based on additional management and expense analysis, these fees are allocated to the proposal.

Revenue and Estimated Profit Margin

The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: Transaction fees, access fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms.

To determine the Exchange's estimated revenue associated with the cToM data feed, the Exchange analyzed the number of Members and non-Members currently receiving the cToM data feed and used a recent monthly billing cycle representative of current monthly revenue. The Exchange also provided its baseline by analyzing March 2022, the monthly billing cycle prior to the proposed cToM data fee, and compared this to its expenses for that month. As discussed below, the Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its estimates for purposes of these calculations, given the uncertainty of such estimates due to the continually changing access needs of market participants and potential changes in internal and third party expenses.

For March 2022, prior to the proposed the cToM data fee, Members and non-Members purchased a total of 13 cToM data feeds, for which the Exchange anticipates charging $0. This will result in a loss of $19,690 for that month. For April 2022, the Exchange anticipates Members and non-Members purchasing a total of 13 cToM data feeds. Assuming the Exchange charges its proposed fees for Distributors, the Exchange would generate revenue of $16,250 for that month. This would result in a loss of $3,440 ($16,250 minus $19,690) for that month (a negative 21% margin from March 2022 to April 2022).

The Exchange believes that conducting the above analysis on a per month basis is reasonable as the revenue generated from access services subject to the proposed fee generally remains static from month to month. The Exchange also conducted the above analysis on a per month basis to comply with the Commission Staff's Guidance, which requires a baseline analysis to assist in determining whether the proposal generates a supra-competitive profit. The Exchange cautions that this

[47] All of the expenses outlined in this proposed fee change refer to the operating expenses of the Exchange. The Exchange did not included any future capital expenditures within these costs. Depreciation and amortization represent the expense of previously purchased hardware and internally developed software spread over the useful life of the assets. Due to the fact that the Exchange has only included operating expense and historical purchases, there is no double counting of expenses in the Exchange's cost estimates.

profit margin may also fluctuate from month to month based on the uncertainty of predicting how many connections may be purchased from month to month as Members and non-Members are free to add and drop connections at any time based on their own business decisions.

The Exchange believes the proposed margin is reasonable and will not result in a ''supra-competitive'' profit. The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.'' [48] Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2019.[49] The Exchange has operated at a net loss due to a number of factors, one of which is choosing to forgo revenue by offering certain products, such as market data, at lower rates than other options exchanges to attract order flow and encourage market participants to experience the high determinism, low latency, and resiliency of the Exchange's trading systems. The Exchange previously provided the cToM data feed free of charge and absorbed all costs associated with providing the cToM data feed to market participants. In this proposal, the Exchange would continue to offer the cToM data feed for a fee that that still falls short of covering the Exchange's expenses. The Exchange is not generating a profit, and therefore, cannot be deemed to be generating a ''supra-competitive'' profit by now charging for the cToM data feed. The Exchange should not now be penalized for now seeking to raise it fees to at least cover a portion of its costs after offering the cToM data feed free of charge.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent such revenue actually produces the revenue estimated. As a generally new entrant to the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from the cToM data feed, the Exchange will have to be successful in retaining existing clients that wish to receive the cToM data feed or obtaining new clients that will purchase such data. To the extent the Exchange is successful in encouraging new clients to receive the cToM data feed, the Exchange does not believe it should be penalized for such success. The Exchange, like other exchanges, is, after all, a for-profit business. While the Exchange believes in transparency around costs and potential margins, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes its cost analysis and related estimates demonstrate this fact.

The Proposed Fees Are Reasonable When Compared to the Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other equities exchanges' costs to provide market data or their fee markup over those costs, and therefore cannot use other exchange's market data fees as a benchmark to determine a reasonable markup over the costs of providing market data. Nevertheless, the Exchange believes the other exchanges' market data fees are a useful example of alternative approaches to providing and charging for connectivity notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of market data. To that end, the Exchange believes the proposed cToM market data fees are reasonable because the proposed fees are still less than fees charged for similar connectivity provided by other options exchanges with comparable market shares.

As described in the below table, the Exchange's proposed fee remains less than fees charged for similar market data products provided by other options exchanges with similar market share. In the each of the above cases, the Exchange's proposed fees are still significantly lower than that of competing options exchanges with similar market share. Each of the market data rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

Exchange	Monthly fee
MIAX Emerald (as proposed)	$1,250—Internal Distributor; $1,750—External Distributor.
Amex [50]	$1,500 Access Fee; $1,000 Redistribution Fee (this fee is in addition to the Access Fee resulting in a $2,500 monthly fee for external distribution).
Arca [51]	$1,500 Access Fee; $1,000 Redistribution Fee (this fee is in addition to the Access Fee resulting in a $2,500 monthly fee for external distribution).
PHLX [52]	$3,000—Internal Distributor; $3,500—External Distributor.

The Proposed Pricing Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess Internal Distributors fees that are less than the fees assessed for External Distributors for subscriptions to the cToM data feed because Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights. All Members and non-Members that determine to receive any market data feed of the Exchange (or its affiliates, MIAX Pearl and MIAX), must first execute, among other things, the MIAX Exchange Group Exchange Data Agreement (the ''Exchange Data Agreement'').[53] Pursuant to the Exchange Data

[48] *See* Guidance, *supra* note 32.

[49] The Exchange has incurred a cumulative loss of $22 million since its inception in 2019 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at https://sec.report/Document/9999999997-21-004557/.*

[50] *See* NYSE American Options Proprietary Market Data Fees, American Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Market_Data_Fee_Schedule.pdf.*

[51] *See* NYSE Arca Options Proprietary Market Data Fees, Arca Options Complex Fees, at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Options_Proprietary_Data_Fee_Schedule.pdf.*

[52] *See* PHLX Price List—U.S. Derivatives Data, PHLX Orders Fees, at *http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#PHLX.*

[53] *See* Exchange Data Agreement, available at *https://miaxweb2.pairsite.com/sites/default/files/page-files/MIAX_Exchange_Group_Data_Agreement_09032020.pdf.*

Agreement, Internal Distributors are restricted to the ''internal use'' of any market data they receive. This means that Internal Distributors may only distribute the Exchange's market data to the recipient's officers and employees and its affiliates.[54] External Distributors may distribute the Exchange's market data to persons who are not officers, employees or affiliates of the External Distributor,[55] and may charge their own fees for the redistribution of such market data. Accordingly, the Exchange believes it is fair, reasonable and not unfairly discriminatory to assess External Distributors a higher fee for the Exchange's market data products as External Distributors have greater usage rights to commercialize such market data and can adjust their own fee structures if necessary. The Exchange also utilizes more resources to support External Distributors versus Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of Exchange staff. The Exchange believes the proposed cToM fees are equitable and not unfairly discriminatory because the fee level results in a reasonable and equitable allocation of fees amongst subscribers for similar services, depending on whether the subscriber is an Internal or External Distributor. Moreover, the decision as to whether or not to purchase market data is entirely optional to all market participants. Potential purchasers are not required to purchase the market data, and the Exchange is not required to make the market data available. Purchasers may request the data at any time or may decline to purchase such data. The allocation of fees among users is fair and reasonable because, if market participants determine not to subscribe to the data feed, firms can discontinue their use of the cToM data.

Further, the Exchange believes that the proposal is equitable and not unfairly discriminatory because the proposed cToM fees will apply to all market participants of the Exchange on a uniform basis. The Exchange also notes that the proposed monthly cToM fees for Internal and External Distributors are the same prices that the Exchange charges for its ToM data product.

The Exchange believes the proposed change to delete certain text from Section 6)a) of the Fee Schedule promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because the proposed change is a non-substantive edit to the Fee Schedule to remove unnecessary text. The Exchange believes that this proposed change will provide greater clarity to Members and the public regarding the Exchange's Fee Schedule and that it is in the public interest for the Fee Schedule to be accurate and concise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing cToM to market participants. As described above, the Exchange has operated at a cumulative net annual loss since it launched operations in 2019[56] due to providing a low cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very marginal cost, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low cost exchange alternative to the options industry which resulted in lower initial revenues. An example of this is cToM, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other options exchanges.

Since the Exchange initially launched operations with the cToM data product in 2019, all Exchange Members and non-Members have had the ability to receive the Exchange's cToM data free of charge for the past three years.[57] Since 2019, when the Exchange adopted Complex Order functionality, the Exchange has spent time and resources building out various Complex Order functionality in its System to provide better trading strategies and risk functionality for market participants in order to better compete with other exchanges' complex functionality and similar data products focused on complex orders.[58] The Exchange now seeks to recoup its costs for providing cToM to market participants and believes the proposed fees will not result in excessive pricing or supra-competitive profit.

Inter-Market Competition

The Exchange also does not believe the proposed fees would cause any unnecessary or in appropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. There is no reason to believe that the newly proposed fees for receive the cToM data feed would impair other exchange's ability to compete or cause any unnecessary or inappropriate burden on inter-market competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that purchase cToM. The proposed fees are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

The Exchange does not believe that the proposed rule change to make a minor, non-substantive edit to Section 6)a) of the Fee Schedule by deleting unnecessary text will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This proposed rule change is not being made for competitive reasons, but rather is designed to remedy a minor non-substantive issue and will provide added clarity to the Fee Schedule. The Exchange believes that it is in the public interest for the Fee Schedule to be accurate and concise so as to eliminate the potential for confusion on the part of market participants. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency regarding the Exchange's Fee Schedule.

[54] *See id.*

[55] *See id.*

[56] *See supra* note 49.

[57] *See supra* note 18.

[58] *See supra* note 15.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[59] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[60] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

As the Exchange further details above, the Exchange first filed a proposed rule change proposing fee changes as proposed herein on June 30, 2021, with the proposed fee changes effective beginning July 1, 2021. That proposal, EMERALD–2021–21, was published for comment in the **Federal Register** on July 15, 2021.[61] On August 27, 2021, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings to determine whether to approve or disapprove the proposal.[62] On September 30, 2021, the Exchange withdrew the proposed rule change,[63] and filed two other proposed rule changes proposing fee changes as proposed herein,[64] which were each also subsequently withdrawn. On February 7, 2022, the Exchange filed a proposed rule change proposing fee changes as proposed herein and, on February 15, 2022, the Commission issued a notice of the proposed rule change and, pursuant to Section 19(b)(3)(C) of the Act, simultaneously: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings to determine whether to approve or disapprove the proposal.[65] The instant filing is substantially similar.[66]

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[67] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [68]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [69] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [70] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[71]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposed fees for the cToM market data feed are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[72]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[73]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C) [74] and 19(b)(2)(B) of the Act [75] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[76] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Exchange has sufficiently demonstrated how the proposed rule change is consistent with Sections 6(b)(4),[77] 6(b)(5),[78] and 6(b)(8) [79] of the Act. Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove

[59] 15 U.S.C. 78s(b)(3)(C).

[60] 15 U.S.C. 78s(b)(1).

[61] *See supra* note 5, and accompanying text.

[62] *See* Securities Exchange Act Release No. 92789, 86 FR 49364 (September 2, 2021).

[63] *See* Securities Exchange Act Release No. 93471 (October 29, 2021), 86 FR 60947 (November 4, 2021).

[64] *See* Securities Exchange Act Release Nos. 93427 (October 26, 2021), 86 FR 60310 (November 1, 2021); 93811 (December 17, 2021), 86 FR 73051 (December 23, 2021).

[65] *See* Securities Exchange Act Release No. 94263 (February 15, 2022), 87 FR 9766 (February 22, 2022).

[66] *See id.*

[67] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[68] *Id.*

[69] 15 U.S.C. 78f(b)(4).

[70] 15 U.S.C. 78f(b)(5).

[71] 15 U.S.C. 78f(b)(8).

[72] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[73] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[74] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[75] 15 U.S.C. 78s(b)(2)(B).

[76] *Id.*

[77] 15 U.S.C. 78f(b)(4).

[78] 15 U.S.C. 78f(b)(5).

[79] 15 U.S.C. 78f(b)(8).

impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth above, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. *Cost Estimates and Allocation.* The Exchange states that it is not asserting that the proposed fees are constrained by competitive forces, but rather sets forth a ''cost-plus model,'' and states that the proposed fees are ''reasonable because they will permit recovery of the Exchange's costs in providing cToM data and will not result in the Exchange generating a supra-competitive profit.'' [80] Setting forth its costs in providing the cToM data product, and as summarized in greater detail above, MIAX Emerald projects $236,284 in aggregate annual estimated costs for 2022 as the sum of: (1) $5,434 in external expenses paid in total to its data center provider (0.20% of the total applicable expense) for data center services; its fiber connectivity provider for network services (0.20% of the total applicable expense); and various other hardware and software providers (0.20% of the total applicable expense) supporting the production environment; (2) $225,075 in internal expenses, allocated to (a) employee compensation costs ($209,610); (b) depreciation and amortization ($4,055); and (c) occupancy costs ($11,410); and (3) $5,775 in allocated shared expenses, including recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. Do commenters believe that these allocations are reasonable? Should the Exchange be required to provide more specific information regarding the allocation of third-party expenses, such as the overall estimated cost for each category of external expenses or at minimum the total applicable third-party expenses? Should the Exchange have provided either a percentage allocation or statements regarding the Exchange's overall estimated costs for the internal expense categories and general shared expenses figure? Do commenters believe that the Exchange has provided sufficient detail about how it determined which costs are associated with providing and maintaining the cToM data product and why? Do commenters believe that the Exchange provided sufficient detail or explanation to support its claim that ''no expense amount is allocated twice,'' [81] whether *among* the sub-categories of expenses in this filing, *across* the Exchange's fee filings for other products or services, or *over time*? Do commenters believe that the Exchange has provided sufficient detail about how it determined ''general shared expenses'' and how it determined what portion should be associated with providing and maintaining the cToM data product? The Exchange describes a ''proprietary'' process that was applied in making these determinations or arriving at particular allocations. Do commenters believe further explanation is necessary? What are commenters' views on whether the Exchange has provided sufficient detail on the identity and nature of services provided by third parties? Across all of the Exchange's projected costs, what are commenters' views on whether the Exchange has provided sufficient detail on the elements that go into market data costs, including how shared costs are allocated and attributed to market data expenses, to permit an independent review and assessment of the reasonableness of purported cost-based fees and the corresponding profit margin thereon?

2. *Revenue Estimates and Profit Margin Range.* The Exchange provides a single monthly revenue figure from March 2022 as the basis for calculating the profit margin of −21%. Do commenters believe this is reasonable? If not, why not? The profit margin is also dependent on the accuracy of the cost projections which, if inflated (intentionally or unintentionally), may render the projected profit margin meaningless. The Exchange acknowledges that this margin may fluctuate from month to month as Members and non-Members add and drop subscriptions,[82] and that costs may increase. The Exchange does not account for the possibility of cost decreases, however. What are commenters' views on the extent to which actual costs (or revenues) deviate from projected costs (or revenues)? Do commenters believe that the Exchange's methodology for estimating the profit margin is reasonable? Should the Exchange provide a range of profit margins that it believes are reasonably possible, and the reasons therefor?

3. *Reasonable Rate of Return.* The Exchange states that its expected profit margin is −21% and that the proposed fees are reasonable because the Exchange is operating at a negative margin for this product. Further, the Exchange states that it chose to initially provide the cToM data product for free and to forego revenue that they otherwise could have generated from assessing any fees.[83] What are commenters' views regarding what factors should be considered in determining what constitutes a reasonable rate of return for the cToM market data product? Do commenters believe it relevant to an assessment of reasonableness that, according to the Exchange, the Exchange's proposed fees are similar to or lower than fees charged by competing options exchanges with similar market share? Should an assessment of reasonable rate of return include consideration of factors other than costs; and if so, what factors should be considered, and why?

4. *Periodic Reevaluation.* The Exchange has not stated that it would reevaluate the appropriate level of cToM data product fees if there is a material deviation from the anticipated profit margin. In light of the impact that the number of subscriptions has on profit margins, and the potential for costs to decrease (or increase) over time, what are commenters' views on the need for exchanges to commit to reevaluate, on an ongoing and periodic basis, their cost-based data fees to ensure that the fees stay in line with their stated profitability projections and do not become unreasonable over time, for example, by failing to adjust for efficiency gains, cost increases or decreases, and changes in subscribers? How formal should that process be, how often should that reevaluation occur, and what metrics and thresholds should be considered? How soon after a new data fee change is implemented should an exchange assess whether its revenue and/or cost estimates were accurate and at what threshold should an exchange commit to file a fee change if its estimates were inaccurate? Should an initial review take place within the first 30 days after a data fee is implemented? 60 days? 90 days? Some other period?

[80] *See supra* Section II.A.2.

[81] *See id.*

[82] *See id.*

[83] *See id.*

5. *Fees for Internal Distributors versus External Distributors.* The Exchange argues that it is reasonable, equitable, and not unfairly discriminatory to assess Internal Distributors fees that are lower than the fees assessed for External Distributors for subscriptions to the cToM data feed ($1,250 per month for Internal Distributors versus $1,750 per month for External Distributors), since Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights, including rights to commercialize such market data.[84] In addition, the Exchange states that it ''utilizes more resources'' to support External Distributors as compared to Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring ''additional time and effort'' of the Exchange's staff.[85] What are commenters' views on the adequacy of the information the Exchange provides regarding the differential between the Internal Distributor and External Distributor fees? Do commenters believe that the fees for Internal Distributors and External Distributors, as well as the fee differences between Distributors, are supported by the Exchange's assertions that it sets the differentiated pricing structure in a manner that is equitable and not unfairly discriminatory? Do commenters believe that the Exchange should demonstrate how the proposed Distributor fee levels correlate with different costs to better substantiate how the Exchange ''utilizes more resources'' to support External Distributors versus Internal Distributors and permit an assessment of the Exchange's statement that ''External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of Exchange staff''?[86]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.''[87] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[88] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[89] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.[90]

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, any potential comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

V. Request for Written Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above, as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[91]

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EMERALD–2022–14 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–EMERALD–2022–14. 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 (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2022–14 and should be submitted on or before May 11, 2022. Rebuttal comments should be submitted by May 25, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[92] that File Number SR–EMERALD–2022–14 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the

[84] *See* text accompanying *supra* notes 53–55.

[85] *See id.*

[86] *See id.*

[87] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[88] *See id.*

[89] *See id.*

[90] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 446–47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

[91] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[92] 15 U.S.C. 78s(b)(3)(C).

proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[93]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08379 Filed 4–19–22; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2021–1205; Summary Notice No. –2022–18]

Petition for Exemption; Summary of Petition Received; Airobotics, Inc.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 10, 2022.

ADDRESSES: Send comments identified by docket number [FAA–2021–1205] using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://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 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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 *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *https://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 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Timothy R. Adams,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2021–1205.

Petitioner: Airobotics, Inc.

Section(s) of 14 CFR Affected: §§ 43.3, 43.5(a), 43.9(a), 43.13(a) & (b), 61.3(a)(1)(i), 91.7(a), 91.119(b) & (c), 91.121, 91.151(b).

Description of Relief Sought: Airobotics, Inc. seeks relief to operate the Optimus 1–EX unmanned aircraft system, with a take-off weight below 55 pounds, for data collection activities to include inspection and monitoring purposes over private property with permission from the property owner/controller or public property with permission from local authorities. Operations would occur beyond visual line of sight of the pilot during both day and night hours under visual meteorological conditions, with either a remote located pilot (off site), or a pilot located on site where the flight takes place. The proposed operations would be conducted under 14 CFR part 91 with a pilot in command holding a remote pilot certificate under 14 CFR part 107.

[FR Doc. 2022–08407 Filed 4–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket #FAA–2022–0410]

Notice of Funding Opportunity

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

ACTION: Notice of funding opportunity.

SUMMARY: The Department of Transportation (DOT), Federal Aviation Administration (FAA), announces the opportunity to apply for $20 million in FY 2022 Airport Infrastructure Grant funds for the newly established FAA Contract Tower (FCT) Competitive Grant Program, made available under the *Infrastructure Investment and Jobs Act of 2021* (IIJA), herein referred to as the Bipartisan Infrastructure Law (BIL). The purpose of the FCT Competitive Grant Program is to make annual grants available to eligible airports for airport-owned airport traffic control tower (ATCT) projects that address the aging infrastructure of the nation's airports.

In addition, FCT Competitive Grant Program will align with DOT's Strategic Framework FY2022–2026 at *www.transportation.gov/administrations/office-policy/fy2022-2026-strategic-framework.* The FY 2022 FCT Competitive Grant Program will be implemented, as appropriate and consistent with law, in alignment with the priorities in the Executive Order, Implementation of the Infrastructure Investments and Jobs Act, which are to invest efficiently and equitably, promote the competitiveness of the U.S. economy, improve job opportunities by focusing on high labor standards, strengthen infrastructure resilience to all hazards, including climate change, and to effectively coordinate with State, local, Tribal, and territorial government partners.

DATES: Airport sponsors that wish to be considered for FY 2022 FCT Competitive Grant Program funding should submit an application that meets the requirements of this NOFO as soon as possible, but no later than 5:00 p.m. Eastern time, May 16, 2022. Submit applications electronically at *https://www.faa.gov/bil/airport-infrastructure/fct* per instructions in this NOFO.

FOR FURTHER INFORMATION CONTACT: Robin K. Hunt, BIL Implementation Team, FAA Office of Airports, at (202) 267–3263 or our FAA BIL email address: *9-ARP-BILAirports@faa.gov.*

SUPPLEMENTARY INFORMATION:

[93] 17 CFR 200.30–3(a)(12), (57), and (58).

A. Program Description

BIL established the FCT Competitive Grant Program, which provides $20 million in grant funding annually for five years (Fiscal Years 2022–2026) to sustain, construct, repair, improve, rehabilitate, modernize, replace, or relocated nonapproach control towers; acquire and install air traffic control, communications, and related equipment to be used in those towers; and construct a remote tower certified by the FAA including acquisition and installation of air traffic control, communications, or related equipment. This program also supports the President's goals to mobilize American ingenuity to build modern infrastructure and an equitable, clean energy future. In support of Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (86 FR 7009), the FAA encourages applicants to consider how the project will address the challenges faced by individuals in underserved communities and rural areas.

The FCT Competitive Grant Program falls under the project grant authority for the Airport Improvement Program (AIP) in 49 United States Code (U.S.C.) § 47104. Per 2 Code of Federal Regulations (CFR) Part 200—*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* the AIP Federal Assistance Listings Number is 20.106, with the objective to assist eligible airports in the development and improvement of a nationwide system that adequately meets the needs of civil aeronautics. The FY 2022 FCT Competitive Grant Program will be implemented, as appropriate and consistent with BIL, in alignment with the priorities in Executive Order 14052, *Implementation of the Infrastructure Investments and Jobs Act* (86 FR 64355), which are to invest efficiently and equitably, promote the competitiveness of the U.S. economy, improve opportunities for good-paying jobs with the free and fair choice to join a union by focusing on high labor standards, strengthen infrastructure resilience to all hazards, including climate change, and to effectively coordinate with State, local, Tribal, and territorial government partners.

Consistent with statutory criteria and Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (86 FR 7619), the FAA also seeks to fund projects under the FCT Competitive Grant Program that reduce greenhouse gas emissions and are designed with specific elements to address climate change impacts. Specifically, the FAA is looking to award projects that align with the President's greenhouse gas reduction goals, promote energy efficiency, support fiscally responsible land use and transportation efficient design, support development compatible with the use of sustainable aviation fuels and technologies, increase climate resilience, incorporate sustainable pavement and construction materials as allowable, and reduce pollution.

B. Federal Award Information

The FCT Competitive Grant Program is a $100 million grant program, distributed as $20 million annually for five years (Fiscal Years 2022, 2023, 2024, 2025, and 2026). The FAA will consider projects at airport-owned Airport Traffic Control Tower (ATCT) that sustain, construct, repair, improve, rehabilitate, modernize, replace, or relocated nonapproach control towers; acquire and install air traffic control, communications, and related equipment to be used in those towers; or construct a remote tower certified by the FAA including acquisition and installation of air traffic control, communications, or related equipment. To date, the FAA has no certified Remote Towers. The FAA is currently evaluating this technology to assess its suitability for use in the National Airspace System (NAS). In addition, these projects will also be evaluated based on overall impact on the NAS including age of facility, operational constraints, nonstandard facilities, or new FCT entrant requirements. This also includes applicable Executive Orders as listed in Section E.2.

The FAA will publish a NOFO annually to announce additional funding made available, $20 million per year, for Fiscal Years 2023–2026.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants are those airport sponsors approved in the FAA's contract tower program or contract tower cost share program as defined in 49 U.S.C. 47124, and normally eligible for Airport Improvement Program (AIP) discretionary grants as defined in 49 U.S.C. 47115. This includes a public agency, private entity, and State agency, Indian Tribe or Pueblo owning a public-use National Plan of Integrated Airport System (NPIAS) airport, the Secretary of the Interior for Midway Island Airport, the Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau.

2. Cost Sharing or Matching

The Federal cost share of the FCT Competitive Grant Program is 100 percent for all airports eligible to receive grants.

3. Project Eligibility

All projects funded from the FCT Competitive Grant Program must be:

i. Airport-owned ATCT projects that sustain, construct, repair, improve, rehabilitate, modernize, replace, or relocated nonapproach control towers;

ii. Projects that acquire and install air traffic control, communications, and related equipment to be used in those towers; or

iii. Projects to construct a remote tower [1] certified by the FAA including acquisition and installation of air traffic control, communications, or related equipment.

D. Application and Submission Information

1. Address To Request Application Package

An application for FCT Competitive Grant Program projects, FAA Form 5100–144, *Bipartisan Infrastructure Law, Airport Terminal and Tower Project Information,* can be found at: *https://www.faa.gov/bil/airport-infrastructure/fct.*

Direct all inquiries regarding applications to the appropriate Regional Office (RO) or Airports District Office (ADO) (RO/ADO contact information is available at *https://www.faa.gov/about/office_org/headquarters_offices/arp/offices/regional_offices)* or to the BIL Team at: *9-ARP-BILAirports@faa.gov.*

2. Content and Form of Application Submission

Applicants will be required to submit information contained in FAA Form 5100–144, *Bipartisan Infrastructure Law, Airport Terminal and Tower Project Information.* This form is provided to assist airports in completing the submission requirements established in this NOFO. Application instructions and the form can be found at: *https://www.faa.gov/bil/airport-infrastructure/fct.*

All applications must be submitted electronically following the instruction on the form. Once the form is complete, save a copy of the form electronically to your files for future reference. Next,

[1] To date, the FAA has no certified Remote Towers. The FAA is currently evaluating this technology to assess its suitability for use in the National Airspace System (NAS). Remote Tower information is located at *www.faa.gov/airports/planning_capacity/non_federal/remote_tower_systems/.*

scroll to the bottom of the form and press the ''submit'' button. The form will be automatically emailed to the FAA BIL Team for review and evaluation, or as a backup, email the form manually to: *9-ARP-BILAirports@faa.gov.*

Applicants selected to receive an FCT Competitive Grant Program grant will then be required to follow AIP grant application procedures prior to award, which include meeting all prerequisites for funding, and submission of Standard Form SF–424, *Application for Federal Assistance,* and FAA Form 5100–100, *Application for Development Projects.*

Airports covered under the FAA's State Block Grant Program or airports in a channeling act state should coordinate with their associated state agency on the process for who should submit an application, via the procedures noted above.

3. Unique Entity Identifier and System for Award Management (SAM)

Applicants must comply with 2 CFR part 25—*Universal Identifier and System for Award Management.* All applicants must have a unique entity identifier provided by SAM. Additional information about obtaining a Unique Entity Identifier (UEI) and registration procedures may be found at the SAM website (currently at *http://www.sam.gov*). Each applicant is required to: (1) Be registered in SAM; (2) provide a valid UEI prior to grant award; and (3) continue to maintain an active SAM registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by the FAA. Under the FCT Competitive Grant Program, the UEI and SAM account must belong to the entity that has the legal authority to apply for, receive, and execute grants.

Once awarded, the FAA grant recipient must maintain the currency of its information in SAM until the grantee submits the final financial report required under the grant or receives the final payment, whichever is later. A grant recipient must review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term.

The FAA may not make an award until the applicant has complied with all applicable UEI and SAM requirements. If an applicant has not fully complied with the requirements by the time the FAA is ready to make an award, the FAA may determine that the applicant is not qualified to receive an award and use that determination as a basis for giving a Federal award to another applicant.

Non-Federal entities that have received a Federal award are required to report certain civil, criminal, or administrative proceedings to SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS) *www.fapiis.gov*) to ensure registration information is current and complies with Federal requirements. Applicants should refer to 2 CFR 200.113 for more information about this requirement.

4. Submission Dates and Times

Airports that wish to be considered for FY 2022 FCT Competitive Grant Program funding should submit an application that meets the requirements of this NOFO as soon as possible, but no later than 5:00 p.m. Eastern time on May 16, 2022. Submit applications electronically at *https://www.faa.gov/bil/airport-infrastructure/fct* per instructions in this NOFO. Airports that submitted projects under the FY 2022 Airport Terminal Program NOFO (87 FR 10890), that meet the eligibility requirements outlined in C.1., do not need to resubmit under this NOFO.

5. Funding Restrictions

All projects funded from the FCT Competitive Grant Program must be at airports approved in the FAA's contract tower program or contract tower cost share program defined in 49 U.S.C. 47124.

FCT Competitive Grant Program funds may not be used to support or oppose union organizing.

E. Application Review Information

1. Criteria

Applications for FY 2022 FCT Competitive Grant Program will be rated using the following criteria:

i. Must meet eligibility requirements under the FCT Competitive Grant Program outlined under Sections C.1 and C.3 above.

ii. Timeliness of implementation, with priority given to those projects that can satisfy all statutory and administrative requirements for grant award in FY 2022 or early FY2023.

iii. ATCT projects will be evaluated based on overall impact on the NAS including age of facility, operational constraints, nonstandard facilities conditions, or new FCT entrant requirements.

iv. Priority will be given to projects that advance aviation safety or enhance air traffic efficiency.

v. The applicant should describe whether and how project delivery and implementation creates good-paying jobs with the free and fair choice to join a union to the greatest extent possible, the use of demonstrated strong labor standards, practices and policies (including for direct employees, contractors, and sub-contractors); use of project labor agreements; distribution of workplace rights notices; the use of Local Hire Provisions; [2] registered apprenticeships; or other similar standards or practices. The applicant should describe how planned methods of project delivery and implementation (for example, use of Project Labor Agreements and/or Local Hire Provisions,[3] training and placement for underrepresented workers) provide opportunities for all workers, including workers underrepresented in construction jobs, to be trained and placed in good-paying jobs directly related to the project. FAA will consider this information in evaluating the application.

2. Review and Selection Process

Applications will be evaluated based on the information submitted related to the above criteria in E.1 to ensure responsiveness to this NOFO and the intent of the FCT Competitive Grant Program. Federal awarding agency personnel will evaluate applications based on how well the projects meet the criteria in E.1, including project eligibility, justification, and readiness. The FAA will also consider projects that advance the goals of the following Executive Orders: The President's January 20, 2021, Executive Order 13990, ''*Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*''*;* the President's January 20, 2021, Executive Order 13985, ''*Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*''*;* the President's January 27, 2021, Executive Order 14008, ''*Tackling the Climate Crisis at Home and Abroad*''*;* and the President's July 9, 2021, Executive Order 14036, ''*Promoting Competition in the American Economy.*''

3. Integrity and Performance Check

Prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, FAA is required to review

[2] IIJA div. B Section 25019 provides authority to use geographical and economic hiring preferences, including local hire, for construction jobs, subject to any applicable State and local laws, policies, and procedures.

[3] Project labor agreement should be consistent with the definition and standards outlined in Executive Order 14063.

and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313). An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered. FAA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, 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 § 200.206.

F. Federal Award Administration Information

1. Federal Award Notices

BIL awards are announced through a Congressional notification process and a DOT Secretary's Notice of Intent to Fund. The FAA RO/ADO representative will contact the airport with further information and instructions. Once all pre-grant actions are complete, the FAA RO/ADO will offer the airport sponsor a grant for the announced project. This offer may be provided through postal mail or by electronic means. Once this offer is signed by the airport sponsor, it becomes a grant agreement. Awards made under this program are subject to conditions and assurances in the grant agreement.

2. Administrative and National Policy Requirements

i. Pre-Award Authority

Costs incurred after the enactment of BIL, November 15, 2021, are eligible for reimbursement under the FCT Competitive Grant Program.

ii. Grant Requirements

All grant recipients are subject to the grant requirements of the AIP, found in 49 U.S.C. Chapter 471. Grant recipients are subject to requirements in the FAA's *AIP Grant Agreement* for financial assistance awards; the annual certifications and assurances required of applicants; and any additional applicable statutory or regulatory requirements, including nondiscrimination requirements and 2 CFR part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.* Grant requirements include, but are not limited to: Approved projects on an airport layout plan; compliance with Federal civil rights laws; Buy American requirements under 49 U.S.C. 50101; Build America, Buy America requirements in sections 70912(6) and 70914 in Public Law No: 117–58, the Infrastructure Investment and Jobs Act; the *Department of Transportation's Disadvantaged Business Enterprise (DBE) Program* regulations for airports (49 CFR part 23 and 49 CFR part 26); and prevailing wage rate requirements under the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5, and reenacted at 40 U.S.C. 3141–3144, 3146, and 3147).

iii. Standard Assurances

Each grant recipient must assure that it will comply with all applicable Federal statutes, regulations, executive orders, directives, FAA circulars, and other Federal administrative requirements in carrying out any project supported by the grant. The grant recipient must acknowledge that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with the FAA. The grant recipient understands that federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The grant recipient must agree that the most recent Federal requirements will apply to the project unless the FAA issues a written determination otherwise.

The grant recipient must submit the certifications at the time of grant application and assurances must be accepted as part of the grant agreement at the time of accepting a grant offer. Grant recipients must also comply with 2 CFR part 200, which is cited in the grant assurances of the grant agreements. The airport sponsor assurances are available on the FAA website at: *https://www.faa.gov/airports/aip/grant_assurances.*

3. Reporting

Grant recipients are subject to financial reporting per 2 CFR 200.328 and performance reporting per 2 CFR 200.329. Under the FCT Competitive Grant Program, the grant recipient is required to comply with all Federal financial reporting requirements and payment requirements, including the submittal of timely and accurate reports. Financial and performance reporting requirements are available in the FAA October 2020 Financial Reporting Policy, which is available at: *https://www.faa.gov/airports/aip/grant_payments/media/aip-grant-payment-policy.pdf.*

The grant recipient must comply with annual audit reporting requirements. The grant recipient and sub-recipients, if applicable, must comply with 2 CFR part 200 subpart F Audit Reporting Requirements. The grant recipient must comply with any requirements outlined in 2 CFR part 180, *Office of Management and Budget (OMB) Guidelines to Agencies on Government wide Debarment and Suspension.*

G. Federal Awarding Agency Contact(s)

For further information concerning this notice, please contact the FAA BIL Implementation Team via email at: *9-ARP-BILAirports@faa.gov.* In addition, FAA will post answers to frequently asked questions and requests for clarifications on FAA's website at *https://www.faa.gov/bil.* To ensure applicants receive accurate information about eligibility of the program, the applicant is encouraged to contact FAA directly, rather than through intermediaries or third parties, with questions.

All applicants should have a plan to address potential cost overruns as part of an overall funding plan.

Issued in Washington, DC, on April 15, 2022.

Robin K. Hunt,

Manager, FAA Office of Airports BIL Implementation Team.

[FR Doc. 2022–08421 Filed 4–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No: FAA–2022–0223]

FY 2022 Competitive Funding Opportunity: Airport Improvement Program Discretionary Grants

AGENCY: Federal Aviation Administration, U.S. Department of Transportation.

ACTION: Notice of funding opportunity.

SUMMARY: The U.S. Department of Transportation's Federal Aviation Administration (FAA) announces the opportunity to apply for approximately $1.5 billion in Fiscal Year (FY) 2022 discretionary grants under the Airport Improvement Program (AIP). FAA will award these annually appropriated discretionary funds through the FAA's long-standing iterative, competitive grant process. Prior to the publication of this Notice of Funding Opportunity (NOFO), the FAA identified eligible applicants in its National Plan of Integrated Airport Systems (NPIAS) and compiled potentially eligible projects

through the 3-year Airports Capital Improvement Plan (ACIP). Both of these processes are described in FAA Order 5090.5, Formulation of NPIAS and ACIP that authorizes discretionary funds. The AIP funds airport capital improvements and rehabilitation projects. All discretionary grant funding is subject to appropriations, statutory requirements, and related program funding availability.

DATES: Sponsors that wish to be considered for all opportunities for discretionary funding throughout FY 2022 should submit applications that meet NOFO requirements as soon as possible, but no later than Thursday, June 30, 2022, 11:59 Eastern time to FAA Regional or Airport District offices per instructions in this NOFO. The FAA will consider all applications properly submitted prior to this NOFO. Discretionary grant applications should be based on bids.

FOR FURTHER INFORMATION CONTACT: David F. Cushing, Manager, Airports Financial Assistance Division, APP–500, at (202) 267–8827.

SUPPLEMENTARY INFORMATION:

A. Program Description

Under 49 U.S.C. 47104, the FAA may issue grants for airport planning and development in the United States. Eligible projects include those improvements related to enhancing airport safety, capacity, security, and environmental concerns. In addition, 49 U.S.C. 47101(1) states that it is the policy of the United States that the safe operation of the airport and airways system is the highest aviation priority, and 49 U.S.C. 47101(7) states that airport construction and improvement projects that increase the capacity of facilities to accommodate passenger and cargo traffic be undertaken to the maximum feasible extent so that safety and efficiency increase and delays decrease. The FAA's safety mission is incorporated into many aspects of the AIP program including, for example: Justification requirements for safety and security projects, allowance for certain Safety Management System (SMS) and Safety Risk Management (SRM) costs, and allowance for safety and security equipment projects. Within discretionary funding, safety is incorporated as a scoring factor in the quantitative formula, which is the National Priority Rating (NPR) discussed below.

The AIP provides grants to public agencies—and, in some cases, to private owners and entities—for the planning and development of public-use airports that are included in the NPIAS. The AIP was authorized by the Airport and Airway Improvement Act of 1982 (Pub. L. 97–248), which Congress recodified in 1994 as 49 U.S.C. 47101, *et seq.* (Pub. L. 103–272). The AIP statutes have been amended several times, most recently with the passage of the FAA Reauthorization Act of 2018 (Pub. L. 115–254) and subsequent legislation.

The AIP Assistance Listing is 20.106, with the objective to assist sponsors, owners, or operators of public-use airports in the development of a nationwide system of airports sufficient to meet the needs of civil aeronautics. This includes preserving existing airport infrastructure in a safe and functional operational condition; bringing airport facilities into conformity with current federal safety standards; constructing, modifying, or expanding facilities as necessary to meet demonstrated aeronautical demand; enhancing environmental sustainability; and providing a balanced system of airports to meet the roles and functions necessary to support civil aeronautical demand.

The FY 2022 AIP will be implemented, as appropriate and consistent with AIP statutory criteria and Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (86 FR 7619). In addition to promoting safety, FAA seeks to fund projects that reduce greenhouse gas emissions and are designed with specific elements to address climate change impacts. Specifically, the FAA is looking to award projects that align with the President's greenhouse gas reduction goals, promote energy efficiency, support fiscally responsible land use and efficient transportation design, support airport development compatible with the use of sustainable aviation fuels and technologies, increase climate resilience, incorporate sustainable pavement and construction materials as allowable, reduce pollution, and direct the benefits of these investments equitably. Specifically for AIP, the FAA encourages applicants to consider how a proposed project directs benefits of investments in Voluntary Airport Low Emission (VALE) and Zero Emissions Vehicle (ZEV) programs to disadvantaged communities and ensures meaningful public engagement, under Executive Order 14008, section 223, recognizing that these limited programs direct vehicles for primarily on-airport uses.

In support of Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (86 FR 7009), the FAA encourages applicants to consider how the project will address the challenges faced by individuals and underserved communities in rural areas.

All recipients of federal funding are subject to Title VI of the Civil Rights Act of 1964, and accompanying regulations; the Americans with Disabilities Act; Section 504 of the Rehabilitation Act of 1973; and the associated terms and conditions of any new grant agreements pursuant to this NOFO as well as prior agreements for AIP grants executed by grantees. See also 28 CFR 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964); and 49 CFR part 28 (entitled Enforcement of Nondiscrimination On The Basis Of Handicap in Programs or Activities Conducted by the Department of Transportation). In certain circumstances, failure to ensure that Limited English Proficiency (LEP) persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and Title VI regulations against national origin discrimination.

Due to the agency's implementation of the AIP statutory process for determining discretionary funding awards, the FAA did not previously issue NOFOs for competitive grants. This is the first fiscal year the FAA is issuing a NOFO for this well-established capital infrastructure program.

B. Federal Award Information

On average, for the last ten years, $3.35 billion has been appropriated annually for AIP. AIP grants include both apportioned (or entitlement) and discretionary (or competitive) funds. Apportioned funds are allocated in accordance with 49 U.S.C. 47114, based on an airport's size and level of activity. Discretionary funds are made available in accordance with 49 U.S.C. 47115 and 49 U.S.C. 47117.

Public Law 115–254, titled ''FAA Reauthorization Act of 2018,'' authorizes $3.35 billion in funding authority for the AIP to administer grants for airport planning, development, and noise compatibility planning and programs each fiscal year from October 1, 2018, through September 30, 2023.

This NOFO is being issued under the Consolidated Appropriations Act, 2022 (Pub. L. 117–103). Funding beyond the current available program amount, is subject to appropriations and the availability of future funds.

In FY 2021, 404 discretionary grants were issued, totaling approximately $1.5 billion. The discretionary grants ranged in amount from $25,000 to $37,000,000.

The average AIP discretionary grant was $4,000,000. In FY 2022, the FAA anticipates awarding discretionary grants beginning in April 2022 with an individual grant 4-year period of performance.

The AIP is an annual program, and AIP projects are funded based on a planning process described in Order 5090.5, Formulation of NPIAS and ACIP. In this process, the FAA works with potential award recipients on eligible and justified development needs.

The FAA uses the NPIAS to identify airports that have a role in the National Airspace System (NAS) and all potential airport development projects that are eligible for AIP funding at those airports. The FAA formulates a 3-year ACIP to guide the assignment of AIP funding to projects based on airport development needs identified in the NPIAS. The 3-year ACIP, as a subset of the NPIAS, is an annual process for reviewing the NPIAS for development project needs. From this ACIP the FAA identifies candidates that are ready to accept a grant, including those that may apply for discretionary funding. Discretionary funding includes 5 types of set-aside funding categories, further described in Section D. 5. The process begins with each eligible airport operator submitting its individual airport capital improvement plan, and follows with the formulation of the NPIAS Report, the National ACIP, and the Discretionary Candidate List (DCL). The DCL accounts for all AIP projects competing for discretionary funding for the first year of the 3-year ACIP. The DCL is prioritized based on quantitative and qualitative criteria, which are discussed in greater detail in NOFO section E. 1. and E. 2.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants are public agencies owning a public-use NPIAS airport; private entities owning a public-use NPIAS airport; States acting as a sponsor for one or more specific NPIAS airports in the State; Indian tribes or pueblos owning or leasing a public-use NPIAS airport; the Secretary of the Interior for Midway Island Airport; the Republic of the Marshall Islands; the Federated States of Micronesia; and the Republic of Palau, and other applicants as outlined in Table 2–1 of Order 5100.38, Airport Improvement Program Handbook ''AIP Handbook'' available at: *https://www.faa.gov/airports/aip/aip_handbook/.*

2. Cost Sharing or Matching

AIP grants generally have Federal shares ranging from 70 percent to 95 percent. The Federal share percentage is based on the airport size and type of project per statute. Federal share by airport and project type can be found in Chapter 4 of the AIP handbook.

3. Project Eligibility

Discretionary funds are made available in accordance with 49 U.S.C. 47115, 49 U.S.C. 47117, and 49 U.S.C. 47120 to fund needs that exceed an airport's available apportioned funds. Apportioned funds are allocated in accordance with 49 U.S.C. 47114 and must be used on an airport's highest priority project(s). Discretionary funding is determined after entitlement funding has been determined. However, the FAA reviews both discretionary grants and entitlement grants for eligibility and justification per the statutory ACIP process as described below.

All projects funded with AIP must be justified and eligible under 49 U.S.C. 48103, as further outlined in Chapter 3 of the AIP Handbook. Eligible projects include those improvements related to enhancing airport safety, capacity, security, and environmental sustainability as well as evidence showing compliance with federal civil rights laws. In general, sponsors can receive AIP funds for most airfield capital improvements or rehabilitation projects and, in some specific situations, for terminals, hangars, and nonaviation development. Certain professional services that are necessary for eligible projects (such as planning, surveying, and design) may also be eligible. The FAA must be able to determine a proposed project is justified based on civil aeronautical demand. The projects must also meet Federal environmental, Buy American, and 2 CFR part 200 procurement requirements.

The discretionary planning process is a subset of the ACIP formulation process. Funds are assigned to projects in the ACIP based on project priority, funding types, and project type. Assignment of funds in the ACIP does not guarantee funding. Funding levels may vary based on annual appropriations. Discretionary projects in the ACIP are evaluated for priority and readiness in accordance with the AIP Handbook. Inclusion of a project in the national ACIP does not constitute a commitment of Federal funding. For a project to be funded under AIP, it must meet the prerequisites for funding, as found in the AIP Handbook ''Table 3–1—The General Requirements for Project Funding.'' These prerequisites include, but are not limited to, the project being included in the airport's approved layout plan, an environmental determination, all necessary airspace studies, title to land, the satisfaction of intergovernmental review and airport user consultation requirements, and reasonable project readiness. For the complete list, refer to the Handbook Table 3–1, available at *https://www.faa.gov/airports/aip/aip_handbook/?Chapter=3#S0301.* The release of funds for each individual grant project is contingent upon grant recipients meeting all of these prerequisite milestones.

D. Application and Submission Information

1. Address To Request Application Package

All inquiries should be directed to the appropriate Regional Office (RO) or Airport District Office (ADO). RO/ADO contact information is below. *https://www.faa.gov/airports/regions/.*

Application forms are at: *https://www.faa.gov/airports/resources/forms/.*

2. Content and Form of Application Submission.

For content and application information, reference Standard Operating Procedure for FAA Review and Approval of an Airport Improvement Program (AIP) Grant Application. *https://www.faa.gov/airports/resources/sops/media/arp-sop-600-grant-application.pdf.*

The final grant application funding requests should be based on bids or firm costs, not estimates. In addition, in FY 2022, the FAA will consider eligible and justified projects per statute 49 U.S.C. 47103, 47104, 47106, 47107, 47108, and 47109 that further the Administration's goals of safety, environmental stewardship, including climate change and sustainability, equity, creation of good jobs and infrastructure investment aligning with Executive Orders identified in this NOFO. Applications should briefly describe how the proposed project meets at least one of these goals. The Administration's Goals are identified for each discretionary project based on the following definitions.

Equity—Projects that advance equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. Examples are projects in Economically Distressed Areas (EDA), projects to meet ADA requirements, and projects in Tribal communities. The statutory criteria used for EDA impacted

communities is explained at the Economically Distressed Areas (EAS/EDA Determinations) Special Rule web page. This definition also applies to statutory requirements under 49 U.S.C. 47102(3)(f) Airport Development and 47123 Non discrimination. In addition, FAA must assess that all grantees are compliant with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and other federal civil rights statutes.

Environmental Stewardship—Projects that promote an equitable, clean energy future as well as standards that protect our air, water, and communities. Examples are any environmental improvements, noise projects, VALE/ZEV, deicing containment, and drainage improvements.

Job Creation—Projects that create good jobs in the community and support good paying construction jobs. Examples are projects to expand cargo or manufacturing operations, fuel farms, hangars and terminals.

Infrastructure Investment—Capital airport development projects, including projects that repair, renew, and upgrade the airports' infrastructure. ''Airport development'' is defined in 49 U.S.C. 47102(3) and includes a list of activities if those activities are undertaken by the sponsor, owner, or operator of a public-use airport.

As stated, safety enhancements and the preservation of a safe environment is an element of nearly every AIP project.

3. Unique Entity Identifier and System for Award Management (SAM)

Applicants must comply with 2 CFR part 25—Universal Identifier and System for Award Management. All applicants must provide a unique entity identifier provided by SAM. Additional information about obtaining a Unique Entity Identifier (UEI) and registration procedures may be found at the SAM website (currently at *http://www.sam.gov*). Each applicant is required to: (1) Be registered in SAM before submitting an application; (2) provide a valid UEI in its application; and (3) continue to maintain an active SAM registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by the FAA. Under the AIP, the UEI and SAM account must belong to the entity that has the legal authority to apply for, receive, and execute AIP grants.

Once awarded, the FAA grant recipient must maintain the currency of its information in the SAM until the grant recipient submits the final financial report required under the grant or receives the final payment, whichever is later. A grant recipient must review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term.

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

Non-Federal entities that have received a Federal award are required to report certain civil, criminal, or administrative proceedings to SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS) *www.fapiis.gov*) to ensure registration information is current and comply with Federal requirements. Applicants should refer to 2 CFR 200.113 for more information about this requirement.

4. Submission Dates and Times

Sponsors that wish to be considered for AIP discretionary funding throughout FY 2022 should submit applications that meet these NOFO requirements as soon as possible to FAA Regional or Airport District offices. All applications submitted prior to this NOFO will be considered if they meet all existing law, federal regulations, NOFO requirements, and FAA policy.

The FAA will consider applications on a rolling basis, and the final deadline to submit discretionary grant applications is Thursday, June 30, 2022, 11:59 Eastern time. Dates are subject to possible adjustment based on future legislation. Under 49 U.S.C. 47115, the Secretary of Transportation, through the FAA, will consider projects that are the most appropriate to carry out the statute at any time prior to September 30, 2022.

Information about entitlement funds can be found at 86 FR 72304, published on December 21, 2021.

5. Funding Restrictions

Under 49 U.S.C. 47115 and 47116, projects must meet airport and project eligibility and justification criteria. Eligibility is derived from statute and may include projects to enhance airport safety, capacity, security, and environmental concerns. In general, sponsors may receive AIP funds for most airfield capital improvements and in specific situations, for terminals, hangars, equipment, and non-aeronautical development. Projects related to airport operations are not eligible for funding. Operational costs—such as salaries, equipment, and supplies—are not eligible for AIP grants.

Furthermore, Chapter 4 of the AIP Handbook describes the funding restrictions by airport type (Table 4–4) and project restrictions by fund type (Table 4–5). Discretionary funding is broken down into 5 categories: 1. Environmental Set-Aside, which includes Noise Compatibility and Implementation Programs, the VALE Program, and ZEV Program; 2. Reliever Set Aside; 3. Military Airport Program (MAP) Set-Aside; 4. Capacity/Safety/Security/Noise (C/S/S/N); and 5. Pure Discretionary. Each of these fund types has certain public use NPIAS airport categories that can use this funding, as described in Table 4–4 of the AIP Handbook, for example, C/S/S/N funding is only available to primary and reliever airports. Each of the discretionary fund types also has certain project restrictions by fund type, as outlined in Table 4–5 of the AIP Handbook, for example, Reliever Set Aside funding may not be used for terminal buildings.

The AIP has funding restrictions by airport and/or project type. Please see below criteria and refer to AIP Handbook, Chapter 3 and 4, for further details on eligibility criteria and funding restrictions available at: *https://www.faa.gov/airports/aip/aip_handbook/*. The AIP Handbook is the published policy for AIP. Except where options are specifically noted or where non-mandatory language is used, the procedures and requirements are mandatory. The general requirements for project funding include considerations of: Project eligibility; project justification; good title of airport property; an FAA approved airport layout plan; a complete intergovernmental review; airport-user consultations; complete required environmental reviews; a determination that the grant will yield a usable unit of work; certification that the project specification will meet FAA standards; applicable cost justifications; and a work plan to complete the project without unreasonable delay.

6. Other Submission Requirements

Contact RO/ADO for the submission process. RO/ADO contact information is below. *https://www.faa.gov/airports/regions/.*

E. Application Review Information

1. Criteria

The Secretary of Transportation will evaluate and administer AIP applications consistent with the statutory criteria as described in 49 U.S.C. 47115. Under 49 U.S.C. 47115(d), capacity enhancement projects have additional considerations, including a project's impact on national transportation system capacity, airport capacity, and global air cargo activity. For all projects, 49 U.S.C. 47115(d)(2) states that in selecting a project for a grant under that section, the Secretary shall consider among other factors whether funding has been provided for all other projects qualifying for funding during the fiscal year under this chapter that have attained a higher score under the numerical priority system employed by the Secretary in administering the fund; and the sponsor will be able to commence the work identified in the project application in the fiscal year in which the grant is made or within 6 months after the grant is made, whichever is later. The ACIP emphasizes using AIP funding on the highest priority projects as required by statute. The numerical priority system is described in section E.2. of this NOFO.

Annual submission from a sponsor of its 5-year Capital Improvement Program (CIP) to the FAA typically initiates the review process. In order for the FAA to include a project in the ACIP, the project must be eligible and justified.

Selection criteria include project eligibility, justification, readiness, and the availability of funds. For a project to be funded through the AIP, certain prerequisites must be completed. These prerequisites are: The project is included in the airport's approved layout plan, an environmental determination, and all necessary airspace studies. Prerequisites must be met in order for grant funding to be released.

2. Review and Selection Process

The FAA's review of submitted projects takes place during the formulation of the ACIP. Through the annual ACIP process, the FAA systematically identifies, plans, and prioritizes airport planning and development projects for AIP funding to produce a three-year funding plan. The ACIP is a needs-based and financially-constrained plan for funding development over a rolling three-year period. The National Priority System (NPS) equation is used to calculate the National Priority Rating (NPR), a quantitative measure used for ranking project importance. The NPR is calculated using the NPS equation, which considers the type of airport, the purpose of the project, the component of the project, and the type of action. The resulting score, between 1 and 100, is known as the national priority rating (NPR). The NPR score prioritizes airport development projects according to FAA goals and objectives, with higher numerical scores indicating the project is more aligned with FAA goals and objectives. The maximum value of the NPS equation is 100. NPIAS–ACIP Order Section 5.7.3 and NPIAS–ACIP Order Appendix B provide a detailed explanation of the NPS Equation, which is available at *https://www.faa.gov/airports/planning_capacity/npias_acip_order/.*

In the administration of the AIP, the FAA gives the highest priority to projects that enhance safety and security at airports. Other major objectives are achieved by awarding AIP funds to projects that maintain existing airport infrastructure and increase or maintain the capacity of existing facilities to accommodate increasing passenger and cargo demand.

DCL projects are prioritized based on the NPR. The NPR emphasizes using AIP funding on the highest priority projects as required by statute. However, the NPR is always the only factor for determining a project's priority. For this reason, the ACIP process considers other qualitative factors to supplement the NPR score in determining priorities. Qualitative factors are assessed through project justifications and priority project identification. FAA goals considered in project justifications include Safety or Security, System Capacity, Environment, and Access. Qualitative factors do not impact the NPR for a given project but are taken into account in funding decisions.

This program also supports the President's goals to mobilize American ingenuity to build modern infrastructure and an equitable, clean energy future while supporting the creation of good jobs. The FAA will consider discretionary grants that advance the goals of the President's Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government''; the President's Executive Order 13988, ''Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation''; the President's Executive Order 14008, ''Tackling the Climate Crisis at Home and Abroad''; and the President's Executive Order 14025, ''Worker Organizing and Empowerment.'' The FAA will consider the extent to which the project incorporates considerations of climate change and sustainability, to the extent possible within the program. FAA will consider the extent to which the project proactively addresses racial equity and barriers to opportunity, to the extent possible within the program.

In addition to the Administration's priority of promoting building infrastructure with American workers detailed in the President's Executive Order 14005, ''Ensuring the Future is Made in all of America by All of America's Workers,'' every AIP grant recipient must comply with the requirements under the Build America, Buy America Act (Pub. L. 117–58).

Also, in addition to this program supporting the President's Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency,'' all recipients of federal funding are subject to Title VI of the Civil Rights Act of 1964, which includes the requirement that, in certain circumstances, grant recipients ensure that persons with LEP can effectively participate in or benefit from federally assisted programs and activities, such as those arising from an AIP grant pursuant to this NOFO, and the terms of any AIP grant agreement.

3. Integrity and Performance Check

Prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, the FAA is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313). An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM. The FAA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, 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 2 CFR 200.206.

F. Federal Award Administration Information

1. Federal Award Notices

AIP awards are announced through Congressional notification, and the FAA RO/ADO representative will contact the sponsor with further information and

instructions. Once all pre-grant actions are complete, the FAA RO/ADO will offer the sponsor a grant for the announced project. This offer may be provided through postal mail or by electronic means, and it includes an offer letter and a grant agreement. Once the sponsor accepts the offer and has fully executed the grant agreement, that agreement becomes the legally binding grant award document. Awards made under this program are subject to conditions and assurances in the grant agreement. In FY 2022, the FAA will announce awards several times throughout the fiscal year, but no later than September 30, 2022. These announcements can include entitlement and discretionary awards.

2. Administrative Requirements

i. Pre-Award Authority

Under 49 U.S.C. 47110(b)(2), all project costs must be incurred after the grant execution date unless specifically permitted under the AIP statutes. Table 3–60 of the AIP Handbook lists the rules regarding when project costs can be incurred in relation to the grant execution date, the type of funding, and the type of project. Certain airport development costs incurred before execution of the grant agreement are allowable, but only if certain conditions under 49 U.S.C. 47110(b)(2)(D) and Table 3–60 of the AIP Handbook are met. Specifically, all allowable costs using passenger, cargo, and nonprimary entitlement (formula) funding after 9/30/1996 may be reimbursed regardless of whether they were incurred before the grant was executed as long as all other applicable AIP requirements have been met. In addition, allowable costs using any or all the following discretionary, state apportionment (including insular) and Alaska supplemental funding project costs must have been incurred after the grant execution date. The only exceptions are based on statute and are relating to the Part 150 Noise Mitigation program, project formulation for development and planning projects, land acquisition, letters of intent, and design-build projects, Military Airport Program and climate-related conditions.

ii. Planning

The FAA encourages applicants to review and understand the long-term planning process in the lifecycle of an AIP grant. The planning process for a particular project begins several years before a fiscal year in which a grant is awarded. FAA Order 5090.5 establishes guidelines for the two Federal plans essential to airport development: The National Plan of Integrated Airport Systems (NPIAS) and the Airports Capital Improvement Plan (ACIP) is available at *https://www.faa.gov/airports/planning_capacity/npias_acip_order/.*

iii. Grant Requirements

All grant recipients are subject to the grant requirements of the AIP, which includes requirements of 49 U.S.C. Chapter 471. Grant recipients are subject to requirements in the FAA's Agreement for AIP for financial assistance awards, the annual Certifications and Assurances required of applicants, and any additional applicable statutory or regulatory requirements, including nondiscrimination requirements, 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Grant requirements include, but are not limited to, approved project on an airport layout plan, compliance with federal civil rights laws, Buy American requirements under 49 U.S.C. 50101, Build America, Buy America Act requirements under Public Law 117–58, Transportation Disadvantaged Business Enterprise (DBE) program regulations for Airports (49 CFR part 23 and 49 CFR part 26), and Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5).

iv. Standard Assurances

Applicants must assure that it will comply with all applicable Federal statutes, regulations, executive orders, directives, FAA circulars, and other Federal administrative requirements in carrying out any project supported by the AIP grant. Applicants must acknowledge that they are under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with the FAA. Applicants understand that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. Applicants must agree that the most recent Federal requirements will apply to the project unless the FAA issues a written determination otherwise.

Applicants must submit the Certifications and Assurances before receiving a grant, including sponsor grant assurances and 2 CFR part 200. The Airport Sponsor Assurances are available on the FAA website at: *https://www.faa.gov/airports/aip/grant_assurances/.*

3. Reporting

The grant recipient is subject to financial reporting per 2 CFR 200.328 and performance reporting per 2 CFR 200.329. Under the AIP, the grant recipient is required to comply with all Federal financial reporting requirements and payment requirements, including the submittal of timely and accurate reports. Financial and performance reporting requirements are available in the FAA October 2020 Financial Reporting Policy, which is available at *https://www.faa.gov/airports/aip/grant_payments/media/aip-grant-payment-policy.pdf.*

The grant recipient must comply with annual audit reporting requirements. The grant recipient and sub-recipients, if applicable, must comply with 2 CFR part 200 subpart F Audit reporting requirements. The grant recipient must comply with any reporting requirements outlined in 2 CFR part 180, OMB Guidelines to Agencies on Government-wide Debarment and Suspension.

G. Federal Awarding Agency Contact(s)

Please contact your local Regional Office or District Office. Contact information is available at *https://www.faa.gov/airports/regions/.*

Issued in Washington, DC, on April 14, 2022.

Robert John Craven,

Director, Office of Airport Planning and Programming.

[FR Doc. 2022–08412 Filed 4–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2022–0070; Summary Notice No.—2022–22]

Petition for Exemption; Summary of Petition Received; Breeze Aviation Group, Inc.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 10, 2022.

ADDRESSES: Send comments identified by docket number FAA–2022–0070 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://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 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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 *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *https://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 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Timothy R. Adams,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2022–0070.

Petitioner: Breeze Aviation Group, Inc.

Sections of 14 CFR Affected: §§ 121.407(a)(1)(ii), and 121.439(a) and (b).

Description of Relief Sought: Breeze Aviation Group, Inc. (Breeze) seeks an exemption from Title 14 Code of Federal Regulations §§ 121.407(a)(1)(ii), and 121.439(a) and (b) that would allow Breeze to operate its fleet of Embraer ERJ 190 (ERJ–190) aircraft while using an Embraer ERJ 170 (ERJ–170) Full Flight Simulator (FFS) for training, checking, and currency. This relief will allow Breeze's use of an ERJ–170 type certificated FFS to train and check pilots currently operating the ERJ–190 aircraft.

[FR Doc. 2022–08408 Filed 4–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2022–0031; Summary Notice No.—2022–23]

Petition for Exemption; Summary of Petition Received; Robert Smith

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 10, 2022.

ADDRESSES: Send comments identified by docket number FAA–2022–0031 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://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 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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 *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *https://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 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Timothy R. Adams,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2022–0031.

Petitioner: Robert Smith.

Sections of 14 CFR Affected: §§ 121.423(a)(3) and 121.436(c).

Description of Relief Sought: Mr. Robert Smith petitions for an exemption from Title 14 Code of Federal Regulations §§ 121.423(a)(3) and 121.436(c) that would allow Mr. Smith to use military second-in-command experience in lieu of military pilot-in-command experience for air carrier time credit permitted by § 121.436(c).

[FR Doc. 2022–08409 Filed 4–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8613

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 continuing information collections, as required by the Paperwork Reduction Act of 1995.

The IRS is soliciting comments concerning return of excise tax on undistributed income of regulated investment companies.

DATES: Written comments should be received on or before June 21, 2022 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 *omb.unit@irs.gov.* Include OMB control number 1545–2009 or Reducing Tax Burden on America's Taxpayers, in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return of Excise Tax on Undistributed Income of Regulated Investment Companies.

OMB Number: 1545–1016.

Form Number: 8613.

Abstract: Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under Internal Revenue Code section 4982. IRS uses the information to verify that the correct amount of tax has been reported.

Current Actions: There is no change to the form or burden at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 1,500.

Estimated Time per Respondent: 11 hours, 53 minutes.

Estimated Total Annual Burden Hours: 17,820 hours.

The following paragraph applies to all 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 if 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: April 15, 2022.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2022–08438 Filed 4–19–22; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INSTITUTE OF PEACE

Notice of Board of Directors Meeting

AGENCY: United States Institute of Peace (USIP) and Endowment of the United States Institute of Peace.

ACTION: Announcement of meeting.

SUMMARY: Meeting of the Board of Directors: Chair's Report; Vice Chair's Report; President's Report; Approval of Minutes; USIP Key Current Initiatives: *Russia and Ukraine; China and Taiwan*; and *Security Sector Reform*; Reports from USIP Board Committees: Governance and Compliance; Strategy and Program; Audit and Finance; Security and Facilities; and Talent and Culture.

DATES: Friday, April 22, 2022 (10:00 a.m.–12:00 p.m.).

ADDRESSES: Virtual Board Meeting Information: Join by video: *https://usip-org.zoomgov.com/j/1611994200?pwd=NlkyZTVWdDNzNC8rS0lFQlN3QU12dz09*; Meeting ID:161 199 4200; Passcode: 392468.

FOR FURTHER INFORMATION CONTACT: Megan O'Hare, 202–429–4144, *mohare@usip.org.*

SUPPLEMENTARY INFORMATION: Open Session—Portions may be closed pursuant to subsection (c) of section 552b of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Authority: 22 U.S.C. 4605(h)(3).

Dated: April 15, 2022.

Rebecca Fernandes,

Director of Accounting.

[FR Doc. 2022–08468 Filed 4–19–22; 8:45 am]

BILLING CODE 6820–AR–P

FEDERAL REGISTER

Vol. 87 Wednesday,
No. 76 April 20, 2022

Part II

Department of Labor

Employment and Training Administration

20 CFR Parts 651, 652, 653, et al.
Wagner-Peyser Act Staffing; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 651, 652, 653, and 658

[Docket No. ETA–2022–0003]

RIN 1205–AC02

Wagner-Peyser Act Staffing

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; request for comment.

SUMMARY: The U.S. Department of Labor (Department or DOL) is issuing a notice of proposed rulemaking (NPRM) that, if finalized, would require States to use State merit staff to provide Wagner-Peyser Act Employment Service (ES) services. If finalized, this proposal would extend the merit-staffing requirement to those States that previously had been operating different staffing models. The proposed changes would create a uniform standard of ES services provision for all States and align the use of State merit staff for ES services with the requirement that States administer the Unemployment Insurance (UI) programs with State merit staff. The Department is additionally proposing revisions to the ES regulations to strengthen the provision of services to migrant and seasonal farmworkers (MSFWs) and to enhance the protections afforded by the Monitor Advocate System and the Employment Service and Employment-Related Law Complaint System (Complaint System).

DATES: To be ensured consideration, comments must be received on or before June 21, 2022.

ADDRESSES: You may submit written comments electronically via the Federal eRulemaking portal (*https://www.regulations.gov).* Follow the instructions on the website for submitting comments (under ''FAQ'' > ''Commenting''). Label all submissions with docket number ETA–2022–0003 and RIN 1205–AC02.

Please be advised that the Department will post all comments received that relate to this proposed rule on *https://www.regulations.gov* without making any change to the comments or redacting any information. The website is the Federal eRulemaking portal, and all comments posted there are available and accessible to the public. Therefore, the Department recommends that commenters remove personal information, such as Social Security numbers, personal addresses, telephone numbers, and email addresses, included in their comments. It is the responsibility of the commenter to safeguard personal information.

Comments under the Paperwork Reduction Act of 1995 (PRA): In addition to filing comments on any aspect of this proposed rule with the Department, interested parties may submit comments that concern the information collection (IC) aspects of this proposed rule to the Office of Information and Regulatory Affairs at *https://www.reginfo.gov/public/do/PRAMain.* Find relevant information collections by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Heidi Casta, Acting Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5641, Washington, DC 20210, Telephone: (202) 693–3700 (voice) (this is not a toll-free number) or 1–800–326–2577 (TDD).

SUPPLEMENTARY INFORMATION:

Preamble Table of Contents

I. Acronyms and Abbreviations

2020 Final Rule Wagner-Peyser Act Staffing Flexibility; Final Rule, 85 FR 592 (Jan. 6, 2020)
AOP Agricultural Outreach Plan
ARS Agricultural Recruitment System
BFOQ bona fide occupational qualification
BLS U.S. Bureau of Labor Statistics
CFR Code of Federal Regulations
CNPC Chicago National Processing Center
COVID–19 coronavirus disease 2019
Complaint System Employment Service and Employment-Related Law Complaint System
CRC DOL Civil Rights Center
Department *or* DOL U.S. Department of Labor
EEOC Equal Employment Opportunity Commission
E.O. Executive Order
EO Equal Opportunity
ES Wagner-Peyser Act Employment Service
ETA Employment and Training Administration
FR Federal Register
FTE(s) full-time equivalent(s)
FUTA Federal Unemployment Tax Act
IC(s) information collection
ICR(s) information collection request
IPA Intergovernmental Personnel Act of 1970
LEP limited English proficient
MOU(s) memorandum/a of understanding
MSFW(s) migrant and seasonal farmworker(s)
NAICS North American Industry Classification System
NFJP National Farmworker Jobs Program
NMA National Monitor Advocate
NPRM *or* proposed rule notifice of proposed rulemaking
O*NET Occupational Information Network
OEWS Occupational Employment and Wage Statistics
OFLC Office of Foreign Labor Certification
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
OPM Office of Personnel Management
OSHA Occupational Safety and Health Administration
PIRL Participant Individual Record Layout
PRA Paperwork Reduction Act of 1995
Pub. L. Public Law
PY Program Year
RA(s) Regional Administrator(s)
RFA Regulatory Flexibility Act
RIN Regulation Identifier Number
RMA(s) Regional Monitor Advocate
Secretary Secretary of Labor
SMA(s) State Monitor Advocate(s)
SOC Standard Occupational Classification
SSA Social Security Act
Stat. United States Statutes at Large
SWA(s) State Workforce Agency/ies
TEGL Training and Employment Guidance Letter
UI Unemployment Insurance
UMRA Unfunded Mandates Reform Act of 1995
U.S.C. United States Code
WHD Wage and Hour Division
WIA Workforce Investment Act
WIOA Workforce Innovation and Opportunity Act

II. Statutory and Legal Background

A. Required Use of State Merit Staff for Delivery of ES Services

The Wagner-Peyser Act of 1933 established the ES program, which is a nationwide system of public employment offices that provide public labor-exchange services. The ES program seeks to improve the functioning of the nation's labor markets by bringing together individuals seeking employment with employers seeking workers. Section 3(a) of the Wagner-Peyser Act directs the Secretary of Labor (Secretary) to assist States by developing and prescribing minimum standards of efficiency and promoting uniformity in the operation of the system of public employment-services offices. This NPRM would amend regulations in 20 CFR parts 651, 652, 653, and 658, and provide States with a uniform standard of ES services provision. States would be required to use State merit staff to provide ES services. The Department also is proposing targeted revisions to the regulations at parts 651, 653, and 658. These proposed revisions are intended to ensure that State Workforce Agencies (SWAs) provide MSFWs with adequate access to ES services and that the role of the State Monitor Advocate (SMA) is effective. In addition, this NPRM would amend parts 651, 652, 653, and 658 to further integrate gender-inclusive language. Finally, the Department is proposing technical corrections to these CFR parts to improve consistency across the parts and to make them easier to understand.

Historically, the Department relied on its authority in secs. 3(a) and 5(b) of the Wagner-Peyser Act to require that ES services, including Monitor Advocate System activities for MSFWs and Complaint System intake, be provided by State merit-staff employees.[1] The Department consistently applied this requirement, with minor exceptions, until 2020. Specifically, beginning in the early 1990s, the Department authorized demonstration projects in which it allowed Colorado and Massachusetts limited flexibility to set their own staffing requirements. Thereafter, in 1998, the Department permitted Michigan to use State and local merit-staff employees to deliver ES services, pursuant to a settlement agreement arising out of *Michigan* v. *Herman,* 81 F. Supp. 2d 840 (W.D. Mich. 1998). All three States continued to operate as demonstration States with approved staffing flexibility through an exemption in their approved State plans.[2] Through rulemaking effective February 5, 2020, the Department removed the requirement that ES services be provided only through the use of State merit staff. *See* Wagner-Peyser Act Staffing Flexibility; Final Rule, 85 FR 592 (Jan. 6, 2020) (2020 Final Rule). In the preamble to this rule, the Department explained that it sought to allow States maximum flexibility in staffing arrangements. *Id.* Accordingly, under current regulations, States may use a variety of staffing models to provide ES services.

The Department has reassessed the approach adopted in the 2020 Final Rule and has determined that alignment of ES and UI staffing, which would allow ES staff to respond to surges of demand in UI, is more important than the efficiencies that flexibility may promote. Accordingly, as discussed below, the Department is proposing to require, with no exceptions, that States use State merit-staff employees to provide ES services. This NPRM proposes to require that all States, including the prior ''demonstration States,'' use State merit-staff employees to deliver ES services. This proposed staffing requirement would apply to all ES services, including services provided to MSFWs.

This proposal would once again align the provision of ES services with the requirement that States administer the UI programs with State merit staff. The ES system is designed to ''promote the establishment and maintenance of a national system of public employment service offices,'' [3] and the UI and ES systems together provide a basic level of employment support for more than 4 million job seekers per year to enter and reenter the workforce. The Department thinks that it is vital that the ES be administered so that services are delivered effectively and equitably to UI beneficiaries and other ES customers.

ES supports the work-test for UI, whereby UI recipients must demonstrate as a condition of continued UI receipt that they are workforce attached.[4] This is includes various State-specific requirements including being able to work, available to work, and actively seeking work. Further, State merit ES staff are best positioned to and often do provide surge capacity for UI administration and adjudication.[5] The proposed rule ensures States are universally equipped to use cross-trained ES staff to assist in processing UI claims, assist UI claimants, and promote reemployment in times of high demand for such services. For example, the recent stress placed upon State UI systems in response to the coronavirus disease 2019 (COVID–19) pandemic served to highlight the necessity of States to be able to rely on eligible State merit staff who are already cross-trained or able to be quickly cross-trained to assist UI claimants during times of high demand placed on State UI systems. States have experienced the benefits of cross-training staff to assist during recessions, the onset of natural disasters, and mass regional layoffs, in which State merit staff are needed to assist with State-level decisions and functions. Emergencies such as natural disasters are occurring across States with increased frequency such that this need for surge capacity and cross-trained staff is becoming increasingly necessary. States can assist one another when one is impacted by a natural disaster, where non-impacted State merit staff, including cross-trained ES staff, provide claims adjudication assistance, such as fact finding/document analysis and claims processing of UI and Disaster Unemployment Assistance claims. Although the COVID–19 pandemic is an historically unprecedented event, in addition to disaster response, the UI system has been a key economic stabilizer in times of need such as the Great Recession, whereby State UI systems benefitted from cross-trained ES staff to provide extra capacity for UI administration and adjudication. Historical data from 1971 through 2021 indicates regular and periodic increases in the number of UI initial claims and first payments in which having ES staff who are already cross-trained or able to be quickly cross-trained to assist UI claimants would be beneficial. The adjudication of UI claims is work that must be performed by State merit staff.[6] Therefore, staff to assist with claims processing and adjudication must be merit staff directly employed by the State and available for States to redirect

[1] *Workforce Innovation and Opportunity Act; Department of Labor; Final Rule,* 81 FR 56072 (Aug. 19, 2016) (WIOA DOL-only Rule) (see 20 CFR 652.215, 653.108, 653.111, 658.602).

[2] *See* WIOA DOL-only Rule, 81 FR at 56267 and 56341 (2016).

[3] 29 U.S.C. 49.

[4] Federal Unemployment Tax Act (FUTA) sec. 3304(a)(1); Social Security Act (SSA) sec. 303(a)(2).

[5] SSA sec. 303(a)(1) provides that the Secretary shall make no certification for payment to any State unless they find that the law of such State, approved by the Secretary under FUTA, includes provision for ''[s]uch methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary . . . shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary . . . to be reasonably calculated to insure full payment of unemployment compensation when due.''

[6] *See* 42 U.S.C. 503(a)(1).

their work. Requiring that ES staff be State merit staff would allow the States to use ES staff to carry out both ES services and necessary UI functions.

In response to the COVID–19 pandemic, emergency legislation related to COVID–19 provided States the ability on a limited and temporary emergency basis to recruit staff on a non-merit basis to quickly process UI applications and claims.[7] However, relying on such time-limited legislative action is not a viable, long-term solution, particularly as providing adequate training for UI adjudicators takes several months to a year. Furthermore, emergency legislation related to COVID–19 does not provide flexibility in future emergencies. Requiring ES labor exchange services to be provided by State merit staff will help ensure that States have the ability to shift staff resources during future exigencies affecting State-level functions and UI claims where time-limited legislative solutions are not available and there is a pressing need to have cross-trained staff who are legally permitted to assist with UI services.

In addition, in the Intergovernmental Personnel Act (IPA), 42 U.S.C. 4701, *et seq.,* Congress found that the quality of public service could be improved if government personnel systems are administered consistent with certain merit-based principles. 42 U.S.C. 4701. Requiring States to employ the professionals who deliver ES services in accordance with these principals would help ensure that ES services are delivered by qualified, non-partisan personnel who are directly accountable to the State. Among other things, such professionals would be required to meet objective professional qualifications, be trained to assure high-quality performance, and maintain certain standards of performance. *Id.* They would also be prohibited from using their official authority for purposes of political interference, and States would be required to assure that they are treated fairly and protected against partisan political coercion. *Id.* By contrast, contract staff and subrecipient staff are employed by and accountable to non-State entities, and their individual adherence to State-issued policies and procedures is not directly observable. And, as noted previously, it is important that the States use State merit staff to deliver ES services because of the critical alignment between the ES and UI programs.

In proposing this State merit-staffing requirement, the Department relies on its authority under secs. 3(a) and 5(b)(2) of the Wagner-Peyser Act, as well as authority under sec. 208 of the IPA, 42 U.S.C. 4728, as amended. Each of these provisions, standing alone, provides the Department with the discretion to require States to use State merit staff to provide ES services.

Specifically, sec. 3(a) of the Wagner-Peyser Act requires the Secretary to assist in coordinating the ES offices by ''developing and prescribing minimum standards of efficiency.'' As the court in *Michigan* v. *Herman,* 81 F. Supp. 2d 840 (W.D. Mich. 1998), concluded, ''the language in [sec. 3(a)] authorizing the Secretary to develop and prescribe 'minimum standards of efficiency' is broad enough to permit the Secretary . . . to require merit staffing.'' *Id.* at 848.

In addition, sec. 5(b)(2) of the Wagner-Peyser Act provides that the Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State that, among other things, ''is found to have coordinated the public employment services with the provision of unemployment insurance claimant services.'' As explained previously, the proposed merit-staffing requirement would align the staffing of ES services with the staffing that States are required to use in the administration of UI programs. This would allow cross-trained ES staff to assist States in processing and adjudicating UI claims, and assisting claimants with work search and reemployment services, particularly in times of high need, such as during the pandemic. It would, therefore, be reasonable for the Department to base the finding required by sec. 5(b)(2) of the Wagner-Peyser Act, in part, on a State's agreement to use State merit staff to administer and provide ES services.

Additionally, sec. 208 of the IPA authorizes Federal agencies to require, as a condition of participation in Federal assistance programs, systems of personnel administration consistent with personnel standards prescribed by the Office of Personnel Management (OPM).[8] In accordance with 5 CFR 900.605, the Department has submitted this proposed rule to OPM for review and has received prior approval.

The Department acknowledges that this proposal constitutes a change in its existing position and would require certain States to adjust how they deliver ES services. The Department notes that Federal agencies are permitted to change their existing policies if they acknowledge the change and provide a reasoned explanation for the change. *See, e.g., Encino Motorcars, LLC* v. *Navarro,* 579 U.S. 211, 221–22 (2016). As explained previously, the Department is proposing this change to ensure that more workers will be available in the States if needed to back up the UI system. In the section-by-section discussion that follows, the Department further explains why it is proposing to require that States use State merit-staff employees to provide ES services, acknowledges the reliance interests of States that would need time to come into compliance with this requirement, and addresses those interests by proposing an 18-month transition period.

B. Strengthening the Provision of Services to Migrant and Seasonal Farmworkers

In addition to a merit-staffing requirement, the Department is proposing targeted revisions to the regulations at parts 651, 653, and 658. The proposed revisions are intended to ensure that SWAs provide adequate outreach services to MSFWs and that SMAs, Regional Monitor Advocates (RMAs) and the National Monitor Advocate (NMA) have the authority, tools, and resources that they need to monitor SWA compliance with the ES regulations. As described in detail in the section-by-section discussion that follows, the proposed revisions would strengthen the Monitor Advocate System established in the wake of *NAACP, Western Region et al.* v. *Brennan,* 360 F.Supp. 1006 (D.D.C. 1973), and ensure that SWAs offer and provide ES services to MSFWs in a manner that is qualitatively equivalent and quantitatively proportionate to the ES services that they offer and provide to other job seekers. Additional proposed revisions include technical edits to improve clarity, such as adding commas or cross-references.

[7] *See* sec. 4102(b) of the Families First Coronavirus Response Act (Pub. L. 116–127), including Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA); sec. 2106 of the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act) (Pub. L. 116–136); sec. 205 of the Continued Assistance Act (Pub. L. 116–260); and sec. 9015 of the American Rescue Plan Act of 2021 (Pub. L. 117–2). This flexibility only applied for responding to workload and increased demand resulting from the spread of COVID–19 and was limited to engaging temporary staff, rehiring retirees or former employees on a non-competitive basis, and other temporary actions to quickly process applications and claims.

[8] 42 U.S.C. 4728(b); *see also* 5 CFR 900.605 (authorizing Federal agencies to adopt regulations that require the establishment of a merit personnel system as a condition for receiving Federal assistance or otherwise participating in an intergovernmental program with the prior approval of OPM).

III. Section-by-Section Discussion of Proposed Rule

A. Technical Amendments and Global Edits

To conform with the proposed changes to the definition of *Wagner-Peyser Act Employment Service (ES) also known as Employment Service (ES)* in § 651.10, the Department proposes making technical changes to replace the phrases ''employment services,'' ''Wagner-Peyser Act services,'' and ''services provided under the Wagner-Peyser Act'' with ''ES services.'' Changes also have been made to replace the phrase ''employment office'' with ''ES office,'' and ''Wagner-Peyser Act participants'' with ''ES participants.'' These changes will simplify and standardize the use of terminology. The proposed language is also intended to improve usage of plain language within the regulations. Technical changes to articles, specifically changing ''a'' to ''an'' where necessary, have been made as well when preceding ''ES office.'' These changes have been made in § 651.10 within the definitions for *applicant holding office, Employment Service (ES) office, field visits, outreach staff, placement,* and *reportable individual,* in addition to the changes in the definition of *Wagner-Peyser Act Employment Service (ES) also known as Employment Service (ES).* Conforming changes have also been made to the subpart heading at part 652, subpart C, and within the regulatory text at §§ 652.205, 652.207, 652.215, 653.107, 653.108, 658.411, 658.502, 658.602, and 658.603.

The Department is proposing several technical edits to refine gender-inclusive language within the regulatory text while maintaining plain language principles. Throughout parts 651, 653, and 658, the term ''he/she'' was used to denote an individual of unknown gender. Using terms with a slash may not be in keeping with plain language principles and may also exclude people who are nonbinary. The Department is proposing three technical edits to replace ''he/she'' with more inclusive language employing plain language principles.

First, where ''he/she'' refers to an individual in their professional capacity, the Department proposes using their job title instead of a pronoun. These edits largely affect regulations impacting the NMA or the RMA. In these cases, ''he/she'' has been replaced with ''the NMA'' or ''the RMA'' as appropriate and ''his/her'' with the possessive pronoun ''their.'' These edits are made at §§ 658.602 and 658.603.

Second, where ''he/she'' refers to an employer that is not an individual person, the Department proposes using the pronoun ''it.'' Where the possessive pronouns ''his/her'' were used, the Department proposes using ''its.'' This is appropriate because employers are entities, not individuals, and the proper pronoun is ''it.'' This edit is made at §§ 658.502 and 658.504.

In all other cases where ''he/she'' was used, the Department proposes using the pronoun ''they'' in its capacity as a gender-inclusive third-person singular pronoun but conjugated with third-person plural verbs. Where the possessive pronouns ''his/her'' were used, the Department proposes using ''their.'' These changes are designed to remove binary gender language so that the full regulatory text is gender inclusive. The Department makes these changes in § 651.10 in the definition of *seasonal farmworker.* Edits are also made to §§ 653.107, 653.108, 653.111, 653.501, 653.502, 658.400, 658.410, 658.411, 658.421, 658.422, 658.602, 658.603, 658.702, 658.705, 658.706, and 658.707.

In addition, the Department proposes to replace the words ''handle'' and ''handled'' with ''process'' and ''processed,'' as appropriate, to clarify that actions by ES staff and Federal staff must follow the processing requirements listed throughout part 658, subparts E and H, which use the word ''process.'' The word ''handle'' does not have a specific meaning in the regulatory text and may be unclear to SWAs.

In some instances, the Department also proposes conforming technical amendments to correct grammar in the regulations, as needed, because of these changes. In addition to such conforming technical amendments, the Department proposes adding and removing commas throughout the regulatory text to improve clarity and readability. These global changes and technical amendments described in this section are not explicitly identified later in the section-by-section discussion.

B. Part 651—General Provisions Governing the Wagner-Peyser Act Employment Service

Part 651 (§ 651.10) sets forth definitions for parts 652, 653, 654, and 658. The Department proposes to revise the following definitions to better align them across the regulatory text, as well as practice in the field, and to make them conform with other revisions the Department proposes to make in this NPRM, including changes to staffing requirements.

The Department proposes to revise the first sentence of § 651.10 by providing the full title of the statute for the existing WIOA reference and identifying where WIOA is codified. These additions will help ensure the definitions in this section apply to WIOA, as published at 29 U.S.C. 3101 *et seq.*

The Department proposes to add a definition for *apparent violation* to clarify that the term means a suspected violation of employment-related laws or ES regulations, as set forth in § 658.419. The Department has observed that SWAs have used inconsistent descriptions of the term in their policies and procedures, which are not always consistent with § 658.419. The proposed definition is derived from existing regulatory language at § 658.419, which describes that an apparent violation is a suspected violation of employment-related laws or ES regulations.

The Department proposes to amend the definition of *applicant holding office* to replace ''a Wagner-Peyser Employment Service Office'' with ''an ES office.'' The definition of *Wagner-Peyser Act Employment Service (ES) also known as Employment Service (ES)* explains that ES offices refers to ES offices described under the Wagner-Peyser Act. Additionally, the definition of *ES office* explains that ES offices provide ES services as a one-stop partner program. Therefore, the reference to ''a Wagner-Peyser Employment Service office'' is redundant and unnecessary.

The Department proposes to amend the definition of *career services* to refer to WIOA by its acronym rather than its full title because the full title is previously spelled out at the beginning of this section.

The Department proposes to amend the definition of *clearance order* to add a citation to the Agricultural Recruitment System (ARS) regulations at part 653, subpart F. The purpose of this addition is to clearly identify the ARS regulations to which the term refers.

The Department proposes to amend the definition of *Complaint System Representative* to specify that the Complaint System Representative must be trained. The addition of the word ''trained'' makes the definition consistent with the requirement in § 658.410(g) and (h) that complaints are processed by a trained Complaint System Representative. The Department also proposes to remove the words ''individual at the local or State level'' due to proposed changes to the definition of *ES staff.*

The Department proposes to amend the definition of *Employment and Training Administration (ETA)* to remove the words ''of Labor'' after ''Department'' because *Department* is previously defined in this section as ''the United States Department of Labor.''

The Department proposes to amend the definition of *Employment Service (ES) office* to replace ''Wagner-Peyser Act'' with ''ES.'' This change would align the definition with proposed changes to the definition of *Wagner-Peyser Employment Service (ES) also known as the Employment Service (ES)* and make the reference to ES consistent across all parts of the ES regulations.

The Department proposes to amend the definition of *Employment Service (ES) Office Manager* to replace the phrase ''all ES activities in a one-stop center'' with the phrase ''ES services provided in a one-stop center.'' This change would align the definition with other proposed changes to the regulatory text and definitions, which refer to ''ES services,'' instead of ''ES activities.'' The Department also proposes to replace ''individual'' with ''ES staff person'' to clarify that the *ES Office Manager* must be *ES staff,* as defined in this section.

The Department proposes to amend the definition of *Employment Service (ES) staff* in two ways. First, the Department proposes to replace the phrase ''individuals, including but not limited to State employees and staff of a subrecipient,'' with ''State government personnel who are employed according to the merit system principles described in 5 CFR part 900, subpart F—Standards for a Merit System of Personnel Administration, and'' to conform with the imposition of the merit-staffing requirement proposed in § 652.215. Second, the Department proposes to delete the phrase ''to carry out activities authorized under the Wagner-Peyser Act,'' because this language is unnecessary. The ES regulations in parts 652, 653, and 658 describe the activities and services that ES staff are authorized or required to carry out. The proposed changes are intended to define a term that, when referenced, will clearly identify services or tasks that must be performed by State merit staff, and to simplify terminology throughout all parts. The revised definition also makes clear that ES staff includes a SWA official.

The Department proposes to amend the definition of *field checks* in several ways. First, the Department proposes to replace the term ''job order'' with ''clearance order,'' which is more accurate because field checks must be conducted on clearance orders as defined in § 651.10. Second, the Department proposes to clarify in the definition that field checks may also be conducted by non-ES State staff, in addition to ES or Federal staff, if the SWA has entered into an arrangement with a State enforcement agency (or agencies) to conduct field checks. This proposed revision aligns the definition with existing practice permitted by the regulation at § 653.503, which allows SWA officials to enter into formal or informal arrangements with appropriate State and Federal enforcement agencies where the enforcement agency staff may conduct field checks instead of and on behalf of ES personnel.

Additionally, the Department proposes to remove from the definition that field checks are ''random'' appearances. The proposed revision would clarify that the selection of the clearance orders on which the SWA will conduct field checks does not need to be random, though random field checks may still occur. The revision clarifies that field checks may be targeted, where necessary, to respond to known or suspected compliance issues, thereby improving MSFW worker protection. In addition, if a SWA makes placements on 9 or fewer clearance orders, the SWA must conduct field checks on 100 percent of those clearance orders. See § 653.503(b). Therefore, in those cases, field checks could not be conducted on a random basis. These proposed revisions would clarify the definition and make it consistent with § 653.503(b).

The Department proposes to amend the definition of *field visits* in several respects. First, the Department proposes to clarify that field visits are announced appearances by SMAs, RMAs, the NMA, or NMA team members. This term is currently defined to include appearances by Monitor Advocates or outreach staff, and the proposed revision would clarify which Monitor Advocates may conduct field visits and that the appearances are announced, and not unannounced, as with field checks. Second, the Department proposes to replace the reference to ''employment services'' with ''ES services'' to conform with the use of the ''ES'' abbreviation throughout the regulatory text. Third, the Department proposes to amend the definition to specify that field visits include discussions on farmworker rights and protections. The Department has observed through monitoring that outreach staff and SMAs do not always discuss farmworker rights and protections during field visits as part of broader discussions about ''other employment-related programs,'' and instead only cover information on ES services. An explicit reference to discussions on farmworker rights and protections in the definition will help ensure that these issues are consistently addressed.

The Department proposes to amend the definition of *Hearing Officer* to remove the words ''of Labor'' because § 651.10 previously defines ''Department'' as ''the United States Department of Labor.''

The Department proposes to amend the definitions of *interstate clearance order* to indicate that it is an agricultural ''clearance'' order for temporary employment instead of a ''job'' order. This change aligns the definitions of job order and clearance order in this part.

The Department also proposes to amend the definition of *intrastate clearance order* in two ways. First, the Department proposes to amend the definition to indicate that it is an agricultural ''clearance'' order for temporary employment instead of a ''job'' order. This change aligns the definition with the definitions of job order and clearance order in this part. Second, the proposed revision clarifies that the term means an agricultural clearance order for temporary employment describing one or more hard-to-fill job openings, which an ES office uses to request recruitment assistance from *all* other ES offices within the State. The current definition does not include the word ''all.'' Therefore, it was not clear that such a request must go to all other offices in the State, and some ES offices were not distributing the clearance order to all offices. This clarification will help SWAs understand that an intrastate clearance order must be circulated to all ES offices within the State.

The Department proposes to amend the definition of *migrant farmworker* by removing the exclusion of full-time students who are traveling in organized groups. The Department proposes considering anyone who meets the definition of migrant farmworker to be considered as such, including full-time students performing farmwork. This change will make the benefits and protections of the Monitor Advocate System, including safeguards built into the Complaint System, ES service requirements, and equity and minimum service levels, available to full-time students traveling in organized groups. The exclusion of full-time students from existing regulatory text was premised on the fact that full-time students did not need to meet minimum farmwork or income requirements, which no longer exist in the ES regulations. Therefore,

the reference is no longer relevant to the *migrant farmworker* definition.

The Department proposes to remove the definition of *migrant food processing worker* because migrant food processing worker status has not been a separately tracked part of the MSFW definition since the ES regulations were updated in 2016. See 81 FR 56071 (Oct. 18, 2016). Current ETA reporting does not require States to document migrant food processing workers as a particular type of MSFW and this definition is unnecessary because the existing MSFW definitions are inclusive of individuals who perform work as migrant food processors.

The Department proposes to amend the definition of *Occupational Information Network (O*NET)* to remove the word ''system'' from the definition, as it is not needed to describe O*NET.

The Department proposes to amend the definition of *O*NET–SOC* to remove the words ''of Labor'' after ''Department'' because Department is previously defined in this section as ''the United States Department of Labor.''

The Department proposes to amend the definition of *outreach staff* to clarify that SMAs are not considered outreach staff. The SMA's role includes monitoring and providing guidance related to outreach staff but does not include acting as outreach staff. Outreach staff are a separate set of staff described in § 653.107(b). As noted in § 653.108, no State may dedicate less than full-time staffing for the SMA position, unless the Regional Administrator (RA), with input from the RMA, provides written approval. The SMA must also be able to review outreach efforts as required in § 653.108(o) and have adequate time to complete the extensive duties described in § 653.108. While an SMA may join ongoing outreach efforts, § 653.107 requires SWAs to employ an adequate number of outreach staff.

The Department proposes to revise the definition of *respondent* by removing the parenthetical language ''including a State agency official'' because the term ''State agency'' is assumed to include ''State agency officials'' and it is therefore unnecessary to distinguish ''State agency officials'' in addition to the State agency.

The Department is proposing to remove the exclusion of non-migrant full-time students from the definition of *seasonal farmworker.* This change would allow full-time students who work in seasonal farmwork to be considered seasonal farmworkers and would make the definition of *seasonal farmworker* consistent with the definition of *migrant farmworker.*

The Department proposes to revise the definition for *significant MSFW one-stop centers* in several ways. First, by removing the requirement that the designation be made annually, the Department can better rely on multiple data sources that are published in intervals up to every 5 years, including the Census of Agriculture and the Quarterly Census of Employment and Wages. This will help ensure the designation more accurately aligns with supporting data on the number of MSFWs in the service area. Based on the Department's analysis of census and other SWA data, the data do not change significantly on an annual basis and, therefore, it is often unnecessary to change the designations. If annual adjustments are warranted by the data, the Department will make adjustments in annual designations. This change would allow the list of significant MSFW one-stop centers to remain the same if there is no compelling reason to make a change. The Department also proposes to add that significant MSFW one-stop centers will also include ES offices where MSFWs account for 10 percent or more of reportable individuals in the ES annually, not just 10 percent or more of participants. This corresponds to the proposed change in §§ 653.103(a) and 653.109(b)(10), which would require ES offices to determine and collect data on the number of reportable individuals who are MSFWs. This proposal is intended to more closely correlate the designation of significant MSFW one-stop centers to the total number of MSFWs—and, therefore, potential participants—in the area, as opposed to just the number of existing participants in the area. Relying solely on the number of existing MSFW participants in the area fails to account for all other MSFWs in the area who could potentially become participants and does not account for situations where the number of participants in the area is low due to failure to perform adequate outreach or to make services available to MSFWs so that MSFWs who are reportable individuals may receive participant level services. In those cases, the number of participants is not an accurate indicator of the need for MSFW-specific ES services in the area. These proposed changes provide a more accurate representation of the number of MSFWs in the area who could benefit from access to ES services. The Department also is proposing to retain language permitting the Department to consider special circumstances beyond the estimated number of MSFWs in the area in designating significant MSFW one-stop centers.

The Department proposes to amend the definition of *significant MSFW States.* Similar to the proposed changes to the definition of *significant MSFW one-stop centers,* the Department proposes to remove the annual designation requirement from the definition of *significant MSFW States.* The Department proposes to rely on information from the Census of Agriculture, which is published every 5 years, and the Quarterly Census of Employment and Wages, which publishes a quarterly count of employment and wages. These data sources provide the most reliable farmworker estimates available. Additionally, the Department proposes to add ''estimated'' before ''number of MSFW'' and remove the word ''participants'' because the Department intends to use the estimated number of MSFWs in each State, instead of exclusively the number of MSFW participants in the State to more accurately determine which States have the most MSFW activity and should therefore be designated as *significant MSFW States.* Relying on the estimated number of MSFWs in a State means the Department will account for those MSFWs who may eventually become participants instead of only focusing on States with the highest existing number of participants.

The Department proposes to delete the definition of *significant multilingual MSFW one-stop centers* in its entirety because the Department is proposing changes to § 653.102 to remove specific requirements for offices that would meet the definition. The Department proposes to remove these specific requirements for *significant multilingual MSFW one-stop centers* because all one-stop centers must comply with the language access requirements in 29 CFR 38.9, which prohibit discrimination on the basis of national origin, including limited English proficiency (LEP). The Department created the *significant multilingual MSFW one-stop center* definition and language access requirements at § 653.102 before comprehensive language access requirements implementing section 188 of WIOA were codified in 29 CFR part 38. The regulations at 29 CFR 38.9 establish that language access requirements apply to services provided to all LEP individuals at all one-stop centers and are broader than the existing requirements for *significant multilingual MSFW one-stop centers.* For these reasons, the designation of *significant multilingual MSFW one-stop centers* is no longer necessary. Additionally,

having separate requirements for *significant multilingual MSFW one-stop centers* may inaccurately create the appearance that there are two sets of language access standards, or that requirements for *significant multilingual MSFW one-stop centers* are narrower. Removing the *significant multilingual MSFW one-stop center* definition therefore clarifies that the comprehensive language access requirements at 29 CFR 38.9 apply to all one-stop centers.

The Department proposes to remove the definition of *State Workforce Agency (SWA) official,* because SWA officials would be considered ES staff based on the Department's proposed revisions to the definition of *ES staff* in this rulemaking.

The Department is proposing to amend the definition of *Wagner-Peyser Act Employment Service (ES) also known as Employment Service (ES)* to replace the phrase ''employment services'' with ''ES services.'' This change would simplify the use of terminology throughout all parts. The Department also proposes to remove the words ''and are'' from the definition for greater clarity.

C. Part 652—Establishment and Functioning of State Employment Service Subpart C—Employment Service Services in a One-Stop Delivery System Environment

1. Subpart A—Employment Service Operations

This subpart includes: An explanation of the scope and purpose of the ES; the rules governing allotments and grant agreements; authorized services; administrative provisions; and rules governing labor disputes. The Department's proposed amendments to subpart A focus solely on administrative provisions governing nondiscrimination requirements.

Section 652.8 Administrative Provisions

Section 652.8 covers administrative matters, including: Financial and program management information systems; recordkeeping and retention of records; required reports; monitoring and audits; costs; disclosure of information; sanctions; and nondiscrimination requirements.

The Department proposes to correct the statutory reference in § 652.8(j)(2) regarding the bona fide occupational qualification (BFOQ) exception currently listed in the regulation as 42 U.S.C. 2000(e)–2(e) to 42 U.S.C. 2000e–2(e).

The Department proposes to amend § 652.8(j)(3) to remove an outdated reference to affirmative action requests to make the Department's regulation consistent with U.S. Supreme Court jurisprudence on race-based affirmative action.[9] The proposed revision clarifies that the States' obligation is to comply with 41 CFR 60–300.84. The regulation at 41 CFR 60–300.84 requires ES offices to refer qualified protected veterans to fill employment openings required to be listed with ES offices by certain Federal contractors; give priority to qualified protected veterans in making such referrals; and, upon request, provide the Office of Federal Contract Compliance Programs with information as to whether certain Federal contractors are in compliance with the mandatory job listing requirements of the equal opportunity clause (41 CFR 60–300.5). Consistent with this proposed amendment, the Department also proposes to remove the phrase ''and affirmative action'' from the paragraph heading for § 652.8(j). The Department reminds SWAs that they have an affirmative outreach obligation under 29 CFR 38.40 that requires them to take appropriate steps to ensure they are providing equal access to services and activities authorized under the Wagner-Peyser Act, as well as any other WIOA title I-financially assisted programs and activities. As outlined in that regulation, these steps should involve reasonable efforts to include members of the various groups protected by the WIOA sec. 188 regulations, including but not limited to persons of different sexes, various racial and ethnic/national origin groups, members of various religions, individuals with limited English proficiency, individuals with disabilities, and individuals in different age groups.

2. Subpart C—Employment Service Services in a One-Stop Delivery System Environment

This subpart discusses State agency roles and responsibilities; rules governing ES offices; the relationship between the ES and the one-stop delivery system; required and allowable ES services; universal service access requirements; provision of services for UI claimants; and State planning. Among other changes, the NPRM's proposed changes to regulations under subpart C are tailored to require all States to use State merit staff to provide ES services, reinstating a longstanding requirement that existed prior to the 2020 Final Rule, and extending the requirement to those States using different staffing arrangements under the rule as it existed prior to the 2020 Final Rule. As was true when the regulations were changed in 2020, none of the changes proposed at this time will impact the personnel requirements of the Vocational Rehabilitation (VR) program, one of the six core programs in the workforce development system that is authorized under title I of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by title IV of WIOA. The Rehabilitation Act has specific requirements governing the use of State VR agency personnel for performing certain critical functions of the VR program.

Section 652.204 Must funds authorized under the Governor's Reserve flow through the one-stop delivery system?

This section explains that the Governor's Reserve funds may, but are not required to, flow through the one-stop delivery system and provides a list of allowable uses for those funds. The Department proposes to simplify the section heading to remove reference to the Wagner-Peyser Act because reference to the Governor's Reserve is adequate. The Department also proposes to amend this section to reference professional development and career advancement of ES staff instead of SWA officials. Under the proposed revisions to the definitions found in part 651, ES staff would exclusively refer to State merit staff. This NPRM proposes to remove the term SWA official as a defined term in § 651.10, as the term is made redundant under the proposed changes.

Section 652.215 Can Wagner-Peyser Act-funded activities be provided through a variety of staffing models?

This section currently provides States the option to provide ES services through a variety of staffing models. For the reasons set forth in this NPRM, the Department proposes to amend § 652.215 to require all States, including the historically exempted ''demonstration States,'' to provide labor exchange services described in § 652.3 of this part through State merit staff. The staffing requirement applies to ES services provided to MSFWs. Specifically, the proposed regulatory text states that labor exchange services must be provided by ES staff. Under proposed revisions to the definitions (§ 651.10), ES staff will exclusively refer to State merit staff.

Historically, the Department relied on authority under sec. 3(a) of the Wagner-Peyser Act, which requires the

[9] *See, e.g., Ricci* v. *DeStefano,* 557 U.S. 557, 585 (2009); *Adarand Constructors, Inc.* v. *Pena,* 515 U.S. 200, 238 (1995); *Richmond* v. *J.A. Croson Co.,* 488 U.S. 469, 507 (1989).

Department to assist in coordinating State ES offices and improve their usefulness by setting minimum standards of efficiency and promoting their uniform administration, as well as authority in sec. 5(b) of the Wagner-Peyser Act, to promulgate regulations prescribing the use of State merit staff. Prior to 2020, in support of its longstanding State merit staff requirement for ES services, the Department explained that the benefits of merit-staffing in promoting greater consistency, efficiency, accountability, and transparency are well established.[10] The Department's discretion to require the use of State merit staff to provide ES services was affirmed in *Michigan* v. *Herman,* 81 F. Supp. 2d 840 (W.D. Mich. 1998). As explained earlier in this preamble, in the 1990s, the Department approved limited exemptions from the merit-staffing requirement for three States (Colorado, Massachusetts, and Michigan) during the establishment of the one-stop delivery system to test alternative service-delivery models, but subsequently noted that no additional exemptions would be authorized.

In the 2020 Final Rule, the Department changed its longstanding policy and determined that granting States flexibility in staffing potentially would give States flexibility to meet the unique needs of ES customers, free up resources to serve employers and job seekers, and better integrate ES services with other WIOA programs. The Department also stated that similar programs operated successfully with flexible staffing arrangements and, therefore, staffing flexibility should be provided under the Wagner-Peyser Act. However, the recent stress placed upon State UI systems in response to the COVID–19 pandemic served to highlight the necessity of States to be able to rely on State merit staff who are already cross-trained or able to be quickly cross-trained and legally permitted to assist UI claimants during times of high demand placed on State UI systems. As discussed above, the Department has reassessed the factors it weighed in the 2020 Final Rule and has determined that the alignment of ES and UI staffing is more important than the efficiencies that flexibility may promote, and that it is vital that the ES be administered so that quality services are delivered effectively and equitably to UI beneficiaries and other ES customers. Accordingly, the Department is now proposing to require, with no exceptions, that States use State merit-staff employees to provide ES services. This proposed rule ensures States are universally equipped to use cross-trained ES staff to assist in processing and adjudicating UI claims, and assisting claimants with work search and reemployment services. As described previously, the Department relies on authority under secs. 3(a) and 5(b) of the Wagner-Peyser Act, as well as sec. 208 of the IPA, to exercise discretion to require the use of State merit staff to deliver ES services.

To improve clarity, the Department proposes revising the section heading from ''Can Wagner-Peyser Act funded activities be provided through a variety of staffing models?'' to ''What staffing model must be used to deliver services in the Employment Service?'' In addition, the Department proposes revising the regulatory text by adding a new paragraph (a), which specifies that the Secretary requires that the labor exchange services described in § 652.3 be provided by ES staff. This revision is proposed to reinstate the State merit-staffing requirement and align with the proposed definitions of ES and ES staff in § 651.10.

The Department further proposes to add a new paragraph (b), which provides that the staffing requirement in this section would have the same effective date as other proposed changes in this NPRM and would become effective 60 days after publication of the final rule in the **Federal Register**. The Department also proposes to add a new paragraph (c), which specifies a compliance date for proposed § 652.215 (*i.e.,* the date on which the requirements of this section would become enforceable) of 18 months after the effective date of the final rule. The Department acknowledges that for States currently using different staffing models for the provision of ES services, both those that have been using different models for many years and those that changed or have begun to change their staffing models due to the 2020 Final Rule, the use of State merit staff may take time to implement.

In the short period of time that staffing flexibility has been available to all States, the Department is aware that a few States expressed an interest in using that flexibility. Some States may have taken steps to use the staffing flexibility without modifying their approved State plans, under which they indicate that they are using State merit staff to deliver ES services. At least one State has submitted a State plan modification indicating that the State intends to use non-State merit staff to provide ES services. Reinstating the State merit-staffing requirement will impact these States, but the Department thinks that the impact will be minimal, as described in the regulatory impact analysis section of this proposal (sec. III.A of the preamble).

The Department recognizes that this proposed change will have the most impact on the three demonstration States, Colorado, Massachusetts, and Michigan. Since the 1990s, these three States have relied on an exemption in their approved State plans to use some limited form of non-State-merit staffing. Any burden imposed on these three States by the proposal to require their use of only State merit staff may be mitigated by the States' currently approved staffing models. Colorado and Michigan both use only merit-staffing to deliver ES services, but they employ merit staff at both the State and local level to deliver services. For these States, the proposed regulation would require that they discontinue their use of local merit staff and use only State merit staff. Massachusetts uses some non-merit staff, but that use of non-merit staff is only approved in 4 out of 16 local areas in the State. In the remaining local areas, Massachusetts uses State merit staff to deliver ES services. Accordingly, while disruption in service delivery may occur due to this change, the Department anticipates that disruption to these States' ES service delivery will be minimal. As noted in the regulatory impact analysis, prior to publication of this NPRM, the Department surveyed the demonstration States on any transition costs that may be incurred by the proposed State merit-staffing requirement. While the Department acknowledges that there may be some cost to these three States due to this change, the Department believes that the rationale for requiring the use of State merit staff applies equally to the demonstration States, and that the long-term benefits of having cross-trained ES staff outweigh the cost to these States of transitioning to the use of State merit staff. The Department seeks comment on the benefits and costs of transitioning to a State merit-staffing requirement in instances where States are using staff other than State merit staff to deliver services. In addition, the Department seeks comment on any positive or negative impact this change would have in terms of the quality of services provided within the American Job Centers—including those funded by WIOA.

However, acknowledging that these three States, and any State that had taken action under the 2020 Final Rule, will be unable to immediately comply

[10] *See* 64 FR 18662, 18691 (April 15, 1999) (Workforce Investment Act (WIA) Interim Final Rule); 65 FR 49294, 49385 (Aug. 11, 2000) (WIA Final Rule); 80 FR 20690, 20805 (April 16, 2015) (WIOA NPRM); 81 FR 56072, 56267 (Aug. 19, 2016) (WIOA Final Rule).

with this proposed requirement, the Department proposes to provide 18 months for States to implement the State merit-staffing requirement in order to provide States with adequate time to consider and implement any necessary changes to come into compliance, including time to resolve outstanding contractual obligations and align changes with the timed financial allotments. The Department is open to adjusting this time period and, accordingly, it seeks comments from States regarding whether 18 months is sufficient time to comply with this requirement. The Department also seeks comments from States describing other regulatory changes States believe are necessary to effectuate compliance with the proposed changes.

D. Part 653—Services of the Wagner-Peyser Act Employment Service System

Part 653 sets forth the principal regulations of the ES concerning the provision of services for MSFWs consistent with the requirement that all services of the workforce development system be available to all job seekers in an equitable fashion. The regulations in this part establish special services to ensure MSFWs receive the full range of career services, as defined in WIOA sec. 134(c)(2), 29 U.S.C. 3174(c)(2), and contain requirements that SWAs establish a system to monitor their own compliance with ES regulations governing services to MSFWs. As noted elsewhere in this preamble, the proposed State merit-staffing requirement discussed in part 652 would also apply to delivery of all ES services to MSFWs, including outreach services and the Monitor Advocate System discussed in the following section. References to staffing throughout this part of the proposed rule, even where the Department has not proposed changes, refer to State merit staff.

1. Subpart B—Services for Migrant and Seasonal Farmworkers (MSFWs)

Section 653.100 Purpose and Scope of Subpart

The Department proposes to amend § 653.100(a) to clarify that the provision of services for MSFWs must be available in an equitable and nondiscriminatory fashion. The addition of the phrase ''and nondiscriminatory'' is intended to clarify that SWAs must not discriminate against farmworkers either because they are farmworkers or because of any characteristics protected under the nondiscrimination and equal opportunity provisions of WIOA, which are contained in sec. 188 of WIOA, 29 U.S.C. 3248, and the implementing regulations at 29 CFR part 38. The requirements of section 188 of WIOA apply to ES services because the Wagner-Peyser Act Employment Service is a required one-stop partner, and the requirements of section 188 of WIOA apply to all one-stop partners. 29 CFR 38.4(zz).

Section 653.101 Provision of Services to Migrant and Seasonal Farmworkers

The Department proposes to amend § 653.101 by revising the first sentence to clarify that the SWA is the primary recipient of Wagner-Peyser Act funds and, therefore, is the entity responsible for ensuring that ES staff offer MSFWs the full range of career and supportive services. This clarification is proposed because it is ultimately incumbent upon the SWA to ensure ES staff at one-stop centers are carrying out the appropriate duties with their Wagner-Peyser Act funds. The Department also proposes to replace the requirement to consider and be sensitive to the preferences, needs, and skills of individual MSFWs and the availability of job and training opportunities with a requirement that SWAs ensure the one-stop centers tailor ES services in a way that accounts for individual MSFW preferences, needs, skills, and the availability of job and training opportunities, so that MSFWs are reasonably able to participate in the ES. This proposed change strengthens the requirement to tailor services to the individualized needs of MSFWs. The change also would make the requirement applicable to the SWA to ensure the one-stop centers comply, to align with the SWA's position as the direct recipient of ES funds.

Section 653.102 Job Information

The Department proposes to revise the second sentence of § 653.102 to clarify that the SWA is the entity responsible for assisting MSFWs to access job order information, for the same rationale as described in the same proposed change for § 653.101. The Department's proposed language also clarifies that the requirement applies to ES staff at one-stop centers because the scope of part 653 relates to the ES services program, not all one-stop partner programs. The Department also proposes to remove the word ''adequate'' as a modifier to the phrase ''assistance to MSFWs.'' The Department has observed that States' interpretation of what it means to provide adequate assistance varies. Removing the word ''adequate'' will remove subjectivity and clarify that a SWA meets its obligation to assist MSFWs by complying with the requirements in parts 653 and 658.

The Department also proposes to remove the final sentence of § 653.102, which stated that in designated significant MSFW multilingual offices, assistance with accessing job order information must be provided to MSFWs in their native language whenever requested or necessary. The Department proposes to remove this sentence to align language access requirements in the ES regulations with those required by WIOA sec. 188 and its implementing regulations at 29 CFR part 38. Language access requirements are not limited to designated multilingual MSFW one-stop centers, but rather, they apply to LEP individuals regardless of through which office they seek ES services. The existing requirement was written into the regulations in the early 1980s, well before the language access requirements were codified at 29 CFR part 38. Removing the existing requirement, which specifically applies to designated multilingual MSFW one-stop centers, and adding a reference to the broader language access requirements at § 653.103(b) (described in the following section) is intended to strengthen language access for all LEP individuals. This change also aligns with the proposal to remove the definition for *multilingual MSFW one-stop centers* from § 651.10. Accordingly, the Department proposes to add a broader language access requirement to § 653.103, as described in the following section.

Section 653.103 Process for Migrant and Seasonal Farmworkers To Participate in Workforce Development

The Department proposes to make several revisions to § 653.103. In paragraph (a), the Department proposes to change ''one-stop center'' to ''ES office.'' This change clarifies that the requirement applies to ES staff because part 653 applies to the ES services program, not all one-stop partner programs. In addition to the existing requirement to determine whether *participants,* as defined at § 651.10, are MSFWs, the Department proposes to require that ES offices must determine whether *reportable individuals,* also defined at that section, are MSFWs. This proposed change will help ES staff identify all individuals who engage in ES services who are MSFWs, and not limit that assessment to participants only. With this information, SWAs will be able to better understand the number of MSFWs who engage in the ES and the degree of their engagement. This information is important for SWAs and SMAs to have so that they may

understand the full scope of who accesses particular services for the purposes of determining whether services are being provided to MSFWs on an equitable basis. For example, by having the number of MSFW reportable individuals, the SWAs and SMA can analyze situations where there may be large numbers of MSFW reportable individuals but very few or no MSFW participants, in proportions far different than other populations. Such scenarios may indicate that ES services are not being provided to MSFWs in a way that is tailored to individual MSFW preferences, needs, skills, and the availability of job and training opportunities, so that MSFWs are reasonably able to participate in the ES, as required by the proposed § 653.101.

In § 653.103(b), the Department proposes to replace the existing provision requiring all SWAs to ensure that MSFWs who are English-language learners receive, free of charge, the language assistance necessary to afford them meaningful access to the programs, services, and information offered by the one-stop centers with a new provision requiring all SWAs to comply with the language access and assistance requirements at 29 CFR 38.9 with regard to all LEP individuals, including MSFWs who are LEP individuals, as defined at 29 CFR 38.4(hh). This compliance includes ensuring ES staff comply with these language access and assistance requirements. This proposed change aligns the language access requirements for MSFWs with those requirements identified for all LEP individuals pursuant to 29 CFR 38.9 and helps ensure LEP individuals have meaningful access to the ES.

Due to this proposed change, the Department proposes corresponding edits throughout the ES regulations to ensure that all language access requirements align with 29 CFR 38.9. This is important for several reasons. First, 29 CFR 38.9 is part of WIOA sec. 188's prohibition on discrimination on the basis of national origin, including limited English proficiency. Maintaining separate language access requirements could create confusion about which standard should apply. Second, the proposed change reduces duplication because the standards at 29 CFR 38.9 already cover the language access requirements provided in the ES regulations. Third, aligning the ES regulations with 29 CFR 38.9 ensures broader language access protections for LEP farmworkers than those in the existing ES regulations.

Lastly, in § 653.103(c), the Department proposes to remove the requirement that one-stop centers must provide MSFWs a list of available career and supportive services ''in their native language.'' This proposed change would make the provision consistent with the broader proposed revisions to language access requirements throughout all parts to ensure they align with 29 CFR 38.9.

Section 653.107 Outreach Responsibilities and Agricultural Outreach Plan

The Department proposes to revise the section heading in § 653.107 to read ''Outreach responsibilities and Agricultural Outreach Plan'' to provide greater clarity.

The Department proposes to revise § 653.107(a)(1) in several ways. First, the Department proposes to move to § 653.107(a)(4) the sentence that explains each SWA must provide an adequate number of outreach staff to conduct MSFW outreach in their service areas. The regulation at paragraph (a)(4) details how many outreach staff a SWA must provide and explains what it means to provide an adequate number of outreach staff. Therefore, the previously quoted language from § 653.107(a)(1) more logically fits in § 653.107(a)(4), where it provides clarity regarding what adequate means. The result of this change is that the first sentence of this section now requires that the SWA ensure that outreach staff fulfill the outreach responsibilities described in paragraph (b) of this section on an ongoing basis. The Department proposes to add that outreach staff must conduct outreach on an ongoing basis to clarify that outreach activities in all States must occur year-round. As described at 20 CFR 653.107(a)(4), in significant MSFW States, there must be full-time, year-round outreach staff and in the remainder of the States there must be year-round part-time outreach staff. This change is proposed to clarify that all States must have some degree of outreach at all times.

Second, the Department proposes to revise the sentence that provides SWA Administrators must ensure SMAs and outreach staff coordinate their outreach efforts with WIOA title I sec. 167 grantees by replacing ''their outreach efforts'' with the word ''activities.'' This change is proposed to correct frequent misunderstandings by SWAs, where SWAs believe coordinating their outreach efforts means that other organizations such as National Farmworker Jobs Program (NFJP) grantees may conduct outreach on behalf of the SWA and that the NFJP grantees' outreach is sufficient to satisfy the SWA's outreach obligations. Using the word ''activities'' helps clarify that SWAs must coordinate their activities with NFJP grantees (*i.e.,* work together to strengthen their respective services) but that NFJP grantee outreach is not a substitute for SWA outreach obligations. To further clarify this point, the Department proposes to add to § 653.107(a)(1) a sentence explaining that WIOA title I sec. 167 grantees' activities involving MSFWs does not substitute for SWA outreach responsibilities. This clarification is important because NFJP staff are not obligated to provide the same information or services to MSFWs as SWA outreach staff must provide, nor are they monitored by the SMA to ensure services are compliant with ES regulations.

At § 653.107(a)(2)(i), the Department proposes a technical edit to change the period after ''MSFWs'' to a semicolon and adding the word ''and'' to clarify that as part of their outreach, SWAs must ensure outreach staff satisfy both paragraphs (i) and (ii), which follow.

In § 653.107(a)(2)(ii), the Department proposes to revise the requirement that SWAs must ensure outreach staff conduct thorough outreach efforts with extensive follow-up activities in supply States by replacing ''in supply States'' with ''identified at § 653.107(b)(5).'' This change is proposed because SWAs must ensure outreach staff are conducting thorough outreach efforts with extensive follow-up activities in all States—not only in supply States. This proposed revision does not increase the outreach burden on non-supply States because all States must already comply with all applicable outreach provisions identified at § 653.107.

The Department proposes several revisions to § 653.107(a)(3). First, the Department proposes to revise the language and structure of the paragraph. The Department proposes to replace ''For purposes of providing and assigning outreach staff to conduct outreach duties, and to facilitate the delivery of employment services tailored to the special needs of MSFWs. . .'' with ''When hiring or assigning outreach staff.'' This change would operationalize the proposed State merit-staffing requirement for outreach workers. The existing regulatory text permits SWAs the flexibility to provide outreach staff in several ways, including by subcontracting staff. With this proposed change, the Department is making clear that the SWA is responsible for directly hiring outreach staff who must be State merit staff because the definition of outreach staff refers to ES staff, who must be State merit staff.

The Department has observed that SWAs commonly assign existing staff to fill outreach staff vacancies, without seeking qualified candidates who speak the language of a significant proportion of the State MSFW population, are from MSFW backgrounds, or have substantial work experience in farmworker activities. The proposed revision is also intended to clarify that SWAs must seek to hire for or assign to outreach staff positions, and put a strong emphasis on hiring or assigning, individuals who speak the language of a significant proportion of the State MSFW population and who either are from MSFW backgrounds or have substantial work experience in farmworker activities. Several revisions impact how a State staffs outreach responsibilities. Changes at 653.107(a) require outreach to be ongoing, changes at 653.107(a)(3) strengthen hiring requirements, and changes at 653.107(a)(4) clarify that full-time outreach work means devoting 100% of their time to outreach. Together, States will be unlikely to be able to fulfill these responsibilities unless they hire staff specifically for outreach. While States can assign outreach responsibilities to existing qualified staff, such staff in significant MSFW States must then devote 100% of their time to outreach, not merely add outreach to other responsibilities. For non-significant MSFW States, outreach staff must devote full time in peak season and part time in non-peak season to outreach.

The Department proposes to maintain the language in § 653.107(a)(3)(i) that SWAs must seek qualified candidates who speak the language of a significant proportion of the State MSFW population. But to strengthen the existing requirement, the Department proposes to add that the SWA must not only seek but also put a strong emphasis on hiring qualified candidates. This language is proposed to increase the likelihood that SWAs will hire candidates with the criteria described in § 653.107(a)(3)(i), instead of simply seeking candidates whom they never hire. To further increase the likelihood that SWAs hire candidates who meet the required criteria, the Department proposes to add a new paragraph at § 653.107(a)(3)(ii) requiring the SWA to inform farmworker organizations and other organizations with expertise concerning MSFWs of outreach staff job openings and encourage them to refer qualified applicants to apply. These additions are proposed to expand the applicant pool for outreach staff positions to include individuals who have the knowledge, skills, and abilities to meet the unique needs of farmworkers. The proposed paragraph also makes requirements for hiring outreach staff consistent with the requirements for appointing an SMA under § 653.108(b). For the SMA position, the SWA is required to inform farmworker organizations and other organizations with expertise concerning MSFWs of the opening and encourage them to refer qualified applicants to apply. As discussed in this section, this requirement helps SWAs expand the applicant pool for SMAs to help the SWA choose from a larger selection of qualified applicants, and the same reasoning applies to outreach staff.

The Department proposes to amend § 653.107(a)(4) by adding the sentence that the Department proposes to remove from § 653.107(a)(1), which provides that each SWA must provide an adequate number of outreach staff to conduct MSFW outreach in their service areas. However, the Department proposes to replace ''in their service areas'' with ''in each area of the State.'' This change will clarify that SWAs must provide outreach in all areas of the State where there are farmworkers, not only in certain service areas. This change would make the expectation to cover the full State clear. The Department also proposes to replace ''provide'' with ''employ'' and add to the end of the sentence language making clear that an adequate number of outreach staff are needed to contact a majority of MSFWs in all of the SWA's service areas annually. These additions are proposed to clarify what it means to employ an ''adequate number of outreach staff,'' all of whom must be State merit staff. Making this determination on an annual basis helps align the assessment of staffing levels with the reporting required in the SMA's Annual Summary.

The Department further proposes to revise the sentence requiring that in the 20 States with the highest estimated year-round MSFW activity, as identified in guidance issued by the Secretary, there must be full-time, year-round outreach staff to conduct outreach duties. Specifically, the Department proposes to replace ''in guidance issued by the Secretary'' with ''as identified by the Department.'' This revision is necessary to conform to guidance issued by the Department.

The Department also proposes to amend § 653.107(a)(4) to add a sentence clarifying what it means to have full-time outreach staff. The proposed sentence explains that full-time means each individual outreach staff person must spend 100 percent of their time on the outreach responsibilities described at § 653.107(b). This requirement is important because having each outreach staff person engage in outreach on a full-time basis gives that person more time to establish a positive working relationship with MSFWs and agricultural employers in their service area. This can be helpful for building trust and engaging in informal resolution of complaints and apparent violations. It is also necessary so that outreach staff are fully available to provide the level of ES and follow-up activities that these regulations describe. The Department proposes to keep the existing requirements that, in the 20 States with the highest estimated year-round MSFW activity, as identified by the Department and defined as significant MSFW States at § 651.10, there must be full-time, year-round outreach staff to conduct outreach duties. In the remainder of the States, there must be year-round part-time outreach staff, and during periods of the highest MSFW activity, there must be full-time outreach staff. This means that States that are not significant MSFW States may allow outreach staff to conduct other activities that promote farmworker safety, including housing inspections, when they are not in peak harvest season. If outreach staff in States that are not significant MSFW States have additional time available after fulfilling their required outreach responsibilities, those States may leverage outreach staff members, required to be State merit staff under this proposal, to help support other critical functions, such as UI.

Finally, the Department proposes to further clarify outreach staffing requirements by adding a new sentence in § 653.107(a)(4) stating that staffing levels must align with and be supported by information about the estimated number of farmworkers in the State and the farmworker activity in the State as demonstrated in the State's Agricultural Outreach Plan (AOP) pursuant to § 653.107(d). This language will help SWAs understand that the number of full-time or part-time outreach staff must be determined by information provided in the State's AOP. These revisions will give the State a clear method to identify what staffing levels are appropriate.

The Department also proposes to revise § 653.107(b) by adding that outreach staff responsibilities include the activities identified in § 653.107(b)(1) through (11). This addition clarifies the specific activities included in outreach staff responsibilities. The proposed regulatory text also replaces a colon with a period, which helps the

construction of the sentence and its relationship to the following paragraphs.

The Department proposes two revisions to § 653.107(b)(1). First, the Department proposes to replace ''Explaining'' with ''Outreach staff must explain'' to align with the updated construction of the sentence whereby paragraph (b) is proposed to be a sentence ending in a period and not a colon, making the following paragraphs full sentences. Second, the Department proposes to remove the explicit requirement for the information that outreach staff must convey to be in a language readily understood by them, because proposed § 653.103(b) would already require this information to be in languages other than English for LEP individuals as provided under 29 CFR 38.9. This proposed change conforms with other proposed changes to language access requirements throughout parts 651, 652, 653, and 658 where the Department seeks to align these requirements with those identified at 29 CFR 38.9.

The Department proposes to revise § 653.107(b)(3) to replace ''outreach workers'' with ''outreach staff'' to align with the proposed definition of outreach staff at § 651.10. The Department proposes the same revision to paragraph (b)(4) and to remove the word ''the'' before ''outreach staff'' for clarity. These changes are necessary to align with the proposed State merit-staffing requirements for ES staff. Because § 651.10 defines outreach staff as ES staff with responsibilities described at § 653.107(b), the proposed State merit-staffing requirement applies to outreach staff.

The Department proposes several revisions to § 653.107(b)(7). First, the Department proposes to replace the reference to outreach staff being trained in ''local office'' procedures with ''one-stop center'' procedures to align with the *ES office* definition at proposed § 651.10. Second, the Department proposes to require SWAs to provide outreach staff with training on sexual coercion, assault, and human trafficking, alongside the existing requirement to provide sexual harassment training. The current regulation gives SWAs the option of providing training on sexual coercion, assault, and human trafficking. The proposed regulation would require training in these areas due to an increased need to combat these issues in the field. These additional topics are of importance to the Department, and this proposal is driven by the increased frequency of complaints and apparent violations SWAs have processed and information from organizations the Department has partnered with regarding these issues. The focus remains for outreach staff to be able to identify and refer cases to the appropriate enforcement agencies. Third, the Department proposes to replace the requirement for outreach staff to be trained in the procedure for informal resolution of complaints with a requirement for them to be trained in the Complaint System procedures (at part 658, subpart E) and be aware of the local, State, regional, and national enforcement agencies that would be appropriate to receive referrals. This change is necessary so that outreach staff are trained in the full Complaint System procedures, which include informal resolution.

The Department proposes to revise § 653.107(b)(8) by changing the record retention requirement from 2 years to 3 years to align with the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards to non-Federal Entities (Uniform Guidance) record retention requirements at 2 CFR 200.334. The Uniform Guidance applies to all grants funded by ETA. It is important to ensure record retention requirements are consistent across all ETA grantee activities, including for the Monitor Advocate System which is funded by the Wagner-Peyser Act grant.

The Department proposes to make a technical edit to § 653.107(b)(11) by replacing the reference to significant MSFW ''local offices'' with ''significant MSFW one-stop centers'' to align with the defined term in § 651.10. The Department also proposes to add a requirement that the outreach activities must align with and be supported by information provided in the State's AOP pursuant to § 653.107(d).

The Department proposes to replace the requirement in § 653.107(d)(2)(ii) for SWAs in the AOP to provide an assessment of available outreach resources with a requirement that SWAs explain the materials, tools, and resources the State will use for outreach. The proposed revision clarifies the requirement to assist SWAs to better understand what information must be reported and that SWAs should provide more detailed and better explanations of how the SWA intends to use those resources.

The Department proposes to amend § 653.107(d)(2)(iii) to require SWAs to describe their activities to contact MSFWs who are not being reached by the normal intake activities conducted by the one-stop centers. The proposed regulation also would require the SWA to include the number of full-time and part-time outreach staff in the State and to demonstrate that there is sufficient outreach staff to contact a majority of MSFWs in all the State's service areas annually. The Department is proposing these changes to strengthen the description in the AOP of how the SWA will contact MSFWs adequately, consistent with the proposed revision to § 653.107(a)(4) for States to employ sufficient outreach staff to contact a majority of MSFWs in all the State's service areas annually. It is also helpful for RMAs to understand staffing levels to assess whether the State can meet the SWAs outreach requirements.

The Department proposes to clarify that § 653.107(d)(2)(iv) requires the AOP to describe activities planned for providing the full range of ES services to the agricultural community, instead of ''employment and training services.'' This change is necessary to explain which specific services the AOP must describe, which is specific to ES services and do not include all workforce development system activities.

The Department proposes to replace the requirement at § 653.107(d)(2)(v) that the AOP must provide an assurance that the SWA is complying with the requirements under § 653.111 if the State has significant MSFW one-stop centers with a requirement that the AOP must include a description of how the SWA intends to provide ES staff in significant MSFW one-stop centers in accordance with § 653.111. This proposed change is intended to help the SMAs, RMAs, and the NMA assess whether SWAs will have the appropriate staffing structure to meet the unique needs of farmworkers.

The Department proposes to amend § 653.107(d)(4) to clarify that the AOP must be submitted in accordance with § 653.107(d)(1) instead of (d), as currently written. Paragraph (d)(1) is the accurate reference that explains the SWA's responsibility to develop the AOP as a part of the Unified or Combined State Plan.

The Department proposes two revisions at § 653.107(d)(5). First, the Department proposes a technical edit to change the reference from § 653.108(s) to § 653.108(u) due to restructuring paragraphs at § 653.108. Second, the Department proposes to replace ''its goals'' with ''the objectives.'' Referring to ''the objectives'' is more accurate because the Department does not ask SWAs to provide specific goals in the AOP, rather SWAs identify various objectives.

Section 653.108 State Workforce Agency and State Monitor Advocate Responsibilities

Section 653.108 governs what a SWA and SMA must do to monitor a State's provision of ES services to MSFWs. As explained subsequently, the Department proposes several revisions to this section to strengthen the role of the SMA and to enhance the monitoring activities that SMAs perform.

The Department proposes to revise § 653.108(a) to explicitly prohibit the State Administrator or ES staff from retaliating against an SMA for performing the monitoring activities that are required by this section. Specifically, the Department proposes to add at the end of § 653.108(a) a requirement that the State Administrator and ES staff must not retaliate against staff, including the SMA, for self-monitoring or raising any issues or concerns regarding non-compliance with the ES regulations. The addition of this sentence will emphasize the Department's intolerance for retaliation against SMAs for conducting their duties and encourage and protect internal disclosures and discussions about noncompliance.

The Department proposes to revise § 653.108(b), which prescribes criteria that States must consider when appointing an SMA, to require that SWAs not only seek but also put a strong emphasis on hiring qualified candidates for the SMA position who meet one or more of the criteria listed in paragraphs (b)(1) through (3). While the current regulations already require SWAs to ''seek'' qualified candidates who meet these criteria, the Department proposes to require that SWAs ''put a strong emphasis on hiring'' such candidates to increase the likelihood that SWAs hire SMAs who meet one or more of these criteria, and not simply seek such individuals. In the Department's view, it is important for SMAs to meet one or more of these existing criteria, so that SMAs understand and have appropriate skills to assess whether the SWA is providing adequate services to MSFWs.

The Department also proposes to remove the requirement in § 653.108(b) that the SMA be a SWA official because the proposed edits to § 651.10 remove *SWA official* as a defined term. The Department proposes to revise § 653.108(c) to require that the SMA be an ES staff employee. As explained previously in this document, the Department is proposing to reinstate the longstanding State merit-staffing requirement that was in effect prior to the 2020 Final Rule. One of the ways in which the Department proposes to effectuate this proposal is to remove the definition of *SWA official* in § 651.10 and to revise the definition of *ES staff* in § 651.10 to mean State government personnel who are employed according to the merit-system principles described in 5 CFR part 900, subpart F (Standards for a Merit System of Personnel Administration) and who are funded, in whole or in part, by Wagner-Peyser Act funds. As relevant here, the Department proposes to remove the requirement in § 653.108(b) for the SMA to be a *SWA Official* and to revise § 653.108(c) to require that the SMA be a senior level *ES staff* employee. While the specifics of this proposal are discussed in detail subsequently, the Department notes here that the term *ES staff* is intended to clarify that the proposed regulation would require the SMA to be not only a State employee, but a State merit-staff employee. This proposal, if finalized, will lead to more consistent delivery of services to ES customers. As a universal access system, it is vital that the ES be administered consistently across all States and that services are delivered effectively and equitably. Returning to the requirement that ES services be provided by State merit staff would help ensure that ES services are delivered by knowledgeable personnel in a manner consistent from State to State and allow for accountability that other staffing models cannot duplicate.

The Department additionally proposes several revisions to § 653.108(c) to strengthen the status of the SMA, as many SMAs have reported difficulty in their ability to fully carry out their duties due to insufficient status within the SWA. With these proposed changes, the Department seeks to align the status of the SMA with that of the Equal Opportunity (E.O.) Officer because the SMA's role is similar to the E.O. Officer's role. Both are charged with ensuring compliance with regulations put in place to ensure individuals have meaningful access to services and equal employment opportunities. In 2016, the DOL Civil Rights Center (CRC) expanded on previous requirements specifying the authority and status that E.O. Officers must have to ensure they can most efficiently and effectively carry out the recipients' nondiscrimination obligations. *See generally,* 29 CFR 38.28 through 38.33.[11] According to CRC's NPRM,[12] the changes were intended to address feedback from E.O. Officers that they lacked sufficient authority to carry out their responsibilities. Similarly, in returning to merit-staffing in this rulemaking, the Department proposes to more specifically describe the required status of the SMA. Prior to the 2020 Final Rule, § 653.108(c) required the SMA to have direct, personal access, when necessary, to the State Administrator, and status and compensation comparable to other State positions assigned similar levels of tasks, complexity, and responsibility. By requiring the SMA to be a senior-level ES staff employee who reports directly to the State Administrator or their designee, this proposed rule would provide concrete ways to ensure that the SMA has status equivalent to what § 653.108(c) required prior to the 2020 Final Rule. This specification will also address feedback from many SMAs, who have reported that they lack sufficient authority to carry out their duties identified in the ES regulations. This change would allow SMAs to more efficiently and effectively carry out the SMA's obligation to monitor whether the SWA is serving farmworkers in a way that is qualitatively equivalent and quantitatively proportionate to all other job seekers.

To achieve these results, the Department proposes to strengthen the status of the SMA in several ways. First, the Department proposes at § 653.108(c) to create new paragraphs (c)(1) through (3). In paragraph (c)(1), the Department proposes to require that the SMA be a senior-level ES staff employee. As previously explained, enhancing the status of the SMA by making the SMA a senior-level official will allow the SMA to have the authority necessary to more effectively carry out their duties. Second, proposed paragraph (c)(2) requires the SMA to report directly to the State Administrator or their designee such as a director or other appropriately titled official in the State Administrator's office, who has the authority to act on behalf of the State Administrator. While current regulations require the SMA to have direct access to the State Administrator, in practice this requirement has been insufficient for the SMA to have the authority necessary to carry out their duties and to communicate with the State Administrator, when the SMA finds it necessary. Reporting directly to the State Administrator will provide more direct access to and interaction with State leadership for the SMAs to

[11] *Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act; Final Rule,* 81 FR 87130, 87176–87179 (Dec. 2, 2016).

[12] *Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act; Notice of Proposed Rulemaking,* 81 FR 4494, 4516–4517 (Jan. 26, 2016).

carry out their duties. The Department proposes to make clear that if the State Administrator chooses to have the SMA report to a designee with the authority of the State Administrator, that person cannot be the individual who has direct program oversight of the ES. Though the State Administrator has overall responsibility for operation and compliance of the ES, the State Administrator is removed from the daily management of program operations. The proposed change would help the SMA avoid challenges that may exist if they were to report to an individual who has direct ES program oversight, for example the ES director, because in that case the SMA would be responsible to monitor compliance with decisions their direct supervisor made or was otherwise directly responsible for. Third, proposed paragraph (c)(3) would require that the SMA have the knowledge, skills, and abilities necessary to fulfill the responsibilities as described in this subpart. This proposed revision is intended to clarify the qualifications that SMAs must have to effectively perform all required SMA functions.

The Department does not anticipate that these revisions to § 653.108(c) will cause undue burden on the SWA. The State Administrator may restructure the current SMA position to meet the requirements of part 653. Moreover, the requirement that State Administrators appoint an SMA is longstanding, and several States already staff their SMA position as described in the proposed revisions (*i.e.,* where the SMA is a senior-level ES staff member who reports directly to the State Administrator or their designee). The proposed revisions will ensure all SWAs meet these same standards. The Department recognizes it may take States with SMA positions that do not already meet these standards some time to implement the standards. Accordingly, the Department seeks comments on whether it should provide a transition period to allow States additional time to come into compliance with the revised standards, and if so, the appropriate duration of such a period.

The Department additionally proposes to enhance the authority of the SMA through several revisions to § 653.108(d) and the addition of paragraph (e). Specifically, the Department proposes to revise § 653.108(d) to require that the SMA have sufficient authority, staff, resources, and access to top management to monitor compliance with the ES regulations. While requiring that the SMA have sufficient staff necessary to fulfill effectively all the duties set forth in the subpart is not a new requirement, the Department seeks to clarify that the SMA must also have sufficient authority, resources, and access to top management to carry out their duties. The Department also proposes to specify that the number of ES staff positions required by this section must be assigned to the SMA The Department proposes to clarify that these positions specifically relate to ES staff assigned to the SMA to help the SMA carry out the duties set forth in § 653.108, and that they may not be assigned conflicting roles to perform any of outreach responsibilities, ARS processing, or complaint processing.

The Department proposes a new paragraph (e) to specify that no State may dedicate less than full-time staffing for the SMA position unless the RA, with input from the RMA, provides written approval. The proposed paragraph would maintain the requirement currently in paragraph (d) for any State proposing less than full-time staffing to demonstrate that all SMA functions can be effectively performed with part-time staffing, but would require the State to make this demonstration to the RMA in addition to the RA. This proposed revision clarifies that the RA must approve the exception to the requirement for a full-time SMA and that the SWA must demonstrate that part-time staffing will not affect the needs of and service delivery to MSFWs in the State and that the SMA will be able to effectively fulfill their duties while working on a part-time basis. The Department anticipates that a SWA would provide both qualitative and quantitative data and information in making its request, and it plans to provide States guidance on the factors that the RA and RMA will consider when States request part-time staffing for the SMA position.

The Department proposes to revise § 653.108(e) (now proposed § 653.108(f)) by removing the requirement for the SMA to attend, within the first 3 months of their tenure, a training session conducted by the RMA. Instead, the Department proposes to require all SMAs and their staff to attend training session(s) offered by the RMAs, the NMA, and their team, and those necessary to maintain competency and enhance SMA's understanding of the unique needs of farmworkers. The Department proposes that such trainings must include those identified by the applicable RMA and may include those offered by the Occupational Safety and Health Administration (OSHA), WHD, the Equal Employment Opportunity Commission (EEOC), the Immigrant and Employee Rights Section of the Department of Justice's Civil Rights Division, CRC, and other organizations offering farmworker-related information. These revisions are proposed to clarify the SMA's responsibility to attend necessary training and keep apprised of issues affecting MSFWs to effectively carry out their duties as the SMA. Historically, there have been numerous cases where SMAs did not or could not attend trainings offered by the RMAs or NMA. This provision seeks to clarify the SMA's responsibility to attend the trainings and increase SMA training opportunities and attendance.

The Department proposes to redesignate § 653.108(f) and (g) due to updated sequencing.

The Department proposes to revise § 653.108(g)(1) (now proposed to be § 653.108(h)(1)) to specify important elements of the ongoing review that the SMA must conduct under this paragraph. In particular, new proposed subordinate paragraphs (h)(1)(i) through (iii) would require the SMA to conduct an ongoing review of the delivery of services and protections afforded by the ES regulations to MSFWs by the SWA and ES offices, including: (i) Monitoring compliance with § 653.111; (ii) monitoring the ES services that the SWA and one-stop center provide to MSFWs to assess whether they are qualitatively equivalent and quantitatively proportionate to the services the SWA and one-stop centers provide to non-MSFWs; and (iii) reviewing the appropriateness of informal resolution of complaints and apparent violations as documented in the complaint logs. The requirements in proposed paragraphs (h)(1)(i) and (iii) currently exist at § 653.108(g)(1) and the minor proposed revisions to these requirements are intended only to clarify the existing requirements. Specifically, in paragraph (h)(1)(i), the Department proposes to add a requirement that ongoing reviews include monitoring compliance with § 653.111 to highlight the importance of significant MSFW one-stop centers in staffing appropriately to meet the unique needs of farmworkers. The Department proposes to add § 653.108(h)(1)(ii) to clarify that SMAs are required to monitor whether the ES services provided to MSFWs are qualitatively equivalent and quantitatively proportionate to the services provided to non-MSFWs. Finally, the Department proposes to clarify in paragraph (h)(1)(iii) that SMAs must review informal resolution of complaints and apparent violations to ensure that resolution of matters is occurring consistent with the requirements in part 658, subpart E.

The Department proposes to redesignate § 653.108(g)(1) as § 653.108(h)(2) and revise the regulatory text by replacing ''local offices'' with ''ES offices'' to align with the defined term for ES office in § 651.10. The Department further proposes to revise the paragraph by clarifying that the SMA, if warranted, can notify the SWA of the corrective action(s) necessary to address the deficiencies described earlier in the paragraph, and that the corrective action plan must comply with the requirements at proposed paragraph (h)(3)(v). This revision is intended to clarify that the corrective action plan is the method by which a SWA or ES office achieves compliance with the SMA's compliance findings. The existing regulatory text provides that the SMA may request a corrective action plan, which does not appear to require the SWA or ES office to take corrective action. The proposed revision clarifies that SMAs assure compliance by documenting noncompliance, describing the corrective actions necessary for the SWA to come into compliance, reviewing the corrective action plan that the SWA or ES office develops to implement the identified corrective action(s), documenting compliance or lack of compliance with the corrective action plan, and reporting to ETA any noncompliance. Once noncompliance is identified, SWAs have a responsibility to address it, as described in part 653, subpart D.

The Department proposes to redesignate § 653.108(g)(2) to be § 653.108(h)(3) and to clarify that SMAs must conduct onsite reviews of one-stop centers regardless of whether or not the one-stop center is designated as a significant MSFW one-stop center. This is an important clarification because SMAs often mistakenly think they only need to review significant MSFW one-stop centers. The Department also proposes a clarifying edit to this paragraph by adding that the reviews must follow procedures set forth in paragraphs (h)(3)(i) through (vii) of this section. This is proposed to help the structure of paragraph (h)(3) and its subordinate paragraphs. Correspondingly, current paragraph (g)(2)(ii), which is proposed to be new paragraph (h)(3)(ii), contains proposed clarifying edits, which state ''The SMA must ensure. . .'' instead of the existing ''Ensure. . . .'' Finally, the Department proposes to specify that the complaint logs that the SMA must review pursuant to § 653.108(g)(2)(i)(D) (proposed § 653.108(h)(3)(i)(D)) are the complaint logs required by the regulations under part 658 of this chapter.

At § 653.108(g)(2)(iv), which is proposed § 653.108(h)(3)(iv), the Department proposes a few revisions. First, the Department proposes to add a comma after ''After each review,'' for technical clarity and readability. Next, the Department proposes to specify that the SMA's conclusions include findings and areas of concern by adding ''including findings and areas of concern,'' after ''The conclusions.'' The Department proposes this revision to make the SMA's monitoring align with the ETA monitoring format, which § 653.108(g)(3)(ii) requires the SMA use as a guideline. The Department also proposes to add a requirement that the SMA's report be sent directly to the State Administrator.

The Department also proposes to revise current § 653.108(g)(2)(v) (proposed 653.108(h)(3)(v)) in several ways. First, the Department proposes to add that the SMA's report must include the corrective action(s) required. Second, the Department proposes to specify that, to resolve the findings, the ES Office Manager or other appropriate ES staff must develop and propose a written corrective action plan. These changes conform the SMA's monitoring process with the ETA monitoring format, which requires the monitor to identify the corrective actions required. The Department proposes to add ''the'' before ''actions,'' as a technical edit. The Department also proposes to revise the third sentence to clarify that the corrective action plan should be designed to bring the ES office into compliance within 30 days, and to specify that where a plan is not designed to bring the ES office into compliance within 30 days, the length of and reasons for the expended period must be specifically stated and the plan must specify the major interim steps that the ES office will take to correct the compliance steps identified by the SMA. In other words, only if there is a documented justification for compliance to take longer than 30 days can such efforts be ''steps'' rather than full compliance. This revision is designed to help ensure SWAs resolve identified compliance issues.

At current § 653.108(g)(2)(vii), which is proposed to be paragraph (h)(3)(vii), the Department proposes to allow the SMA to delegate reviews to their staff instead of ''a SWA official'' because SMA staff may conduct such reviews under the authority of the SMA. This change will clarify that other persons who conduct reviews on behalf of the SMA must be the SMA's staff, who should share the same objectives of the SMA, helping ensure that the role of the monitor advocate is effectively carried out. The Department also proposes that the SMA may delegate the reviews whenever the SMA finds such delegation necessary, as opposed to when the State Administrator finds such delegation necessary. This proposed change aligns with the proposal for the SMA to be a senior-level official with greater authority within the SWA. The SMA, therefore, should be empowered to make the determination about whether such delegation is necessary. The Department also proposes to remove the words ''and when'' from the phrase ''if and when'' in this paragraph. As such, the proposed paragraph now states that the SMA may delegate the review described in § 653.108(h)(1) to the SMA's staff, if the SMA finds such delegation necessary, and in such event, the SMA is responsible for and must approve the written report of the review.

The Department proposes to revise § 653.108(g)(3) (proposed paragraph (h)(4)) to ensure all significant MSFW one-stop centers not reviewed onsite by Federal staff are reviewed at least once per year by the SMA or their staff, instead of ''a SWA official.'' This change is proposed because it is important for these reviews to be conducted by staff who share the SMA's objectives. As previously noted, the SMA's staff are responsible to assist the SMA in carrying out the SMA's duties described at § 653.108.

Paragraph (g)(5), proposed § 653.108(h)(6), currently requires SMAs to review outreach workers' daily logs and other reports including those showing or reflecting the workers' activities ''on a random basis.'' The Department proposes to replace ''random'' with ''regular.'' SMAs were confused, at times, about what ''random'' means and, therefore, how frequently they should be reviewing outreach staff's logs. Replacing ''random'' with ''regular'' is intended to help clarify the SMA's responsibility that these reviews occur on a regular basis. The frequency of these reviews may vary based on how many outreach staff each SWA has; however, there should be some standard of frequency in each SWA to ensure regular review occurs. For example, in SWAs with one or two outreach staff, it may be possible for the SMA to review outreach logs every month, but in SWAs with many outreach staff, it may be more appropriate to review outreach logs quarterly. The Department also proposes to replace ''outreach workers'' with ''outreach staff'' throughout this paragraph to use the defined term at § 651.10.

The Department proposes to revise § 653.108(g)(6), proposed paragraph

(h)(7), which currently requires the SMA to write and submit Annual Summaries to the State Administrator with a copy to the RA by adding that a copy of the summary must also be sent to the NMA. This aligns the requirement with paragraph (s) (proposed paragraph (u)) whereby the Annual Summary must also be sent to the NMA. The Department also proposes to remove the last part of the sentence, ''as described in paragraph (s) of this section,'' as it is no longer necessary with the addition of the NMA to this provision.

At § 653.108(h), proposed paragraph (i), the Department proposes to add ''as requested by the Regional or National Monitor Advocate,'' after ''The SMA must participate in Federal reviews conducted pursuant to part 658, subpart G, of this chapter.'' This is proposed to be added to ensure the SMA participates in a way that is helpful and productive for the RMA or NMA. In the past, there have been cases where the SMA either was not permitted or chose not to participate in reviews with the Federal staff. This proposed addition helps ensure the SMA will participate when requested.

The Department proposes to redesignate § 653.108(i) as § 653.108(j). The Department proposes to remove the provision permitting the State Administrator to assign the SMA the responsibility as the Complaint System Representative, and the requirement that the SMA participate in the Complaint System set forth in part 658, subpart E. As explained later in the section of the preamble addressing part 658, subpart E, the Department is proposing to prohibit SWAs from assigning SMAs responsibility for processing complaints. The Department is proposing to remove SMAs from Complaint System processing because this section tasks SMAs with monitoring the Complaint System, and the Department anticipates that SMAs will be more objective in monitoring the Complaint System if they are not tasked with monitoring work that they themselves perform. This change would result in greater safeguards for MSFWs within the Complaint System. The Department proposes to make corresponding edits to part 658, subpart E.

The Department proposes to redesignate § 653.108(j) and (k), as a technical edit.

The Department proposes a new provision at proposed § 653.108(m). This provision is proposed to state how the SMA must establish an ongoing liaison with the State-level E.O. Officer. The Department proposes this addition to enhance equity and inclusion for farmworkers. When SMAs work closely with the State-level E.O. Officer, the SMA will have a better sense of steps the State is taking to meet its equity requirements pursuant to WIOA sec. 188, and how the SMA can better ensure services are provided equitably for MSFWs. The SMA can also provide information to the State-level E.O. Officer on patterns in service provision.

The Department proposes to redesignate § 653.108(l) as § 653.108(n), and to make a conforming revision to the cross reference in this paragraph so that the organizations with which the SMA must meet are updated to reflect the organizations described in proposed paragraph (l) and the State-level E.O. Officer referred to in proposed paragraph (m). This will mean that § 653.108(n) would refer to the paragraphs requiring the SMA to establish an ongoing liaison with NFJP grantees, other organizations serving farmworkers, employers, and employer organizations in the State, and the State-level E.O. Officer. The Department also proposes to add a requirement that SMAs must communicate freely with these individuals and organizations to enable the SMA to communicate efficiently, so that important information is not delayed due to the SMA needing to get approval to speak with these individuals and groups. This proposed change also conforms with the proposed revisions to the SMA's position as a senior-level staff member, who should have the discretion to communicate, as they find appropriate. In addition, the Department proposes to remove the requirement that the SMA receive complaints and assist in referrals of alleged violations to enforcement agencies to conform with the proposal to remove the SMA from Complaint System processing, as explained previously.

The Department proposes to redesignate § 653.108(m) as 653.108(o), as a technical edit. The Department also proposes to revise this paragraph to clarify that when the SMA conducts field visits, they must discuss the SWA's provision of ES services and obtain input on the adequacy of those services from MSFWs, crew leaders, and employers, rather than explaining and providing direct employment services and access to other employment-related programs. The purpose of the SMA's field visits is distinct from the direct ES services that outreach staff provide to MSFWs in the field, because the SMA is tasked with assessing how the ES is functioning and whether the SWA can make improvements, as opposed to the direct provision of ES services. This proposed revision helps clarify that SMA field visits are for a different purpose than outreach staff field visits.

The Department proposes to redesignate § 653.108(n) through (p) as § 653.108(o) through (q), as a technical edit.

The Department proposes to redesignate § 653.108(q) as § 653.108(s), as a technical edit. The Department also proposes a technical edit to remove the reference to SWA staff and keep only ''ES staff'' to align with the proposed definition for *ES staff* at § 651.10. Because SWA staff are included in the proposed definition of ES staff, this will not change the substance of the paragraph. The Department further proposes to simplify the wording of the paragraph by replacing the phrase ''Subsequent to'' with the word ''After.''

The Department proposes to redesignate § 653.108(r) and (s) as § 653.108(t) and (u), respectively, as a technical edit.

The Department proposes to redesignate § 653.108(s) as § 653.108(u). Proposed paragraph (u) requires the SMA to prepare an Annual Summary describing how the State provided ES services to MSFWs within the State based on statistical data, reviews, and other activities. It includes subordinate paragraphs (1) through (11), which identify the various required components of the Annual Summary.

The Department proposes to revise § 653.108(s)(2), proposed § 653.108(u)(2), to conform with proposed edits at § 653.108(c). Specifically, § 653.108(s)(2) currently requires an assurance that the SMA has direct, personal access, whenever they find it necessary, to the State Administrator. Proposed paragraph (u)(2) would require an assurance that the SMA is a senior-level official who reports directly to the State Administrator or the State Administrator's designee as described at § 653.108(c).

The Department proposes to amend § 653.108(s)(3)(i) and (ii), proposed 20 CFR 653.108(u)(3)(i) and (ii), to revise the assurance requested in the SMA's Annual Summary regarding SMA staffing levels. Currently, the Annual Summary requires an assurance that the SMA devotes all of their time to Monitor Advocate functions, or, if the SMA conducts their functions on a part-time basis, an explanation of how the SMA functions are effectively performed with part-time staffing. This paragraph is proposed to be revised in several ways. First, proposed paragraph (u)(3) would begin with a requirement to provide an evaluation of SMA staffing levels, and it would be followed by § 653.108(u)(3)(i) and (ii), which would outline the

contents of this evaluation. Specifically, paragraph (u)(3)(i) would require the SMA to assure that they devote all their time to Monitor Advocate functions, or if the SMA has approval under § 653.108(e) to conduct their functions on a part-time basis, an assessment of whether they can perform all their functions effectively on a part-time basis. Paragraph (u)(3)(ii) would additionally require the SMA to assess whether the performance of SMA functions requires increased time by the SMA (if part time) or an increase in the number of ES staff assigned to assist the SMA in the performance of SMA functions, or both. This information will help the RMA and NMA better understand whether the SMA's status as full- or part-time is sufficient for them to carry out their duties, and whether the SMA requires additional staff to perform all the functions required by this section. The previous requirement for an assurance did not provide the depth, context, or explanation necessary for the State Administrator or the Department to assess whether the SMA has adequate staffing.

The Department proposes to revise § 653.108(s)(4) (iii), proposed § 653.108(u)(4)(iii), to clarify that the summary of any technical assistance the SMA provided must include any technical assistance provided to outreach staff, in addition to technical assistance provided to the SWA and ES offices. While outreach staff are considered part of the SWA, the Department proposes to clarify that the summary must specifically identify the technical assistance that the SMA provided to outreach staff, so that the State Administrator and the Department may better assess whether outreach staff are obtaining the knowledge and resources necessary to fulfill their duties.

The Department proposes to revise § 653.108(s)(5), proposed § 653.108(u)(5), to specify that when the SMA summarizes the outreach efforts undertaken by all significant and non-significant MSFW ES offices in the State, the SMA must include the results of those efforts and analyze whether the outreach levels and results were adequate. Through this analysis, the Department would like to understand whether the SMA believes the SWA has allocated sufficient outreach staff and resources to complete the outreach duties identified at § 653.107, including whether outreach staff are able to reach the majority of MSFWs in the State.

The Department proposes to revise § 653.108(s)(7), proposed § 653.108(u)(7), by adding that in addition to providing a summary of how the SMA is working with WIOA sec. 167 NFJP grantees, the SMA must provide a summary of how they are working with the State-level E.O. Officer. This revision aligns with the proposed requirement at proposed § 653.108(m) for the SMA to establish an ongoing liaison with the State-level E.O. Officer. The inclusion of this information in the Annual Summary will allow State Administrators, RMAs, and the NMA to review what the SMA is doing to fulfill the new liaison requirement (*e.g.,* how frequently are they meeting with the State-level E.O. Officer, the type of information that is shared, any best practices or lessons learned).

The Department proposes to revise § 653.108(s)(10), proposed § 653.108(u)(10), which currently requires the SMA to provide a summary of activities related to the AOP and an explanation of how those activities helped the State reach the goals and objectives described in the AOP. At the end of the 4-year AOP cycle, the summary must include a synopsis of the SWA's achievements over the previous 4 years to accomplish the goals set forth in the AOP, and a description of the goals which were not achieved and the steps the SWA will take to address those deficiencies. The Department proposes to replace the requirement to explain ''how'' the activities helped the State reach the goals and objectives described in the AOP with a requirement to explain ''whether'' the activities helped the State reach the objectives described in the AOP. This revision better reflects the information that the Department seeks (*i.e.,* whether these activities helped the State meet its objectives). The Department also proposes to remove ''goals'' from the first sentence and to replace ''goals'' with ''objectives'' in the second sentence, because the Department does not ask States to identify specific goals in the AOP. Rather, the SWA provides objectives in its AOP, and the SMA's Annual Summary should explain whether the activities that the SWA performed that year are meeting the identified objectives.

The Department proposes two clarifying edits to § 653.108(s)(11), proposed § 653.108(u)(11). First, the Department proposes to replace significant MSFW ''ES offices'' with significant MSFW ''one-stop centers'' to align with the defined term at § 651.10. Second, the Department proposes to revise the requirement for the SMA to summarize the State's efforts to provide ES staff in accordance with § 653.111, to require the SMA to summarize the State's efforts to comply with § 653.111. The Department anticipates that this change will put greater emphasis on compliance with the requirements of § 653.111.

Section 653.109 Data Collection and Performance Accountability Measures

Section 653.109 specifies data collection and performance accountability measures specific to MSFWs. The Department proposes to make several revisions to this section.

First, the Department proposes to add a new data collection requirement in paragraph (b) of this section. Specifically, the Department proposes to add § 653.109(b)(10), which would require SWAs to collect the number of reportable individuals and participants who are MSFWs. The Department anticipates that access to this information will help the SWAs and the Department to better understand how many MSFWs are engaging with the ES, either as reportable individuals or participants, and to identify potential issues surrounding MSFW access to ES services. Specifically, Monitor Advocates will be able to compare the number of MSFW reportable individuals and the number of MSFW participants and use this data to identify potential areas where MSFWs are not being offered participant-level services. The collection of this data is consistent with the Monitor Advocate System's purpose to monitor whether MSFWs have meaningful access to services in a way that is appropriate to their particular needs. SWAs commonly report few or no MSFW ES participants, which creates the concern that MSFWs do not have access to ES services. This piece of information will enable Monitor Advocates to identify cases where there may be larger numbers of MSFW reportable individuals, but few or no MSFW participants. Without this information, Monitor Advocates and the Department lack data necessary to identify whether that problem exists, and cannot work to correct the problem, if it is present.

Second, the Department proposes to redesignate § 653.109(b)(10) as § 653.109(b)(11), as a technical edit to account for the insertion of proposed § 653.109(b)(10).

Third, the Department proposes several revisions to § 653.109(h), which sets forth the minimum levels of service that significant MSFW States must meet. First, the Department proposes to replace the requirement that a significant MSFW State measure the number of outreach contacts per ''week'' with the number of outreach contacts per ''quarter'' to align with the SWA's quarterly data submissions to the Department. SMAs have provided

feedback to the Department that measuring contacts per week is difficult and not an effective measurement of outreach, and they believe it would be a better measure to report contacts per quarter. Second, the Department proposes to clarify that it will not update minimum service level indicators on an annual basis, by removing ''for each year'' from the last sentence in § 653.109(h). The Department's practice has been that minimum service level indicators have not been updated each year because the Department has not identified such a need. This revision would align the regulation with what is happening in practice.

Section 653.110 Disclosure of Data

The Department proposes to revise § 653.110(b) by removing the word ''the'' before ''ETA,'' as a technical edit.

Section 653.111 State Workforce Agency Staffing Requirements for Significant MSFW One-Stop Centers

The Department proposes several revisions to § 653.111, which outlines SWA staffing requirements for significant MSFW one-stop centers. First, the Department proposes to revise the heading of this section to clarify that the staffing requirements in this section apply only to significant MSFW one-stop centers.

Second, the Department proposes to revise paragraph (a)—which currently requires SWAs to implement and maintain a program for staffing significant MSFW one-stop centers by providing ES staff in a manner facilitating the delivery of employment services tailored to the special needs of MSFWs, including by seeking ES staff that meet the criteria in § 653.107(a)(3)—and divide it into two sentences. The first sentence would provide that a SWA *must* staff significant MSFW one-stop centers in a manner that facilitates the delivery of ES services tailored to the unique needs of MSFWs, and the second sentence would clarify that such staffing includes recruiting qualified candidates who meet the criteria for outreach worker positions in § 653.107(a)(3). The Department proposes this change to specify that SWAs must recruit qualified candidates who meet the criteria for outreach workers in § 653.107(a)(3). SWAs have some discretion to create a plan to meet the standard, but the ultimate requirement is for SWAs to recruit qualified candidates who meet these criteria.

Third, for purposes of consistency, the Department proposes a technical edit to replace ''special needs of MSFWs'' with ''unique needs of MSFWs,'' to conform to the terminology that the Department uses elsewhere in the ES regulations.

2. Subpart F—Agricultural Recruitment System for U.S. Workers (ARS)

Subpart F sets forth the regulations governing the ARS.

Section 653.501 Requirements for Processing Clearance Orders

Section 653.501 describes the requirements that ES staff must follow when processing clearance orders for the ARS. As explained subsequently, the Department proposes to make several substantive and technical revisions to this section.

The Department proposes to make a minor clarifying edit to § 653.501(a) by replacing the terms ''ES office'' or ''SWA official'' with ''ES staff'' to conform with the proposed revision to the definition of *ES staff* at § 651.10.

The Department proposes to add a fourth paragraph to § 653.501(b), at § 653.501(b)(4), which would require ES staff to consult the Department's Office of Foreign Labor Certification (OFLC) and Wage and Hour Division (WHD) debarment lists before placing a job order into intrastate or interstate clearance and initiate discontinuation of ES services if the employer is debarred or disqualified from participating in one or all of the Department's foreign labor certification programs. The Department's mission is to promote the welfare of workers. This addition is intended to further that mission by ensuring that ES offices do not place U.S. workers with employers who are presently barred from employing immigrant and nonimmigrant workers via the employment-based visa programs. This requirement protects workers who may be using the ARS by ensuring that the ARS is not used to place a worker with an employer that has failed to comply with its obligation(s) as an employer of foreign workers. ETA's regulations at 20 CFR 655.73, 655.182, 655.473, 656.31(f), and the Wage and Hour Division's regulations at 29 CFR 503.24 describe the violations that may result in an employer's debarment from receiving future labor certifications for a specified time period. The potential reasons for debarment include serious violations that could affect worker safety, for example ''[a] single heinous act showing such flagrant disregard for the law'' that future compliance with program requirements cannot reasonably be expected (§ 655.182(d)(1)(x)). Such reasons also include an employer's substantial failure to comply with regulatory requirements, including an employer's failure to pay or provide the required wages or working conditions, an employer's failure to comply with its obligations to recruit U.S. workers, or an employer's failure to cooperate with required audits or investigations. Additionally, an employer's failure to pay a necessary certification fee in a timely manner may result in debarment. In the Department's view, whether the reason an employer is debarred from an OFLC program (or programs) is directly related to worker safety, failure to provide required wages or working conditions, failure to comply with recruitment requirements or participate in required investigations or audits, or failure to pay required fees, the employer subject to debarment should be excluded from participation in the ARS. The Department does not want to facilitate placement of workers with employers whose actions have risen to a level that warrants debarment.

The Department proposes minor edits to § 653.501(c)(3) to clarify that paragraph (c) sets forth a list of the assurances that an employer must make before the SWA may place a job order into intrastate or interstate clearance.

In addition, the Department proposes to make several technical and conforming edits in § 653.501(d). First, the Department proposes to revise § 653.501(d)(1) by clarifying that the provision refers to the ''order-holding ES office,'' instead of ''order-holding office,'' as it is currently written. This proposed change aligns with § 651.10 by using the defined term, *ES office*.

Second, the Department proposes to revise § 653.501(d)(3) by referring to ''this paragraph'' instead of ''paragraph (d)(3) of this section'' for clarity.

Third, the Department proposes to revise § 653.501(d)(6) to remove the explicit instruction for ES staff to assist all farmworkers ''upon request in their native language.'' This revision is intended to align with the broader proposed revisions regarding language access in this NPRM. Because the Department proposes in this NPRM to clarify that SWAs must already comply with the language access and assistance requirements at 29 CFR 38.9, the language access requirement here is redundant, unnecessary, and potentially confusing, because it may appear to set a different standard.

Fourth, the Department proposes to revise § 653.501(d)(10) to remove the sentence requiring checklists under this paragraph to be in the workers' native language because, as previously mentioned, language access requirements are already provided at 29 CFR 38.9 and retaining this language

would be redundant and unnecessary. The Department also proposes to remove the requirement that SWAs must use a standard format provided by the Department (such as Form WH516 or a successor form) to provide workers referred to clearance orders a checklist summarizing wages, working conditions, and other material specifications in the clearance order. Removing this requirement would provide SWAs with greater flexibility to develop and use their own forms that meet their needs. Under the proposed revision, SWAs may still use standard forms, including the WH516, but they would not be required to use a standard form. Regardless, the checklist that the SWA provides workers must include the material terms and conditions of employment that are required to be included in clearance orders pursuant to § 653.501(c)(1)(iv).

Finally, the Department proposes to revise § 653.501(d)(11) to replace the reference to the Department's ''ARS Handbook'' with a reference to ''Departmental guidance.'' As proposed, § 653.501(d)(11) would require the applicant-holding office to give each referred worker a copy of the list of worker's rights described in Departmental guidance. This revision is intended to reflect the fact that this list of worker's rights may be available in different documents and formats in the future.

Section 653.503 Field Checks

The Department proposes to make two conforming and clarifying edits to the regulations governing field checks in § 653.503. First, the Department proposes to revise § 653.503(a) to add ''transportation'' to the list of conditions that SWAs must assess and document when performing a field check. This change would increase health and safety of MSFWs by adding an additional safeguard against dangerous transportation tied to their employment.

Second, the Department also proposes to remove that the field checks are ''random.'' The proposed revision would clarify that the selection of the clearance orders on which the SWA will conduct field checks does not need to be random, and may respond to known or suspected compliance issues, thereby improving MSFW worker protection. In addition, if a SWA makes placements on 9 or fewer clearance orders, the SWA must conduct field checks on 100 percent of those clearance orders. See § 653.503(b). Therefore, in those cases, field checks could not be conducted on a random basis.

E. Part 658—Administrative Provisions Governing the Wagner-Peyser Act Employment Service

This part sets forth the regulations governing the Complaint System for the Wagner-Peyser Act Employment Service (ES) at the State and Federal levels. Specifically, the Complaint System processes complaints against an employer about the specific job to which the applicant was referred through the ES, and complaints involving the failure to comply with ES regulations under 20 CFR parts 651, 652, 653, and 654. The Complaint System also accepts, refers, and, under certain circumstances, tracks complaints involving employment-related laws as defined in § 651.10. While the Complaint system is available to MSFWs and non-MSFWs, the Complaint System includes additional shorter processing timelines and additional follow-up on MSFW-related complaints, which are designed to provide increased protection for MSFWs. The Department proposes to revise several regulations within this part to conform with proposed revisions to definitions listed at § 651.10, remove redundancies and make other non-substantive technical edits, clarify or modify certain requirements, and improve equity and inclusion for MSFWs in the ES system. The Department also proposes to remove the requirement that the SMA serve as a Complaint System Representative and eliminate the requirement that SMAs must process MSFW complaints. The Department is proposing these revisions because § 653.108 requires the SMA to monitor the Complaint System, and the proposed revisions would remove the challenge that exists when the SMA is required to monitor their own actions in processing MSFW complaints. The Department anticipates that an SMA will be more objective in monitoring the Complaint System if they are not tasked with monitoring their own actions. The proposed revisions would maintain the integrity of the Monitor Advocate System as it provides safeguards to MSFWs who participate in the Complaint System, and they would allow SMAs to focus their attention on monitoring the ES services that are provided to MSFWs in their State.

The Department has observed through analysis of SWA quarterly Labor Exchange Agricultural Reporting System 5148 Reports, meetings with SMAs and RMAs, and other communications with SWAs, that SWAs misunderstand several of the requirements currently in part 658. These misunderstandings have caused inaccurate recordkeeping and reporting, which impede the ability of SMAs and the Department to monitor MSFW complaints to determine whether the Complaint System is processing MSFW complaints consistently with the governing regulations. The Department also has received information, through 5148 Reports and Monitor Advocate Annual Summaries, that Complaint System activity is low in many States. Through Wage and Hour Division (WHD) investigations, news reports, SMA Annual Summaries, conversations with farmworkers and farmworker advocacy organizations, and anecdotal information SMAs share with the Department, the Department concludes that violations of employment-related laws against MSFWs may be prevalent across the country—therefore, it is concerning that Complaint System activity is low. In Program Year 2019 (July 2019-June 2020), which is the most recent complete set of data available, at least eight States did not report any MSFW complaints. RMAs and the NMA have communicated concerns to the Department that one of the reasons complaint numbers may be low is because MSFWs are unaware of the Complaint System, or SWAs are not processing or recording complaints correctly.

Through SWA 5148 Reports and RMA monitoring, the Department has identified several common requirements in the regulatory text that SWAs may misunderstand. These misunderstandings have a direct impact on the availability and correct processing of complaints. To address these issues, several of the proposed revisions are more prescriptive than the existing regulatory text and specifically clarify terms and other requirements.

1. Subpart E—Employment Service and Employment-Related Law Complaint System (Complaint System)

Section 658.410 Establishment of Local and State Complaint Systems

The Department proposes to amend § 658.410(c) to replace the word ''SWA'' with ''State'' so that it clearly points to the defined term ''State Administrator.'' This change will clarify which specific individual is responsible to ensure a central complaint log is maintained.

The Department proposes to remove language in § 658.410(c)(6) that the complaint log must include actions taken on apparent violations and, instead, add several specific references in § 658.410(c)(1) through (6) that explain that each requirement also applies to apparent violations. These proposed changes are intended to clarify

that the complaint log must document all the same components for apparent violations, except for the complainant's name because there is no complainant for an apparent violation. The Department commonly identifies issues through RMA monitoring of SWAs where complaint logs do not document apparent violations. These proposed revisions would clarify the requirement to document apparent violations and specify the information that SWAs must include on the complaint log.

The Department also proposes to amend § 658.410(c)(6) to make all uses of the word ''action'' plural because there may be several actions taken to appropriately process a complaint or apparent violation. This change is necessary to clarify to SWAs that they must document all actions. The Department also proposes to describe the type of information SWAs must include in their complaint logs by noting that it includes any documents the SWA sent or received and the date the SWA took such action(s). This change will mean the SWA must specifically record documents the SWA sent or received, and the dates of those actions, on the complaint log. Through monitoring SWAs, the Department has observed that SWAs often do not keep records of all actions taken. Instead, SWAs often have minimal information listed on their complaint logs. The proposed changes are purposefully prescriptive because it is critical that the Department has records of all documents sent and received related to complaints and apparent violations. This allows the Department to have sufficient information to monitor SWA complaint and apparent violation processing. These records are also critical when RAs receive appeals from SWA determinations and must review whether a SWA's actions are compliant.

The Department proposes to amend § 658.410(g) to remove the word ''local,'' which comes before ''ES office'' in the existing regulatory text. This proposed change is appropriate because *ES office* is a defined term at § 651.10 and, therefore, the word ''local'' is not necessary. Removal of the word ''local'' will also clarify that the regulatory text is not referring to a different type of office.

The Department proposes to remove the requirement in § 658.410(h) that the SMA must be the Complaint System Representative designated to handle MSFW complaints and replace it with a provision prohibiting the State Administrator from assigning the SMA responsibility for processing MSFW complaints. The Department is proposing this change because SMAs are also tasked with monitoring the Complaint System, and the Department anticipates that SMAs will be more objective in monitoring the Complaint System if they are not tasked with monitoring work that they themselves perform. Removing this responsibility would also allow SMAs to focus their attention on monitoring the ES services provided to MSFWs in their State.

For similar reasons, the Department proposes to revise § 658.410(m) to replace ''SMA'' with ''Complaint System Representative.'' This proposal is consistent with other changes throughout part 658 that remove the SMA's direct involvement in the Complaint System, including the proposed removal of the SMA being designated to process MSFW complaints.

The Department proposes to remove § 658.410(n), which currently addresses correspondence to complainants who are English-language learners. The Department has determined that it is no longer necessary to include explicit requirements regarding language access in various sections of the ES regulations, because all one-stop centers and ES staff must comply with the language access and assistance requirements in 29 CFR 38.9 with regard to all LEP individuals, including those LEP individuals who file complaints under the Complaint System set forth in this subpart. This proposed revision is consistent with the Department's proposed addition in § 653.103(b), which would require SWAs to comply with the language access and assistance requirements at 29 CFR 38.9 with regard to all LEP individuals, including MSFWs who are LEP individuals, as defined at 29 CFR 38.4(hh). The proposed revision would specify that this requirement includes ensuring ES staff in one-stop centers comply with these language access requirements. The regulations at 29 CFR 38.9 establish that language access requirements apply to services provided to all LEP individuals at all one-stop centers and are broader than the existing requirement at § 658.410(n). For these reasons, the reference in § 658.410(n) is no longer necessary. Like the reasons laid out previously in the preamble concerning proposed changes to § 653.103(b), having a specific reference to LEP translations for complaint correspondence may inaccurately create the appearance that there are two sets of language access standards or that requirements for the Complaint System are narrower. Removing the reference clarifies that the full scope of 29 CFR 38.9 also applies to LEP individuals participating in the Complaint System.

Due to the proposed removal of current regulatory text in § 658.410(n), the Department proposes to redesignate the existing regulatory text at § 658.410(o) as § 658.410(n).

Section 658.411 Action on Complaints

The Department proposes to amend § 658.411(a)(2)(ii) to remove the word ''and'' before ''telephone numbers'' in the listed methods to contact a complainant, and to add ''and any other helpful means by'' to broaden the scope of contact methods requested from complainants. In addition, the Department proposes to indicate that there may be multiple physical addresses and email addresses through which a complainant could be contacted. The Department has received information from SWAs and other grantee organizations, including NFJP grantees, that MSFWs often do not have or respond to traditional methods of communication, including mail, email, and telephone. Specifically, migrant farmworkers move from one location to another for work, so it is not always reliable or efficient to send communications through mail to their last known or permanent addresses. Additionally, SWAs and NFJP grantees indicate that MSFW youth often are more responsive to communication sent through social media and other applications. In the process of advising SWAs regarding complaints, the Department has encountered several cases where SWAs closed complaints because the complainant failed to respond to the SWA. It is possible that a portion of these failures to respond are due to lack of current contact information, instead of the complainant's desire to close the complaint. The Department's proposed revision addresses this issue by directing SWAs to request from complainants any other helpful means by which they might be contacted, which would broaden the potential methods by which SWAs may contact complainants and account for the fact that complainants may receive information through various platforms other than physical mail, email, or telephone, including technological applications. This would also increase the likelihood that SWAs will be able to communicate with complainants to process complaints to resolution. This change should improve MSFW access to the Complaint System and increase the SWA's ability to resolve complaints.

Paragraph (b) of § 658.411 covers complaints regarding an employment-related law. The Department proposes to amend § 658.411(b)(1) to replace ''a'' with ''an'' before ''ES office'' as a

technical grammar edit. The Department also proposes to clarify the appropriate steps for processing employment-related law complaints involving alleged violations of nondiscrimination laws or reprisal for protected activity by revising § 658.411(b)(1), to add a reference to § 658.411(c). This revision would clarify that the procedures in § 658.411(c) apply to any employment-related law complaint alleging unlawful discrimination or reprisal for protected activity in violation of nondiscrimination laws, such as those enforced by the EEOC or the DOL's CRC, or in violation of the Immigration and Nationality Act's anti-discrimination provision found at 8 U.S.C. 1324b.

The Department proposes three changes to § 658.411(b)(1)(ii)(B). First, the Department proposes to remove both references to the SMA making determinations and taking actions on employment-related law complaints and replace the first with a reference to the ''Complaint System Representative.'' This proposal is consistent with other changes throughout part 658 that remove the SMA's direct involvement in the Complaint System, including the proposed removal of the SMA being designated to process MSFW complaints. As explained earlier, the Department is proposing to remove the SMA from Complaint System processing because the SMA duties outlined at § 653.108 include monitoring the Complaint System, and the Department anticipates that SMAs will be more objective in performing this monitoring if they are not tasked with monitoring their own actions for compliance. Second, the Department proposes to replace the word ''employment'' with ''ES'' before ''services'' in the last sentence to conform with the defined term *Wagner-Peyser Act Employment Service (ES) also known as Employment Service (ES).* The Department also proposes to change ''and except'' to ''or'' to clarify that immediate action must be taken in cases where either the Complaint System Representative determines that it is necessary or where informal resolution would be detrimental to the complainant.

Consistent with the proposed removal of the SMA from § 658.411(b)(1)(ii)(B), the Department proposes to amend § 658.411(b)(1)(ii)(D) to remove the requirement for the ES office or SWA Complaint System Representative to refer the complaint to the SMA who must immediately refer the complaint. Instead, under the proposed regulatory text, the ES office or SWA Complaint System Representative would themselves refer the complaint immediately to the appropriate enforcement agency for prompt action. This change would remove the SMA from Complaint System processing for the same reasons that the Department proposes to remove the SMA from other aspects of Complaint System processing. This proposed change is consistent with the SWA's requirements in processing non-MSFW complaints, where staff other than the SMA refer complaints to enforcement agencies. Additionally, this proposed change would decrease the amount of administrative time for complaints to be referred for prompt action by enforcement agencies. It is important to note that this regulation specifically deals with complaints that ES offices or SWA staff have determined need to be referred to a State or Federal agency. Requiring staff to refer the complaint first to the SMA, who then refers to the applicable agency, adds unnecessary time, which may cause avoidable harm to complainants in sensitive or otherwise serious, time-sensitive situations.

The Department proposes to remove all references to the ''SMA'' in 20 CFR 658.411(b)(1)(ii)(D) and (E) to conform with the Department's proposal to remove the SMA from playing a direct role in Complaint System processing. Under the proposed changes, the complaint will not be referred to the SMA. Instead, the Complaint System Representative must notify the complainant of the enforcement agency to which the complaint was referred, rather than for the SMA to notify the complainant.

The Department proposes to add § 658.411(b)(1)(ii)(F) to provide steps ES offices and SWAs must take when they receive complaints alleging an employer in a different State has violated an employment-related law, when such complaints are filed by or on behalf of MSFWs. The proposed changes would require SWAs and ES offices to use the same process for processing employment-related law complaints as § 658.411(d)(ii) currently requires for ES complaints involving an employer in another State. This situation comes up periodically, and the Department has advised SWAs to follow the same procedures for when an ES complaint is filed in a different State, which includes sending the complaint to the SWA in the other State. This addition is intended to make the employment-related law complaint regulations consistent with current SWA practices. Because the regulations currently do not address this scenario, the regulations currently are unclear as to whether ES offices and SWAs must immediately refer employment-related law complaints against out-of-State employers to enforcement agencies or if they should attempt to resolve MSFW-related complaints involving employers in other States. The Department believes that the most beneficial option is for these complaints to be referred to the SWA in the other State, consistent with how SWAs process complaints involving employers in other States. Additionally, the entity best situated to process a complaint is the SWA for the State where the employer is located, because that SWA has greater knowledge of applicable employment-related laws and may have other records for the employer that impact appropriate decision making. The proposed changes also specifically require the ES office or SWA receiving the complaint to ensure the Complaint/Referral Form is adequately completed before sending the Complaint/Referral Form and copies of any relevant documents to the SWA in the other State. This language is designed to correct issues the Department has observed, where SWAs have informed SWAs in other States of complaint information but have not completed the Complaint/Referral Form or provided copies of any relevant documents. As a result, the other State SWAs were not able to contact the complainant or identify other critical information to act on the complaint, including material facts and allegations and the identity of the employer respondent. The proposed changes explicitly require the referring SWA to provide this necessary documentation so that the SWA receiving the complaint can address it appropriately.

The Department proposes to revise the heading and text of § 658.411(c) to clarify that all complaints under this subpart alleging unlawful discrimination or reprisal for protected activity should be handled in accordance with the procedures in this paragraph. In addition, the Department proposes to modify the procedures in this paragraph to require an ES office or SWA in receipt of such a complaint to log and immediately refer it to the State-level E.O. Officer. The process set forth in the existing regulations has proven to be confusing, because it identifies multiple officials to which nondiscrimination complaints should be referred and requires ES staff to determine which nondiscrimination laws are at issue. The revisions that the Department proposes here would simplify the process by requiring ES offices and SWAs to treat all nondiscrimination complaints that they receive under this subpart in the same manner. Specifically, under the

proposed revision, when an ES office or SWA receives such a complaint, they will log it and immediately refer it to the State-level E.O. Officer, regardless of the nondiscrimination law(s) at issue, and notify the complainant of the referral in writing. The State-level E.O. Officer will then either process the complaint if it is within their jurisdiction or immediately refer the complaint to the appropriate enforcement agency if it is not. This simplified referral process will reduce confusion for ES staff and ensure that someone with appropriate nondiscrimination expertise—the State-level E.O. Officer—will determine how the complaint should be handled and by whom.

The Department proposes to amend § 658.411(d) throughout to replace ''a'' with ''an'' as a technical edit when it comes before ''ES office.'' In addition, the Department proposes to revise § 658.411(d)(1) to clarify that the procedures in § 658.411(c) apply to all ES complaints alleging violations of nondiscrimination laws, including violations of EEOC regulations, the Immigration and Nationality Act's anti-discrimination provision, or laws enforced by CRC.

The Department proposes to rephrase § 658.411(d)(2)(ii)(A), which addresses how an ES office should process an ES complaint filed against an employer that is not located within its service area, to clarify the order of steps such an office must take, without substantively changing the steps. Specifically, the proposed regulatory text changes the phrasing from ''must send, after ensuring that the Complaint/Referral Form is adequately completed, a copy . . .'' to ''must ensure the Complaint/Referral Form is adequately completed, and then immediately send a copy . . .'' This proposed change is consistent with the proposed change at § 658.411(b)(3), so that processes for both ES complaints and employment-related law complaints (other than alleged violations of rights under the EEOC regulations or laws enforced by CRC, as described at § 658.411(c)) are the same when the complaint involves an employer in a different State. The changes are, therefore, necessary for clarity and consistency.

At § 658.411(d)(1)(iv), the Department proposes a technical edit to add a comma after ''alleged agency-wide violation.''

The Department proposes to amend § 658.411(d)(4)(i) and (5)(i) to replace references to the SMA investigating, attempting informal resolution, and making written determinations with references to the ''Complaint System Representative'' taking such actions. This proposed change is necessary to conform to the proposed change, discussed previously, to remove the SMA from playing a direct role in Complaint System processing. This will strengthen the SMA's role to monitor the Complaint System.

The Department proposes to amend § 658.411(d)(5)(i) to change ''ES or SWA officials'' to ''the SWA'' because the proposed changes to § 651.10 remove the definition of SWA official.

The Department proposes to amend § 658.411(d)(5)(ii) in three ways. First, the Department proposes to change ''SWA officials'' to ''the SWA'' because the proposed changes to § 651.10 remove the definition of *SWA official.* Because of this proposed term change, it is also necessary to make the word ''determine'' plural for subject-verb agreement. Second, the Department proposes to insert '', in writing,'' between ''request'' and ''hearing'' to clarify that the complainant must request a hearing in writing. This change will make the procedures consistent with § 658.411(d)(5)(i)(D). Lastly, the Department proposes to change ''working days'' to ''business days.'' Under § 651.10, *working days* and *business days* have the same meaning and can be used interchangeably. However, because this reference is located immediately after a use of ''business days'' in § 658.411(d)(5)(i)(D), it may give the appearance that there are different meanings between the terms. To correct this issue, the Department proposes to use the same term—''business days''—in both places.

The Department proposes to amend § 658.411(d)(5)(iii)(G) to change ''SWA official'' to ''SWA'' because the proposed changes to § 651.10 remove the definition of *SWA official.* This change would make the provision agree with the proposed definitions.

Section 658.419 Apparent Violations

The Department proposes several clarifying revisions to § 658.419(a). First, the Department proposes to update § 658.419(a) to replace the words ''a SWA, an ES office employee, or outreach staff'' with ''an ES staff member'' to conform with proposed revisions to ES staff at § 651.10. It is not necessary to specifically refer to ''outreach staff'' in this section, because the definition of o*utreach staff* means ES staff with the responsibilities described in § 653.107(b). This change will make § 658.419 more clear because the proposed regulatory text will use the term *ES staff* uniformly.

The Department also proposes to change the second reference to a ''suspected violation'' in § 658.419(a) to ''apparent violation'' for clarity. In addition, the Department proposes to add a sentence to § 658.419(a) to clarify that the apparent violation must be documented in the Complaint System log as described at § 658.410.

Finally, the Department proposes to add a sentence at the end of § 658.419(a) to clarify that when an apparent violation involves alleged violations of nondiscrimination laws, it must be processed according to the procedures described in § 658.411(c)—that is, it must be logged and immediately referred to the State-level E.O. Officer.

Section 658.420 Responsibilities of the Employment and Training Administration Regional Office

The Department proposes several revisions to § 658.420. First, the Department proposes to revise § 658.420(b) to conform with the simplified process for referring nondiscrimination complaints in proposed § 658.411(c). In particular, the Department proposes to revise § 658.420(b)(1) to provide that if an ETA regional office receives a complaint alleging violations of nondiscrimination laws, then the complaint must be logged and immediately referred to the appropriate State-level E.O. Officer(s). As explained previously under the section addressing revisions to § 658.411(c), this simplified referral process would provide clear instruction to ETA regional staff and task State-level E.O. Officers, who have appropriate nondiscrimination expertise, with determining how nondiscrimination complaints should be handled and by whom.

Second, the Department proposes to remove existing § 658.420(b)(2), which addresses complaints alleging discrimination on the basis of genetic information, because such complaints would fall under the simplified procedures set forth in proposed § 658.420(b)(1). Third, the Department proposes to make several revisions to conform with this deletion—namely, to move the text in existing § 658.420(c) to § 658.420(b) and remove all references to paragraph (b)(2) in this section.

Finally, the Department proposes to revise § 658.420(c) to clarify that when an ETA regional office receives an employment-related law complaint under this subsection, it should process the complaint in accordance with § 658.422. The existing regulation incorrectly references § 658.411, which provides complaint processing

procedures for ES offices and SWAs (and not ETA regional offices).

Section 658.422 Processing of Employment-Related Law Complaints by the Regional Administrator

The Department proposes several revisions to § 658.422. First, the Department proposes to revise paragraph (a) to clarify that this section applies to all ''employment-related law'' complaints submitted directly to the ETA Regional Administrator or their representative. Second, the Department proposes to add a sentence to the end of paragraphs (b) and (c) to conform with the proposed revisions to § 658.420(b)(1). In particular, proposed paragraphs (b) and (c) each include an additional sentence to specify that when a complaint described in the paragraph alleges a violation of nondiscrimination laws or reprisal for protected activity, then it must be referred to the appropriate State-level E.O. Officer in accordance with § 658.420(b)(1).

2. Subpart F—Discontinuation of Services to Employers by the Wagner-Peyser Act Employment Service

Section 658.501 Basis for Discontinuation of Services

The Department proposes to amend § 658.501(a)(4) to add that SWA officials must initiate procedures for discontinuation of services to employers who are currently debarred or disqualified from participating in one of the Department's foreign labor certification programs. This revision corresponds to the proposed addition in § 653.501(a)(4), which would require ES staff to consult the Department's OFLC and Wage and Hour Division debarment lists prior to placing a job order into intrastate or interstate clearance, and to initiate discontinuation of services pursuant to this subpart if the employer requesting access to the clearance system is currently debarred or disqualified from participating in one of the Department's foreign labor certification programs. As explained in the section of this preamble addressing the proposed addition in § 653.501(a)(4), the Department is proposing this requirement to protect workers that are referred to employers through the ARS by ensuring that the ARS is not used to place a worker with an employer that has failed to comply with its obligation(s) as an employer of foreign workers.

The Department proposes to amend § 658.501(b) to correct an error in the existing regulatory text, which improperly references § 658.501, instead of § 658.502. Specifically, the regulatory text currently provides that SWA officials may discontinue services immediately if, in the judgment of the State Administrator, exhaustion of the administrative procedures set forth in § 658.501(a)(1) through (7) would cause substantial harm to a significant number of workers. The reference to paragraphs (a)(1) through (7) of § 685.501 appears to have been made in error, because § 658.501 does not set forth administrative procedures but rather the bases for discontinuation of services. Section 658.502, by contrast, sets forth the process by which SWAs must generally follow when discontinuing the provision of ES services. Accordingly, the Department proposes to replace the cross reference in 658.501(b) to 658.501(a)(1) through (7) with a cross reference to § 658.502, which will clarify that the administrative procedures that must otherwise be exhausted are set forth in § 658.502. This revision is necessary to clarify when a SWA official may discontinue services immediately.

The Department proposes to amend § 658.501(c) to correct an error in the regulatory text like the cross-referencing error in § 658.501(b). This section incorrectly references the bases on which a SWA may discontinue services to an employer in § 658.501(a)(1) through (8), instead of the procedures to discontinue such services set forth in § 658.502. Accordingly, the Department proposes to replace the reference to § 658.501(a)(1) through (8) with a cross reference to § 658.502.

The Department proposes to amend § 658.502(a)(4) to add that where a SWA's decision to discontinue services is based on the fact that the employer is currently debarred or disqualified from participating in one of the Department's foreign labor certification programs, the SWA must specify the time period for which the employer is debarred or disqualified. The proposed revision would further specify that the employer must be notified that all ES services will be terminated in 20 working days unless, within that time, the employer provides adequate evidence that the Department's disbarment or disqualification is no longer in effect or will terminate before the employer's anticipated date of need. Similar to the proposed revision to § 658.501(a)(4) discussed previously, the revisions proposed here correspond to the proposed addition in § 653.501(a)(4), which would require ES staff to consult the Department's OFLC and Wage and Hour Division debarment lists prior to placing a job order into intrastate or interstate clearance, and to initiate discontinuation of services pursuant to this subpart if the employer requesting access to the clearance system is currently debarred or disqualified from participating in one of the Department's foreign labor certification programs.

3. Subpart G—Review and Assessment of State Workforce Agency Compliance With Employment Service Regulations

Section 658.602 Employment and Training Administration National Office Responsibility

The Department proposes to amend § 658.602(g) to refer to § 653.108(a) instead of § 653.108(b). This is necessary to correct the inaccurate citation to § 653.108(b), which does not contain self-monitoring requirements. This proposed revision will clarify the location of self-monitoring requirements for readers.

The Department proposes to amend the introductory text of § 658.602(n) to replace the phrase ''in the course of'' with the word ''during'' for purposes of clarity.

The Department proposes to amend § 658.602(n)(1) to replace the phrase ''outreach workers'' with ''outreach staff'' because *outreach staff* is a defined term in § 651.10. Using the defined term will make the regulatory text more clear regarding which staff it references.

The Department proposes to amend § 658.602(n)(2) to remove the word ''random'' from the requirement for the NMA to participate in field check(s) of migrant camps or work site(s) where MSFWs have been placed. The proposed revision would clarify that the selection of migrant camps or work sites for which the NMA will participate in field checks does not need to be random, and may be targeted, where necessary, to respond to known or suspected compliance issues, thereby improving MSFW worker protection.

The Department proposes to amend § 658.602(o) to remove ''(8)'' from the reference to paragraph (f)(8) as a technical edit. Paragraph (f) of § 658.602 does not have a subordinate paragraph (8).

Section 658.603 Employment and Training Administration Regional Office Responsibility

The Department proposes to amend § 658.603(d)(7) to replace uses of ''job order'' with ''clearance order.'' This change will make the provision conform with the proposed changes to the definition of *clearance order* in § 651.10. The change will also clarify that field checks should only be conducted on orders that have been cleared for intrastate and/or interstate recruitment, not including local job

orders. The Department also proposes to remove the word ''random'' from the requirement for the RA to conduct field checks. Under the proposed revision, the selection of agricultural work sites does not need to be random, and may be targeted, where necessary, to respond to known or suspected compliance issues, thereby improving MSFW worker protection. Finally, the Department proposes to add the word ''and'' before ''working and housing conditions'' to make clear that this is a single term that follows wages and hours in the list of items that must be specified on a clearance order.

Paragraph (i) of § 658.603 addresses RMA training. The Department proposes to amend § 658.603(i) to remove the requirement that the RMA participate in training sessions approved by the National Office within the first 3 months of their tenure and replace it with a requirement that would require the RMA to participate in training sessions offered by the National Office and additional training sessions necessary to maintain competency and enhance their understanding of issues farmworkers face (including trainings offered by OSHA, WHD, EEOC, CRC, and other organizations offering farmworker-related information). The proposed regulatory text removes the requirement for training within the first 3 months of an RMA's tenure because RMAs must participate in all trainings necessary to learn and maintain competencies for the role. The proposed regulatory text clarifies that training attendance is required beyond the first 3 months of an RMA's tenure. The proposed regulatory text regarding maintaining competencies specifically aligns with the Department's training requirements for SMAs as well as E.O. staff training requirements, which provide a positive example for RMA training.

The Department proposes to amend § 658.603(p)(1) to replace ''workers'' with ''staff.'' This change would implement the defined term of *outreach staff* to clarify the type of staff to which the provision refers.

The Department proposes to amend § 658.603(p)(2) to remove the word ''random'' so that the RMA understands that clearance orders selected for a field check do not need to be selected at random. This change will clarify that RMAs may conduct targeted field checks where necessary, allowing the Department to respond to known or suspected compliance issues, in addition to random field checks.

4. Subpart H—Federal Application of Remedial Action to State Workforce Agencies

Section 658.702 Assessment and Evaluation of Program Performance Data

The Department proposes to amend § 658.702(f)(2) to add references to the ''RMA'' in two places to clarify that the RA must notify both the RMA and the NMA when findings and noncompliance involve services to MSFWs or the Complaint System. Additionally, this proposed change would require the Final Notification to be sent to the RMA, as well as the NMA. These changes are necessary for the RMA to be aware of all ES issues involving MSFWs and the Complaint System, which the RMA is responsible to monitor. The notification required by these revisions would improve the RMA's ability to effectively perform all required duties.

Section 658.704 Remedial Actions

The Department proposes to amend § 658.704(f)(2) to require that copies of the RA's notification to the SWA of decertification proceedings must be sent to the RMA and the NMA. The existing regulatory text only requires that one copy be sent to the NMA. This revision is necessary because the RMA needs to be aware of all issues that relate to MSFWs in the regional office.

The Department proposes to amend § 658.707(a), which addresses the circumstances in which a SWA may request a hearing, to specify that any SWA that has received a Notice of Remedial Action under § 658.707(a) of this subpart may also request a hearing, and that the SWA may do so by filing a written request with the RA within 20 business days of the SWA's receipt of the notice. This is a clarifying edit, as § 658.704(c) already provides a SWA the opportunity to request a hearing under these circumstances. The Department additionally proposes to add a reference to the RA in § 658.707(b), because § 658.704(c) directs the SWA to send its written request to the RA.

IV. Rulemaking Analyses and Notices

A. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Under Executive Order (E.O.) 12866, OMB's Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. *See* 58 FR 51735 (Oct. 4, 1993). Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. Id. This proposed rule is a significant regulatory action, although not an economically significant regulatory action, under sec. 3(f) of E.O. 12866. Accordingly, OMB has reviewed this proposed rule.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and, in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

The Department anticipates that the proposed rule would result in costs, transfer payments, and benefits for State governments and agricultural employers. The costs of the proposed rule would include rule familiarization and additional information collection for State governments, as well as transition costs such as recruitment, training, and technology expenses for the four States (*i.e.,* Colorado, Delaware, Massachusetts, and Michigan) that currently have non-State-merit staff providing some labor exchange services and would need to transition to State merit staff for the provision of all labor exchange services.[13]

The transfer payments would include the changes in wages and fringe benefits for staff providing Wagner-Peyser Act

[13] Since the 2020 Final Rule, some States expressed an interest in using non-merit staff. Delaware began using this flexibility and currently uses two contract staff for ES services. Missouri has an approved WIOA State Plan modification to utilize non-State-merit staff.

ES labor exchange services in the four States that currently have non-State-merit staff providing ES labor exchange services: Colorado, Delaware, Massachusetts, and Michigan.

The benefits of the merit-staffing provisions in the proposed rule would include the ability for States to shift staff resources during future surges in UI claims when time-limited legislative flexibilities in the delivery of UI services are not available. The Department also is proposing amendments to the regulations that govern labor exchange services provided to MSFWs, the Monitor Advocate System, and the Complaint System. These amendments would remove redundancies, clarify requirements, and improve equity and inclusion for MSFWs in the ES system.

1. Costs

The Department anticipates that the proposed rule would result in costs related to rule familiarization, staff transition, and information collection.

a. Rule Familiarization Costs

Regulatory familiarization costs represent direct costs to States associated with reviewing the new regulation. The Department's analysis [14] assumes that the changes introduced by the rule would be reviewed by Human Resources Managers (SOC code 11–3121) employed by SWAs. The Department anticipates that it would take a Human Resources Manager an average of 1 hour to review the rule.

The U.S. Bureau of Labor Statistics (BLS) Occupational Employment and Wage Statistics (OEWS) data show that the median hourly wage of State government Human Resources Managers is $43.75.[15] The Department used a 61 percent benefits rate [16] and a 17 percent overhead rate,[17] so the fully loaded hourly wage is $77.88 [= $43.75 + ($43.75 × 61%) + ($43.75 × 17%)].

[14] This analysis uses codes from the Standard Occupational Classification (SOC) system and the North American Industry Classification System (NAICS).

[15] BLS, ''Occupational Employment and Wage Statistics, National Industry-Specific Occupational Employment and Wage Estimates, NAICS 999200,'' SOC Code 11–3121, May 2020, *https://www.bls.gov/oes/current/naics4_999200.htm* (last visited Aug. 2, 2021).

[16] BLS, ''National Compensation Survey, Employer Costs for Employee Compensation,'' *https://www.bls.gov/ncs/data.htm* (last visited Aug. 2, 2021). For State and local government workers, wages and salaries averaged $32.72 per hour worked in 2020, while benefit costs averaged $20.09, which is a benefits rate of 61 percent.

[17] Cody Rice, U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program,'' June 10, 2002, *https://www.regulations.gov/document/EPA-HQ-OPPT-2014-0650-0005* (last visited Aug. 2, 2021).

Therefore, the one-time rule familiarization cost for all 57 jurisdictions (the 50 States, the District of Columbia, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Republic of Palau, and the U.S. Virgin Islands) is estimated to be $4,439 (= $77.88 × 1 hour × 57 jurisdictions).

b. Transition Costs

Four States would potentially incur one-time costs associated with the proposal to require all ES labor exchanges services to be provided by State merit staff. Colorado, Delaware, Massachusetts, and Michigan currently have some non-State-merit staff who provide labor exchange services, and these States may incur transition expenses, such as recruitment, training, or technology costs, as well as costs related to the State budgeting process. Moreover, job seekers and employers may experience nonquantifiable transition costs associated with service interruptions during the time period in which the State is making staff changes to comply with the provisions of this proposed rule.

The Department used a survey to ask the four States to estimate these potential expenses. One State anticipates that transition expenses would be minimal unless one of the local one-stop centers goes through an ''upheaval'' due to the proposed change. The State explained that the SWA provides employee training, and this would not change under the provisions in the proposed rule. Moreover, technology costs have always been shared costs, and recruitment is conducted by local management teams on an on-going basis. The State noted, however, that there would be significant disruptions in the workforce areas that use non-State merit-staffed employees to provide ES labor exchange services; those areas constitute 25 percent of the State's workforce areas. Hiring State merit-staffed employees in those areas would take months; moreover, the State would need to add State supervision and engage in union negotiations.

A second State estimated that the transition costs related to training and technology would be minimal. However, obtaining additional FTE State merit-staffed employees would generate nonquantifiable costs. The State explained that the process would entail requesting and justifying new positions, preparing and submitting a budget request, posting the positions, interviewing candidates, checking references, and onboarding new hires. The State estimated that the process would take at least 12 to 18 months.

The Department is not able to quantify the transition costs to the four States due to the lack of data. The Department is seeking additional input from the four States on their potential transition expenses such as recruitment, training, or technology costs, as well as costs related to the State budgeting process. The Department is also seeking input on the potential costs associated with service interruptions during the time period in which the State is making staff changes to comply with the provisions of this proposed rule.

c. Information Collection Costs

IC costs represent direct costs to States associated with the proposed information collection requests (ICRs) under this proposed rule.

The first ICR pertains to the proposed requirement that SWA Wagner-Peyser programs document Participant Individual Record Layout (PIRL) data element 413 for all reportable individuals. The Department assumes that this provision would entail three costs: (1) Computer programming; (2) additional time for ES staff to help individuals register for services, and (3) additional time for SMAs to check the accuracy of the MSFW coding. SWAs would need to reprogram their ES registration systems to ask MSFW status (PIRL 413) questions earlier in the registration process. The Department assumes reprogramming would cost an average of $4,000 per jurisdiction,[18] so the total one-time cost for reprogramming is estimated at $228,000 (= $4,000 × 57 jurisdictions). For the additional annual burden on ES staff, the Department anticipates that it would take an ES staff member an average of 2 minutes per reportable individual to ask the additional MSFW questions and record the answers. To estimate this cost, the Department used the median hourly wage of $26.85 for educational, guidance, and career counselors and advisors (SOC code 21–1012) employed by State governments (NAICS 999200).[19] The Department used a 61-percent benefits rate and a 17-percent overhead rate, so the fully loaded hourly wage is $47.79 [= $26.85 + ($26.85 × 61%) + ($26.85 × 17%)]. Assuming ES staff assist in registering half of the 10.2 million reportable individuals (based on the average for Program Years 2018, 2019, and 2020), the annual cost is

[18] Anecdotal evidence from States indicates a range of $2,000 to $6,000 to add one yes/no question to an existing data collection.

[19] BLS, ''Occupational Employment and Wage Statistics, National Industry-Specific Occupational Employment and Wage Estimates, NAICS 999200, SOC 21–1012.'' *https://www.bls.gov/oes/current/naics4_999200.htm.*

estimated at $8,129,913 (= 10,207,047 reportable individuals × 50% × 2 minutes × $47.79 per hour). For the annual burden on SMAs, the Department anticipates that it would take an SMA 1 hour per quarter to check the accuracy of the MSFW coding. To estimate this cost, the Department used the median hourly wage of $36.25 for social and community service managers (SOC code 11–9151) employed by State governments (NAICS 999200).[20] The Department used a 61-percent benefits rate and a 17-percent overhead rate, so the fully loaded hourly wage is $64.53 [= $36.25 + ($36.25 × 61%) + ($36.25 × 17%)]. Therefore, the annual cost is estimated at $14,713 (= 57 SMAs × 4 hours per year × $64.53 per hour).

The second ICR pertains to the proposed requirement that SWA applicant-holding offices provide workers referred on clearance orders with a checklist summarizing wages, working conditions, and other material specifications in the clearance order. The Department anticipates that it would take an ES staff member an average of 35 minutes to read the clearance order, create a checklist, and provide the checklist to applicants. To estimate this cost, the Department used a fully loaded hourly wage of $47.79 for educational, guidance, and career counselors and advisors (SOC code 21–1012) employed by State governments (NAICS 999200). Assuming 14,580 clearance orders per year (based on the number of clearance orders reported by SWAs in Program Year 2019), the annual cost is estimated at $406,454 (= 14,580 clearance orders × 35 minutes × $47.79 per hour).

The third ICR pertains to the proposed changes associated with the Migrant and Seasonal Farmworker Monitoring Report and Complaint/Apparent Violation Form. The Department assumes that this provision would entail two costs: (1) Time for ES Managers to update a central complaint log, and (2) additional time for SMAs to complete the Annual Summary due to content changes. For the annual burden on ES Managers, the Department anticipates that it would take an ES Manager 8 hours per year to update the central complaint log. To estimate this cost, the Department used a fully loaded median hourly wage of $64.53 for social and community service managers (SOC code 11–9151) employed by State governments (NAICS 999200). Assuming that there are approximately 2,400 ES Managers (based on the approximate number of one-stop centers), the annual cost is estimated at $1,238,976 (= 2,400 ES Managers × 8 hours per year × $64.53 per hour). For the annual burden on SMAs, the Department anticipates that it would take an SMA an additional 3 hours per year to complete the Annual Summary due to content changes. To estimate this cost, the Department used a fully loaded median hourly wage of $64.53 for social and community service managers (SOC code 11–9151) employed by State governments (NAICS 999200). Therefore, the annual cost is estimated at $11,035 (= 57 SMAs × 3 hours per year × $64.53 per hour).

The fourth ICR pertains to the proposal to require the delivery of all ES labor exchanges services by State merit staff. The Department proposes to create a new ICR that would require Unified or Combined State Plans to describe how the State will staff labor exchange services under the Wagner-Peyser Act using State merit staff. The Department does not anticipate additional costs related to this requirement given that States must already describe in their Unified or Combined State Plans how ES labor exchange services will be delivered.

In total, the proposed rule is expected to have first-year IC costs of $10.0 million in 2020 dollars. Over the 10-year analysis period, the annualized costs are estimated at $9.8 million at a discount rate of 7 percent in 2020 dollars.

2. Transfer Payments

According to OMB Circular A–4, transfer payments are monetary payments from one group to another that do not affect total resources available to society. The transfer payments for this proposed rule are the transfer payments associated with employee wages and fringe benefits.

The 2020 Final Rule gave all States and territories more staffing options for delivering labor exchange services. Four States (Colorado, Delaware, Massachusetts, and Michigan) currently have non-State-merit staff providing labor exchange services, and others have expressed interest in such an arrangement. This proposed rule would require all ES labor exchange services to be provided by State merit-staffed employees; therefore, these four States would need to restaff (along with other States that could implement non-State-merit staffing before this NPRM is finalized) and may incur additional wage costs. For purposes of E.O. 12866, these additional wage costs are categorized as transfer payments from States to employees.

To estimate the transfer payments, the Department surveyed the four States and asked them to provide the total number of full-time equivalent (FTE) hours provided by State merit staff and non-State-merit staff dedicated to delivering ES services, as well as the occupation (or position title) and annual salary for all employees included in the FTE calculations. Delaware, Massachusetts, and Michigan provided data via email, while Colorado responded via telephone.

Delaware reported that it currently has two FTE non-State, merit-staffed employees delivering ES services: one FTE management analyst with an annual salary of $59,000 and one FTE migrant farm outreach worker with an annual salary of $48,000. The Department assumes that Delaware would replace the two FTE non-State, merit-staffed employees with one State merit-staffed management analyst (SOC code 13–1111) and one State merit-staffed community and social service specialist (SOC code 21–1099). To calculate the change in wage costs for Delaware, the Department used OEWS data to estimate the median annual wages for management analysts and community and social service specialists employed by the State of Delaware. The median annual wage for management analysts is $61,840, while the median annual wage for community and social service specialists is $43,910.[21]

The Department adjusted the annual wages to account for fringe benefits (61 percent) and overhead costs (17 percent). Then, the Department calculated the difference between the fully loaded wage rates of the two current non-State-merit staff and two potential State merit staff. The decrease in wage costs for Delaware is estimated at $2,225 per year.[22]

Massachusetts reported that currently it has approximately 30 FTE non-State, merit-staffed employees providing ES services, but did not provide their job titles or annual salaries. Based on the occupational distribution of the State merit staff reported by Massachusetts, the Department assumes that 80 percent (or 24 FTEs) of the 30 FTE non-State-merit staff are educational, guidance, and career counselors and advisors (SOC code 21–1012), 10 percent (or 3 FTEs) are social and community service

[20] BLS, ''Occupational Employment and Wage Statistics, National Industry-Specific Occupational Employment and Wage Estimates, NAICS 999200, SOC 11–9151.'' *https://www.bls.gov/oes/current/naics4_999200.htm.*

[21] BLS, OEWS data for government workers by State, May 2020, *https://www.bls.gov/oes/special.requests/oes_research_2020_sec_99.xlsx* (last visited Aug. 2, 2021).

[22] ($61,840 − $59,000) × 1.78 + ($43,910 − $48,000) × 1.78 = −$2,225.

managers (SOC code 11–9151), and 10 percent (or 3 FTEs) are office and administrative support workers (SOC code 43–0000). To calculate the change in wage costs for Massachusetts, the Department used OEWS data on median annual wages in Massachusetts for the three occupations identified previously. The median wage rates for private sector workers are not available by State and occupation; therefore, the Department used the median wage rates for all sectors in Massachusetts as a proxy because private sector jobs constitute 85 percent of total employment.[23] The median annual wage for educational, guidance, and career counselors and advisors in Massachusetts is $69,722, the median for social and community service managers is $67,309, and the median for office and administrative support workers is $46,342.[24]

Massachusetts reported that the median annual salary for State merit-staffed ES services representatives and State merit-staffed job specialists is $59,689, the median for State merit-staffed program managers is $75,880, and the median for State merit-staffed office support specialists is $47,176.[25] The Department adjusted the annual wages to account for fringe benefits (61 percent) and overhead costs (17 percent). Then, the Department calculated the difference between the fully loaded wage rates of the 30 current non-State-merit staff and 30 potential State merit staff. The decrease in wage costs for Massachusetts is estimated at $378,387 per year.[26]

Michigan reported that it currently has approximately 192 FTE non-State-merit staff. A wide range of occupational titles for non-State-merit staff providing ES services was reported; however, most of the staff members are program managers, employment and job specialists (or other professional occupations), or office and administrative support workers. Based on the occupational distribution of the State merit staff reported by Michigan, the Department assumes that 7 percent (or 14.3 FTEs) of the 192 FTE non-State-merit staff are program managers, 83 percent (or 159.3 FTEs) are employment and job specialists, and 9 percent (or 18.1 FTEs) are office and administrative support workers. Michigan reported that the median annual salary plus benefits and other associated employment costs for non-State, merit-staffed program managers is $86,494, the median for employment and job specialists (or other professional occupations) is $50,955, and the median for non-State, merit-staffed office support specialists is $43,602.

Michigan also reported that the median annual salary plus benefits and other associated employment costs for State merit-staffed State administrative managers is $189,639, the median for State merit-staffed migrant service workers is $100,894, and the median for State merit-staffed office secretaries is $102,135.[27]

The Department did not adjust the annual wages to account for fringe benefits or overhead costs because the wages reported by Michigan already included benefits and other employment costs. The Department calculated the difference between the fully loaded wage rates of the 192 current non-State-merit staff and 192 potential State merit staff. The wage cost increase for Michigan is estimated at $10,489,704 per year.[28]

In total, the proposed rule is expected to have annual transfer payments of $10,109,091 for Delaware, Massachusetts, and Michigan (= − $2,225 − $378,387 + $10,489,704). The Department continues to seek data from Colorado and intends to include in the final rule an analysis of any pertinent data received.

This proposed rule may impact the demographic composition of the staff delivering ES labor exchange services. State government employees are more likely than private sector employees to be women or black. Current Population Survey data show that 60 percent of State government employees in 2020 were women compared to 46 percent of private sector employees. With respect to race, 75 percent of State government employees in 2020 were white compared to 78 percent of employees in the private sector, 15 percent of State government employees were black compared to 12 percent of employees in the private sector, and 6 percent of State government employees were Asian compared to 7 percent of employees in the private sector. As far as the ethnic composition of these two labor forces, 12 percent of State government employees in 2020 were Hispanic compared to 18 percent of employees in the private sector.[29]

3. Nonquantifiable Benefits

The Department is proposing to reinstate the longstanding requirement that States use only State merit staff to deliver ES labor exchange services, with no exceptions. The COVID–19 pandemic placed an enormous burden on State UI programs due to the significant increase in UI claims from the massive number of unemployed workers. The number of continued claims rose from fewer than 2 million before the pandemic to more than 20 million in the week ended May 9, 2020. It became evident to the Department that, during a crisis that displaces a large number of workers in a short time, it could become imperative for States to shift staff resources from ES services to support urgent UI services. Being able to do so, however, would require that ES labor exchange services be provided only by State merit staff because UI services are required to be delivered solely by State merit staff pursuant to sec. 303(a)(1) of the Social Security Act. Requiring labor exchange services to be provided by State merit staff will help ensure that States have the flexibility to shift staff resources during future surges in UI claims where time-limited legislative flexibilities to UI services are not available.

The benefits of requiring States to use only State merit staff to deliver ES labor exchange services are not entirely quantifiable. Yet, in addition to States benefiting from the availability of State merit staff to assist with a surge in UI services, benefits also accrue to individuals accessing labor exchange services delivered by State merit personnel. State merit-staffed employees are accountable only to their State government, are hired through objective, transparent standards, and must deliver

[23] In May 2020, total employment was 139,099,570 (*https://www.bls.gov/oes/current/oes_nat.htm*), with 117,718,070 jobs (85 percent) in the private sector (*https://www.bls.gov/oes/current/000001.htm*) and 21,381,500 jobs (15 percent) in the government sector (*https://www.bls.gov/oes/current/999001.htm*).

[24] BLS, ''OEWS, May 2020 State Occupational Employment and Wage Estimates: Massachusetts,'' *https://www.bls.gov/oes/current/oes_ma.htm* (last visited Aug. 2, 2021).

[25] The Department assumes that Massachusetts would replace non-State, merit-staffed educational, guidance, and career counselors and advisors with State merit-staffed ES services representatives or job specialists; non-State, merit-staffed social and community service managers with State merit-staffed program managers; and non-State, merit-staffed office and administrative support workers with State merit-staffed office support specialists.

[26] ($59,689 − $69,722) × 24 × 1.78 + ($75,880 − $67,309) × 3 × 1.78 + ($47,176 − $46,342) × 3 × 1.78 = − $378,387.

[27] The Department assumes that Michigan will replace non-State merit-staffed program managers with State merit-staffed employees paid at a rate similar to State administrative managers; non-State merit-staffed employment and job specialists (and other professional occupations) with State merit-staffed employees paid at a rate similar to migrant service workers; and non-State merit-staffed office and office support specialists with State merit-staffed employees paid at a rate similar to office secretaries. In categorizing each non-State employee, the Department used the job title and compensation rate provided by the State.

[28] ($189,639 − $86,494) × 14.3 + ($100,894 − $50,955) × 159.3 + ($102,135 − $43,602) × 18.1 = $10,489,704.

[29] BLS, Current Population Survey, unpublished tables.

services to all customers of the ES system according to established standards. In exercising its discretion under sec. 3(a) of the Wagner-Peyser Act to establish minimum levels of efficiency and promote the uniform administration of labor exchange services by requiring the use of State merit staff to deliver labor exchange services, the Department has determined that alignment of ES and UI staffing is needed to ensure that quality services are delivered effectively and equitably to UI beneficiaries and other ES customers.

The Department is also proposing amendments to the regulations governing ES labor exchange services provided to MSFWs, the Monitor Advocate System, and the Complaint System. These amendments would remove redundancies, clarify requirements, and enhance equity and inclusion for farmworkers in the ES system.

4. Summary

Exhibit 1 shows the annualized rule familiarization costs, IC costs, and transfer payments at discount rates of 3 percent and 7 percent. The proposed rule is expected to have first-year rule familiarization costs of $4,439 in 2020 dollars, first-year IC costs of $10.0 million in 2020 dollars, and first-year transfer payments of $10.1 million in 2020 dollars. Over the 10-year analysis period, the annualized rule familiarization costs are estimated at $591 at a discount rate of 7 percent in 2020 dollars, the annualized IC costs are estimated at $9.8 million at a discount rate of 7 percent in 2020 dollars, and annualized transfer payments are estimated at $10.1 million at a discount rate of 7 percent in 2020 dollars.

Exhibit 1: Summary of Monetized Costs and Transfers

Year		Rule Familiarization Costs	Information Collection Costs	Total Costs	Transfers
1	2022	$ 4,439	$ 10,029,091	$ 10,033,529	$ 10,109,091
2	2023	$ -	$ 9,801,091	$ 9,801,091	$ 10,109,091
3	2024	$ -	$ 9,801,091	$ 9,801,091	$ 10,109,091
4	2025	$ -	$ 9,801,091	$ 9,801,091	$ 10,109,091
5	2026	$ -	$ 9,801,091	$ 9,801,091	$ 10,109,091
6	2027	$ -	$ 9,801,091	$ 9,801,091	$ 10,109,091
7	2028	$ -	$ 9,801,091	$ 9,801,091	$ 10,109,091
8	2029	$ -	$ 9,801,091	$ 9,801,091	$ 10,109,091
9	2030	$ -	$ 9,801,091	$ 9,801,091	$ 10,109,091
10	2031	$ -	$ 9,801,091	$ 9,801,091	$ 10,109,091
Annualized with 7% discounting		$ 591	$ 9,831,429	$ 9,832,020	$ 10,109,091
Annualized with 3% discounting		$ 505	$ 9,827,041	$ 9,827,546	$ 10,109,091

Due to data limitations, the Department is unable to quantify transition costs such as recruitment, training, and technology expenses that would be incurred by the four States (*i.e.,* Colorado, Delaware, Massachusetts, and Michigan) that currently have non-State-merit staff providing some ES labor exchange services.

5. Regulatory Alternatives

OMB Circular A–4 directs agencies to analyze alternatives if such alternatives best satisfy the philosophy and principles of E.O. 12866. Accordingly, the Department considered the following regulatory alternatives.

a. Alternative 1

Under this alternative, the Department would return to the pre-2020 Wagner-Peyser Act regulations, reinstituting the State merit-staffing requirement for all States except for the three States previously operating as exceptions: Colorado, Massachusetts, and Michigan. After careful consideration, the Department is not pursuing this alternative. These States operate ES by devolving it to the local level where it can be managed alongside WIOA title I services. While such alignment with WIOA title I has some value, it is outweighed by the benefits of aligning ES staffing with UI administration and adjudication, which would allow ES staff to provide surge capacity for UI administration and adjudication during times of high need. Therefore, the Department is proposing that all States, including those that previously operated as demonstration States, come into compliance with the merit-staffing requirement.

b. Alternative 2

Under this alternative, the Department would require States to come into compliance with the requirement to use State merit staff within 30 or 60 days of issuance of the final rule. The Department is not pursuing this alternative because it could result in significant interruption to ES labor exchange services in the four States not already operating in compliance with the proposed rule. Colorado, Delaware, Massachusetts, and Michigan would need to rapidly shift existing staff or hire new staff and may find themselves in violation of contracts for services negotiated after the 2020 Final Rule. The Department recognizes that this alternative would be a substantial change for those States that have relied on other staffing arrangements and they may need time to make adjustments to personnel, contractual arrangements, and service provision. Accordingly, the Department is proposing to allow those States 18 months from the effective date of the final rule to come into compliance with the merit-staffing requirement rather than stipulating that the States comply immediately.

B. Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act of 1996, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act (RFA), 5 U.S.C. chapter 6, requires the

Department to evaluate the economic impact of this proposed rule on small entities. The RFA defines small entities to include small businesses, small organizations, including not-for-profit organizations, and small governmental jurisdictions. The Department must determine whether the proposed rule would impose a significant economic impact on a substantial number of such small entities. The Department concludes that this proposed rule does not regulate any small entities directly, so any regulatory effect on small entities will be indirect. Accordingly, the Department has determined this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

C. Paperwork Reduction Act of 1995

The purposes of the PRA, 44 U.S.C. 3501 *et seq.,* include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. See 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

A Federal agency may not conduct or sponsor a collection of information unless approved by OMB under the PRA and displays a currently valid OMB control number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

In accordance with the PRA, the Department has submitted four ICRs to OMB in concert with the publishing of this proposed rule. This provides the public the opportunity to submit comments on the ICs, either directly to the Department or to OMB. The 60-day period for the public to submit comments begins with the submission of the ICRs to OMB. Comments may be submitted electronically through *https://www.regulations.gov.* See the **ADDRESSES** section of this proposed rule for more information about submitting comments.

The ICs in this proposed rule are summarized as follows.

Agency: DOL–ETA.

Title of Collection: DOL–Only Performance Accountability, Information, and Reporting System for Reportable Individuals.

Type of Review: New Collection.

OMB Control Number: 1205–0NEW.

Description: The Department is requesting a new OMB control number for this collection. The request for a new control number is for administrative reasons only. The proposed changes to §§ 653.103(a) and 653.109(a)(10) in this rulemaking described subsequently will eventually be included in OMB Control Number 1205–0521. The Department is anticipating that a few different upcoming rulemakings will impact the ICs contained in OMB Control Number 1205–0521. Once all outstanding actions are final and complete, the Department intends to submit a nonmaterial change request to transfer the burden from the new ICR to the existing OMB control number for the DOL–Only Performance Accountability, Information, and Reporting System (1205–0521) and proceed to discontinue the use of the new control number.

This NPRM proposes to add a requirement that SWA Wagner-Peyser programs must document PIRL data element 413 for reportable individuals. The DOL-only PIRL ETA 9172 already requires Wagner-Peyser programs to document data element 413 for participants. This proposed change will help ES staff identify all individuals who engage in ES services who are MSFWs and the degree of their engagement, so that SWAs, SMAs, and the Department may better assess whether all Wagner-Peyser services are provided to MSFWs on an equitable basis. The NPRM also proposes changes to the definitions of migrant farmworker and seasonal farmworker. The Department plans to submit a new ICR that will update ETA 9172 to indicate that Wagner-Peyser programs must document and keep records of PIRL data element 413 for reportable individuals and align the definitions of migrant farmworker and seasonal farmworker with proposed revisions at § 651.10.

Affected Public: State Governments.

Obligation to Respond: Required to Obtain or Retain Benefits.

Estimated Total Annual Respondents: 22,687,331.

Estimated Total Annual Responses: 46,167,618.

Estimated Total Annual Burden Hours: 10,610,629,971.

Estimated Total Annual Other Burden Costs: $9,719,287.

Regulations Sections: §§ 653.103(a), 653.109(a)(10).

Agency: DOL–ETA.

Title of Collection: Agricultural Recruitment System Forms Affecting Migrant and Seasonal Farmworkers.

Type of Review: New Collection.

OMB Control Number: 1205–0NEW.

Description: This NPRM proposes to add a new IC to address the requirement for SWAs to provide certain workers with checklists summarizing wages, working conditions, and other material specifications. Specifically, pursuant to proposed 20 CFR 653.501(d)(6), ES staff would be required to provide farmworkers with ''checklists showing wage payment schedules, working conditions, and other material specifications of the clearance order.'' In addition, pursuant to proposed 20 CFR 653.501(d)(10), SWA applicant-holding offices must provide workers referred on clearance orders with a checklist summarizing wages, working conditions and other material specifications in the clearance order. The Department also proposes that this ICR include a new Agricultural Clearance Order Form, ETA Form 790B, which will be attached to the Agricultural Clearance Order Form, ETA Form 790 (see OMB Control Number 1205–0466). The Department previously proposed the ETA Form 790B through OMB Control Number 1205–0134, which is an expired ICR for which a submission requesting reinstatement is currently pending at OMB. The Department proposes to withdraw OMB Control Number 1205–0134 and to instead attach ETA Form 790B to this ICR because the subjects are related. ETA Form 790B is only used for employers who submit clearance orders requesting U.S. workers for temporary agricultural jobs, which are not attached to requests for foreign workers through the H–2A visa program. ETA is including the estimated burden to the public for the completion of ETA Form 790 in addition to the estimated burden for the ETA Form 790B, because employers would fill out both forms.

Affected Public: State Governments, Private Sector: Business or other for-

profits, not-for-profit institutions, and farms.

Obligation to Respond: Required to Obtain or Retain Benefits.

Estimated Total Annual Respondents: 18,180.

Estimated Total Annual Responses: 18,180.

Estimated Total Annual Burden Hours: 11,606.

Estimated Total Annual Other Burden Costs: $0.

Regulations Sections: § 653.501(d)(6) and (10).

Agency: DOL–ETA.

Title of Collection: Migrant and Seasonal Farmworker Monitoring Report and Complaint/Apparent Violation Form.

Type of Review: Revision.

OMB Control Number: 1205–0039.

Description: The proposed rule would require four areas to be changed in this ICR. First, there would be several changes to the required content of the SMA's Annual Summary, described at § 653.108, including a summary of how the SMA is working with the State-level E.O. Officer, an assurance that the SMA is a senior-level official who reports directly to the State Administrator or their designee, an evaluation of SMA staffing levels, a summary and analysis of outreach efforts, and other minor edits to language used to describe content in the summary. To implement these proposed changes, the Department also proposes to revise the ETA Form 5148 to include the proposed content. Second, the Department proposes to make two non-substantive corrections to the ETA Form 5148: (1) Adding transportation to the types of apparent violations reported in part 1, section E, item 3; and (2) revising part 3, items 2 and 3 so that the field check requirements conform to the existing regulation at § 653.501. The Department is adding transportation to the types of apparent violations because the types of apparent violations listed on the form are intended to exactly mirror the types of complaints reported in section D, item 2. Transportation was inadvertently omitted from the prior ICR revision. Third, the Department proposes to add a new IC to conform with the proposed change to § 653.107(b)(8), which is proposed to require that ES Office Managers maintain MSFW outreach logs on file for at least 3 years, to comply with 2 CFR 200.334. Fourth, the Department proposes to add an IC to this ICR to explain the recordkeeping requirements established at § 658.410(c) regarding maintaining a central complaint log. The Department does not propose to establish a required form, but rather to describe the minimum contents that must be included in any complaint logs SWAs create. In addition, the Department proposes to revise the ETA Form 5148 to conform with proposed revisions to the minimum level of service indicators to request information regarding outreach contacts per quarter as opposed to per week as currently required under § 653.109(h).

Affected Public: State Governments.

Obligation to Respond: Required to Obtain or Retain Benefits.

Estimated Total Annual Respondents: 5,536.

Estimated Total Annual Responses: 9,050.

Estimated Total Annual Burden Hours: 28,240.

Estimated Total Annual Other Burden Costs: $0.

Regulations Sections: 2 CFR 200.334; 20 CFR 653.107(b)(8), 653.108, 653.109(h), and 658.410(c).

Agency: DOL–ETA.

Title of Collection: Wagner-Peyser Employment Service Required Elements for the Unified or Combined State Plan.

Type of Review: New Collection.

OMB Control Number: 1205–0NEW.

Description: The Department is requesting a new OMB control number for this collection. The request for a new control number is for administrative reasons only. The proposed changes in this rulemaking described subsequently will eventually be included in OMB Control Number 1205–0522 (Expires 01/31/2023). As a result of the upcoming expiration date for 1205–0522, the Department will soon begin the process to request an extension for use of the ICR as required under the PRA. Once all outstanding actions are final and complete, the Department intends to submit a nonmaterial change request to transfer the burden from the new ICR to the existing OMB control number for the Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act (1205–0522) and proceed to discontinue the use of the new control number.

The proposed rule would require all States to provide Wagner-Peyser Act ES services through State merit staff. The Department proposes to create a new ICR to require Unified or Combined State Plans to describe how the State will staff labor exchange services under the Wagner-Peyser Act using State merit staff. Similarly, the Department proposes to reinstitute the SWA's requirement to provide assurances that it will use State merit staff to deliver ES services. The NPRM also proposes several clarifications regarding outreach and significant MSFW one-stop center staffing, including changes to the content of the AOP. The proposed changes will require revision to the AOP instructions.

Affected Public: State Governments.

Obligation to Respond: Required to Obtain or Retain Benefits.

Estimated Total Annual Respondents: 57 (every 2 years).

Estimated Total Annual Responses: 38 (every 2 years).

Estimated Total Annual Burden Hours: 8,136 (every 2 years).

Estimated Total Annual Other Burden Costs: $0 (every 2 years).

Regulations Sections: §§ 652.215; 653.107(a)(1), (a)(4), (b)(11), and (d)(2)(ii) through (v).

Interested parties may obtain a copy free of charge of one or more of the ICRs submitted to OMB on the OIRA website at *https://www.reginfo.gov/public/do/PRAMain.* From that page, select Department of Labor from the ''Currently under Review'' dropdown menu, click the ''Submit'' button, and find the applicable control number among the ICRs displayed.

As noted in the **ADDRESSES** section of this proposed rule, interested parties may send comments about the ICs to the Department, OMB, or both throughout the 60-day comment period. To help ensure appropriate consideration, such comments should mention the applicable OMB control number(s).

The Department and OMB are 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 appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

D. Executive Order 13132 (Federalism)

E.O. 13132 requires Federal agencies to ensure that the principles of Federalism animating our Constitution guide the executive departments and agencies in the formulation and implementation of policies and to

further the policies of the Unfunded Mandates Reform Act of 1995 (UMRA). Further, agencies must strictly adhere to constitutional principles. Agencies must closely examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and they must carefully assess the necessity for any such action. To the extent practicable, State and local officials must be consulted before any such action is implemented. The Department has reviewed the proposed rule in light of these requirements and has concluded that it is properly premised on the statutory authority given to the Secretary to set standards under the Wagner-Peyser Act.

Accordingly, the Department has reviewed this proposed rule and has concluded that the rulemaking has no substantial direct effects on States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government as described by E.O. 13132. Therefore, the Department has concluded that this proposed rule does not have a sufficient Federalism implication to require further agency action or analysis.

E. Unfunded Mandates Reform Act of 1995

Title II of UMRA, Public Law 104–4, requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. This proposed rule, if finalized, does not exceed the $100 million expenditure in any one year when adjusted for inflation. Therefore, the requirements of title II of UMRA do not apply, and the Department has not prepared a statement under UMRA.

F. Executive Order 13175 (Indian Tribal Governments)

The Department has reviewed this proposed rule under the terms of E.O. 13175 and DOL's Tribal Consultation Policy and has concluded that the changes to regulatory text would not have tribal implications. These changes do not have substantial direct effects on one or more Indian tribes, the relationship between the Federal government and Indian tribes, nor the distribution of power and responsibilities between the Federal government and Tribal Governments.

G. Plain Language

E.O. 12866, E.O. 13563, and the Presidential Memorandum of June 1, 1998 (Plain Language in Government Writing), direct executive departments and agencies to use plain language in all rulemaking documents published in the **Federal Register**. The goal is to make the government more responsive, accessible, and understandable in its communications with the public. Accordingly, the Department drafted this NPRM in plain language.

List of Subjects

20 CFR Part 651

Employment, Grant programs—labor.

20 CFR Part 652

Employment, Grant programs—labor, Reporting and recordkeeping requirements.

20 CFR Part 653

Agriculture, Employment, Equal employment opportunity, Grant programs—labor, Migrant labor, Reporting and recordkeeping requirements.

20 CFR Part 658

Administrative practice and procedure, Employment, Grant programs—labor, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Department of Labor proposes to amend 20 CFR parts 651, 652, 653, and 658, as follows:

PART 651—GENERAL PROVISIONS GOVERNING THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE

■ 1. The authority citation for part 651 continues to read as follows:

Authority: 29 U.S.C. 49a; 38 U.S.C. part III, 4101, 4211; Secs. 503, 3, 189, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

■ 2. Amend § 651.10 by:
■ a. Revising the introductory text;
■ b. Adding in alphabetical order a definition for ''Apparent violation'';
■ c. Revising the definitions of ''Applicant holding office,'' ''Bona fide occupational qualification (BFOQ),'' ''Career services,'' ''Clearance order,'' ''Complaint System Representative,'' ''Decertification,'' ''Employment and Training Administration (ETA),'' ''Employment Service (ES) office,'' ''Employment Service (ES) Office Manager,'' ''Employment Service (ES) staff,'' ''Field checks,'' ''Field visits,'' ''Hearing Officer,'' ''Interstate clearance order,'' ''Intrastate clearance order,'' and ''Migrant farmworker'';
■ d. Removing the definition of ''Migrant food processing worker'';
■ e. Revising the definitions of ''Occupational Information Network (O*NET),'' ''O*NET–SOC,'' ''Outreach staff,'' ''Participant,'' ''Placement,'' ''Reportable individual,'' ''Respondent,'' ''Seasonal farmworker,'' ''Significant MSFW one-stop centers,'' and ''Significant MSFW States'';
■ f. Removing the definitions of ''Significant multilingual MSFW one-stop centers'' and ''State Workforce Agency (SWA) official''; and
■ g. Revising the definition of ''Wagner-Peyser Act Employment Service (ES) also known as Employment Service (ES).''

The addition and revisions read as follows:

§ 651.10 Definitions of terms used in this part and parts 652, 653, 654, and 658 of this chapter.

In addition to the definitions set forth in sec. 3 of the Workforce Innovation and Opportunity Act (WIOA), codified at 29 U.S.C. 3101 *et seq.,* the following definitions apply to the regulations in parts 652, 653, 654, and 658 of this chapter:

* * * * *

Apparent violation means a suspected violation of employment-related laws or employment service (ES) regulations, as set forth in § 658.419 of this chapter.

Applicant holding office means an ES office that is in receipt of a clearance order and has access to U.S. workers who may be willing and available to perform farmwork on less than year-round basis.

* * * * *

Bona fide occupational qualification (BFOQ) means that an employment decision or request based on age, sex, national origin, or religion is based on a finding that such characteristic is necessary to the individual's ability to perform the job in question. Since a BFOQ is an exception to the general prohibition against discrimination on the basis of age, sex, national origin, or religion, it must be interpreted narrowly in accordance with the Equal Employment Opportunity Commission regulations set forth at 29 CFR parts 1604, 1605, and 1627.

Career services means the services described in sec. 134(c)(2) of WIOA and § 678.430 of this chapter.

Clearance order means a job order that is processed through the clearance system under the Agricultural Recruitment System (ARS) at part 653, subpart F, of this chapter.

* * * * *

Complaint System Representative means a trained ES staff individual who is responsible for processing complaints.

Decertification means the rescission by the Secretary of Labor (Secretary) of the year-end certification made under sec. 7 of the Wagner-Peyser Act to the Secretary of the Treasury that the State agency may receive funds authorized by the Wagner-Peyser Act.

* * * * *

Employment and Training Administration (ETA) means the component of the Department that administers Federal government job training and worker dislocation programs, Federal grants to States for public ES programs, and unemployment insurance benefits. These services are provided primarily through State and local workforce development systems.

* * * * *

Employment Service (ES) office means a site that provides ES services as a one-stop partner program. A site must be colocated in a one-stop center consistent with the requirements of §§ 678.305 through 678.315 of this chapter.

Employment Service (ES) Office Manager means the ES staff person in charge of ES services provided in a one-stop center.

* * * * *

Employment Service (ES) staff means State government personnel who are employed according to the merit-system principles described in 5 CFR part 900, subpart F—Standards for a Merit System of Personnel Administration, and who are funded, in whole or in part, by Wagner-Peyser Act funds. ES staff includes a State Workforce Agency (SWA) official.

* * * * *

Field checks means unannounced appearances by ES staff and/or other State or Federal staff at agricultural worksites to which ES placements have been made through the intrastate or interstate clearance system to ensure that conditions are as stated on the clearance order and that the employer is not violating an employment-related law.

Field visits means announced appearances by State Monitor Advocates, Regional Monitor Advocates, the National Monitor Advocate (or National Monitor Advocate team member(s)), or outreach staff to the working and living areas of migrant and seasonal farmworkers (MSFWs), to discuss ES services, farmworker rights and protections, and other employment-related programs with MSFWs, crew leaders, and employers. Monitor Advocates or outreach staff must keep records of each such visit.

* * * * *

Hearing Officer means a Department Administrative Law Judge, designated to preside at Department administrative hearings.

* * * * *

Interstate clearance order means an agricultural clearance order for temporary employment (employment on a less than year-round basis) describing one or more hard-to-fill job openings, which an ES office uses to request recruitment assistance from other ES offices in a different State.

Intrastate clearance order means an agricultural clearance order for temporary employment (employment on a less than year-round basis) describing one or more hard-to-fill job openings, which an ES office uses to request recruitment assistance from all other ES offices within the State.

* * * * *

Migrant farmworker means a seasonal farmworker (as defined in this section) who travels to the job site so that the farmworker is not reasonably able to return to their permanent residence within the same day.

* * * * *

*Occupational Information Network (O*NET)* means the online reference database which contains detailed descriptions of U.S. occupations, distinguishing characteristics, classification codes, and information on tasks, knowledge, skills, abilities, and work activities as well as information on interests, work styles, and work values.

* * * * *

*O*NET–SOC* means the occupational codes and titles used in the O*NET system, based on and grounded in the Standard Occupational Classification (SOC), which are the titles and codes utilized by Federal statistical agencies to classify workers into occupational categories for the purpose of collecting, calculating, and disseminating data. The SOC system is issued by the Office of Management and Budget and the Department is authorized to develop additional detailed O*NET occupations within existing SOC categories. The Department uses O*NET–SOC titles and codes for the purposes of collecting descriptive occupational information and for State reporting of data on training, credential attainment, and placement in employment by occupation.

* * * * *

Outreach staff means ES staff with the responsibilities described in § 653.107(b) of this chapter. State Monitor Advocates are not considered outreach staff.

Participant means a reportable individual who has received services other than the services described in § 677.150(a)(3) of this chapter, after satisfying all applicable programmatic requirements for the provision of services, such as eligibility determination. (See § 677.150(a) of this chapter.)

(1) The following individuals are not Participants, subject to § 677.150(a)(3)(ii) and (iii) of this chapter:

(i) Individuals who only use the self-service system; and

(ii) Individuals who receive information-only services or activities.

(2) ES participants must be included in the program's performance calculations.

Placement means the hiring by a public or private employer of an individual referred by the ES office for a job or an interview, provided that the ES office completed all the following steps:

(1) Prepared a job order form prior to referral, except in the case of a job development contact on behalf of a specific participant;

(2) Made prior arrangements with the employer for the referral of an individual or individuals;

(3) Referred an individual who had not been specifically designated by the employer, except for referrals on agricultural job orders for a specific crew leader or worker;

(4) Verified from a reliable source, preferably the employer, that the individual had entered on a job; and

(5) Appropriately recorded the placement.

* * * * *

Reportable individual means an individual who has taken action that demonstrates an intent to use ES services and who meets specific reporting criteria of the Wagner-Peyser Act (see § 677.150(b) of this chapter), including:

(1) Individuals who provide identifying information;

(2) Individuals who only use the self-service system; or

(3) Individuals who only receive information-only services or activities.

Respondent means the individual or entity alleged to have committed the violation described in the complaint, such as the employer, service provider, or State agency.

Seasonal farmworker means an individual who is employed, or was employed in the past 12 months, in farmwork (as defined in this section) of a seasonal or other temporary nature and is not required to be absent overnight from their permanent place of residence. Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind

exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. Workers who move from one seasonal activity to another, while employed in farmwork, are employed on a seasonal basis even though they may continue to be employed during a major portion of the year. Workers are employed on a temporary basis where they are employed for a limited time only or their performance is contemplated for a particular piece of work, usually of short duration. Generally, employment which is contemplated to continue indefinitely is not temporary.

* * * * *

Significant MSFW one-stop centers are those designated by the Department and include those ES offices where MSFWs account for 10 percent or more of annual participants or reportable individuals in ES and those local ES offices that the administrator determines must be included due to special circumstances such as an estimated large number of MSFWs in the service area. In no event may the number of significant MSFW one-stop centers be less than 100 centers on a nationwide basis.

Significant MSFW States are those States designated by the Department and must include the 20 States with the highest estimated number of MSFWs.

* * * * *

Wagner-Peyser Act Employment Service (ES) also known as Employment Service (ES) means the national system of public ES offices described under the Wagner-Peyser Act. ES services are delivered through a nationwide system of one-stop centers, managed by SWAs and the various local offices of the SWAs, and funded by the United States Department of Labor.

* * * * *

PART 652—ESTABLISHMENT AND FUNCTIONING OF STATE EMPLOYMENT SERVICE

■ 3. The authority citation for part 652 continues to read as follows:

Authority: 29 U.S.C. 491–2; Secs. 189 and 503, Public Law 113–128, 128 Stat. 1425 (Jul. 22, 2014).

■ 4. Amend § 652.8 by revising paragraphs (h), introductory text of paragraph (j), (j)(2), and (3) to read as follows:

§ 652.8 Administrative provisions.

* * * * *

(h) *Other violations.* Violations or alleged violations of the Wagner-Peyser Act, regulations, or grant terms and conditions except those pertaining to audits or discrimination must be determined and processed in accordance with part 658, subpart H, of this chapter.

* * * * *

(j) *Nondiscrimination requirements.* States must:

(1) * * *

(2) Assure that discriminatory job orders will not be accepted, except where the stated requirement is a bona fide occupational qualification (BFOQ). See, generally, 42 U.S.C. 2000e–(2)(e) and 29 CFR parts 1604, 1606, and 1625.

(3) Assure that ES offices are in compliance with the veteran referral and job listing requirements at 41 CFR 60–300.84.

* * * * *

■ 5. Revise the heading for Subpart C to read as follows:

Subpart C—Employment Service Services in a One-Stop Delivery System Environment

■ 6. Amend § 652.204 by revising the section heading and the first sentence to read as follows:

§ 652.204 Must funds authorized under the Governor's Reserve flow through the one-stop delivery system?

No, sec. 7(b) of the Wagner-Peyser Act provides that 10 percent of the State's allotment under the Wagner-Peyser Act is reserved for use by the Governor for performance incentives, supporting exemplary models of service delivery, professional development and career advancement of ES staff as applicable, and services for groups with special needs. * * *

■ 7. Amend § 652.205 by revising paragraph (b)(3) to read as follows:

§ 652.205 May funds authorized under the Wagner-Peyser Act be used to supplement funding for labor exchange programs authorized under separate legislation?

* * * * *

(b) * * *

(3) The activity provides services that are coordinated with ES services; and

* * * * *

■ 8. Amend § 652.207 by revising the section heading and paragraph (a) to read as follows:

§ 652.207 How does a State meet the requirement for universal access to Employment Service services?

(a) A State has discretion in how it meets the requirement for universal access to ES services. In exercising this discretion, a State must meet the Wagner-Peyser Act's requirements.

* * * * *

■ 9. Revise § 652.215 to read as follows:

§ 652.215 What staffing models must be used to deliver services in the Employment Service?

(a) *Staffing requirement.* The Secretary requires that the labor exchange services described in § 652.3 be provided by ES staff, as defined in part 651 of this chapter.

(b) *Effective date.* This section becomes effective [60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) *Compliance date.* All obligations in this section become enforceable [18 MONTHS AFTER EFFECTIVE DATE OF THE FINAL RULE].

PART 653—SERVICES OF THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE SYSTEM

■ 10. The authority citation for part 653 continues to read as follows:

Authority: Secs. 167, 189, 503, Public Law 113–128, 128 Stat. 1425 (Jul. 22, 2014); 29 U.S.C. chapter 4B; 38 U.S.C. part III, chapters 41 and 42.

■ 11. Amend § 653.100 by revising paragraph (a) to read as follows:

§ 653.100 Purpose and scope of subpart.

(a) This subpart sets forth the principal regulations of the Wagner-Peyser Act Employment Service (ES) concerning the provision of services for MSFWs consistent with the requirement that all services of the workforce development system be available to all job seekers in an equitable and nondiscriminatory fashion. This includes ensuring MSFWs have access to these services in a way that meets their unique needs. MSFWs must receive services on a basis which is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs.

* * * * *

■ 12. Revise § 653.101 to read as follows:

§ 653.101 Provision of services to migrant and seasonal farmworkers.

SWAs must ensure that ES staff at one-stop centers offer MSFWs the full range of career and supportive services, benefits and protections, and job and training referral services as are provided to non-MSFWs. SWAs must ensure ES staff at the one-stop centers tailor such ES services in a way that accounts for individual MSFW preferences, needs, skills, and the availability of job and training opportunities, so that MSFWs are reasonably able to participate in the ES.

■ 13. Amend § 653.102 by revising the third sentence and removing the fourth sentence to read as follows:

§ 653.102 Job information.

* * * SWAs must ensure ES staff at one-stop centers provide assistance to MSFWs to access job order information easily and efficiently.

■ 14. Amend § 653.103 by revising paragraphs (a) through (c) to read as follows:

§ 653.103 Process for migrant and seasonal farmworkers to participate in workforce development activities.

(a) Each ES office must determine whether participants and reportable individuals are MSFWs as defined at § 651.10 of this chapter.

(b) SWAs must comply with the language access and assistance requirements at 29 CFR 38.9 with regard to all limited English proficient (LEP) individuals, including MSFWs who are LEP individuals, as defined at 29 CFR 38.4(hh). This includes ensuring ES staff comply with these language access and assistance requirements.

(c) One-stop centers must provide MSFWs a list of available career and supportive services.

* * * * *

■ 15. Amend § 653.107 by:

■ a. Revising the section heading and paragraphs (a)(1), (a)(2)(i) and (ii), and (a)(3)(i);

■ b. Adding paragraphs (a)(3)(i)(A) and (B); and

■ c. Revising paragraphs (a)(3)(ii), (a)(4), the first sentence of (a)(5), introductory text of paragraph (b), (b)(1), (b)(3), introductory text of (b)(4), (b)(4)(i) and (vi), (b)(7), the second sentence of (b)(8), and paragraphs (b)(11), (d)(2)(ii) through (v), and (d)(4) and (5).

The revisions and additions read as follows:

§ 653.107 Outreach responsibilities and Agricultural Outreach Plan.

(a) * * *

(1) Each SWA must ensure outreach staff conduct outreach as described in paragraph (b) of this section on an ongoing basis. SWA Administrators must ensure State Monitor Advocates (SMAs) and outreach staff coordinate activities with WIOA title I sec. 167 grantees as well as with public and private community service agencies and MSFW groups. WIOA title I sec. 167 grantees' activities involving MSFWs does not substitute for SWA outreach responsibilities.

(2) * * *

(i) Communicate the full range of workforce development services to MSFWs; and

(ii) Conduct thorough outreach efforts with extensive follow-up activities identified at paragraph (b)(5) of this section.

(3) When hiring or assigning outreach staff:

(i) SWAs must seek and put a strong emphasis on hiring and assigning qualified candidates who speak the language of a significant proportion of the State MSFW population; and

(A) Who are from MSFW backgrounds; or

(B) Who have substantial work experience in farmworker activities.

(ii) SWAs must inform farmworker organizations and other organizations with expertise concerning MSFWs of job openings and encourage them to refer qualified applicants to apply.

(4) Each SWA must employ an adequate number of outreach staff to conduct MSFW outreach in each area of the State to contact a majority of MSFWs in all of the SWA's service areas annually. In the 20 States with the highest estimated year-round MSFW activity, as identified by the Department, there must be full-time, year-round outreach staff to conduct outreach duties. Full-time means each individual outreach staff person must spend 100 percent of their time on the outreach responsibilities described in paragraph (b) of this section. For the remainder of the States, there must be year-round part-time outreach staff, and during periods of the highest MSFW activity, there must be full-time outreach staff. These staffing levels must align with and be supported by information about the estimated number of farmworkers in the State and the farmworker activity in the State as demonstrated in the State's Agricultural Outreach Plan (AOP) pursuant to paragraph (d) of this section. All outreach staff must be multilingual, if warranted by the characteristics of the MSFW population in the State, and must spend a majority of their time in the field.

(5) The SWA must publicize the availability of ES services through such means as newspaper and electronic media publicity. * * *

* * * * *

(b) *Outreach staff responsibilities.* Outreach staff must locate and contact MSFWs who are not being reached by the normal intake activities conducted by the ES offices. Outreach staff responsibilities include the activities identified in paragraphs (b)(1) through (11) of this section.

(1) Outreach staff must explain to MSFWs at their working, living, or gathering areas (including day-haul sites), by means of written and oral presentations either spontaneous or recorded, the following: * * *

* * * * *

(3) After making the presentation, outreach staff must urge the MSFWs to go to the local one-stop center to obtain the full range of employment and training services.

(4) If an MSFW cannot or does not wish to visit the local one-stop center, outreach staff must offer to provide on-site the following:

(i) Assistance in the preparation of applications for ES services;

* * * * *

(vi) As needed, assistance in making appointments and arranging transportation for individual MSFW(s) or members of their family to and from local one-stop centers or other appropriate agencies.

* * * * *

(7) Outreach staff must be trained in one-stop center procedures and in the services, benefits, and protections afforded MSFWs by the ES, including training on protecting farmworkers against sexual harassment, sexual coercion, assault, and human trafficking. Such trainings are intended to help outreach staff identify when such issues may be occurring in the fields and how to document and refer the cases to the appropriate enforcement agencies. Outreach staff also must be trained in the Complaint System procedures at part 658, subpart E, of this chapter and be aware of the local, State, regional, and national enforcement agencies that would be appropriate to receive referrals. The program for such training must be formulated by the State Administrator, pursuant to uniform guidelines developed by ETA. The SMA must be given an opportunity to review and comment on the State's program.

(8) * * * These records must include a daily log, a copy of which must be sent monthly to the ES Office Manager and maintained on file for at least 3 years. * * *

* * * * *

(11) Outreach staff in significant MSFW one-stop centers must conduct especially vigorous outreach in their service areas. Outreach activities must align with and be supported by information provided in the State's AOP pursuant to paragraph (d) of this section.

* * * * *

(d) * * *

(2) * * *

(ii) Explain the materials, tools, and resources the State will use for outreach;

(iii) Describe the SWA's proposed outreach activities to contact MSFWs who are not being reached by the normal intake activities conducted by the one-stop centers, including identifying the number of full-time and

part-time outreach staff positions in the State and demonstrating that there is sufficient outreach staff to contact a majority of MSFWs in all the State's service areas annually;

(iv) Describe the activities planned for providing the full range of ES services to the agricultural community, including both MSFWs and agricultural employers, through the one-stop centers; and

(v) Include a description of how the SWA intends to provide ES staff in significant MSFW one-stop centers in accordance with § 653.111.

* * * * *

(4) The AOP must be submitted in accordance with paragraph (d)(1) of this section and planning guidance issued by the Department.

(5) The Annual Summaries required at § 653.108(u) must update the Department on the SWA's progress toward meeting the objectives set forth in the AOP.

* * * * *

■ 16. Revise § 653.108 to read as follows:

§ 653.108 State Workforce Agency and State Monitor Advocate responsibilities.

(a) State Administrators must ensure their SWAs monitor their own compliance with ES regulations in serving MSFWs on an ongoing basis. The State Administrator has overall responsibility for SWA self-monitoring. The State Administrator and ES staff must not retaliate against staff, including the SMA, for self-monitoring or raising any issues or concerns regarding noncompliance with the ES regulations.

(b) The State Administrator must appoint an SMA. The State Administrator must inform farmworker organizations and other organizations with expertise concerning MSFWs of the opening and encourage them to refer qualified applicants to apply. Among qualified candidates, the SWAs must seek and put a strong emphasis on hiring persons:

(1) Who are from MSFW backgrounds; or

(2) Who speak the language of a significant proportion of the State MSFW population; or

(3) Who have substantial work experience in farmworker activities.

(c) The SMA must be an individual who:

(1) Is a senior-level ES staff employee;

(2) Reports directly to the State Administrator or State Administrator's designee, such as a director or other appropriately titled official in the State Administrator's office, who has the authority to act on behalf of the State Administrator, except that if a designee is selected, they must not be the individual who has direct program oversight of the ES; and

(3) Has the knowledge, skills, and abilities necessary to fulfill the responsibilities as described in this subpart.

(d) The SMA must have sufficient authority, staff, resources, and access to top management to monitor compliance with the ES regulations. Staff assigned to the SMA are intended to help the SMA carry out the duties set forth in this section and must not perform work that conflicts with any of the SMA's monitoring duties, such as outreach responsibilities required by § 653.107, ARS processing under subpart F of this part, and complaint processing under subpart E of part 658. The number of ES staff positions assigned to the SMA must be determined by reference to the number of MSFWs in the State, (as measured at the time of the peak MSFW population), and the need for monitoring activity in the State.

(e) The SMA must devote full-time staffing to SMA functions. No State may dedicate less than full-time staffing for the SMA position, unless the Regional Administrator, with input from the Regional Monitor Advocate, provides written approval. Any State that proposes less than full-time dedication must demonstrate to the Regional Administrator and Regional Monitor Advocate that all SMA functions can be effectively performed with part-time staffing.

(f) All SMAs and their staff must attend training session(s) offered by the Regional Monitor Advocate(s) and National Monitor Advocate and their team and those necessary to maintain competency and enhance the SMA's understanding of the unique needs of farmworkers. Such trainings must include those identified by the SMA's Regional Monitor Advocate and may include those offered by the Occupational Safety and Health Administration, the Department's Wage and Hour Division, U.S. Equal Employment Opportunity Commission, the Immigrant and Employee Rights Section of the Department of Justice's Civil Rights Division, the Department's Civil Rights Center, and other organizations offering farmworker-related information.

(g) The SMA must provide any relevant documentation requested from the SWA by the Regional Monitor Advocate or the National Monitor Advocate.

(h) The SMA must:

(1) Conduct an ongoing review of the delivery of services and protections afforded by the ES regulations to MSFWs by the SWA and ES offices. This includes:

(i) Monitoring compliance with § 653.111;

(ii) Monitoring the ES services that the SWA and one-stop centers provide to MSFWs to assess whether they are qualitatively equivalent and quantitatively proportionate to the services that the SWA and one-stop centers provide to non-MSFWs; and

(iii) Reviewing the appropriateness of informal resolution of complaints and apparent violations as documented in the complaint logs.

(2) Without delay, must advise the SWA and ES offices of problems, deficiencies, or improper practices in the delivery of services and protections afforded by these regulations and, if warranted, specify the corrective action(s) necessary to address these deficiencies. When the SMA finds corrective action(s) necessary, the ES Office Manager or other appropriate ES staff must develop a corrective action plan in accordance with the requirements identified at paragraph (h)(3)(v) of this section. The SMA also must advise the SWA on means to improve the delivery of services.

(3) Participate in on-site reviews of one-stop centers on a regular basis (regardless of whether or not they are designated significant MSFW one-stop centers) using the procedures set forth in paragraphs (h)(3)(i) through (vii) of this section.

(i) Before beginning an onsite review, the SMA or review staff must study:

(A) Program performance data;

(B) Reports of previous reviews;

(C) Corrective action plans developed as a result of previous reviews;

(D) Complaint logs, as required by the regulations under part 658 of this chapter, including logs documenting the informal resolution of complaints and apparent violations; and

(E) Complaints elevated from the office or concerning the office.

(ii) The SMA must ensure that the onsite review format, developed by ETA, is used as a guideline for onsite reviews.

(iii) Upon completion of an onsite monitoring review, the SMA must hold one or more wrap-up sessions with the ES Office Manager and staff to discuss any findings and offer initial recommendations and appropriate technical assistance.

(iv) After each review, the SMA must conduct an in-depth analysis of the review data. The conclusions, including findings and areas of concern and recommendations of the SMA, must be put in writing and must be sent directly

to the State Administrator, to the official of the SWA with authority over the ES office, and other appropriate SWA officials.

(v) If the review results in any findings of noncompliance with the regulations under this chapter, the SMA's report must include the necessary corrective action(s). To resolve the findings, the ES Office Manager or other appropriate ES staff must develop and propose a written corrective action plan. The plan must be approved or revised by SWA officials and the SMA. The plan must include the actions required to correct any compliance issues within 30 business days or, if the plan allows for more than 30 business days for full compliance, the length of and the reasons for the extended period and the major interim steps to correct the compliance issues must be specifically stated. SWAs are responsible for assuring and documenting that the ES office is in compliance within the time period designated in the plan.

(vi) SWAs must submit to the appropriate ETA regional office copies of the onsite review reports and corrective action plans for ES offices.

(vii) The SMA may delegate the review described in paragraph (h)(3) of this section to the SMA's staff, if the SMA finds such delegation necessary. In such event, the SMA is responsible for and must approve the written report of the review.

(4) Ensure all significant MSFW one-stop centers not reviewed onsite by Federal staff are reviewed at least once per year by the SMA or their staff, and that, if necessary, those ES offices in which significant problems are revealed by required reports, management information, the Complaint System, or other means are reviewed as soon as possible.

(5) Review and approve the SWA's AOP.

(6) On a regular basis, review outreach staff's daily logs and other reports including those showing or reflecting the outreach staff's activities.

(7) Write and submit annual summaries to the State Administrator with a copy to the Regional Administrator and the National Monitor Advocate.

(i) The SMA must participate in Federal reviews conducted pursuant to part 658, subpart G, of this chapter, as requested by the Regional or National Monitor Advocate.

(j) The SMA must monitor the performance of the Complaint System, as set forth at §§ 658.400 and 658.401 of this chapter. The SMA must review the ES office's informal resolution of complaints relating to MSFWs and must ensure that the ES Office Manager transmits copies of the Complaint System logs pursuant to part 658, subpart E, of this chapter to the SWA.

(k) The SMA must serve as an advocate to improve services for MSFWs.

(l) The SMA must establish an ongoing liaison with WIOA sec. 167 National Farmworker Jobs Program (NFJP) grantees and other organizations serving farmworkers, employers, and employer organizations in the State.

(m) The SMA must establish an ongoing liaison with the State-level Equal Opportunity (E.O.) Officer.

(n) The SMA must meet (either in person or by alternative means), at minimum, quarterly, with representatives of the organizations pursuant to paragraphs (l) and (m) of this section, to receive input on improving coordination with ES offices or improving the coordination of services to MSFWs. To foster such collaboration, the SMAs must communicate freely with these organizations. The SMA must also establish Memorandums of Understanding (MOUs) with the NFJP grantees and may establish MOUs with other organizations serving farmworkers as appropriate.

(o) The SMA must conduct frequent field visits to the working, living, and gathering areas of MSFWs, and must discuss the SWA's provision of ES services and other employment-related programs with MSFWs, crew leaders, and employers. Records must be kept of each such field visit.

(p) The SMA must participate in the appropriate regional public meeting(s) held by the Department of Labor Regional Farm Labor Coordinated Enforcement Committee, other Occupational Safety and Health Administration and Wage and Hour Division task forces, and other committees as appropriate.

(q) The SMA must ensure that outreach efforts in all significant MSFW one-stop centers are reviewed at least yearly. This review will include accompanying at least one outreach staff from each significant MSFW one-stop center on field visits to MSFWs' working, living, and/or gathering areas. The SMA must review findings from these reviews with the ES Office Managers.

(r) The SMA must review on at least a quarterly basis all statistical and other MSFW-related data reported by ES offices in order:

(1) To determine the extent to which the SWA has complied with the ES regulations; and

(2) To identify the areas of non-compliance.

(s) The SMA must have full access to all statistical and other MSFW-related information gathered by SWAs and ES offices and may interview ES staff with respect to reporting methods. After each review, the SMA must consult, as necessary, with the SWA and ES offices and provide technical assistance to ensure accurate reporting.

(t) The SMA must review and comment on proposed State ES directives, manuals, and operating instructions relating to MSFWs and must ensure:

(1) That they accurately reflect the requirements of the regulations; and

(2) That they are clear and workable. The SMA also must explain and make available at the requestor's cost, pertinent directives and procedures to employers, employer organizations, farmworkers, farmworker organizations, and other parties expressing an interest in a readily identifiable directive or procedure issued and receive suggestions on how these documents can be improved.

(u) The SMA must prepare for the State Administrator, the Regional Monitor Advocate, and the National Monitor Advocate an Annual Summary describing how the State provided ES services to MSFWs within the State based on statistical data, reviews, and other activities as required in this chapter. The summary must include:

(1) A description of the activities undertaken during the program year by the SMA pertaining to their responsibilities set forth in this section and other applicable regulations in this chapter.

(2) An assurance that the SMA is a senior-level official who reports directly to the State Administrator or the State Administrator's designee as described at paragraph (c) of this section.

(3) An evaluation of SMA staffing levels, including:

(i) An assurance the SMA devotes all of their time to Monitor Advocate functions or, if the SMA conducts their functions on a part-time basis, an assessment of whether all SMA functions are able to be effectively performed on a part-time basis; and

(ii) An assessment of whether the performance of SMA functions requires increased time by the SMA (if part-time) or an increase in the number of ES staff assigned to assist the SMA in the performance of SMA functions, or both.

(4) A summary of the monitoring reviews conducted by the SMA, including:

(i) A description of any problems, deficiencies, or improper practices the

SMA identified in the delivery of services;

(ii) A summary of the actions taken by the SWA to resolve the problems, deficiencies, or improper practices described in its service delivery; and

(iii) A summary of any technical assistance the SMA provided for the SWA, ES offices, and outreach staff.

(5) A summary and analysis of the outreach efforts undertaken by all significant and non-significant MSFW ES offices, as well as the results of those efforts, and an analysis of whether the outreach levels and results were adequate.

(6) A summary of the State's actions taken under the Complaint System described in part 658, subpart E, of this chapter, identifying any challenges, complaint trends, findings from reviews of the Complaint System, trainings offered throughout the year, and steps taken to inform MSFWs and employers, and farmworker advocacy groups about the Complaint System.

(7) A summary of how the SMA is working with WIOA sec. 167 NFJP grantees, the State-level E.O. Officer, and other organizations serving farmworkers, employers, and employer organizations in the State, and an assurance that the SMA is meeting at least quarterly with these individuals and representatives of these organizations.

(8) A summary of the statistical and other MSFW-related data and reports gathered by SWAs and ES offices for the year, including an overview of the SMA's involvement in the SWA's reporting systems.

(9) A summary of the training conducted for ES staff on techniques for accurately reporting data.

(10) A summary of activities related to the AOP and an explanation of whether those activities helped the State reach the objectives described in the AOP. At the end of the 4-year AOP cycle, the summary must include a synopsis of the SWA's achievements over the previous 4 years to accomplish the objectives set forth in the AOP, and a description of the objectives which were not achieved and the steps the SWA will take to address those deficiencies.

(11) For significant MSFW one-stop centers, a summary of the State's efforts to comply with § 653.111.

■ 17. Amend § 653.109 by:

■ a. Revising paragraph (b)(9);

■ b. Redesignating paragraph (b)(10) as paragraph (b)(11);

■ c. Adding a new paragraph (b)(10); and

■ d. Revising paragraphs (g), (h), and (h)(1).

The revision, redesignation, and additions read as follows:

§ 653.109 Data collection and performance accountability measures.

* * * * *

(b) * * *

(9) Agricultural clearance orders (including field checks), MSFW complaints and apparent violations, and monitoring activities;

(10) The number of reportable individuals and participants who are MSFWs; and

(11) Any other data required by the Department.

* * * * *

(g) Meet equity indicators that address ES controllable services and include, at a minimum, individuals referred to a job, receiving job development, and referred to supportive or career services.

(h) Meet minimum levels of service in significant MSFW States. That is, only significant MSFW States will be required to meet minimum levels of service to MSFWs. Minimum level of service indicators must include, at a minimum, individuals placed in a job, individuals placed long-term (150 days or more) in a non-agricultural job, a review of significant MSFW ES offices, field checks conducted, outreach contacts per quarter, and processing of complaints. The determination of the minimum service levels required of significant MSFW States must be based on the following:

(1) Past SWA performance in serving MSFWs, as reflected in on-site reviews and data collected under paragraph (b) of this section.

* * * * *

■ 18. Amend § 653.110 by revising paragraph (b) to read as follows:

§ 653.110 Disclosure of data.

* * * * *

(b) If a request for data held by a SWA is made to the ETA national or regional office, ETA must forward the request to the SWA for response.

* * * * *

■ 19. Amend § 653.111 by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 653.111 State Workforce Agency staffing requirements for significant MSFW one-stop centers.

(a) The SWA must staff significant MSFW one-stop centers in a manner facilitating the delivery of ES services tailored to the unique needs of MSFWs. This includes recruiting qualified candidates who meet the criteria in § 653.107(a)(3).

(b) The SMA, Regional Monitor Advocate, or the National Monitor Advocate, as part of their regular reviews of SWA compliance with these regulations, must monitor the extent to which the SWA has complied with its obligations under paragraph (a) of this section.

* * * * *

■ 20. Amend § 653.501 by:

■ a. Revising the introductory text of paragraph (a) and paragraph (a)(1);

■ b. Adding paragraph (b)(4);

■ c. Revising paragraph (c)(3) introductory text; and

■ d. Revising the first sentence in the introductory text of paragraph (d)(1) and paragraphs (d)(3), (6), (10), and (11).

The revisions and additions read as follows:

§ 653.501 Requirements for processing clearance orders.

(a) *Assessment of need.* No ES staff may place a job order seeking workers to perform farmwork into intrastate or interstate clearance unless:

(1) The ES office and employer have attempted and have not been able to obtain sufficient workers within the local labor market area; or

* * * * *

(b) * * *

(4) Prior to placing a job order into intrastate or interstate clearance, ES staff must consult the Department's Office of Foreign Labor Certification and Wage and Hour Division debarment lists. If the employer requesting access to the clearance system is currently debarred or disqualified from participating in one of the Department's foreign labor certification programs, the SWA must initiate discontinuation of services pursuant to part 658, subpart F of this chapter.

(c) * * *

(3) SWAs must ensure that the employer makes the following assurances in the clearance order: * * *

* * * * *

(d) * * *

(1) The order-holding ES office must transmit an electronic copy of the approved clearance order to its SWA.

* * *

* * * * *

(3) The approval process described in this paragraph does not apply to clearance orders that are attached to applications for foreign temporary agricultural workers pursuant to part 655, subpart B, of this chapter; such clearance orders must be sent to the processing center as directed by ETA in guidance. For noncriteria clearance orders (orders that are not attached to applications under part 655, subpart B, of this chapter), the ETA regional office must review and approve the order

within 10 business days of its receipt of the order, and the Regional Administrator or their designee must approve the areas of supply to which the order will be extended. Any denial by the Regional Administrator or their designee must be in writing and state the reasons for the denial.

* * * * *

(6) ES staff must assist all farmworkers to understand the terms and conditions of employment set forth in intrastate and interstate clearance orders and must provide such workers with checklists showing wage payment schedules, working conditions, and other material specifications of the clearance order.

* * * * *

(10) Applicant-holding offices must provide workers referred on clearance orders with a checklist summarizing wages, working conditions and other material specifications in the clearance order. The checklist must include language notifying the worker that a copy of the original clearance order is available upon request.

(11) The applicant-holding office must give each referred worker a copy of the list of worker's rights described in Departmental guidance.

* * * * *

■ 21. Amend § 653.502 by revising paragraph (d) to read as follows:

§ 653.502 Conditional access to the Agricultural Recruitment System.

* * * * *

(d) *Notice of denial.* If the Regional Administrator denies the request for conditional access to the intrastate or interstate clearance system they must provide written notice to the employer, the appropriate SWA, and the ES office, stating the reasons for the denial.

* * * * *

■ 22. Amend § 653.503 by revising paragraphs (a) and (b) to read as follows:

§ 653.503 Field checks.

(a) If a worker is placed on a clearance order, the SWA must notify the employer in writing that the SWA, through its ES offices, and/or Federal staff, must conduct unannounced field checks to determine and document whether wages, hours, transportation, and working and housing conditions are being provided as specified in the clearance order.

(b) Where the SWA has made placements on 10 or more agricultural clearance orders (pursuant to this subpart) during the quarter, the SWA must conduct field checks on at least 25 percent of the total of such orders. Where the SWA has made placements on nine or fewer job orders during the quarter (but at least one job order), the SWA must conduct field checks on 100 percent of all such orders. This requirement must be met on a quarterly basis.

* * * * *

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE

■ 23. Revise the authority citation for part 658 to read as follows:

Authority: Pub. L. 113–128, 128 Stat. 1425 (July 22, 2014); 29 U.S.C. chapter 4B.

■ 24. Amend § 658.400 by revising the second sentence of paragraph (a) and paragraph (d) to read as follows:

§ 658.400 Purpose and scope of subpart.

(a) * * * Specifically, the Complaint System processes complaints against an employer about the specific job to which the applicant was referred through the ES and complaints involving the failure to comply with the ES regulations under parts 651, 652, 653, and 654 of this chapter and this part. * * *

* * * * *

(d) A complainant may designate an individual to act as their representative.

■ 25. Amend § 658.410 by:

■ a. Revising paragraphs (c), (g), (h), (k), and (m);

■ b. Removing paragraph (n); and

■ c. Redesignating and revising paragraph (o) as paragraph (n).

The revisions and redesignation read as follows:

§ 658.410 Establishment of local and State complaint systems.

* * * * *

(c) SWAs must ensure centralized control procedures are established for the processing of complaints and apparent violations. The ES Office Manager and the State Administrator must ensure a central complaint log is maintained, listing all complaints taken by the ES office or the SWA and apparent violations identified by ES staff, and specifying for each complaint or apparent violation:

(1) The name of the complainant (for complaints);

(2) The name of the respondent (employer or State agency);

(3) The date the complaint is filed or the apparent violation was identified;

(4) Whether the complaint is made by or on behalf of a migrant and seasonal farmworker (MSFW) or whether the apparent violation affects an MSFW;

(5) Whether the complaint or apparent violation concerns an employment-related law or the ES regulations; and

(6) The actions taken (including any documents the SWA sent or received and the date the SWA took such action(s)), and whether the complaint or apparent violation has been resolved, including informally.

* * * * *

(g) All complaints filed through the local ES office must be processed by a trained Complaint System Representative.

(h) All complaints received by a SWA must be assigned to a trained Complaint System Representative designated by the State Administrator. Complaints must not be assigned to the State Monitor Advocate (SMA).

* * * * *

(k) The appropriate ES staff processing a complaint must offer to assist the complainant through the provision of appropriate services.

* * * * *

(m) Follow-up on unresolved complaints. When an MSFW submits a complaint, the Complaint System Representative must follow-up monthly on the processing of the complaint and must inform the complainant of the status of the complaint. No follow-up with the complainant is required for non-MSFW complaints.

(n) A complainant may designate an individual to act as their representative throughout the filing and processing of a complaint.

■ 26. Amend § 658.411 by:

■ a. Revising paragraphs (a)(2)(i) and (ii), (a)(3), the first sentence of paragraph (a)(4), and paragraphs (b)(1), (b)(1)(i), and (b)(1)(ii)(A), (B), (D), and (E);

■ b. Adding paragraph (b)(1)(ii)(F); and

■ c. Revising paragraphs (c), (d)(1)(i), (d)(1)(ii)(A) through (D), (d)(1)(iii) and (iv), the introductory text of (d)(3), (d)(4), the introductory text of (d)(5)(i) and (ii), (d)(5)(iii)(G), and (d)(6).

The revisions and addition read as follows:

§ 658.411 Action on complaints.

(a) * * *

(2) * * *

(i) Make every effort to obtain all the information they perceive to be necessary to investigate the complaint;

(ii) Request that the complainant indicate all of the physical addresses, email addresses, telephone numbers, and any other helpful means by which they might be contacted during the investigation of the complaint; and

* * * * *

(3) The staff must ensure the complainant (or their representative) submits the complaint on the Complaint/Referral Form or another

complaint form prescribed or approved by the Department or submits complaint information which satisfies paragraph (a)(4) of this section. The Complaint/Referral Form must be used for all complaints, including complaints about unlawful discrimination, except as provided in paragraph (a)(4) of this section. The staff must offer to assist the complainant in filling out the form and submitting all necessary information and must do so if the complainant desires such assistance. If the complainant also represents several other complainants, all such complainants must be named. The complainant, or their representative, must sign the completed form in writing or electronically. The identity of the complainant(s) and any persons who furnish information relating to, or assisting in, an investigation of a complaint must be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of the complaint. A copy of the completed complaint submission must be given to the complainant(s), and the complaint form must be given to the appropriate Complaint System Representative described in § 658.410(g).

(4) Any complaint in a reasonable form (letter or email) which is signed by the complainant, or their representative, and includes sufficient information to initiate an investigation must be treated as if it were a properly completed Complaint/Referral Form filed in person. * * *

(b) * * *

(1) When a complaint is filed regarding an employment-related law with an ES office or a SWA, and paragraph (c) of this section does not apply, the office must determine if the complainant is an MSFW.

(i) If the complainant is a non-MSFW, the office must immediately refer the complainant to the appropriate enforcement agency, another public agency, a legal aid organization, and/or a consumer advocate organization, as appropriate, for assistance. Upon completing the referral, the local or State representative is not required to follow-up with the complainant.

(ii) * * *

(A) Take from the MSFW or their representative, in writing (hard copy or electronic), the complaint(s) describing the alleged violation(s) of the employment-related law(s); and

(B) Attempt to resolve the issue informally at the local level, except in cases where the complaint was submitted to the SWA and the Complaint System Representative determines that they must take immediate action or in cases where informal resolution at the local level would be detrimental to the complainant(s). In cases where informal resolution at the local level would be detrimental to the complainant(s), the Complaint System Representative must immediately refer the complaint to the appropriate enforcement agency. Concurrently, the Complaint System Representative must offer to refer the MSFW to other ES services should the MSFW be interested.

* * * * *

(D) If the ES office or SWA Complaint System Representative determines that the complaint must be referred to a State or Federal agency, they must refer the complaint immediately to the appropriate enforcement agency for prompt action.

(E) If the complaint was referred under paragraph (b)(1)(ii)(D) of this section, the representative must notify the complainant of the enforcement agency to which the complaint was referred.

(F) When a complaint alleges an employer in a different State from where the complaint is filed has violated an employment-related law:

(*1*) The ES office or SWA receiving the complaint must ensure the Complaint/Referral Form is adequately completed and then immediately send a copy of the Complaint/Referral Form and copies of any relevant documents to the SWA in the other State. Copies of the referral letter must be sent to the complainant, and copies of the complaint and referral letter must be sent to the ETA Regional Office(s) with jurisdiction over the transferring and receiving State agencies. All such copies must be sent via hard copy or electronic mail.

(*2*) The SWA receiving the complaint must process the complaint as if it had been initially filed with that SWA.

(*3*) The ETA Regional Office with jurisdiction over the receiving SWA must follow up with it to ensure the complaint is processed in accordance with these regulations.

* * * * *

(c) *Complaints alleging unlawful discrimination or reprisal for protected activity.* All complaints received under this subpart by an ES office or a SWA alleging unlawful discrimination or reprisal for protected activity in violation of nondiscrimination laws, such as those enforced by the Equal Employment Opportunity Commission (EEOC) or the Department of Labor's Civil Rights Center (CRC), or in violation of the Immigration and Nationality Act's anti-discrimination provision found at 8 U.S.C. 1324b, must be logged and immediately referred to the State-level E.O. Officer. The Complaint System Representative must notify the complainant of the referral in writing.

(d) * * *

(1) When an ES complaint is filed with an ES office or a SWA, and paragraph (c) of this section does not apply, the following procedures apply:

(i) When an ES complaint is filed against an employer, the proper office to process the complaint is the ES office serving the area in which the employer is located.

(ii) * * *

(A) The ES office or SWA receiving the complaint must ensure the Complaint/Referral Form is adequately completed, and then immediately send a copy of the Complaint/Referral Form and copies of any relevant documents to the SWA in the other State. Copies of the referral letter must be sent to the complainant, and copies of the complaint and referral letter must be sent to the ETA Regional Office(s) with jurisdiction over the transferring and receiving State agencies. All such copies must be sent via hard copy or electronic mail.

(B) The SWA receiving the complaint must process the complaint as if it had been initially filed with that SWA.

(C) The ETA regional office with jurisdiction over the receiving SWA must follow-up with it to ensure the complaint is processed in accordance with these regulations.

(D) If the complaint is against more than one SWA, the complaint must so clearly state. Additionally, the complaints must be processed as separate complaints and must be processed according to procedures in this paragraph (d).

(iii) When an ES complaint is filed against an ES office, the proper office to process the complaint is the ES office serving the area in which the alleged violation occurred.

(iv) When an ES complaint is filed against more than one ES offices and is in regard to an alleged agency-wide violation, the SWA representative or their designee must process the complaint.

* * * * *

(3) When a non-MSFW or their representative files a complaint regarding the ES regulations with a SWA, or when a non-MSFW complaint is referred from an ES office the following procedures apply:

* * * * *

(4)(i) When a MSFW or their representative files a complaint

regarding the ES regulations directly with a SWA, or when a MSFW complaint is referred from an ES office, the Complaint System Representative must investigate and attempt to resolve the complaint immediately upon receipt and may, if necessary, conduct a further investigation.

(ii) If resolution at the SWA level has not been accomplished within 20 business days after the complaint was received by the SWA (or after all necessary information has been submitted to the SWA pursuant to paragraph (a)(4) of this section), the Complaint System Representative must make a written determination regarding the complaint and must send electronic copies to the complainant and the respondent. The determination must follow the procedures set forth in paragraph (d)(5) of this section.

(5)(i) All written determinations by the SWA on complaints under the ES regulations must be sent by certified mail (or another legally viable method) and a copy of the determination may be sent via electronic mail. The determination must include all the following:

(ii) If the SWA determines that the employer has not violated the ES regulations, the SWA must offer to the complainant the opportunity to request, in writing, a hearing within 20 business days after the certified date of receipt of the notification.

(iii) * * *

(G) With the consent of the SWA and of the State hearing official, the party who requested the hearing may withdraw the request for the hearing in writing before the hearing.

* * * * *

(6) A complaint regarding the ES regulations must be processed to resolution by these regulations only if it is made within 2 years of the alleged occurrence.

* * * * *

■ 27. Amend § 658.417 by revising paragraph (b) to read as follows:

§ 658.417 State hearings.

* * * * *

(b) The State hearing official may decide to conduct hearings on more than one complaint concurrently if they determine that the issues are related or that the complaints will be processed more expeditiously if conducted together.

* * * * *

■ 28. Amend § 658.419 by revising paragraph (a) to read as follows:

§ 658.419 Apparent violations.

(a) If an ES staff member observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment-related laws or ES regulations by an employer, except as provided at § 653.503 of this chapter (field checks) or § 658.411 (complaints), the employee must document the apparent violation and refer this information to the ES Office Manager, who must document the apparent violation in the Complaint System log, as described at § 658.410. Apparent violations of nondiscrimination laws must be processed according to the procedures described in § 658.411(c).

* * * * *

■ 29. Amend § 658.420 by revising paragraphs (b) and (c) to read as follows:

§ 658.420 Responsibilities of the Employment and Training Administration regional office.

* * * * *

(b) The Regional Administrator must designate Department of Labor officials to process ES regulation-related complaints as follows:

(1) All complaints received at the ETA regional office under this subpart that allege unlawful discrimination or reprisal for protected activity in violation of nondiscrimination laws, such as those enforced by the EEOC or CRC, in violation of the Immigration and Nationality Act's anti-discrimination provision found at 8 U.S.C. 1324b, must immediately be logged and immediately referred to the appropriate State-level E.O. Officer(s).

(2) All complaints other than those described in paragraph (b)(1) of this section must be assigned to a regional office official designated by the Regional Administrator, provided that the regional office official designated to process MSFW complaints must be the Regional Monitor Advocate (RMA).

(c) Except for those complaints under paragraph (b)(1) of this section, the Regional Administrator must designate Department of Labor officials to process employment-related law complaints in accordance with § 658.422, provided that the regional official designated to process MSFW employment-related law complaints must be the RMA. The RMA must follow up monthly on all complaints filed by MSFWs including complaints under paragraph (b)(1) of this section.

* * * * *

■ 30. Amend § 658.421 by revising the section heading, the first sentence of paragraph (a)(1), introductory text of (a)(2), the first sentences of paragraphs (a)(2)(i) and (b), and paragraphs (c) and (d) to read as follows:

§ 658.421 Processing of Wagner-Peyser Act Employment Service regulation-related complaints.

(a) Except as provided below in paragraph (a)(2) of this section, no complaint alleging a violation of the ES regulations may be processed at the ETA regional office level until the complainant has exhausted the SWA administrative remedies set forth at §§ 658.411 through 658.418. * * *

(2) If a complaint is submitted directly to the Regional Administrator and if they determine that the nature and scope of a complaint described in paragraph (a) of this section is such that the time required to exhaust the administrative procedures at the SWA level would adversely affect a significant number of individuals, the RA must accept the complaint and take the following action:

(i) If the complaint is filed against an employer, the regional office must process the complaint in a manner consistent with the requirements imposed upon State agencies by §§ 658.411 and 658.418. * * *

* * * * *

(b) The ETA regional office is responsible for processing appeals of determinations made on complaints at the SWA level. * * *

(c)(1) Once the Regional Administrator receives a timely appeal, they must request the complete SWA file, including the original Complaint/Referral Form from the appropriate SWA.

(2) The Regional Administrator must review the file in the case and must determine within 10 business days whether any further investigation or action is appropriate; however, if the Regional Administrator determines that they need to request legal advice from the Office of the Solicitor at the U.S. Department of Labor, then the Regional Administrator is allowed 20 business days to make this determination.

(d) If the Regional Administrator determines that no further action is warranted, the Regional Administrator will send their determination in writing to the appellant within 5 days of the determination, with a notification that the appellant may request a hearing before a Department of Labor Administrative Law Judge (ALJ) by filing a hearing request in writing with the Regional Administrator within 20 working days of the appellant's receipt of the notification.

* * * * *

■ 31. Amend § 658.422 by revising the section heading and paragraphs (a) through (c) to read as follows:

§ 658.422 Processing of employment-related law complaints by the Regional Administrator.

(a) This section applies to all complaints submitted directly to the Regional Administrator or their representative.

(b) Each complaint filed by an MSFW alleging violation(s) of employment-related laws must be taken in writing, logged, and referred to the appropriate enforcement agency for prompt action. If such a complaint alleges a violation of nondiscrimination laws or reprisal for protected activity, it must be referred to the appropriate State-level E.O. Officer in accordance with § 658.420(b)(1).

(c) Each complaint submitted by a non-MSFW alleging violation(s) of employment-related laws must be logged and referred to the appropriate enforcement agency for prompt action. If such a complaint alleges a violation of nondiscrimination laws or reprisal for protected activity, it must be referred to the appropriate State-level E.O. Officer in accordance with § 658.420(b)(1).

* * * * *

■ 32. Amend § 658.424 by revising paragraph (d) to read as follows:

§ 658.424 Proceedings before the Office of Administrative Law Judges.

* * * * *

(d) The ALJ may decide to consolidate cases and conduct hearings on more than one complaint concurrently if they determine that the issues are related or that the complaints will be processed more expeditiously.

* * * * *

■ 33. Amend § 658.425 by revising paragraph (a)(1) to read as follows:

§ 658.425 Decision of Department of Labor Administrative Law Judge.

(a) * * *

(1) Rule that they lack jurisdiction over the case:

* * * * *

■ 34. Amend § 658.501 by revising paragraphs (a)(4), (b), and (c) to read as follows:

§ 658.501 Basis for discontinuation of services.

(a) * * *

(4) Are found by a final determination by an appropriate enforcement agency to have violated any employment-related laws and notification of this final determination has been provided to the Department or the SWA by that enforcement agency or are currently debarred or disqualified from participating in one of the Department's foreign labor certification programs;

* * * * *

(b) SWA officials may discontinue services immediately if, in the judgment of the State Administrator, exhaustion of the administrative procedures set forth in § 658.502 would cause substantial harm to a significant number of workers. In such instances, procedures at §§ 658.503 and 658.504 must be followed.

(c) If it comes to the attention of an ES office or a SWA that an employer participating in the ES may not have complied with the terms of its temporary labor certification, under, for example the H–2A and H–2B visa programs, SWA officials must engage in the procedures for discontinuation of services to employers pursuant to § 658.502 and simultaneously notify the Chicago National Processing Center (CNPC) of the alleged non-compliance for investigation and consideration of ineligibility pursuant to § 655.184 or § 655.73 of this chapter respectively for subsequent temporary labor certification.

* * * * *

■ 35. Amend § 658.502 by revising the introductory text of paragraphs (a)(1) through (3), (a)(4), introductory text of (a)(5) through (7), (a)(7)(i) and (iii), and (b) to read as follows:

§ 658.502 Notification to employers.

(a) * * *

(1) Where the decision is based on submittal and refusal to alter or to withdraw job orders containing specifications contrary to employment-related laws, the SWA must specify the date the order was submitted, the job order involved, the specifications contrary to employment-related laws and the laws involved. The SWA must notify the employer in writing that all ES services will be terminated in 20 working days unless the employer within that time: * * *

(2) Where the decision is based on the employer's submittal of an order and refusal to provide assurances that the job is in compliance with employment-related laws or to withdraw the order, the SWA must specify the date the order was submitted, the job order involved, and the assurances involved. The employer must be notified that all ES services will be terminated within 20 working days unless the employer within that time: * * *

(3) Where the decision is based on a finding that the employer has misrepresented the terms or conditions of employment specified on job orders or failed to comply fully with assurances made on job orders, the SWA must specify the basis for that determination. The employer must be notified that all ES services will be terminated in 20 working days unless the employer within that time: * * *

(4) Where the decision is based on a final determination by an enforcement agency or the employer is currently debarred or disqualified from participating in one of the Department's foreign labor certification programs, the SWA must specify the enforcement agency's findings of facts and conclusions of law and, if applicable, the time period for which the employer is debarred or disqualified from participating in one of the Department's foreign labor certification programs. The employer must be notified that all ES services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the enforcement agency has reversed its ruling and that the employer did not violate employment-related laws; or

(ii) Provides adequate evidence that the Department's disbarment or disqualification is no longer in effect or will terminate before the employer's anticipated date of need; or

(iii) Provides adequate evidence that the appropriate fines have been paid and/or appropriate restitution has been made; and

(iv) Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future.

(5) Where the decision is based on a finding of a violation of ES regulations under § 658.411, the SWA must specify the finding. The employer must be notified that all ES services will be terminated in 20 working days unless the employer within that time: * * *

(6) Where the decision is based on an employer's failure to accept qualified workers referred through the clearance system, the SWA must specify the workers referred and not accepted. The employer must be notified that all ES services will be terminated in 20 working days unless the employer within that time: * * *

(7) Where the decision is based on lack of cooperation in the conduct of field checks, the SWA must specify the lack of cooperation. The employer must be notified that all ES services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that it did cooperate; or

* * * * *

(iii) Provides assurances that it will cooperate in future field checks in further activity; or

* * * * *

(b) If the employer chooses to respond pursuant to this section by providing documentary evidence or assurances, it must at the same time request a hearing if such hearing is desired in the event that the SWA does not accept the documentary evidence or assurances as adequate.

* * * * *

■ 36. Amend § 658.504 by revising paragraphs (a)(2)(ii) and (b) to read as follow:

§ 658.504 Reinstatement of services.

(a) * * *

(2) * * *

(ii) The employer provides adequate evidence that it has responded adequately to any findings of an enforcement agency, SWA, or ETA, including restitution to the complainant and the payment of any fines, that were the basis of the discontinuation of services.

(b) The SWA must notify the employer requesting reinstatement within 20 working days whether its request has been granted. If the State denies the request for reinstatement, the basis for the denial must be specified and the employer must be notified that it may request a hearing within 20 working days.

* * * * *

■ 37. Amend § 658.602 by revising paragraphs (f)(2) through (4), (g), introductory text paragraph (j), (j)(8), (l) through (n), introductory text paragraph (o), (p) through (r), introductory text paragraph(s), (s)(2) and (3) to read as follows:

§ 658.602 Employment and Training Administration National Office responsibility.

* * * * *

(f) * * *

(2) Review the performance of SWAs in providing the full range of ES services to MSFWs;

(3) Take steps to resolve or refer ES-related problems of MSFWs which come to their attention;

(4) Take steps to refer non-ES-related problems of MSFWs which come to their attention;

* * * * *

(g) The NMA must be appointed by the Office of Workforce Investment Administrator (Administrator) after informing farmworker organizations and other organizations with expertise concerning MSFWs of the opening and encouraging them to refer qualified applicants to apply through the Federal merit system. Among qualified candidates, determined through merit systems procedures, individuals must be sought who meet the criteria used in the selection of the SMAs, as provided in SWA self-monitoring requirements at § 653.108(a) of this chapter.

* * * * *

(j) The NMA must monitor and assess SWA compliance with ES regulations affecting MSFWs on a continuing basis. Their assessment must consider: * * *

(8) Their personal observations from visits to SWAs, ES offices, agricultural work sites, and migrant camps. In the Annual Report, the NMA must include both a quantitative and qualitative analysis of their findings and the implementation of their recommendations by State and Federal officials, and must address the information obtained from all of the foregoing sources.

* * * * *

(l) If the NMA finds the effectiveness of any RMA has been substantially impeded by the Regional Administrator or other regional office official, they must, if unable to resolve such problems informally, report and recommend appropriate actions directly to the OWI Administrator. If the NMA receives information that the effectiveness of any SMA has been substantially impeded by the State Administrator, a State or Federal ES official, or other ES staff, they must, in the absence of a satisfactory informal resolution at the regional level, report and recommend appropriate actions directly to the OWI Administrator.

(m) The NMA must be informed of all proposed changes in policy and practice within the ES, including ES regulations, which may affect the delivery of services to MSFWs. The NMA must advise the Administrator concerning all such proposed changes which may adversely affect MSFWs. The NMA must propose directly to the OWI Administrator changes in ES policy and administration which may substantially improve the delivery of services to MSFWs. They also must recommend changes in the funding of SWAs and/or adjustment or reallocation of the discretionary portions of funding formulae.

(n) The NMA must participate in the review and assessment activities required in this section and §§ 658.700 through 658.711. As part of such participation, the NMA, or if they are unable to participate, an RMA must accompany the National Office review team on National Office on-site reviews. The NMA must engage in the following activities during each State on-site review:

(1) They must accompany selected outreach staff on their field visits.

(2) They must participate in field check(s) of migrant camps or work site(s) where MSFWs have been placed on inter or intrastate clearance orders.

(3) They must contact local WIOA sec. 167 National Farmworker Jobs Program grantees or other farmworker organizations as part of the on-site review and discuss with representatives of these organizations current trends and any other pertinent information concerning MSFWs.

(4) They must meet with the SMA and discuss the full range of the ES services to MSFWs, including monitoring and the Complaint System.

(o) In addition to the duties specified in paragraph (f) of this section, the NMA each year during the harvest season must visit the four States with the highest level of MSFW activity during the prior fiscal year, if they are not scheduled for a National Office on-site review during the current fiscal year, and must: * * *

(p) The NMA must perform duties specified in §§ 658.700 through 765.711. As part of this function, they must monitor the performance of regional offices in imposing corrective action. The NMA must report any deficiencies in performance to the Administrator.

(q) The NMA must establish routine and regular contacts with WIOA sec. 167 National Farmworker Jobs Program grantees, other farmworker organizations and agricultural employers and/or employer organizations. The NMA must attend conferences or meetings of these groups wherever possible and must report to the Administrator and the National Farm Labor Coordinated Enforcement Committee on these contacts when appropriate. The NMA must include in the Annual Report recommendations about how the Department might better coordinate ES and WIOA sec. 167 National Farmworker Jobs Program services as they pertain to MSFWs.

(r) In the event that any SMA or RMA, enforcement agency, or MSFW group refers a matter to the NMA which requires emergency action, the NMA must assist them in obtaining action by appropriate agencies and staff, inform the originating party of the action taken, and, upon request, provide written confirmation.

(s) Through all the mechanisms provided in this subpart, the NMA must aggressively seek to ascertain and remedy, if possible, systemic deficiencies in the provisions of ES services and protections afforded by these regulations to MSFWs. The NMA must: * * *

(2) Provide technical assistance to ETA regional office and ES staff for

administering the Complaint System, and any other ES services as appropriate.

(3) Recommend to the Regional Administrator specific instructions for action by regional office staff to correct any ES-related systemic deficiencies. Prior to any ETA review of regional office operations concerning ES services to MSFWs, the NMA must provide to the Regional Administrator a brief summary of ES-related services to MSFWs in that region and their recommendations for incorporation in the regional review materials as the Regional Administrator and ETA reviewing organization deem appropriate.

* * * * *

■ 38. Amend § 658.603 by revising paragraphs (d)(7), (f)(1) through (3), (g), (i), introductory text of paragraph (k), (k)(7) and (8), (m), (n)(2) and (3), (o)(1), (p), (q), and (s) through (v) to read as follows:

§ 658.603 Employment and Training Administration regional office responsibility.

* * * * *

(d) * * *

(7) Unannounced field checks of a sample of agricultural work sites to which ES placements have been made through the clearance system to determine and document whether wages, hours, and working and housing conditions are as specified on the clearance order. If regional office staff find reason to believe that conditions vary from clearance order specifications, findings must be documented on the Complaint/Apparent Violation Referral Form and provided to the State Workforce Agency to be processed as an apparent violation under § 658.419.

* * * * *

(f) * * *

(1) Review the effective functioning of the SMAs in their region;

(2) Review the performance of SWAs in providing the full range of ES services to MSFWs;

(3) Take steps to resolve ES-related problems of MSFWs which come to their attention;

* * * * *

(g) The RMA must be appointed by the Regional Administrator after informing farmworker organizations and other organizations in the region with expertise concerning MSFWs of the opening and encouraging them to refer qualified applicants to apply through the Federal merit system. The RMA must have direct personal access to the Regional Administrator wherever they find it necessary. Among qualified candidates, individuals must be sought who meet the criteria used in the selection of the SMAs, as provided in § 653.108(b) of this chapter.

* * * * *

(i) The RMA must participate in training sessions including those offered by the National Office and those necessary to maintain competency and enhance their understanding of issues farmworkers face (including trainings offered by OSHA, WHD, EEOC, CRC, and other organizations offering farmworker-related information).

* * * * *

(k) At the ETA regional level, the RMA must have primary responsibility for ensuring SWA compliance with ES regulations as it pertains to services to MSFWs is monitored by the regional office. They must independently assess on a continuing basis the provision of ES services to MSFWs, seeking out and using: * * *

(7) Any other pertinent information which comes to their attention from any possible source.

(8) In addition, the RMA must consider their personal observations from visits to ES offices, agricultural work sites, and migrant camps.

* * * * *

(m) The Regional Administrator's quarterly report to the National Office must include the RMA's summary of their independent assessment as required in paragraph (f)(5) of this section. The fourth quarter summary must include an Annual Summary from the region. The summary also must include both a quantitative and a qualitative analysis of their reviews and must address all the matters with respect to which they have responsibilities under these regulations.

(n) * * *

(2) Is being impeded in fulfilling their duties; or

(3) Is making recommendations that are being consistently ignored by SWA officials. If the RMA believes that the effectiveness of any SMA has been substantially impeded by the State Administrator, other State agency officials, any Federal officials, or other ES staff, the RMA must report and recommend appropriate actions to the Regional Administrator. Copies of the recommendations must be provided to the NMA electronically or in hard copy.

(o)(1) The RMA must be informed of all proposed changes in policy and practice within the ES, including ES regulations, which may affect the delivery of services to MSFWs. They must advise the Regional Administrator on all such proposed changes which, in their opinion, may adversely affect MSFWs or which may substantially improve the delivery of services to MSFWs.

* * * * *

(p) The RMA must participate in the review and assessment activities required in this section and §§ 658.700 through 658.711. The RMA, an assistant, or another RMA must participate in National Office and regional office on-site statewide reviews of ES services to MSFWs in States in the region. The RMA must engage in the following activities in the course of participating in an on-site SWA review:

(1) Accompany selected outreach staff on their field visits;

(2) Participate in a field check of migrant camps or work sites where MSFWs have been placed on intrastate or interstate clearance orders;

(3) Contact local WIOA sec. 167 National Farmworker Jobs Program grantees or other farmworker organizations as part of the on-site review, and must discuss with representatives of these organizations perceived trends, and/or other relevant information concerning MSFWs in the area; and

(4) Meet with the SMA and discuss the full range of the ES services to MSFWs, including monitoring and the Complaint System.

(q) During the calendar quarter preceding the time of peak MSFW activity in each State, the RMA must meet with the SMA and must review in detail the State Workforce Agency's capability for providing the full range of services to MSFWs as required by ES regulations, during the upcoming harvest season. The RMA must offer technical assistance and recommend to the SWA and/or the Regional Administrator any changes in State policy or practice that the RMA finds necessary.

* * * * *

(s) The RMA must initiate and maintain regular and personal contacts, including informal contacts in addition to those specifically required by these regulations, with SMAs in the region. In addition, the RMA must have personal and regular contact with the NMA. The RMA also must establish routine and regular contacts with WIOA sec. 167 National Farmworker Jobs Program grantees, other farmworker organizations and agricultural employers and/or employer organizations in the RMA's region. The RMA must attend conferences or meetings of these groups wherever possible and must report to the Regional Administrator and the Regional Farm Labor Coordinated Enforcement

Committee on these contacts when appropriate. The RMA also must make recommendations as to how the Department might better coordinate ES and WIOA sec. 167 National Farmworker Jobs Program services to MSFWs.

(t) The RMA must attend MSFW-related public meeting(s) conducted in the region, as appropriate. Following such meetings or hearings, the RMA must take such steps or make such recommendations to the Regional Administrator, as the RMA deems necessary to remedy problem(s) or condition(s) identified or described therein.

(u) The RMA must attempt to achieve regional solutions to any problems, deficiencies, or improper practices concerning services to MSFWs which are regional in scope. Further, the RMA must recommend policies, offer technical assistance, or take any other necessary steps as they deem desirable or appropriate on a regional, rather than State-by-State basis, to promote region-wide improvement in the delivery of ES services to MSFWs. The RMA must facilitate region-wide coordination and communication regarding provision of ES services to MSFWs among SMAs, State Administrators, and Federal ETA officials to the greatest extent possible. In the event that any SWA or other RMA, enforcement agency, or MSFW group refers a matter to the RMA which requires emergency action, the RMA must assist them in obtaining action by appropriate agencies and staff, inform the originating party of the action taken, and, upon request, provide written confirmation.

(v) The RMA must initiate and maintain such contacts as they deem necessary with RMAs in other regions to seek to resolve problems concerning MSFWs who work, live, or travel through the region. The RMA must recommend to the Regional Administrator and/or the National Office inter-regional cooperation on any particular matter, problem, or policy with respect to which inter-regional action is desirable.

* * * * *

■ 39. Amend § 658.604 by revising paragraph (c)(3)(i) to read as follows:

§ 658.604 Assessment and evaluation of program performance data.

* * * * *

(c) * * *

(3) * * *

(i) Generally, for example, a SWA has direct and substantial control over the delivery of ES services such as referrals to jobs, job development contacts, counseling, referrals to career and supportive services, and the conduct of field checks.

* * * * *

■ 40. Amend § 658.702 by revising paragraphs (a), (d), (e), (f)(2), and (h)(5) to read as follows:

§ 658.702 Initial action by the Regional Administrator.

(a) The ETA Regional Administrator is responsible for ensuring that all SWAs in their region are in compliance with ES regulations.

* * * * *

(d) If the Regional Administrator determines that there is no probable cause to believe that a SWA has violated ES regulations, they must retain all reports and supporting information in Department files. In all cases where the Regional Administrator has insufficient information to make a probable cause determination, they must so notify the Administrator in writing and the time for the investigation must be extended 20 additional business days.

(e) If the Regional Administrator determines there is probable cause to believe a SWA has violated ES regulations, they must issue a Notice of Initial Findings of Non-compliance by registered mail (or other legally viable means) to the offending SWA. The notice will specify the nature of the violation, cite the regulations involved, and indicate corrective action which may be imposed in accordance with paragraphs (g) and (h) of this section. If the non-compliance involves services to MSFWs or the Complaint System, a copy of said notice must be sent to the NMA.

(f) * * *

(2) After the period elapses, the Regional Administrator must prepare within 20 business days, written final findings which specify whether the SWA has violated ES regulations. If in the final findings the Regional Administrator determines the SWA has not violated ES regulations, the Regional Administrator must notify the State Administrator of this finding and retain supporting documents in their files. If the final finding involves services to MSFWs or the Complaint System, the Regional Administrator also must notify the RMA and the NMA. If the Regional Administrator determines a SWA has violated ES regulations, the Regional Administrator must prepare a Final Notice of Noncompliance which must specify the violation(s) and cite the regulations involved. The Final Notice of Noncompliance must be sent to the SWA by registered mail or other legally viable means. If the noncompliance involves services to MSFWs or the Complaint System, a copy of the Final Notice must be sent to the RMA and the NMA.

* * * * *

(h) * * *

(5) If, as a result of this review, the Regional Administrator determines the SWA has taken corrective action but is unable to determine if the violation has been corrected due to seasonality or other factors, the Regional Administrator must notify in writing the SWA and the Administrator of their findings. The Regional Administrator must conduct further follow-up at an appropriate time to make a final determination if the violation has been corrected. If the Regional Administrator's follow-up reveals that violations have not been corrected, the Regional Administrator must apply remedial actions to the SWA pursuant to § 658.704.

* * * * *

■ 41. Amend § 658.704 by revising the fifth sentence of paragraph (d) and the fourth sentence of (f)(2) to read as follows:

§ 658.704 Remedial actions.

* * * * *

(d) * * * The Regional Administrator must notify the SWA of their findings. * * *

* * * * *

(f) * * *

(2) * * * One copy must be retained. Two must be sent to the ETA National Office, one must be sent to the Solicitor of Labor, Attention: Associate Solicitor for Employment and Training, and, if the case involves violations of regulations governing services to MSFWs or the Complaint System, copies must be sent to the RMA and the NMA. * * *

* * * * *

■ 42. Amend § 658.705 by revising the introductory text of paragraphs (b) and (b)(3) and paragraphs (c) through (f) to read as follows:

§ 658.705 Decision to decertify.

* * * * *

(b) The Assistant Secretary must grant the request for decertification unless they make a finding that: * * *

(3) The Assistant Secretary has reason to believe the SWA will achieve compliance within 80 business days unless exceptional circumstances necessitate more time, pursuant to the remedial action already applied or to be applied. (In the event the Assistant Secretary does not have sufficient information to act upon the request, they may postpone the determination for up to an additional 20 business days to obtain any available additional

information.) In making a determination whether violations are ''serious'' or ''continual,'' as required by paragraph (b)(1) of this section, the Assistant Secretary must consider: * * *

(c) If the Assistant Secretary denies a request for decertification, they must write a complete report documenting their findings and, if appropriate, instructing an alternate remedial action or actions be applied. Electronic copies of the report must be sent to the Regional Administrator. Notice of the Assistant Secretary's decision must be published promptly in the **Federal Register** and the report of the Assistant Secretary must be made available for public inspection and copying.

(d) If the Assistant Secretary decides decertification is appropriate, they must submit the case to the Secretary providing written explanation for their recommendation of decertification.

(e) Within 30 business days after receiving the Assistant Secretary's report, the Secretary must determine whether to decertify the SWA. The Secretary must grant the request for decertification unless they make one of the three findings set forth in paragraph (b) of this section. If the Secretary decides not to decertify, they must then instruct that remedial action be continued or that alternate actions be applied. The Secretary must write a report explaining their reasons for not decertifying the SWA and copies (hard copy and electronic) will be sent to the SWA. Notice of the Secretary's decision must be published promptly in the **Federal Register**, and the report of the Secretary must be made available for public inspection and copy.

(f) Where either the Assistant Secretary or the Secretary denies a request for decertification and orders further remedial action, the Regional Administrator must continue to monitor the SWA's compliance. If the SWA achieves compliance within the time established pursuant to paragraph (b) of this section, the Regional Administrator must terminate the remedial actions. If the SWA fails to achieve full compliance within that time period after the Secretary's decision not to decertify, the Regional Administrator must submit a report of their findings to the Assistant Secretary who must reconsider the request for decertification pursuant to the requirements of paragraph (b) of this section.

■ 43. Amend § 658.706 to read as follows:

§ 658.706 Notice of decertification.

If the Secretary decides to decertify a SWA, they must send a Notice of Decertification to the SWA stating the reasons for this action and providing a 10 business day period during which the SWA may request an administrative hearing in writing to the Secretary. The document must be published promptly in the **Federal Register**.

■ 44. Amend § 658.707 by revising paragraphs (a) and (b) to read as follows:

§ 658.707 Requests for hearings.

(a) Any SWA which received a Notice of Decertification under § 658.706 or a notice of disallowance under § 658.702(g) may request a hearing on the issue by filing a written request for hearing with the Secretary within 10 business days of receipt of the notice. Additionally, any SWA that has received a Notice of Remedial Action under § 658.704(c) may request a hearing by filing a written request with the Regional Administrator within 20 business days of the SWA's receipt of the notice. This request must state the reasons the SWA believes the basis of the decision to be wrong, and it must be signed by the State Administrator (electronic signatures may be accepted).

(b) When the Secretary or Regional Administrator receives a request for a hearing from a SWA, they must send copies of a file containing all materials and correspondence relevant to the case to the Assistant Secretary, the Regional Administrator, the Solicitor of Labor, and the Department of Labor Chief Administrative Law Judge. When the case involves violations of regulations governing services to MSFWs or the Complaint System, a copy must be sent to the NMA.

* * * * *

Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

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Presidential Documents

Title 3—

The President

Proclamation 10369 of April 15, 2022

National Park Week, 2022

By the President of the United States of America

A Proclamation

From the Great Smoky Mountains in North Carolina and Tennessee, to the wonderous sights of the Grand Canyon in Arizona, to the vast hidden treasures of the Channel Islands in California, our cherished national parks are home to so many of those most beautiful places on Earth, places that astonish us, inspire us, and fill us with a sense of pride and belonging. During National Park Week, we celebrate the natural splendor of our national parks and show our appreciation for the Department of the Interior and National Park Service's dedicated stewardship of them.

Last month, our Nation celebrated the 150th anniversary of Yellowstone National Park—the world's first national park and a place that holds many treasured memories for me. The desire to protect and share the indescribable beauty, bountiful wildlife, and natural resources of Yellowstone laid the foundation for what would become America's national parks system.

To protect our Nation's outdoors and all of its marvels, I was proud to launch the ''America the Beautiful'' initiative—the first-ever voluntary national conservation effort with a goal to conserve 30 percent of our country's lands and waters by 2030. I have called for a whole-of-government approach that supports locally-led efforts to conserve and restore lands and waters across the country. In doing so, we will address the interconnected climate and biodiversity crises that our planet faces and also allow more people in more communities to have access to nature and the physical and spiritual nourishment it provides.

Historic investments through the Bipartisan Infrastructure Law and the Great American Outdoors Act are also allowing us to revitalize our national parks and public lands by modernizing facilities and addressing the extensive deferred maintenance and repair backlog. These laws also allow us to make progress on pollution clean-up, environmental sustainability, climate resiliency, and green energy initiatives. Through these important upgrades and restoration efforts, we will make it possible for more people to enjoy our national parks, today and for generations to come.

My Administration is working to fully engage with Tribal Nations by acknowledging their history and learning from their ancestral and modern connections to our national parks. By recognizing Native American Tribes' connection to this land since time immemorial and finding opportunities to collaborate on managing our shared lands and waters, we can preserve Native American Tribes' rich histories while safeguarding America's national parks for future generations. The National Park Service is also working with stakeholders to connect more Americans to our national parks, incorporating the experiences, backgrounds, and history of every community that these sites represent.

As part of my Administration's efforts to advance equity, diversity, and inclusion, we have made a priority of creating equitable access to our shared natural resources. Through programs funded by the Land and Water Conservation Fund, such as the Outdoor Recreation Legacy Partnership, we

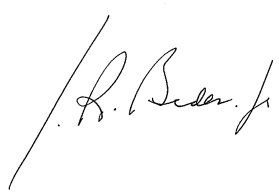
are working with communities to develop and preserve green space, reinvigorating existing national parks, and expanding opportunities to forge connections between people and the outdoors, particularly in economically underserved areas. By tackling the intersecting challenges of environmental and racial justice, we will create a future where all Americans can enjoy everything that our national parks have to offer.

As we have learned throughout the COVID–19 pandemic, providing easy and equitable access to the great outdoors is vital for our physical, mental, and social health. National parks, trails, and other close-to-home public spaces create opportunities for us to get outdoors, enjoy fresh air, and socialize or find sanctuary.

Our national parks serve as a source of recreation, inspiration, and spirit. They are, indeed, America's best idea. I encourage all Americans to take some time during National Park Week to connect with our national parks.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 16 through April 24, 2022, as National Park Week. I encourage all Americans to find their park, recreate responsibly, and enjoy the benefits that come from spending time in the natural world.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



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Presidential Documents

Proclamation 10370 of April 15, 2022

National Volunteer Week, 2022

By the President of the United States of America

A Proclamation

Over the past year, we have seen that the American spirit of service is alive and well. Every day, Americans are giving their love and labor to care for seniors, help communities rebuild after disasters, support veterans and military families, tackle climate change, guide and mentor our youth, serve and strengthen the democratic process, feed the hungry, and keep communities healthy and safe. Tens of millions of Americans collectively volunteer billions of hours of their time each year. This commitment to service represents the best of who we are as Americans. During National Volunteer Week, we recognize the contributions that our Nation's volunteers make every day and encourage all Americans to discover their path to making a difference.

We also need to call on that spirit more than ever as we help our Nation recover from the COVID–19 pandemic. For example, we need volunteers in education to help students get back on track, and I encourage Americans to support our youth by serving as tutors and mentors or in other critical roles. As we tackle the pandemic and so many other challenges, government has a role to play, but our Nation is stronger, more connected, and best prepared for the future when government, nonprofits, community organizations, the private sector, and the American people work together.

Volunteering also benefits the volunteers. People who volunteer develop new skills, build their personal and professional networks, forge a deeper connection with their communities and service organizations, and experience the joy of serving a larger cause. The opportunities to volunteer are seemingly limitless. Students gain real world experience, workers apply their skills to organizations that benefit from their experience and often develop new skills in the process, and older Americans improve their health and longevity. At every age and stage in life, volunteers experience the profound joy of giving back.

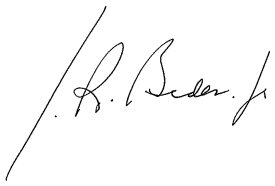
Volunteerism is also a reinforcing cycle. Volunteers are more likely to become further involved in volunteer groups, participate in civic organizations, attend public meetings, and lend a helping hand to their neighbors. Serving together in common purpose has the power to unite us across the lines that sometimes divide. As I pursue a unity agenda in the Congress, volunteering serves as a unity agenda for our national life.

Vice President Harris and I salute all of our fellow Americans who take time to help others in need and the faith-based, nonprofit, national service, military service, and community organizations that make their service possible. My Administration is committed to encouraging and advancing volunteer service throughout our Nation and the world. Through AmeriCorps—a network of service programs across our country that helps meet community needs—we are removing barriers to service, expanding volunteer opportunities, and focusing on our Nation's toughest challenges. AmeriCorps increased the living allowance for national service members through funding from the American Rescue Plan and is working with partners to recruit volunteers in underserved communities so that service opportunities are more accessible. To serve communities abroad in their response and recovery efforts from

the pandemic, the Peace Corps has developed criteria and processes to return volunteers around the world. I encourage all Americans to learn how get involved by visiting AmeriCorps.gov and peacecorps.gov/volunteer.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 17 through April 23, 2022, as National Volunteer Week. I call upon all Americans to observe this week by volunteering in service projects across the country and pledging to make service a part of their daily lives.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



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